

Circuit Court for Washington County
Case No: 21-C-15-054823

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 185

September Term, 2018

JEFFREY FRANCE

v.

MARYLAND PAROLE COMMISSION

Beachley,
Wells,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: November 25, 2019

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

In 2015, Jeffrey France, the appellant, filed a petition for writ of habeas corpus in the Circuit Court for Washington County. He claimed that the Maryland Parole Commission wrongly suspended approval of a 2014 decision granting him a “conditional delayed release on parole,” which had been scheduled for March 2016, after learning that was he was ineligible for domestic violence therapy – a condition of the release.¹ The Parole Commission, however, agreed to reconsider Mr. France for parole at a hearing to be held in November 2017.²

By order dated December 1, 2015, the circuit court denied Mr. France’s petition after finding that he was not entitled to habeas relief because he had never been served with an order for release on parole and, therefore, there was no violation of any liberty interest. *See Patuxent Institution Board of Review v. Hancock*, 329 Md. 556, 584-85 (1993) (a recommendation of parole did not give rise to a liberty interest; it is the order of parole from which a liberty interest flows). The court also concluded that, until an order of parole is issued, a decision to approve a prisoner for parole may be reconsidered. *See* Code of Maryland Regulation 12.08.01.23.B.(3) (“Any case may be reviewed at the discretion of the Commission at any time upon receipt of new information of significance relative to the

¹ It appears that Mr. France was deemed ineligible for domestic violence therapy because of his refusal to participate in the program. Mr. France disputes that finding.

² Following a November 2017 hearing, the Maryland Parole Commission adopted the hearing officer’s recommendation to refuse Mr. France parole, noting his unwillingness to participate in a domestic violence program. The Commission found that Mr. France’s position that he did not need domestic violence counseling was belied by his criminal history and the threatening letters he had sent, from prison, to his former girlfriend.

possibility of parole.”). Mr. France did not seek appellate review of the denial of his request for habeas relief. Instead, more than two years later, in January 2018, he filed a motion for reconsideration of the court’s decision.

In his motion for reconsideration, Mr. France challenged the earlier finding by the Parole Commission that he had refused to participate in a domestic violence program. He also claimed he had completed the program in February 2016 and, therefore, he should have been paroled in March 2016, the conditional delayed release on parole date set back in 2014. Further, he asserted that the Parole Commission did not have the authority, in 2015, to suspend the approved conditional delayed release on parole because, in his view, the Commission could do so only based on “bad person conduct” and “being ineligible for a program” does not fall within that category. The circuit court summarily denied the motion for reconsideration. Mr. France appeals that ruling.

On appeal, Mr. France challenges the Parole Commission’s decision to suspend its approval of his conditional delayed release on parole. The only issue properly before us, however, is whether the circuit court erred or abused its discretion in denying his motion for reconsideration of its 2015 denial of his petition for writ of habeas corpus.

A court’s revisory power of its judgments is governed by § 6-408 of the Courts & Judicial Proceedings Article of the Md. Code, which provides:

For a period of 30 days after the entry of a judgment, or thereafter pursuant to a motion filed within that period, the court has revisory power and control over the judgment. After the expiration of that period the court has revisory power and control over the judgment only in case of fraud, mistake, irregularity, or failure of an employee of the court or of the clerk’s office to perform a duty required by statute or rule.

Rule 2-535(a) similarly provides a 30-day period for a court to revise its judgment. It states, in pertinent part, that, “[o]n motion of any party filed within 30 days after entry of judgment, the court may exercise revisory power and control over the judgment and, if the action was tried before the court, may take any action that it could have taken under Rule 2-534.” After 30 days, a motion must be made pursuant to Rule 2-535(b), which provides, “[o]n motion of any party filed at any time, the court may exercise revisory power and control over the judgment in case of fraud, mistake, or irregularity.” Given that Mr. France waited more than two years to file his motion for reconsideration of the circuit court’s denial of his request for habeas relief, Rule 2-535(b) applies here.

The terms fraud, mistake, and irregularity are “narrowly defined and strictly applied” to ensure finality of judgments. *Pelletier v. Burson*, 213 Md. App. 284, 290 (2013) (quoting *Thacker v. Hale*, 146 Md. App. 203, 217 (2002)). “The burden of proof in establishing fraud, mistake, or irregularity is clear and convincing evidence.” *Jones v. Rosenberg*, 178 Md. App. 54, 72, *cert. denied*, 405 Md. 64 (2008). “We review a circuit court’s determination of whether there was fraud, mistake, or irregularity for clear error and legal correctness.” *Davis v. Attorney General*, 187 Md. App. 110, 124 (2009).

Mr. France’s motion for reconsideration was not based on fraud or irregularity and his argument that the Parole Commission erred in suspending its approval for a conditional delayed release was not the type of “mistake” contemplated by Courts & Judicial Proc., § 6-408 or Rule 2-535(b). Mistake, in this context, “is limited . . . to jurisdictional error, such as where the Court lacks the power to enter judgment.” *Green v. Ford Motor Credit*

Co., 152 Md. App. 32, 51 (2003). Accordingly, the circuit court did not err in denying Mr. France’s motion for reconsideration.

**JUDGMENT OF THE CIRCUIT COURT
FOR WASHINGTON COUNTY AFFIRMED.
COSTS TO BE PAID BY APPELLANT.**