

Circuit Court for Somerset County
Case No.: C-19-CV-24-000102

UNREPORTED

IN THE APPELLATE COURT
OF MARYLAND*

No. 418

September Term, 2025

PHILLIP S. BAILEY

v.

ERNEST ELEY, JR., *et al.*

Graeff,
Berger,
Kenney, James A., III
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: January 14, 2026

* This is a per curiam opinion. Under Rule 1-104, the opinion is not precedent within the rule of stare decisis, nor may it be cited as persuasive authority.

Phillip Bailey, appellant, is an inmate in the custody of Maryland’s Division of Correction serving a lengthy prison sentence for several violations of Maryland’s narcotics laws. On October 4, 2022, the Maryland Parole Commission (“the Commission”) refused appellant release on parole. On September 12, 2024, acting *pro se*, he filed a petition for a writ of mandamus or, in the alternative, complaint for injunctive relief, in the Circuit Court for Somerset County asking that court to, among other things, order appellees, Ernest Eley, the Chairman of the Parole Commission, and/or William Bailey, the Warden of the Eastern Correctional Institution, to immediately release him on parole. On January 31, 2025, appellees moved to dismiss appellant’s petition, and on April 9, 2025, the court dismissed it for the reasons set forth in appellees’ motion to dismiss.

Acting *pro se*, appellant noted an appeal from the circuit court’s dismissal of his petition wherein he asserts that the circuit court erred. He asks us to “[r]emand the case to the circuit court with instructions to apply C.O.M.A.R. where applicable and declare that the parole commision [sic] did grant parole to Appellant when all parties involved signed the parole contract, this being Appellant’s liberty interest.”

BACKGROUND

Legal Background

Parole release determinations are governed by Title 7 of the Correctional Services Article (“CS”) of the Maryland Code and Title 12, Subtitle 08, of the Code of Maryland Regulations (COMAR). Some cases are heard in the first instance by a hearing examiner

who makes a recommendation to a reviewing parole commissioner.¹ CS § 7-204(b)(2). In that event, at the conclusion of a parole hearing, the hearing examiner informs the inmate of the parole recommendation that will be submitted to the Commission for review. CS § 7-306(d)(1), (e)(1); CS § 7-205(a)(4)-(5); COMAR 12.08.01.18E(1)-(2). After the hearing examiner submits its recommendation to the Commission, a parole commissioner decides whether to accept or reject the recommendation.

The relevant statutes delineate a timeframe for the Commission to act on the recommendation and provide a timeframe for the inmate and the Commissioner of Correction to “appeal” the Commission’s decision. CS § 7-306(d)-(e). If the reviewing commissioner disagrees with the recommendation of the hearing examiner, that is also treated as an “appeal.” CS § 7-306(e)(2)(i); COMAR 12.08.01.19A(4).

Whichever of those paths results in an appeal, the case is then heard by a panel of not less than two parole commissioners. CS § 7-306(e)(2)(i); COMAR 12.08.01.19B(1). That panel may affirm the hearing officer’s decision, reverse the decision and render a new decision, modify the decision, or remand the case for further consideration and a new decision. COMAR 12.08.01.19C(1). The appellate panel is required to issue a written decision, and the panel’s decision is the final parole decision. CS § 7-306(e)(2)(ii)-(iii).

Another way to be released on parole is to enter into a “tripartite agreement or contract for parole release of the inmate at a time certain in the future.” COMAR

¹ Generally speaking, parole commissioners hear cases where the inmate was convicted of a homicidal act, where the inmate is serving a life sentence, or where the parole hearing is open to the public. Hearing examiners hear all other cases. CS § 7-205(a)(3)(ii)-(iv).

12.08.01.20A. Pursuant to CS § 7-205(b)(1)(i), the “Commission may negotiate, enter into, and sign a predetermined parole release agreement with the Commissioner of Correction and an incarcerated individual under the jurisdiction of the Commission.” Such an agreement may provide for the release of the inmate on parole at a predetermined time if the inmate fulfills the conditions specified in the agreement. CS § 7-205(b)(1)(ii). COMAR 12.08.01.20A and B require that the contract be in writing and be signed by all parties, i.e., the Commission, the inmate, and the Commissioner of Correction.²

Once the Commission decides to approve parole by either of the aforementioned paths, the inmate is not entitled to release on parole until the Commission issues a formal Order for Parole, and the incarcerated individual signs the order, thereby accepting the conditions of the parole.³ *Patuxent Inst. Bd. of Review v. Hancock*, 329 Md. 556, 584-85 (1993); *Lomax v. Warden, Md. Corr. Training Ctr.*, 120 Md. App. 314, 327-28 (1998).

² There are corresponding provisions concerning such agreements in the section of COMAR germane to the Division of Correction who is also a party to such an agreement. See COMAR 12.02.25.00 *et seq.* In those regulations, such an agreement is referred to as a Mutual Agreement Program (“MAP”) contract. In the parole-related statutes, such an agreement is referred to as a “Predetermined parole release agreement.” CS § 7-101(l). It is unclear to us why the agreements have different names.

³ CS § 7-308 titled “Parole Order” provides as follows:

(a) A parole shall be evidenced by a written order.
(b) Parole entitles the recipient:
(1) to leave the correctional facility in which the recipient was confined; and
(2) if the recipient satisfactorily complies with all the terms and conditions provided in the parole order, to serve the remainder of the

(continued)

[T]here is a critical and substantial difference between being deprived of liberty one has, as in parole, and being denied a conditional liberty that one desires, . . . “[T]here is a human difference between losing what one has and not getting what one wants.”

Lomax, 120 Md. App. at 327 (citations omitted) (quoting *Hancock*, 329 Md. at 583). See COMAR 12.08.01.18F(1) (“A decision to parole does not become effective for release of the inmate until the parole order is presented and accepted by [them].”)

Factual Background

With the legal background related to parole release procedures in mind, we now turn to the events in appellant’s case leading up to this appeal.

Appellant’s amended commitment record reflects that he is serving a term of confinement in the Division of Correction of thirty-five years and one day, which began on June 6, 2011. The available appellate record in this case reveals the following timeline of appellant’s interactions with the Parole Commission:

First Request for Parole Release into Substance Abuse Treatment

At some point before appellant became eligible for release on parole into the community, appellant requested to be paroled into a substance abuse treatment program.⁴

recipient’s term of confinement outside the confines of the correctional facility.

- (c) A parolee remains in legal custody until the expiration of the parolee’s full, undiminished term.
- (d) The chairperson of the Commission shall file a copy of the parole order with the clerk of the court in which the parolee was sentenced.

⁴ CS § 7-301(a)(3) provides that certain eligible inmates may be released on parole at any time to undergo, among other things, drug or alcohol treatment.

On May 17, 2016, the Commission denied that request.

First Parole Hearing

On September 11, 2019, appellant had a parole hearing before a hearing officer who recommended a re-hearing of appellant’s parole consideration in September 2022. That same day, a commissioner adopted that recommendation.⁵

On October 2, 2019, appellant appealed the September 11, 2019 parole decision. On November 15, 2019, two commissioners adopted the hearing officer’s recommendation for a re-hearing in September 2022.

Second Request for Parole Release into Substance Abuse Treatment

On July 7, 2020, the Commission denied appellant’s second request to be paroled to a treatment program and informed him that the decision to consider him for parole again in September 2022 would stand. However, in 2021, at the request of a prisoner rights advocate for appellant, the Commission decided to schedule him for another parole hearing as “soon as administratively possible.”

⁵ Also that same day, appellant wrote a letter to the Parole Commission, inquiring about the parole consideration process. On September 17, 2019, the Commission responded to appellant in writing explaining that a hearing officer makes a parole recommendation which is reviewed by a parole commissioner and that upon receipt of the written decision of a commissioner, the inmate may appeal the decision to two other commissioners who review the appeal. With respect to such an appeal, the Parole Commission specifically explained that “[t]he appellate panel may affirm the original decision or render a new decision that is more or less favorable than the original decision. The decision of the appellate panel i[s] final.”

Second Parole Hearing

On April 22, 2021, appellant had his second parole hearing. The hearing officer recommended that the case be re-heard in June 2022. The next day, a parole commissioner adopted that recommendation. On May 17, 2021, appellant appealed the Commission’s decision, and on May 26, 2021, two commissioners adopted the hearing officer’s recommendation to re-hear the matter in June 2022.

Third Request for Parole Release into Substance Abuse Treatment

On July 2, 2021, for the third time, appellant requested to be paroled into a substance abuse treatment program. On July 26, 2021, the Commission denied that request.

Third Parole Hearing

On July 20, 2022, appellant had his third parole hearing. The hearing officer recommended a delayed release on parole in May 2023 into inpatient substance abuse treatment. A parole commissioner later adopted that recommendation. On August 16, 2022, appellant signed a copy of his parole decision under a section of the decision titled “Certificate of Service.” The parole decision was also signed by the hearing officer, the parole commissioner, and the Commission’s institutional parole associate. It was not signed by the Commissioner of Correction.

Parole Refusal

On August 18, 2022, appellant, apparently unsatisfied with the parole commission’s decision, appealed it to the Commission. In that appeal, among other things, he requested that he be paroled to his mother’s home instead of into inpatient substance abuse treatment. On October 4, 2022, a two-commissioner appellate panel rejected the hearing officer’s

recommendation and, instead, issued a final decision refusing parole for appellant.⁶

Mandamus

As noted earlier, on September 12, 2024, appellant filed a petition for a writ of mandamus or, in the alternative, complaint for injunctive relief in the Circuit Court for Somerset County.⁷ At the outset of his petition, appellant stated that he brought the action “to restore the approved and granted parole delayed release as they breached a legal contract that can only be restored through an order from this Court.”

In his petition, appellant recites some of the relevant procedural history of his parole hearings and their outcomes. In that recitation, he refers to the parole decision document he signed on August 16, 2022 granting him a delayed release as a contract. He claims that the parole commission breached that contract when it changed the parole decision from delayed release to an outright refusal of release on parole. In a nutshell, he asked the circuit court to enforce that ‘contract.’ He claims that the appellees failed to follow COMAR

⁶ The Commission advised appellant that he could seek reconsideration of that decision not sooner than July 2024.

⁷ Common law mandamus is an extraordinary remedy that is generally used to compel public officials or administrative agencies to perform a ministerial duty or function which is imperative in nature, and to which the petitioner has a clear legal right. *Mayor and City Council of Balt. v. ProVen Mgmt., Inc.*, 472 Md. 642, 669-71 (2021). Mandamus does not lie where the decision being reviewed is discretionary in nature or involves the exercise of judgment. *Goodwich v. Nolan*, 102 Md. App. 499 (1994).

12.08.01.18E and F.^{8,9}

As noted earlier, on January 31, 2025, appellees moved the court to dismiss appellant's petition on the basis that, among other things, mandamus does not lie in this case because release on parole is a strictly discretionary act. In addition, the appellees explained that appellant did not have a liberty interest in parole release because he was never presented with a formal parole order, and therefore he never signed a parole order. The appellees pointed out that appellant was presented with, and signed, a parole decision, not a parole order, and not a contract of any kind. They also pointed out that it was appellant who appealed his favorable parole decision. According to the appellees, after that, the Parole Commission, acting within its statutory and regulatory powers, made the

⁸ COMAR 12.08.01.18E is described, in pertinent part, in the legal background section *supra*. COMAR 12.08.01.18F, titled “Effective Date of Parole,” provides as follows:

- (1) A decision to parole does not become effective for release of the inmate until the parole order is presented and accepted by him. An inmate shall be released on parole as soon as practicable after a favorable decision unless:
 - (a) The Commission has specified a deferred release date; or
 - (b) The investigation of the community plan of the individual indicates that he would be without means of support, is likely to be unemployed upon his release, or is without a satisfactory home plan.
- (2) A prisoner may not be released from confinement without an approved parole plan.

⁹ On appeal, appellant directs our attention to COMAR 12.08.01.20 which, as discussed earlier, addresses predetermined parole release agreements. He claims that the Commission violated the terms of that regulation when it failed to release him on parole after all parties signed what he considered to be a contract.

discretionary call to refuse parole to appellant.

As noted earlier, on April 9, 2025, the circuit court dismissed appellant’s petition for the reasons the appellees set forth in their motion to dismiss.

DISCUSSION

The fundamental premise of appellant’s argument is that he entered into a contract with the Commission. We disagree with that assertion.

We agree with the appellees that, contrary to appellant’s argument, the Commission did not “negotiate, enter into, and sign a predetermined parole release agreement” with him and the Commissioner of Correction. Rather, as discussed earlier, on July 20, 2022, appellant appeared before a hearing officer for a parole hearing, after which a commissioner approved the hearing examiner’s recommendation to grant him a delayed parole release into inpatient substance abuse treatment. At that time, appellant received only an appealable parole decision and not a formal order for parole, and not a contract governed by COMAR 12.08.01.20.¹⁰ To be sure, he signed that document, but he signed it under the heading “Certificate of Service” acknowledging that he had received a copy of the decision. After that, appellant chose to appeal the parole decision to the Commission who, in their discretion, chose to refuse parole to him.¹¹

¹⁰ Even if the parole decision could possibly be construed to be a contract, and we are certain that it cannot, it was not signed by “all parties” as required by COMAR 12.08.01.20B, because the Commissioner of Correction, who is a required party to a predetermined parole release agreement, did not sign it.

¹¹ Appellant was obviously aware of the appeal process as he had twice before appealed his parole decisions. In addition, as noted earlier, he was previously advised, in (continued)

The bottom line is that the parole decision was in no sense a contract, and it was not an order for parole. As a result, there was no breach of the non-existent contract, and appellant never had a protected liberty interest in parole release. Because the parole commission’s decision to refuse appellant parole was a discretionary act, and because appellant had no liberty interest in parole, the common law writ of mandamus was not available as it only applies to non-discretionary acts to which a person has a clear legal right. *Mayor and City Council of Balt. v. ProVen Mgmt., Inc.*, 472 Md. 642, 669-71 (2021).

We, therefore, see no error on the part of the circuit court.

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

writing, by the Commission, of the danger that an appeal can result in a less favorable parole decision.