

Circuit Court for Frederick County
Case No.: C-10-CV-19-000628

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 471

September Term, 2021

IN THE MATTER OF MICHAEL STEMPLE

Kehoe
Zic
Moylan, Charles, E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: January 27, 2022

*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.

This is an appeal from the denial of a petition for a writ of administrative mandamus, filed, pursuant to Maryland Rules 7-401, *et. seq.*, in the Circuit Court for Frederick County wherein Michael Stemple, appellant, challenged the decision of the Maryland Parole Commission to deny him the opportunity to be released on parole.¹

BACKGROUND

In 2011, appellant pleaded guilty, in the Circuit Court for Frederick County, to two counts of sexual abuse of a minor. Thereafter the court sentenced him to twenty-five years' imprisonment for one count, and to a fully suspended consecutive term of twenty-five years' imprisonment for the other count in favor of five years' supervised probation upon release. A few months later, on October 27, 2011, appellant was convicted of juror intimidation and was sentenced to two years' imprisonment to be served concurrently.²

In April 2016, after serving one quarter of his sentence, appellant became eligible for release on parole. Md. Code Ann. Corr. Servs. § 7-301(a)(2). On April 29, 2016, in apparent anticipation of his upcoming parole hearing, appellant sent a letter to Parole Commission listing some of his accomplishments while incarcerated in the Division of Correction. On April 27, 2016, a hearing was held before a parole hearing officer, who, a few days later, on April 29, 2016 recommended that appellant be reconsidered for release on parole in May 2018. On May 4, 2016, a parole commissioner disapproved the hearing

¹ At all relevant stages of the proceedings in this case, appellant acted *pro se*.

² At the time, the sentencing court incorrectly noted on the commitment record that juror intimidation was a felony. According to Section 9-305(c) the crime is classified as a misdemeanor absent circumstances not present here.

officer’s recommendation and also made the decision to refuse appellant the opportunity for release on parole altogether. The commissioner based its decision on the nature of appellant’s offenses and his criminal history.

Where, as here, a parole commissioner disapproves of a hearing officer’s recommendation, the matter is, by operation of law, automatically referred to a two-commissioner appellate panel for the issuance of a final parole decision. Corr. Servs. § 7-306(e)(2) & COMAR 12.08.01.19.A(4). On May 10, 2016, the two-commissioner panel agreed to refuse appellant the opportunity for release on parole noting that:

The subject has a moderate criminal record, but it is worth noting, convictions for animal cruelty and intimidating a juror. That history taken together with this sexual offense which was perpetrated for years, a refusal is warranted.

About a year and half later, on September 10, 2018, the circuit court issued an amended commitment record to indicate that appellant’s juror intimidation conviction was actually classified as a misdemeanor, and not a felony. Thereafter, in light of that change in circumstance, appellant wrote a letter to the Parole Commission seeking reconsideration of its earlier decision to refuse him the opportunity to be released on parole. That letter also made a vague reference to “the P.A. charge” which allegedly “shows no case # as it was to be expunged. But yet never happened.” This was an apparent reference to appellant’s animal cruelty, or conspiracy to commit animal cruelty, conviction. Because the Commission had relied, in part, on appellant’s juror intimidation conviction in refusing him parole, the Commission decided to grant his request and scheduled him for a new parole release determination hearing.

About six weeks later, on October 26, 2018, appellant had another parole release determination hearing, at the conclusion of which the hearing officer recommended no change in the earlier decision to refuse appellant the opportunity for release on parole. Later, a parole commissioner adopted the hearing officer’s recommendation to refuse parole.

Appellant thereafter sought “appellate” review of that decision by a panel of two different parole commissioners pursuant to Section 7-306(d)(3) of the Correctional Services Article and COMAR 12.08.01.19.A(1). Nearly nine months later, on June 24, 2019, the panel of two commissioners adopted the recommendation to refuse appellant the opportunity for release on parole noting:

Panel agrees to refuse parole based on complete review of the offender’s file and statement of charges. Panel does take notice of the offender’s accomplishment and completed programs which will be beneficial upon being released from custody.

On May 11, 2020, appellant requested reconsideration of the denial of parole pursuant to COMAR 12.08.01.23, and, on November 9, 2020, the Commission declined to change its decision.

On August 19, 2019, appellant filed, in the Circuit Court for Frederick County, a petition for judicial review. The court permitted the parties to file various papers related to appellant’s petition. In the Parole Commission’s response to appellant’s petition, it summarized appellant’s *pro se* arguments as follows:

- he pled guilty to one count of sexually abusing his stepdaughter, but he entered an Alford plea as to another count, thereby not admitting to the crime;

- he did not begin sexually abusing his stepdaughter when she was ten years old;
- the sexual abuse of a minor is not a violent crime;
- jury tampering is a misdemeanor, not a felony;
- although he was convicted of a crime involving animal cruelty, he has never harmed an animal or, in this case, a bird;
- he has had various roadblocks -- for example, unhelpful case managers -- in his efforts to obtain prison jobs and to participate in programming in the Division of Correction (“DOC”);
- he obtained his GED while in the DOC;
- he has a good institutional disciplinary record; and
- he has been assaulted four times while in prison, resulting in his periodic placement on protective custody where he cannot participate in institutional programming or earn sentence credits.

Ultimately, the court treated appellant’s papers as a petition for a writ of mandamus, and, after holding a hearing on the matter on May 17, 2021, it denied relief. Appellant noted an appeal from that denial. For the following reasons, we shall affirm the judgment of the circuit court.

DISCUSSION

With respect to a petition for a writ of mandamus, Maryland Rule 7-403 provides that:

The court may issue an order denying the writ of mandamus, or may issue the writ (1) remanding the case for further proceedings, or (2) reversing or modifying the decision if any substantial right of the plaintiff may have been prejudiced because a finding, conclusion, or decision of the agency:

(A) is unconstitutional,

(B) exceeds the statutory authority or jurisdiction of the agency,

- (C) results from an unlawful procedure,
- (D) is affected by any error of law,
- (E) is unsupported by competent, material, and substantial evidence in light of the entire record as submitted,
- (F) is arbitrary or capricious, or
- (G) is an abuse of its discretion.

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); *Bovey v. Exec Dir., Health Claims Arbitration Office*, 292 Md. 640, 646 (1982); *Criminal Injuries Compensation Board v. Gould*, 273 Md. 486, 514 (1975).

In deciding whether the circuit court correctly denied appellant’s petition for writ of administrative mandamus, this Court applies the same standard of review as in an action for judicial review. *Perry v. Department of Health and Mental Hygiene*, 201 Md. App. 633, 639-40 (2011). Employing that standard, the Court will “look through” the circuit court’s decision to evaluate the decision of the Parole Commission. *People’s Counsel for Baltimore County v. Loyola College*, 406 Md. 54, 66 (2008).

As an initial matter, the Parole Commission argues that mandamus does not lie because the decision to grant or deny parole does not involve a “substantial right” as contemplated by Maryland Rule 7-403. We agree. Maryland’s laws do not create a “protectible expectation” to parole under the Due Process Clause because of broad discretion afforded by statute to the Parole Commission. *McLaughlin-Cox v. Maryland Parole Commission*, 200 Md. App. 115, 121-25 (2011). Moreover, prisoners in Maryland do not have a liberty interest in parole until they are served with a formal Order for Parole.

See Bryant v. Maryland, 848 F.2d 492, 493 (4th Cir. 1988) (Maryland prisoners do not have a liberty interest in parole); *Lomax v. Warden, Maryland Correctional Training Center*, 120 Md. App. 314, 338, *aff'd*, 356 Md. 569 (1999) (in Maryland, a liberty interest in parole does not arise until the inmate is served with an Order for Parole).

But, even if the Parole Commission’s decision did affect a substantial right within the contemplation of a mandamus action, the Commission complied with all applicable laws and regulations when making its parole release determination for appellant. The Commission reviewed all applicable facts and circumstances of appellant’s case. Even if the Parole Commission had less than perfect information before it during appellant’s first parole release determination hearing, it had the corrected information before it during all subsequent proceedings to include a second parole hearing, an “appeal” therefrom, and a request for reconsideration from the decision on “appeal.” Thus, the Commission’s decision was supported by substantial evidence.

Put simply, the Commission’s decision was not unconstitutional, it did not exceed the statutory authority or jurisdiction of the Commission, it did not result from an unlawful procedure, it was unaffected by any error of law, it was supported by competent, material, and substantial evidence in light of the entire record as submitted, it was not arbitrary or capricious, and it did not constitute an abuse of its discretion.

Consequently, we shall affirm the judgment of the circuit court.

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