

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC.

SUPERIOR COURT

(FILED: December 16, 2015)

PARRISH CHASE

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V.

No. PM/14-4277
(P1/00-3287A)

STATE OF RHODE ISLAND

DECISION

KRAUSE, J. In this application for post-conviction relief, Parrish Chase principally complains that (1) the parole board has denied him due process by failing to identify adequately the reasons for denying him parole; (2) the 2010 and 2014 parole denials were unjustified; and, (3) the time intervals between those two parole hearings were arbitrary and violated due process strictures. Jurisdiction in this matter is pursuant to G.L. 1956 §§ 10-9.1-1 *et. seq.* A hearing on Chase’s application was held before this Court on October 9, 2015.¹

I. Facts and Travel

On July 27, 2000, Chase was ejected from a Woonsocket tavern for rowdy misconduct. He returned within an hour and began swinging a long-bladed combat knife, killing one customer as well as another who had tried to intervene in that unprovoked attack. Shortly thereafter, a grand jury charged him with two counts of murder, but because of his mental

¹ A senior attorney in the Public Defender’s Office represented Chase and presented a well-written brief on Chase’s behalf. She declined, however, to present any argument to support Chase’s final two contentions (see page 11, *infra*) because she believed them to be without merit. At the October 9, 2015 hearing, Chase jettisoned his attorney and decided to represent himself. This Court, as reflected at page 11 herein, agrees with prior counsel’s assessment that Chase’s ancillary contentions are baseless. The within Decision is responsive to the issues raised by counsel’s brief.

instability resulting from excessive use of prescription drugs and/or alcohol that night, the murder charges were reduced. On September 30, 2004, the state amended the charges, and Chase was allowed to plead guilty to two counts of manslaughter. In exchange for the reduced charges, Chase agreed to serve thirty years in jail (fifteen years of a thirty-year sentence on each count, consecutively; the remaining time was suspended with probation).

Chase waited a few months, and then on January 27, 2005, he filed a *pro se* motion demanding that his agreed-upon sentence be reduced. This Court denied that request on June 17, 2005, and the Supreme Court rejected Chase's appeal. State v. Chase, 9 A.3d 1248 (R.I. 2010).

Since that time, Chase has twice unsuccessfully sought release on parole. In July 2010, the parole board denied his initial request, stating that "[t]he reason for the denial is due to the serious nature of the crime." (Parole Board Minutes, July 19, 2010.) In July 2014, the parole board again denied his request for release, stating that "[t]he reason for the denial is due to the serious nature of the crime and the life long victim impact." (Parole Board Minutes, July 23, 2014.) Chase now claims that he is entitled to postconviction relief for professed due process violations by the parole board. The Court disagrees.

II. Standard of Review

General Laws 1956 § 10-9.1-1 creates a postconviction remedy "available to any person who has been convicted of a crime and who thereafter alleges either that the conviction violated the applicant's constitutional rights or that the existence of newly discovered material facts requires vacation of the conviction in the interest of justice." DeCiantis v. State, 24 A.3d 557, 569 (R.I. 2011). "An applicant for such relief bears '[t]he burden of providing, by a preponderance of the evidence, that such relief is warranted' in his or her case." Brown v. State, 32 A.3d 901, 907 (R.I. 2011) (quoting State v. Laurence, 18 A.3d 512, 521 (R.I. 2011)). The

proceedings for such relief are civil in nature. DePina v. State, 79 A.3d 1284, 1288-89 (R.I. 2013); Palmigiano v. Mullen, 119 R.I. 363, 374, 377 A.2d 242, 248 (1977).

Statutory and decisional law provide that a postconviction relief proceeding is the proper vehicle for raising limited objections to parole board decisions. State v. Ouimette, 117 R.I. 361, 363, 367 A.2d 704, 706 (1976). However, the legally protected “interests of one who merely has a hope of ‘conditional liberty’” are sparse. Id. at 365, 367 A.2d at 707. Our Supreme Court has generally exercised a “‘hands-off’ policy” in dealing with the parole board, reflecting its “overall reluctance to interfere with what must necessarily be highly discretionary decisions.” Id. at 363, 367 A.2d at 706.

III. Discussion

A. Specificity of Grounds for Denial

Chase contends that the reasons listed by the parole board for denial, to wit, “the serious nature of the crime and the life long victim impact,” lack the specificity required to provide due process of law. He asserts that the parole board must outline, in writing, individualized findings based on the specific facts and circumstances of his case. The law, however, does not require such detailed explications.

At the outset, it must be borne in mind that “‘there is no constitutional or inherent right to parole.’” Lyons v. State, 43 A.3d 62, 67 (R.I. 2012) (quoting Estrada v. Walker, 743 A.2d 1026, 1031 (R.I. 1999)). As such, “[d]ue process only entitles the parole applicant an opportunity to be heard and to be informed in what respects the applicant falls short of qualifying for parole.” Id. (quoting Estrada, 743 A.2d at 1031). “The Parole Board, because of its special expertise, has been granted an extraordinarily broad amount of discretion to make decisions regarding parole release.” Ouimette, 117 R.I. at 369, 367 A.2d at 709.

In order “to satisfy minimum standards of due process,” a written statement providing why parole was denied in a specific case should “accompany[] any parole denial[.]” Id. at 372, 367 A.2d at 710. Nevertheless, the “failure to provide [a detailed] explanation is not ground that warrants the grant of an application for postconviction relief.” Estrada, 743 A.2d at 1031. Ultimately, standards for parole “are merely procedural guidelines that are used in the exercise of discretion of the parole board in evaluating a prisoner’s petition for parole.” Skawinski v. State, 538 A.2d 1006, 1010 (R.I. 1988). As long as a parole board’s decision is “sufficient to enable a reviewing court to determine if parole has been denied for permissible reasons,” its ruling will stand. Ouimette, 117 R.I. at 372, 367 A.2d at 710; accord Green v. Sherrod, No. 07-CV-304-DRH, 2010 WL 746992, at *7 (S.D. Ill. Mar. 2, 2010) (quoting Solomon v. Elsea, 676 F.2d 282, 286 (7th Cir. 1982)) (“To satisfy minimum due process requirements a statement of reasons should be sufficient to enable a reviewing body to determine whether parole has been denied for an impermissible reason or for no reason at all. For this essential purpose, detailed findings of fact are not required[.]”); Williams v. Ward, 556 F.2d 1143, 1159 (2d Cir. 1977) (holding same).

A written decision by the parole board enables a reviewing court to “prevent[] [] arbitrary decisions” and “ensure . . . that the board does not stray from its proper functions or act contrary to law.” Ouimette, 117 R.I. at 371-72, 367 A.2d at 710. By requiring a basic recitation of the grounds for denial, our Supreme Court has also sought to dispel the notion of a parole board’s decision as some form of “arcana imperii”; requiring a written decision is designed in part to remove “feelings of hopelessness or despondency which lead inmates no longer to care about making any effort to improve themselves.” Id. at 370, 367 A.2d at 709. However, “nothing in the due process concepts . . . requires the Parole Board to specify the particular ‘evidence’ in the inmate’s file or at his interview on which it rests the discretionary

determination that an inmate is not ready for conditional release.” Greenholtz v. Inmates of Neb. Penal and Corr. Complex, 442 U.S. 1, 15 (1979).

Instead, only “[t]he grounds for the decision and the underlying factors supporting those grounds should be the essential elements of the statement of reasons.” Ouimette, 117 R.I. at 372, 367 A.2d at 710. Section 13-8-14 of the Rhode Island General Laws enumerates such factors that may be considered by the Parole Board:

“(1) That the prisoner has substantially observed the rules of the institution in which confined, as evidenced by reports submitted to the board by the director of the department of corrections, or his or her designated representatives, in a form to be prescribed by the director;

“(2) That release would not depreciate the seriousness of the prisoner’s offense or promote disrespect for the law;

“(3) That there is a reasonable probability that the prisoner, if released, would live and remain at liberty without violating the law;

“(4) That the prisoner can properly assume a role in the city or town in which he or she is to reside. In assessing the prisoner’s role in the community the board shall consider:

“(i) Whether or not the prisoner has employment;

“(ii) The location of his or her residence and place of employment; and

“(iii) The needs of the prisoner for special services, including but not limited to, specialized medical care and rehabilitative services; and

“(5) That any and all restitution imposed pursuant to § 12-19-32 has been paid in full, or satisfactory arrangements have been made with the court if the person has the ability to pay. Any agreement shall be in writing and it is the burden of the person seeking parole to satisfy the parole board that this requirement has been met. Any person subject to the provisions of this section may request an ability to pay hearing, by filing the request with the court which imposed the original sentence.”

Furthermore, the case law makes clear that a parole board may consider factors over which an inmate holds no present control. Ouimette “reject[ed] [the] contention that . . . the seriousness of [a] crime [is an] irrelevant factor[] not to be considered by the Parole Board[,]” finding that

such a factor is crucial in “determining likelihood of future lawful behavior.” 117 R.I. at 372, 367 A.2d at 710-11.

Here, the parole board denied Chase’s request for parole twice: first in 2010 for “the serious nature of the crime,” and again, in 2014, for both “the serious nature of the crime and the life long victim impact.” That rationale is almost identical to that in Estrada. There, our Supreme Court found no due process violation when the parole board repeatedly declined to release Estrada and, in essence, listed the “seriousness of the offense” as its only basis. Estrada, 743 A.2d at 1031 (quoting the parole board’s three decisions)²; see also Borchers v. Arizona Bd. of Pardons & Paroles, 851 P.2d 88, 93 (Ariz. Ct. App. 1992) (finding the listed reasons of “past criminal history and the serious nature of the offense” to be sufficient). As such, the parole board has satisfied due process requirements by explaining the grounds upon which it denied

² The three parole board decisions upheld in Estrada stated:

- 1) ““He is serving a very lengthy sentence and the Board feels that to parole him at this time would depreciate the seriousness of the offense. These robberies involved the use of firearms. However, the Board would like to commend Mr. Estrada for setting goals and one-by-one meeting them successfully. The Board would like to see him work through the system and obtain some work release and furlough experience as well. He will be seen again in 2 years.”
- 2) ““We commend him for his good progress. However we believe that to parole him now would depreciate the seriousness of the offense. We will review him in one year.”
- 3) ““Once again, the Board feels to parole Mr. Estrada at this time would depreciate the seriousness of his crime and the Board wishes again to commend Mr. Estrada, however, on the progress that he is making. The Board realizes that there is not much more that Mr. Estrada can do in his current facility and it is suggested to him that he contact Director Vose for a possible transfer to a facility which would provide for a more gradual return to the community. We will see him again in eighteen (18) months.”” Estrada, 743 A.2d at 1030 (quoting the parole board’s decisions).

Chase's parole. See Estrada, 743 A.2d at 1031 (holding that the "failure to provide [a detailed] explanation is not ground that warrants the grant of an application for postconviction relief"); Greenholtz, 442 U.S. at 15-16 ("To require the parole authority to provide a summary of the evidence would tend to convert the process into an adversary proceeding and to equate the [parole board's] parole-release determination with a guilt determination."). Indeed, the explanation provided is plainly sufficient to enable review, as the Court can discern that parole was denied because of the violence exacted by Chase and the impact of that violence on the families of the victims. See Ouimette, 117 R.I. at 371-72, 367 A.2d at 710. Moreover, such an explanation provides Chase with a particularized reason why his parole was denied rather than shrouding the process in mystery. See id. at 370, 367 A.2d at 709. Accordingly, this aspect of Chase's postconviction relief claim is denied.

B. Static versus Dynamic Factors

Chase additionally complains that when the parole board denied his request for parole in 2010, it generated a presumption that he would be released at his next parole hearing. He further asserts that because the parole board, in its 2014 denial, only identified static factors (those that an inmate has no power to change, such as the seriousness of the crime committed or the impact on a victim) rather than dynamic factors (those related to how an inmate behaves while incarcerated), the board contravened its own guidelines, thereby impermissibly interfering with Chase's established liberty interest. Chase argues that once the parole board at its initial hearing set the next date for review for 2014, it signaled that, barring any change in dynamic factors, the stated goals of retribution and general deterrence would thus be satisfied and parole was thus assured. This argument, while superficially beguiling, has no basis in law.

It bears noting once again that “there is no constitutional or inherent right to parole,” Lyons, 43 A.3d at 67 (quoting Estrada, 743 A.2d at 1031), and that “[t]he Parole Board, because of its special expertise, has been granted an extraordinarily broad amount of discretion to make decisions regarding parole release.” Quimette, 117 R.I. at 369, 367 A.2d at 709. Under due process strictures, “[p]arole applicants are entitled only to an opportunity to be heard and to be informed in what respects the applicant falls short of qualifying for parole.” Higham v. State, 45 A.3d 1180, 1185 (R.I. 2012). Moreover, a parole board “may deviate from prescribed guidelines when a particular case warrants.” State v. Tillinghast, 609 A.2d 217, 218 (R.I. 1992).

There is no requirement that the parole board’s decision be based on dynamic factors rather than static ones. Under the statutory scheme for parole, the parole board is expressly required to take “the seriousness of the prisoner’s offense” into account in deciding when to release an inmate on parole. Sec. 13-8-14(a)(2). Indeed, it is well recognized in the case law that the seriousness of the inmate’s crime is a critical factor in “determining likelihood of future lawful behavior.” Quimette, 117 R.I. at 372, 367 A.2d at 711. Additionally, in Estrada, the Court took no issue with the fact that the petitioner was repeatedly denied parole only for the seriousness of his offense. 743 A.2d at 1031 (holding that nothing indicated “that the parole board deviated from its clearly established guidelines when it denied Estrada’s request for parole”); accord York v. Tennessee Bd. of Prob. & Parole, No. M2005-01488-COA-R3-CV, 2007 WL 1541360, at *2 (Tenn. Ct. App. May 25, 2007) (finding no constitutional violation where denial of parole was based solely on the seriousness of the crime).

Furthermore, as Estrada’s parole was, as here, denied repeatedly on the basis of a sole static factor—the seriousness of the offense—there is clearly no presumption that parole will be granted at a subsequent hearing. The mere scheduling of another parole hearing in no way

serves as a presumptive release date. Indeed, nothing in the Parole Guidelines hints at such a requirement. See 2014 Rhode Island Parole Guidelines. Plainly, “at no time does a defendant have an absolute right to receive parole at the time of parole consideration.” Skawinski, 538 A.2d at 1010 (citing Lee v. Kindelan, 80 R.I. 212, 95 A.2d 51 (1953)); see Lerner v. Gill, 463 A.2d 1352, 1363 (R.I. 1983) (stating that “the mere possibility of parole does not a fortiori result in a protectable expectation of release”). As such, the parole board acted within its discretion in denying Chase’s parole based on clearly established guidelines, and this claim for postconviction relief also fails.

C. Intervals of Parole Hearings

Chase also argues that the parole board, by its course of conduct, has set the maximum interval between parole hearings as two years. He imagines that such a liberty interest exists because the parole board’s website states that “[r]econsideration hearings are usually set at 6, 12, 18 or 24- month intervals.” Such an informal explanation of typical parole hearing procedure on the “frequently asked questions” page of the parole board’s website scarcely rises to the level of a constitutional guarantee.

In order to create a “protectable expectation of release,” a “state statute [or regulation] must be phrased in such a way that it creates a legitimate claim of entitlement and not just a unilateral hope for parole.” Lerner, 463 A.2d at 1363; see also Ingrassia v. Purkett, 985 F.2d 987, 988 (8th Cir. 1993) (holding that a liberty interest only arises where “a statute, rule or policy contains ‘specific substantive predicates’ and ‘explicitly mandatory language,’” (quoting Hewitt v. Helms, 459 U.S. 460, 472 (1983))). Chase concedes that there is no statute or regulation which requires that a reconsideration hearing must be held within a specific amount of time. “[U]nofficial statements by parole officials do not create a liberty interest.” Neil P. Cohen, The

Law of Probation and Parole, § 6:12 (2d ed. 1999); see Ingrassia, 985 F.2d at 988 (holding that unofficial statements from parole board member to petitioner’s wife regarding a parole date did not create a liberty interest). That the parole board’s website indicates that it usually holds reconsideration hearings within a two-year span is simply informational and in no way translates into a due process guarantee that an inmate should or will receive a hearing at such intervals. See White v. Hyman, 647 A.2d 1175, 1179-80 (D.C. 1994) (finding no protected interest where regulation stated that reconsideration will “ordinarily” be held within a year and stating that “[t]he decision when to schedule a new parole hearing after an inmate has been denied parole is [] a discretionary one”).

While Mr. Chase cites two Superior Court rulings³ stating that the parole board must have parole hearings at reasonable intervals, such orders are not binding upon this Court. See McCann v. McCann, 121 R.I. 173, 176, 396 A.2d 942, 944 (1979) (holding that only rulings by the Rhode Island Supreme Court “become mandatory precedent for all other tribunals” within the state). There is a dearth of case law from both our Supreme Court and other jurisdictions (barring a statute or regulation to the contrary) indicating that reconsideration for parole must be heard at a certain interval. See Tillinghast, 609 A.2d at 218 (holding that “the parole board may, in its discretion, . . . deny any application . . . after the time set in the applicable standards”) (quoting Skawinski, 538 A.2d at 1010); Page v. Hastings, No. 05-CV-230-KKC, 2005 WL 3018749, at *3 (E.D. Ky. Nov. 10, 2005) (noting that “prisoners generally have no statutory or constitutional interest in a parole reconsideration date”); Jones v. Braxton, 647 A.2d 1116, 1117 (D.C. 1994) (finding that the time interval between parole reconsideration hearings was not an

³ Baustien v. Moran, No. PM NO. 83-4817, 1985 WL 663555, at *22 (R.I. Super. Sept. 25, 1985); Leonardo v. Rhode Island Parole Bd., No. 85-0439, 1986 WL 732863, at *4 (R.I. Super. Apr. 17, 1986).

“interest protected by the due process clause”); In re Parole of Bivings, 619 N.W.2d 163, 166 (Mich. App. 2000) (holding that the parole board can set the time interval for reconsideration at its discretion, including up until the time of the “maximum sentence imposed for the original offense”). [Moreover, a petitioner “bears the burden of proving . . . that he is entitled to post-conviction relief.” Burke v. State, 925 A.2d 890, 893 (R.I. 2007).] Even if such a standard were applicable, there is nothing in the record before the Court that the intervals between parole hearings were “unreasonable” as contended by Chase. Accordingly, this final claim also fails.

* * *

Chase’s additional claims are meritless and invite summary rejection. He complains that other inmates have been released who, he says, have committed offenses similar to or greater than his double homicides. He offers no evidence to support his specious suggestion of unfair or impermissibly disparate treatment by the parole board, and this lamentation is baseless. See Manley v. Thomas, 255 F. Supp. 2d 263, 267-68 (S.D.N.Y. 2003) (“The number and variety of factors bearing on the seriousness of the underlying offense and the likelihood that an offender will be a danger to the community make it impossible to conclude, on the bases of the sketchy data presented, that petitioner has been singled out from among all homicide offenders for disparate treatment.”) (quoting Brown v. Thomas, No. 02 Civ. 9257, 2003 WL 941940 (S.D.N.Y. Mar. 10, 2003)); U.S. ex rel King v. McGinnis, 558 F. Supp. 1343, 1348 (N.D. Ill. 1983) (“The Constitution does not command the parole board to treat all murderers equally simply because they were convicted of the same crime.”).

Chase’s contention that the parole board placed undue emphasis on a victim impact statement is also wholly without merit. The board is statutorily authorized, indeed mandated, to take such impact statements into account. G.L. 1956 § 12-28-6(a), (d). Indeed, the Rhode Island

Supreme Court has upheld the parole board's discretion to rescind its stated intention to grant parole, basing its decision to withhold a parole certificate after considering impact statements it subsequently received from victims. Yang v. State, 703 A.2d 754, 756 (R.I. 1997).

IV. Conclusion

For all of the preceding reasons, this Court denies Chase's application for postconviction relief. Judgment shall enter in favor of the state.



RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

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COURT: Providence County Superior Court

DATE DECISION FILED: December 16, 2015

JUSTICE/MAGISTRATE: Krause, J.

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