



Procedurally, Clumm, as a prison inmate, must also comply with R.C. 2969.25(A), when filing any lawsuit in the state court system. R.C. 2969.25(A) requires Petitioners to submit an affidavit listing all lawsuits to which they have been a litigant within the past five years. This affidavit must be submitted with the petition. *State ex rel. Washington v. Ohio Adult Parole Auth.* (1999), 87 Ohio St.3d 258, 259, 719 N.E.2d 544. In addition, inmates must also comply with R.C. 2969.25 (C) when filing an affidavit of indigency and R.C. 2969.26(A) evidencing that they have exhausted all administrative remedies. Failure to comply with these provisions serves as a basis for the court to dismiss a petition.

**A. Merit Based Defects**

Clumm's petition fails on both merit and procedurally based defects. To obtain a writ of prohibition, a judicial or quasi-judicial exercise of authority must first be challenged. Ohio Revised Code 2967.03, the statute governing the general authority of the APA, states in pertinent part:

If a victim, victim's representative, or the victim's spouse, parent, sibling, or child appears at a full board hearing of the parole board and gives testimony as authorized by section 5149.101[5149.10.2] of the Revised Code, the [APA] shall consider the testimony in determining whether to grant parole.

Additionally, Ohio Administrative Code provision 5120:1-1-07 permits the parole board to deny a conditional grant of parole on the basis of certain factors. When Clumm was denied parole; the APA cited the following factors in support of its decision:

(A) An inmate may be released on or about the date of his eligibility for release, unless the parole board, acting pursuant to rule 5120:1-1-10 of the Administrative code, determines that he should not be released on such date for one or more of the following reasons:

(1) There is substantial reason to believe that the inmate will engage in further criminal conduct, or that the inmate will not conform to such conditions of release as may be established under Rule 5120:1-1-12 of the Administrative Code.

(2) There is substantial reason to believe that due to the serious nature of the crime, the release of the inmate into society would create undue risk to public safety, or that due to the serious nature of the crime, the release of the inmate would not further the interest of justice nor be consistent with the welfare and security of society.

In addition to the above stated factors, Administrative Code provision 5120:1-1-07 also permits the APA to consider “any other factors which the Board determines to be relevant.” It is clear that this provision permits consideration of victim testimony.

Although permitted by statute, Clumm challenges the APA’s power to conduct a full board hearing, consider victim testimony and deny parole, as quasi-judicial. Such statutorily granted authority does not constitute a quasi-judicial action pursuant to this Court’s definition. In *State ex rel. Potts v. Comm. on Continuing Legal Edn.* (2001), 93 Ohio St.3d 452, 455, 755 N.E.2d 886, (emphasis) quoting *State ex rel. Wright v. Ohio Bur. of Motor Vehicles* (1999), 87 Ohio St.3d 184, 186, 718 N.E. 2d 908, this Court defined quasi-judicial authority as “the power to hear and determine controversies between the public and individuals that *require* a hearing resembling a judicial trial.” It is clear that the APA’s decision to consider victim testimony when denying Clumm’s parole, does not fit within this Court’s definition of quasi-judicial.

Additionally, it is important to note that a writ of prohibition, as an extraordinary writ, is designed to prevent a lower court or other tribunal from exceeding its authority to resolve issues before it. *State ex rel. Tubbs Jones v. Suter* (1998), 84 Ohio St.3d 70, 73, 701 N.E.2d 1002 (cites omitted); cf. *State ex rel. McKee v. Copper* (1974), 40 Ohio St.2d 65, 68, 320 N.E.2d 286. Here Clumm challenges the APA’s authority to consider victim

testimony when denying parole; however, because the APA's power to consider testimony and deny parole is vested by statute, it is clear it did not exceed its authority. Furthermore, the APA is not a lower court or tribunal which can be prohibited in this instance from acting.

As stated above, Clumm has failed to establish that the APA's actions were quasi-judicial, or that it exceeded its authority. Additionally, he has also failed to prove that a denial of the instant writ would leave him without an adequate legal remedy. Clumm argues that he has a liberty interest in parole as well as a contractual right to receive parole, which he alleges attached when he was initially given a conditional release upon first review by the three member APA panel. In asserting that argument he invokes the spirit of the *Layne* line of cases. Those cases addressed the issue of whether inmates who were convicted under a plea agreement had to be classified for parole release considerations under their crime of conviction, or their crime of indictment. It was later determined that the crime of conviction had to be used. *Layne v. Ohio Adult Parole Authority*, 97 Ohio St.3d 456, 2002 Ohio 6719. As a result, inmates classified under their crime of indictment sought relief through declaratory judgment. Because Clumm's constitutional and contractual theories are so closely aligned with those asserted by inmates in *Layne* and other similar cases, the remedy of declaratory judgment is also available to him. Furthermore, a writ of prohibition cannot be used towards finding the APA's Victim Advocacy Board unconstitutional. Thus, his Petition should be dismissed.

Lastly, Clumm asserts the broad argument that his Petition for Writ of Prohibition should be granted because the APA's actions were quasi-judicial. However, after closer inspection, it is evident that at the crux of Clumm's argument is his desire to be granted

parole. In essence, Clumm is asking this Court to serve as an administrative appellate body and reverse the APA's decision. It is clear that the jurisdiction of this Court cannot extend in that capacity. "The decision to deny parole is not subject to judicial review." *Linger v. Ohio Adult Parole Auth.* (Oct 14, 1997), Franklin App. No. 97APE04-482. As *Linger* explained, long established precedent dictates that Ohio does not give a convicted person a claim of entitlement to parole before the expiration of a valid sentence. Rather, because the decision maker under Ohio's system can deny the requested relief for any constitutionally permissible reason or for no reason at all, the state has not created a constitutionally protected liberty interest. *Inmates of Orient Corr. Inst. v. Ohio State Adult Parole Auth.* (1991), 929 F.2d 233, citing *Olim v. Wakinekona* (1983), 461 U.S. 238, 103 S.Ct. 1741.

Similarly, "there is no constitutional or inherent right to be released before the expiration of a valid sentence." *State ex. Rel. Miller v. Leonard* (2000), 88 Ohio St.3d 46, 47, *certiorari* denied, 530 U.S. 1223, citing *Greenholtz v. Inmates of Nebraska Penal and Corr. Complex* (1979), 422 U.S. 1, 7; see *State ex. Rel. Hattie v. Goldhardt* (1994), 69 Ohio St.3d 123, 125; *Robertson v. Ohio Adult Parole Auth.*, Franklin App. No. 01AP-1111, 2002-Ohio-4303, at ¶33. An inmate that is denied parole is deprived of no protected liberty interest and can claim no due process rights with respect to a parole determination. *Goldhardt*, at 125-126. See, also, *Miller*, at 47 (observing that nothing in Am.Sub.S.B. No. 2 conferred a mandatory right to parole); *Festi v. Ohio Adult Parole Auth.*, Franklin App. No. 04AP-1372, 2005-Ohio-3622, at ¶16 (noting that "[e]ven when OAPA has informed an inmate of its decision to grant parole, the inmate has no protected

liberty interest in parole before his actual release). Accordingly, for the reasons stated above, Clumm's Petition should be dismissed on its merits.

**B. Procedural Defects**

Clumm's Petition also fails procedurally. When filing his Petition, Clumm failed to comply with R.C. 2969.25(A) which mandates Petitioners file an affidavit stating all cases in which they have been a party litigant within the past five years. Clumm listed his prior actions under the caption "Affidavit of Indigency", rather than "Affidavit of Prior Actions". Additionally, he neglected to provide a clear outcome of the cases in which he was a party litigant; a clear violation of R.C. 2969.25(A).

Clumm also failed adhere to the rules of R.C. 2969.25(C) when he filed his affidavit of indigency. Clumm's affidavit does not set forth a balance of his inmate account for the preceding six months, it is not certified by an institutional cashier, nor does it set forth other cash and things of value owned by Clumm at the time of filing, as required by R.C. 2969.25(C).

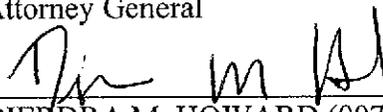
Additionally, Clumm completely neglected to comply with R.C. 2969.26(A) when filing his Petition. Although R.C. 2969.26(A) requires a Petitioner to submit an affidavit proving exhaustion of all administrative remedies, Clumm did not submit any of the required documentation. Because compliance with the above rules is required by statute, Clumm's Petition should be dismissed on the basis of these defects alone.

**III. Conclusion**

WHEREFORE, for the reasons set forth above, the instant Petition for Writ of Prohibition should be denied. All costs of this action should be taxed to the Relator.

Respectfully submitted,

MARC DANN  
Attorney General

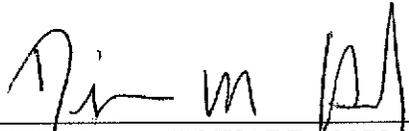
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Respondents' Motion for Judgment on the Pleadings was sent by regular U.S. Mail, postage prepaid, this 11<sup>th</sup> day of September 2007, to

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