

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio ex rel. Brent L. Grace,	:	
Petitioner,	:	
v.	:	No. 09AP-1115
Ohio Adult Parole Authority,	:	(REGULAR CALENDAR)
Respondent.	:	

D E C I S I O N

Rendered on June 10, 2010

Dennis Pusateri, for petitioner.

Richard Cordray, Attorney General, and *Melissa A. Montgomery*, for respondent.

IN HABEAS CORPUS AND/OR MANDAMUS
ON OBJECTION AND ON MOTION TO DISMISS

CONNOR, J.

{¶1} Petitioner, Brent L. Grace ("petitioner"), has filed this original action seeking a writ of habeas corpus and/or a writ of mandamus ordering respondent, Ohio Adult Parole Authority ("OAPA"), to release him from parole supervision.

{¶2} The court referred this matter to a magistrate pursuant to Civ.R. 53(C) and Loc.R. 12(M) of the Tenth District Court of Appeals. The magistrate issued a decision, including findings of fact and conclusions of law, which is appended to this decision.

Therein, the magistrate concluded petitioner is not entitled to a writ of habeas corpus because he failed to assert the conditions of his parole were sufficiently severe or restrictive of his liberty. Additionally, the magistrate concluded petitioner is not entitled to a writ of mandamus, as petitioner has no clear legal right to be released from supervision at this time, and furthermore, OAPA has no clear legal duty to release petitioner from supervision at this time. Therefore, the magistrate recommended that this court deny petitioner's request for a writ of habeas corpus and/or a writ of mandamus and grant respondent's motion to dismiss.

{¶3} Petitioner filed an objection to the magistrate's decision. OAPA filed a memorandum opposing the objection. This cause is now before the court for a full review.

{¶4} Petitioner argues he was deprived of due process when OAPA failed to provide him with notice and/or a hearing when it decided to "extend" his period of parole supervision. Petitioner contends the magistrate failed to properly address these due process issues. However, petitioner cites to no authority to support his position. Moreover, petitioner is not entitled to relief under either avenue presented here.

{¶5} In order to be entitled to a writ of mandamus, petitioner must demonstrate the following: (1) that petitioner has a clear legal right to the relief requested; (2) that respondent has a clear legal duty to perform the act requested; and (3) that petitioner has no plain and adequate remedy in the ordinary course of law. *State ex rel. Berger v. McMonagle* (1983), 6 Ohio St.3d 28.

{¶6} When petitioner was released from prison and placed on parole on January 18, 2007, he was informed that his period of supervision would start upon his

release from the institution and continue "for a period of not less than 2 year(s)." Because the "certificate of parole/release authorization" indicates petitioner was notified that his period of parole supervision would last "not less than 2 year(s)," he does not have a clear legal right to be released from supervision at this time, as his overall sentence has not yet expired. Thus, it also follows that OAPA has no clear legal duty to release petitioner from supervision at this time. As a result, petitioner is not entitled to a writ of mandamus.

{¶7} Furthermore, petitioner is not entitled to a writ of habeas corpus. Habeas corpus is generally appropriate only where the petitioner is entitled to immediate release from prison or some other type of physical confinement. *Cruse v. Bradshaw*, 108 Ohio St.3d 212, 2006-Ohio-663, ¶5. Although petitioner is subject to some restraints on his liberty as a result of the imposition of parole supervision, in order for habeas to be potentially available as a remedy, the challenged conditions must be sufficiently severe or restrictive of liberty. *Patterson v. Ohio Adult Parole Auth.*, 120 Ohio St.3d 311, 2008-Ohio-6147, ¶7. Petitioner has failed to make such allegations. Therefore, petitioner is not entitled to a writ of habeas corpus.

{¶8} Following an independent review of this matter, we find the magistrate has properly determined the pertinent facts and applied the appropriate law. We adopt the magistrate's findings of fact and conclusions of law. Accordingly, petitioner's objection to the magistrate's decision is overruled. In accordance with the magistrate's decision, we deny both the requested writs and grant respondent's motion to dismiss.

*Objection overruled; writs denied;
motion to dismiss granted.*

KLATT and McGRATH, JJ., concur.

A P P E N D I X

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v.	:	No. 09AP-1115
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Ohio Adult Parole Authority,	:	(REGULAR CALENDAR)
	:	
Respondent.	:	

M A G I S T R A T E ' S D E C I S I O N

Rendered on January 25, 2010

Dennis Pusateri, for petitioner.

Richard Cordray, Attorney General, and *Lisa M. Eschbacher*,
for respondent.

IN HABEAS CORPUS
AND/OR MANDAMUS
ON MOTION TO DISMISS

{¶9} Petitioner, Brent L. Grace, seeks a writ of habeas corpus and/or mandamus arguing that he be released from parole supervision.

Findings of Fact:

{¶10} 1. Petitioner was released from prison and placed on parole on January 18, 2007.

{¶11} 2. Petitioner was aware that he would be under parole supervision for a "period of not less [than] 2 year(s)."

{¶12} 3. In his complaint, petitioner asserts that his parole officer informed him that he would begin processing the paperwork for petitioner's release from parole supervision in January 2009.

{¶13} 4. As of January 18, 2009, petitioner had been on parole for two years.

{¶14} 5. On December 1, 2009, petitioner filed this original action asserting that he has a clear legal right to be released from parole supervision as of January 18, 2009 and that the failure of respondent, Ohio Adult Parole Authority, to release him from parole supervision entitles him to a writ of habeas corpus.

{¶15} 6. Respondent has filed a motion to dismiss on grounds that habeas corpus relief is not appropriate when seeking release from parole.

{¶16} 7. Petitioner has not filed a memorandum opposing respondent's motion.

{¶17} 8. The matter is currently before the magistrate on respondent's motion to dismiss.

Conclusions of Law:

{¶18} For the reasons that follow, it is this magistrate's decision that this court should grant respondent's motion to dismiss petitioner's petition.

{¶19} Habeas corpus is generally appropriate in the criminal context only if the petitioner is entitled to immediate release from prison or some other type of physical confinement. *State ex rel. Smirnoff v. Greene* (1998), 84 Ohio St.3d 165. Further, although habeas corpus is not generally available to challenge conditions of parole, probation or post-release control, it may be available where the conditions challenged

are sufficiently severe or restrictive of liberty. See *Patterson v. Ohio Adult Parole Auth.*, 120 Ohio St.3d 311, 2008-Ohio-6147.

{¶20} In the present case, nothing in petitioner's complaint asserts that the conditions of his parole are sufficiently severe or restrictive of liberty. As such, it is this magistrate's decision that petitioner is not entitled to a writ of habeas corpus.

{¶21} The Supreme Court of Ohio has set forth three requirements which must be met in establishing a right to a writ of mandamus: (1) that relator has a clear legal right to the relief prayed for; (2) that respondent is under a clear legal duty to perform the act requested; and (3) that relator has no plain and adequate remedy in the ordinary course of the law. *State ex rel. Berger v. McMonagle* (1983), 6 Ohio St.3d 28.

{¶22} Petitioner also appears to argue that respondent has a clear legal duty to release him from parole supervision at this time. However, inasmuch as the documentation petitioner has attached indicates that he was notified that his period of parole supervision would continue for a "period of not less [than] 2 year(s)," petitioner does not have a clear legal right to be released from parole supervision at this time.

{¶23} Based on the foregoing, it is this magistrate's conclusion that petitioner is not entitled to either a writ of habeas corpus and/or mandamus and respondent's motion to dismiss should be granted.

/s/Stephanie Bisca Brooks
STEPHANIE BISCA BROOKS
MAGISTRATE

NOTICE TO THE PARTIES

Civ.R. 53(D)(3)(a)(iii) provides that a party shall not assign as error on appeal the court's adoption of any factual finding or legal conclusion, whether or not specifically designated as a finding of fact or conclusion of law under Civ.R. 53(D)(3)(a)(ii), unless the party timely and specifically objects to that factual finding or legal conclusion as required by Civ.R. 53(D)(3)(b).