

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

January 2002 Term

FILED

June 14, 2002
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

No. 30442

RELEASED

June 14, 2002
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

**STATE OF WEST VIRGINIA EX REL.
WILLIS RAY STOLLINGS,
Petitioner,**

V.

**WILLIAM S. HAINES, WARDEN,
HUTTONSVILLE CORRECTIONAL CENTER, AND
THE WEST VIRGINIA PAROLE BOARD,
Respondents.**

Petition for a Writ of Habeas Corpus

WRIT DENIED

Submitted: June 5, 2002

Filed: June 14, 2002

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Attorney for Petitioner**

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The Opinion of the Court was delivered PER CURIAM.

JUSTICES STARCHER and ALBRIGHT concur and reserve the right to file concurring opinions.

JUSTICE MAYNARD deeming himself disqualified, did not participate in the decision of this case.

JUDGE KING, sitting by temporary assignment.

SYLLABUS BY THE COURT

1. “The decision to grant or deny parole is a discretionary evaluation to be made by the West Virginia [Parole Board]. However, such a decision shall be reviewed by this Court to determine if the [Parole Board] abused its discretion by acting in an arbitrary and capricious fashion.” Syllabus point 3, *Rowe v. Whyte*, 167 W. Va. 668, 280 S.E.2d 301 (1981).

2. “The Board of Parole may only extend the period between parole review hearings . . . beyond 1 year [for prisoners whose offenses occurred at a time when the law prescribed annual parole reviews] if the Board has made a case-specific individualized determination with reasoned findings on the record showing why there will be no detriment or disadvantage to the prisoner from such an extension. Additionally, due process requires that such a prisoner receiving a review period of more than 1 year must be afforded the opportunity to submit information for the Board’s consideration during any extended period requesting that a review be granted before the expiration of the extended period.” Syllabus point 3, in part, *State ex rel. Carper v. West Virginia Parole Bd.*, 203 W. Va. 583, 509 S.E.2d 864 (1998).

Per Curiam:

William Ray Stollings, (hereinafter referred to as “Mr. Stollings”) filed this

petition for a writ of habeas corpus seeking release from his confinement at the Huttonsville Correctional Center. In support of his petition, Mr. Stollings contends that he was arbitrarily and capriciously denied parole by the respondent, West Virginia Parole Board (hereinafter referred to as “the Parole Board”).¹ Mr. Stollings further alleges that the Parole Board failed to set out findings as to why he would not be reconsidered for parole until two years after the date of Parole Board’s initial denial. Based upon the parties’ arguments on appeal, the record designated for appellate review, and the pertinent authorities, we deny the writ of habeas corpus.

I.

FACTUAL AND PROCEDURAL HISTORY

In 1985, Mr. Stollings went to a bar in Logan, West Virginia, armed with a pistol. While at the bar, Mr. Stollings met and confronted his estranged girlfriend, twenty-three year-old Terri Lea Sizemore. Mr. Stollings and Ms. Sizemore engaged in a conversation and she told him their relationship had ended. Mr. Sizemore then placed the pistol to Ms. Sizemore’s head and shot her.

On March 19, 1987, Mr. Stollings was found guilty of first degree murder by a Logan County jury. The jury recommended mercy. The trial court sentenced Mr. Stollings on

¹The warden of Huttonsville Correctional Center, Bill Haines, was also named as a respondent.

April 24, 1987, to life imprisonment with eligibility for release on parole after serving a minimum confinement of ten years.

On July 25, 2000, Mr. Stollings had his first parole hearing. The Parole Board elicited testimony from Mr. Stollings, and from members of the community who testified both in favor of and against his release. Subsequent to the hearing, the Parole Board denied parole to Mr. Stollings and set a new parole hearing date of June of 2002. Mr. Stollings filed this habeas petition on December 27, 2001.

II.

STANDARD OF REVIEW

In this case, we have been asked to review a final decision of the Parole Board denying parole to Mr. Stollings. This Court stated in syllabus point 3 of *Rowe v. Whyte*, 167 W. Va. 668, 280 S.E.2d 301 (1981), that “[t]he decision to grant or deny parole is a discretionary evaluation to be made by the West Virginia [Parole Board]. However, such a decision shall be reviewed by this Court to determine if the [Parole Board] abused its discretion by acting in an arbitrary and capricious fashion.” *See also* Syl. pt. 3, in part, *State ex rel. Eads v. Duncil*, 196 W. Va. 604, 474 S.E.2d 534 (1996) (“The West Virginia [Parole] Board . . . must act in a way which is not unreasonable, capricious, or arbitrary.”).

III.

DISCUSSION

A. *Denial of Parole*

The dispositive issue in this case is whether the Parole Board's decision to deny parole to Mr. Stollings was arbitrary and capricious. It is contended by Mr. Stollings that the Parole Board "acted in an arbitrary and capricious fashion by focusing primarily upon [his] previous criminal activity to the exclusion of other relevant factors." We have also held, in syllabus point 3 of *Tasker v. Mohn*, 165 W. Va. 55, 267 S.E.2d 183 (1980), that "[r]elease on parole is a substantial liberty interest and the procedures by which it is granted or denied must satisfy due process standards."

Mr. Stollings cites to our decision in *Rowe v. Whyte*, 167 W. Va. 668, 280 S.E.2d 301 (1981), to support his contention that the Parole Board failed to consider all relevant factors impacting its decision to grant or deny him parole. In *Rowe* the inmate was denied parole and sought immediate release from this Court in a habeas proceeding. We determined in *Rowe* that the Parole Board provided the inmate with an inadequate hearing. We indicated specifically that:

The concentration of the parole board upon the petitioner's criminal record and the negative community sentiment report limited the scope of the parole board's inquiry to a consideration of factors beyond the ability of the petitioner to modify after his incarceration. In fact, the parole board, in its emphasis upon the petitioner's criminal activity prior to incarceration, acted in a manner similar to a sentencing court in which, more appropriately, such criminal activity would be highly determinative.

Rowe, 167 W. Va. at 678, 280 S.E.2d 306. We ultimately required the Parole Board to hold another parole hearing for the purpose of considering all of the requirements contained W. Va. Code § 62-12-13 (1999) for parole consideration. We believe *Rowe* is distinguishable from the instant case.

Our review of the record reveals that the Parole Board complied with all the factors contained in W. Va. Code § 62-12-13(i)(1).² Unlike the decision in *Rowe*, the Parole

²W. Va. Code § 62-12-13(i)(1) states:

(i)(1). When considering an inmate of a state correctional center for release on parole, the parole board is to have before it an authentic copy of or report on the inmate's current criminal record as provided through the West Virginia state police, the United States department of justice or other reliable criminal information sources and written reports of the warden or superintendent of the state correctional center to which such inmate is sentenced:

(i) On the inmate's conduct record while in custody, including a detailed statement showing any and all infractions of disciplinary rules by the inmate and the nature and extent of discipline administered therefor;

(ii) On improvement or other changes noted in the inmate's mental and moral condition while in custody, including a statement expressive of the inmate's current attitude toward society in general, toward the judge who sentenced him or her, toward the prosecuting attorney who prosecuted him or her, toward the policeman or other officer who arrested the inmate and toward the crime for which he or she is under sentence and his or her previous criminal record;

(iii) On the inmate's industrial record while in custody which shall include: The nature of his or her work, occupation or education, the average number of hours per day he or she has been employed or in class while in

(continued...)

Board in this case conducted a thorough interview of Mr. Stollings and addressed all of the required statutory issues. The transcript from the hearing does not reflect an undue degree of attention to Mr. Stollings' prior criminal history. The transcript revealed the Parole Board considered such factors as the circumstances of crime, prior criminal record, present conduct, work record, participation in prison programs, and official and community sentiments regarding release.³

The decision of the Parole Board listed four factors for denying parole: (1) circumstances of the crime, (2) prior convictions, (3) community/public sentiment, and (4) official/judicial sentiment. Additionally, during the interview, the Parole Board expressed considerable dismay that Mr. Stollings still contended that he did not remember placing the pistol to Ms. Sizemore's head and killing her. During the hearing, Mr. Stollings, while claiming to accept responsibility for the crime, could recall only matters that occurred prior to the shooting and afterward. Specifically, he recalled trying to give the pistol to Ms.

²(...continued)

custody and a recommendation as to the nature and kinds of employment which he or she is best fitted to perform and in which the inmate is most likely to succeed when he or she leaves prison;

(iv) On physical, mental and psychiatric examinations of the inmate conducted, insofar as practicable, within the two months next preceding parole consideration by the board.

³There was some debate during oral argument as to whether the Parole Board considered the psychological report of Mr. Stollings. However, the record indicates that the psychological report was before the Parole Board at the time of the hearing.

Sizemore. He claimed that in the process the gun went off. His selective recollection of events is in contrast to medical testimony offered at his trial. Indeed, the evidence at trial indicated that Ms. Sizemore had an impression on her head from the pistol being placed directly against it.

We also note that the Parole Board received petitions purportedly signed by hundreds of individuals in the community who argued against releasing Mr. Stollings on parole. The Parole Board also received letters from numerous relatives of Ms. Sizemore requesting that he not be released. Therefore, in view of the entire record in this case, we cannot say that the Parole Board abused its discretion by denying Mr. Stollings parole. Nor can we say that Mr. Stollings was denied due process.

B. Noncompliance with State ex rel. Carper v. W. Va. Parole Board

Mr. Stollings also assigned error to the Parole Board's failure to set out reasons for refusing to reconsider him for parole any earlier than two years from his last parole hearing. The Parole Board contends that this issue is moot because Mr. Stollings will have another parole hearing on June 24-27, 2002. While we agree with the Parole Board that this issue may be technically moot, we further believe the matter falls within one of this Court's

mootness exceptions.

In syllabus point 1 of *Israel v. West Virginia Secondary Schools Activities Commission*, 182 W. Va. 454, 388 S.E.2d 480 (1989), we set out the basis for addressing moot issues as follows:

Three factors to be considered in deciding whether to address technically moot issues are as follows: first, the court will determine whether sufficient collateral consequences will result from determination of the questions presented so as to justify relief; second, while technically moot in the immediate context, questions of great public interest may nevertheless be addressed for the future guidance of the bar and of the public; and third, issues which may be repeatedly presented to the trial court, yet escape review at the appellate level because of their fleeting and determinate nature, may appropriately be decided.

The issue presented by Mr. Stollings relating to the *Carper* decision must be firmly addressed because it is a matter that can escape review. In fact, Mr. Stollings' case is a good example of how this issue can escape judicial review. He is now scheduled for a parole hearing on June 24, 2002. Therefore, unless this Court addresses the matter, the *Carper* violation could be repeated by the Parole Board thus again escaping appellate review.

Mr. Stollings contends that this Court's decision in *State ex rel. Carper v. West Virginia Parole Bd.*, 203 W. Va. 583, 509 S.E.2d 864 (1998), required the Parole Board to set out findings as to why two years would have to pass before he could have another parole

hearing.⁴ We agree. In syllabus point 3, in part, of *Carper*, we set out the following:

The Board of Parole may only extend the period between parole review hearings . . . beyond 1 year [for prisoners whose offenses occurred at a time when the law prescribed annual parole reviews] if the Board has made a case-specific individualized determination with reasoned findings on the record showing why there will be no detriment or disadvantage to the prisoner from such an extension. Additionally, due process requires that such a prisoner receiving a review period of more than 1 year must be afforded the opportunity to submit information for the Board's consideration during any extended period requesting that a review be granted before the expiration of the extended period.

In the instant case, the record is totally void of any stated reason as to why the Parole Board refused to consider Mr. Stollings for parole for a period of two years. In fact, the Parole Board's Recommendations sheet at page two states:

Parole Hearing Decision: Deny - 2 years/PED 6/2002.
If set-up is for more than one year, reason for time increase: _____
_____.

The decision of the Parole Board simply declares that Mr. Stollings would be seen again in two years.⁵ *Carper* demands more. Under *Carper*, the Parole Board cannot deny Mr. Stollings an annual parole review without articulating individualized justifications. Therefore, we strongly

⁴The offense for which Mr. Stollings is incarcerated was committed at a time when the law prescribed annual parole reviews.

⁵The Parole Board's decision did make clear that Mr. Stollings could submit additional material during the two year period in an effort to illustrate the need for an expedited parole hearing.

urge the Parole Board to follow the *Carper* decision and set forth individualized justifications for their determination. Otherwise, this Court may be forced to enunciate specific remedies for *Carper* violations. Insofar as Mr. Stollings is again up for parole review, we need not presently fashion a remedy for the *Carper* violations. Should Mr. Stollings not be granted parole during his June 24-27, 2002, parole board hearing, however, we caution the Parole Board to follow the specific mandates of *Carper*.

IV.

CONCLUSION

The writ prayed for is denied.

Writ denied.