

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE

Assigned On Briefs September 3, 2014

JAMES WITT v. TENNESSEE BOARD OF PAROLE, ET AL.

Direct Appeal from the Chancery Court for Davidson County

No. 12-1707-I Claudia C. Bonnyman, Chancellor

No. M2013-02843-COA-R3-CV - Filed September 12, 2014

Plaintiff is an inmate in the Tennessee prison system serving a life sentence with the possibility of parole for first degree murder. The Tennessee Board of Parole declined to recommend the inmate for parole, citing as its reason the seriousness of his offense. The inmate filed a common law writ of certiorari in Davidson County Chancery Court challenging the Board's decision to deny him parole. The chancery court dismissed the petition for failure to state a claim upon which relief can be granted. We affirm.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Affirmed

BRANDON O. GIBSON, J., delivered the opinion of the Court, in which J. STEVEN STAFFORD, P.J., W.S., and KENNY W. ARMSTRONG, J., joined.

James Witt, *Pro Se*.

Robert E. Cooper, Jr., Attorney General and Reporter, Joe Whalen, Acting Solicitor General and Lee Pope, Assistant Attorney General, for the appellees, Tennessee Board of Parole and Amanda Fisher.

MEMORANDUM OPINION¹

¹Rule 10 of the Rules of the Court of Appeals of Tennessee provides:

This Court, with the concurrence of all judges participating in the case, may affirm, reverse or modify the actions of the trial court by memorandum opinion when a formal opinion would have no precedential value. When a case is decided by memorandum opinion it shall be designated "MEMORANDUM OPINION", shall not be published, and shall not be cited or relied on for any reason in any unrelated case.

I. BACKGROUND AND PROCEDURAL HISTORY

On December 14, 1986, James Witt participated in the robbery and murder of a man in Hamblen County, Tennessee. Mr. Witt subsequently pleaded guilty to first degree murder and was sentenced to life imprisonment with the possibility of parole. He is currently incarcerated at the Northeast Correctional Complex in Mountain City.

In 2012, Mr. Witt became eligible for parole for the first time and appeared for a hearing before the Tennessee Board of Parole (“Board”). The Board denied Mr. Witt parole after the hearing, finding that “[t]he release from custody at this time would depreciate the seriousness of the crime of which the offender stands convicted or promote disrespect of the law.” The Board deferred his next parole hearing for six years. Mr. Witt filed a request for an appeal with the Board, which was denied.

On November 28, 2012, Mr. Witt filed a *pro se* petition for writ of certiorari in the Chancery Court of Davidson County. On February 20, 2013, after denying a motion to dismiss, which the Board filed alleging Mr. Witt filed a false affidavit of indigency, the chancery court granted the writ of certiorari. The court ordered the Board to file a complete record of the administrative proceedings and ordered both parties to submit briefs on the matter.

In his brief, Mr. Witt raised three issues for judicial review: First, Mr. Witt argued that the Board violated his due process and equal protection rights by using “seriousness of the crime” and “disrespect of the law” as the sole reasons for denying him parole. He contended that the “seriousness of the crime” factor had already been considered in determining his original sentence and could be used every time the Board considered his parole to essentially change his original sentence to life without parole. Second, Mr. Witt argued that the Board acted “illegally and fraudulently” by leading him to believe he would be paroled by placing him in a pre-release class. Third, Mr. Witt contended that the Board acted arbitrarily by failing to consider statutory guidance factors for granting or denying parole. The Board responded in its brief, arguing that the petition failed to state a claim because it only challenged the correctness of the Board’s decision. The chancery court agreed, and on November 20, 2013, it filed a lengthy order in which it addressed the substance of Mr. Witt’s claims before dismissing his petition. Mr. Witt timely filed a notice of appeal.

II. ANALYSIS

Release on parole is a privilege, not a right. Tenn. Code Ann. § 40-35-503(b) (2014). Accordingly, no prisoner has the absolute right to be released on parole prior to the

expiration of his or her sentence. *Graham v. State*, 304 S.W.2d 622, 623 (Tenn. 1957); *Hopkins v. Tennessee Bd. of Paroles and Probation*, 60 S.W.3d 79, 82 (Tenn. Ct. App. 2001). The power to decide whether a prisoner should be granted parole rests solely with the Board, not the courts. *Hopkins*, 60 S.W.3d at 82. Because the decisions of the Board are entirely discretionary, they are only subject to judicial review under the common law writ of certiorari. *Powell v. Parole Eligibility Review Bd.*, 879 S.W.2d 871, 873 (Tenn. Ct. App. 1994). The scope of review under the common law writ is very narrow; the court may only inquire into whether the Board exceeded its jurisdiction or acted illegally, fraudulently, or arbitrarily. *Id.* The court cannot inquire into the intrinsic correctness of the Board's decision, but only the manner in which the decision is reached. *Id.* Accordingly, where the Board arrives at its decision in a constitutional and lawful manner, the court cannot grant relief. *Arnold v. Tennessee Bd. of Paroles*, 956 S.W.2d 478, 480 (Tenn. 1997).

On appeal to this Court, Mr. Witt raises two issues regarding the Board's procedure. First, Mr. Witt asserts that the Board acted arbitrarily in denying parole on the sole ground that his release would depreciate the seriousness of the crime and promote disrespect of the law. He contends that the Board should have heard testimony and considered evidence regarding the particular facts and circumstances surrounding his crime. We note, however, that Tennessee Code Annotated section 40-35-503(b)(2) expressly authorizes the Board to deny parole where release would depreciate the seriousness of the crime or promote disrespect for the law. It is well established in Tennessee that the Board's consideration of the seriousness of an inmate's offense does not violate any constitutional right and is sufficient by itself to support denying parole. *Arnold*, 956 S.W.2d at 482; *Hopkins*, 60 S.W.3d at 83; *Robinson v. Traugher*, 13 S.W.3d 361, 363 (Tenn. Ct. App. 1999). Moreover, though we are unaware of any set of facts that could diminish the seriousness of a first degree murder conviction, we note that the transcript from Mr. Witt's parole hearing reflects conversation regarding the particular facts and circumstances of his crime. Regarding the crime, Mr. Witt acknowledged that he was out of jail on parole for grand larceny when he participated in a robbery that resulted in the victim being beaten to death. Accordingly, the Board did not act arbitrarily or illegally in determining that the seriousness of Mr. Witt's offense warranted a denial of parole.

Second, Mr. Witt argues that the Board acted illegally and fraudulently by placing him in a pre-release class and then denying him parole. He contends that his placement in the pre-release class fraudulently led him and his family to believe he would be released. The subjective presumptions of Mr. Witt and his family are not relevant. The grant or denial of parole is a discretionary matter, vested exclusively in the Board. *Baldwin v. Tennessee Bd. of Paroles*, 125 S.W.3d 429, 433 (Tenn. Ct. App. 2003). In making its determination, the Board must consider the inmate's participation in available programs during incarceration. Tenn. Code Ann. § 40-35-503(g). However, as we have previously stated, no inmate is

entitled to parole, regardless of his or her conduct in prison. *Graham v. State*, 304 S.W.2d 622, 623-24 (Tenn. 1957). The transcript from Mr. Witt's parole hearing demonstrates that the Board considered his participation in the pre-release class, as well as other favorable factors such as his completion of a GED program, his release plan, and his family's support. We find no error in the manner in which the Board reached its decision. Further inquiry into the correctness of the Board's decision is beyond the scope of judicial review.

III. HOLDING

Mr. Witt has failed to show that the Board exceeded its jurisdiction or acted illegally, fraudulently, or arbitrarily in denying him parole. The judgment of the trial court is affirmed. The costs of this appeal are assessed against the Appellant, James Witt. Because Mr. Witt is proceeding *in forma pauperis* in this appeal, execution may issue for costs if necessary.

BRANDON O. GIBSON, JUDGE