

Circuit Court for Wicomico County
Case No. C-22-CV-19-000094

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1696

September Term, 2019

WILLIE LEE BARTON

v.

MARYLAND PAROLE COMMISSION

Fader, C.J.
Leahy,
Harrell, Glenn T., Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Harrell, J.

Filed: August 6, 2020

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Willie Lee Barton, an inmate serving a life sentence in the care of the Maryland Department of Corrections, filed, in the Circuit Court for Wicomico County, a Petition for Judicial Review challenging the Maryland Parole Commission’s recommendation that Mr. Barton’s life sentence be commuted, rather than the parole he had sought. Mr. Barton also challenged Maryland Governor Larry Hogan’s ultimate refusal to commute Mr. Barton’s sentence. The circuit court denied Mr. Barton’s petition without a hearing. In this appeal, Mr. Barton presents three questions for our consideration, which we have rephrased and reordered for the purposes of this opinion.¹ Those questions are:

1. Did Maryland Governor Larry Hogan violate Mr. Barton’s due process rights in refusing to commute his sentence, and was that decision legally erroneous?
2. Did the Maryland Parole Commission violate Mr. Barton’s due process rights in recommending that his sentence be commuted, and was that recommendation legally erroneous?
3. Did the circuit court err in denying Mr. Barton’s petition without a hearing?

¹ Mr. Barton phrased his questions as:

1. Was the trial court’s denial of the Appellant’s Petition for Judicial Review without granting the Appellant’s hearing he requested legally correct when Maryland Rule 2-311(f) requires the trial court to hold a hearing before rendering a decision disposing of a claim or defense?
2. Was the Governor’s failure to specify the reasons for denial of clemency deprived [sic] Appellant of his due process rights?
3. Was Appellant denied his due process rights by the Maryland Parole Commission’s failure to give him notice of the Governor’s denial of clemency and did the Commission abuse its discretion and the law when it failed to abide by the law in not recommending parole release?

For reasons to be explained, we answer the questions in the negative and affirm the judgment of the circuit court.

I. BACKGROUND

In 1975, Mr. Barton was convicted of first-degree murder and sentenced to life imprisonment. In 2017, two commissioners from the Maryland Parole Commission (the “Commission”) conducted a parole hearing with Mr. Barton. These commissioners subsequently decided to submit Mr. Barton’s case for en banc review by the Commission. In so doing, the commissioners noted that Mr. Barton was 64 years old and had been incarcerated for 42 years; that he had admitted to the crime and experienced remorse for his actions; that he had abused drugs around the time the crime was committed; and that he had a “risk assessment” conducted in December of 2014. A written report of the commissioner’s findings and recommendation was given to Mr. Barton.

The Commission thereafter submitted a recommendation to Maryland Governor Larry Hogan (the “Governor”) that Mr. Barton’s life-sentence be commuted. For reasons not entirely clear from the record, the Commission did not recommend parole.

In 2019, the Governor issued a letter to the Commission denying the Commission’s request for a commutation of Mr. Barton’s sentence. The Governor explained that, in reaching his decision, he had “considered, among other relevant and lawful factors and information, the factors and information assessed by the Parole Commission in this matter.” The Commission ordered Mr. Barton’s case to be reheard in 2022.

Mr. Barton filed, in proper person, a Petition for Judicial Review in the circuit court. In that petition, he asked the court to review “the decision of the Maryland Parole Commission and the Governor of the State of Maryland denying commutation of sentence.” Mr. Barton argued that the Governor abused his discretion and violated due process by failing to abide by the Commission’s recommendation of clemency and by failing to inform him as to the reasons why the Governor rejected the Commission’s recommendation. He argued also that the Commission abused its discretion and violated due process by recommending clemency (instead of parole) and by not notifying him of the recommendation. Mr. Barton asked the court to “issue an order directing the Maryland Parole Commission to make a recommendation for parole.” Mr. Barton asked the court also to “reverse” the Governor’s decision to deny clemency and “send back this matter before the Governor for proper and lawful consideration in accordance with all laws[.]”

After the State filed a response opposing his petition, Mr. Barton filed an answer asking the circuit court to hold a hearing to decide the merits of his petition. The court thereafter issued a written order denying Mr. Barton’s petition without holding a hearing.

In this *purported* appeal, Mr. Barton, again in proper person, challenges the Commission’s recommendation of clemency, the Governor’s denial of that recommendation, and the circuit court’s decision to deny his petition for judicial review without a hearing.

II. PAROLE AND CLEMENCY IN MARYLAND

First, to set the stage, we offer some perspective on the legal context of parole and commutation in Maryland. “The Maryland Constitution, article 3, section 60 states that ‘the General Assembly of Maryland shall have the power to provide by suitable general enactment ... for the release upon parole in whatever manner the General Assembly may prescribe, of convicts imprisoned under sentence for crimes.’” *Lomax v. Warden Maryland Correctional Training Center*, 120 Md. App. 314, 319-20 (1998). “The General Assembly has exercised that constitutional authority by creating the Maryland Parole Commission and enacting statutes governing the process by which an inmate can seek release on parole.” *Carter v. State*, 461 Md. 295, 318 (2018) (citing Maryland Code, Correctional Services Article § 7-101 *et seq.*). Under that statutory scheme, “[t]he Commission has the exclusive power to ... authorize the parole of an individual sentenced under the laws of the State to any correctional facility in the State” and to “hear cases for parole or administrative release in which ... the inmate is serving a sentence of life imprisonment[.]” Md. Code, Corr. Servs. §§ 7-205(a)(1) and (3)(iii).

Parole eligibility is governed by § 7-301 of the Correctional Services Article, which provides that an inmate who is serving a sentence longer than six months is eligible generally for parole consideration after serving one-fourth of his sentence. Md. Code, Corr. Servs. § 7-301(a). An inmate serving a life sentence, however, is not eligible for parole until he or she has served 15 years of his sentence or, if convicted of first-degree murder, until he or she has served 25 years of his sentence.² Md. Code, Corr. Servs. §§ 7-301(d)(1)

² An inmate sentenced to life without the possibility of parole is not eligible for parole consideration. Md. Code, Corr. Servs. § 7-301(d)(3).

and (2). Moreover, “the Parole Commission does not have the authority to grant parole directly to an inmate serving a life sentence.” *Carter*, 461 Md. at 320. Rather, absent very narrow circumstances not applicable here, “an inmate serving a term of life imprisonment may only be paroled with the approval of the Governor.”³ Md. Code, Corr. Servs. § 7-301(d)(4).

“The Parole Commission’s statutory authority and administrative policy regarding parole for inmates serving life sentences is further amplified in the Code of Maryland Regulations (‘COMAR’).” *Lomax*, 120 Md. App. at 321. Pursuant to those regulations, “[a] parole release hearing for a prisoner serving a sentence of life imprisonment shall be conducted by a panel of two Commissioners[.]” COMAR 12.08.01.17(7)(f). A parole hearing consists of an informal, private interview of the inmate, and attendance is restricted to parole personnel and a representative of the institution. COMAR 12.08.01.18(C)(1). In addition, “[f]ormal presentations by an attorney, relatives, and others interested are not permitted at the parole hearings.” *Id.*

“At the end of the parole interview, the inmate shall be verbally informed of ... the decision in cases heard by two or more commissioners.” COMAR 12.08.01.18(E)(1). In addition, “a written copy of [the] panel’s decision shall be prepared and served upon the

³ Section 7-301(5) of the Correctional Services Article provides that, “[i]f the Commission decides to grant parole to an inmate sentenced to life imprisonment who has served 25 years without application of diminution of confinement credits, the decision shall be transmitted to the Governor.” Md. Code, Corr. Servs. § 7-301(d)(5)(i). The statute provides further that, “[i]f the Governor does not disapprove the decision within 180 days after receipt, the decision becomes effective.” Md. Code, Corr. Servs. § 7-301(d)(5)(iii).

prisoner[.]” COMAR 12.08.01.18(E)(2). “If parole is denied, the Commission shall give the inmate a written report of its findings within 30 days after the hearing.” Md. Code, Corr. Servs. § 7-307(c)(2). If parole is recommended, “the case shall be presented by the panel to the Commission en banc.” COMAR 12.08.01.17(7)(f). “If the Commission meeting en banc agrees that the prisoner should be granted parole, the Commission’s recommendation for parole shall be forwarded to the Governor.” COMAR 12.08.01.17(7)(g). “Decisions of cases heard by two or more Commissioners are not subject to exceptions.” COMAR 12.08.01.19(A)(3).

In addition to being empowered to recommend parole for an inmate serving a life sentence, the Commission may “recommend to the Governor a commutation of a life sentence where the case warrants special consideration or where the facts and circumstances of the crime justify special consideration, or both.” COMAR 12.08.01.15(B). Unlike parole, which is a conditional release from confinement, a commutation of sentence is “an act of clemency in which the Governor, by order, substitutes a lesser penalty for the grantee’s offense for the penalty imposed by the court in which the grantee was convicted.” Md. Code, Corr. Servs. § 7-101(d).

The Governor’s power to commute a sentence is derived from Article 2 § 20 of the Maryland Constitution, which states that the Governor “shall have the power to grant reprieves and pardons[.]” *See also Grandison v. State*, 234 Md. App. 564, 584-85 (2017) (noting that “the gubernatorial pardon power encompasses the power to commute a sentence”). “Distinct from the Governor’s role in the parole of inmates serving life

sentences, the Maryland Constitution confers the independent power of executive clemency on the Governor.” *Carter*, 461 Md. at 325. Pursuant to that authority, “the Governor may remit any part of a sentence of imprisonment subject to any conditions the Governor requires, without remission operating as a full pardon.” Md. Code, Corr. Servs. § 7-601(a)(3).

Importantly, “[w]hile the [Maryland] Constitution authorizes the Governor to grant pardons and reprieves of sentences, it does not provide criteria as to when that power should be exercised.” *Carter*, 461 Md. at 325-26. Moreover, because the Governor’s power to pardon is derived directly from the Maryland Constitution, it “may be exercised independently of legislative control, so long as the Governor, in exercising that power, does not violate federal constitutional provisions or their Maryland cognates.” *Grandison*, 234 Md. App. at 585. In short, “the gubernatorial pardon power is plenary[.]” *Id.*

III. DISCUSSION

A. Standard of Review

Before discussing the merits of Mr. Barton’s claims regarding the Commission’s recommendation of clemency and the Governor’s denial of that recommendation, we must set forth the appropriate scope of our review. We begin with the basic premise that, “in order for an administrative agency’s action properly to be before this Court (or any court) for judicial review, there generally must be a legislative grant of the right to seek judicial review.” *Harvey v. Marshall*, 389 Md. 243, 273 (2005).

Mr. Barton’s Petition for Judicial Review in the circuit court was filed purportedly pursuant to Maryland Rule 7-202,⁴ which governs “actions for judicial review of [] an order or action of an administrative agency, where judicial review is authorized by statute[.]” Md. Rule 7-201(a). The problem with Mr. Barton’s reliance on that Rule is that no relevant statute dealing with the Commission’s or the Governor’s powers and duties regarding the granting of parole or clemency authorizes expressly judicial review of those decisions. *See* Md. Code, Corr. Servs. §§ 7-205 (outlining the Commission’s powers), 7-206 (outlining the Commission’s duties), 7-301 (discussing the circumstances under which an inmate is eligible for parole), 7-305 (discussing the factors that the Commission must consider when making a parole determination), 7-306 (outlining the procedures for parole hearings conducted by an examiner), 7-307 (outlining the procedures for hearings conducted by Commission panel), and 7-601 (highlighting the Governor’s power to commute a sentence); *See also Holly v. State*, 241 Md. App. 349, 352-56 (2019) (discussing the lack of judicial review of the Commission’s or the Governor’s decision to deny parole and rejecting the appellant’s claim that such review is required by constitution). Furthermore, both the Governor and the Maryland Parole Commission are exempt expressly from the statutory scheme governing contested cases under the Administrative Procedures Act, which permits generally judicial review of an administrative agency decision pursuant to a

⁴ Mr. Barton, in his petition, also cited § 7-401 of the Correctional Services Article, which permits judicial review of the Commission’s decisions regarding the revocation of parole. Md. Code, Corr. Servs. § 7-401(f). That Rule is inapplicable in Mr. Barton’s case because he was never granted parole (nor was any parole revoked).

contested case.⁵ See Md. Code, State Government §§ 10-203(a)(3) and 10-222. Thus, Mr. Barton’s petition was not cognizable under Rule 7-202. See *A.C. v. Maryland Commission on Civil Rights*, 232 Md. App. 558, 572 (2017) (“A statute must authorize judicial review for the circuit court to have authority over a petition for judicial review from an administrative agency’s order or action.”) (citing Md. Rule 7-201(a)).

“In those circumstances where there is no statutory provision for judicial review, however, [the Court of Appeals] ‘has consistently held that the Legislature cannot divest the courts of the inherent power they possess to review and correct actions by an administrative agency which are arbitrary, illegal, capricious or unreasonable.’” *Harvey*, 389 Md. at 275 (citing *Criminal Injuries Comp. Bd. v. Gould*, 273 Md. 486, 500-01 (1975)). That is, a circuit court has “the inherent power, through the writ of mandamus, to correct abuses of discretion and arbitrary, illegal, capricious or unreasonable acts[.]” *Matter of White*, 451 Md. 630, 651 (2017). As the State pointed out in its response to Mr. Barton’s petition in the circuit court and in its brief to this Court, Mr. Barton’s petition for judicial review was, in essence, a mandamus action. Thus, we shall review Mr. Barton’s claims pursuant to the principles governing such actions. See *Gisriel v. Ocean City Bd. of Sup’rs of Elections*, 345 Md. 477, 500 (1997) (“[E]ven where a particular action against an administrative agency was allegedly brought under a statutory judicial review provision, this Court has looked to the substance of the action, has held that it could be treated as a

⁵ The Governor and Maryland Parole Commission are also exempt expressly from the statutory scheme governing the Office of Administrative Hearings. Md. Code, State Government § 9-1601(a).

common law mandamus or certiorari action, and has exercised appellate jurisdiction.”); *see also State v. Kanaras*, 357 Md. 170, 185 (1999) (noting that the actions of the Parole Commission, which had the effect of denying certain parole consideration to certain inmates, “was subject to correction through a proper proceeding, such as ... a mandamus action[.]”).

“Mandamus is an original action, as distinguished from an appeal.” *White*, 451 Md. at 650 (citing *Goodwich v. Nolan*, 343 Md. 130 (1996)). It is “generally used to compel inferior tribunals, public officials or administrative agencies to perform their function, or perform some particular duty imposed upon them which in its nature is imperative and to the performance of which the party applying for the writ has a clear legal right.” *Falls Road Community Ass’n, Inc. v. Baltimore County*, 437 Md. 115, 139 (2014) (citations and quotations omitted). Ordinarily, a writ of mandamus “does not lie where the action to be reviewed is discretionary or depends on personal judgment.” *Id.* (citations and quotations omitted). Nevertheless, the Court of Appeals “has indicated that, in rare cases, a court may review a discretionary act of a public official when there is both a lack of an available procedure for obtaining review and an allegation that the action complained of is illegal, arbitrary, capricious or unreasonable.” *Id.* at 140 (citations and quotations omitted).

That said, mandamus is “an extraordinary remedy,” *White*, 451 Md. at 650 (citations and quotations omitted), and is appropriate “only in those cases ... where clear and undisputable rights are at stake.” *Wilson v. Simms*, 380 Md. 206, 223 (2004) (citations and quotations omitted). “If the right be doubtful ... the writ will not be granted.” *Id.* (citing

City of Seat Pleasant v. Jones, 364 Md. 663, 673 (2001)) (cleaned up). Moreover, “in exercising that power, care must be taken not to interfere ... with the exercise of sound administrative discretion, where discretion is clearly conferred.” *White*, 451 Md. at 651 (citations and quotations omitted); *See also Harvey*, 389 Md. at 279-80 (noting that “[t]he inherent power of judicial review of administrative decisions ... is extremely limited” and that “[n]umerous cases expressly caution about the danger of exercising our inherent power of judicial review in the absence of statutory authority”).

The procedures regarding writs of mandamus filed in the circuit court are set forth in Maryland Rules 7-401, 7-402, and 7-403. *See* Md. Rule 7-401(a) (“The rules in this Chapter govern actions for judicial review of a quasi-judicial order or action of an administrative agency where review is not expressly authorized by law.”). Pursuant to those Rules, “[a]n action for a writ of mandamus is commenced by the filing of a petition, the form, contents, and timing of which shall comply with Rules 7-202 and 7-203.” Md. Rule 7-402(a). Upon the filing of such a petition, the court may permit discovery under certain circumstances and may, but is not required to, hold a hearing. Md. Rules 7-402(c) and (f). In disposing of the petition, “[t]he court may issue an order denying the writ of mandamus[.]” Md. Rule 7-403. Alternatively, the court “may issue the writ [] remanding the case for further proceedings[.]” *Id.* Finally, the court

may issue the writ ... reversing or modifying the decision if any substantial right of the plaintiff may have been prejudiced because a finding, conclusion, or decision of the agency: (A) is unconstitutional, (B) exceeds the statutory authority or jurisdiction of the agency, (C) results from an unlawful procedure, (D) is affected by any error of law, (E) is unsupported by

competent, material, and substantial evidence in light of the entire record as submitted, (F) is arbitrary or capricious, or (G) is an abuse of discretion.

Id.

B. ANALYSIS

1. The Governor’s Decision Not To Commute

Mr. Barton’s first claim of error concerns the Governor’s decision not to commute his life sentence. He contends that the Governor’s refusal to adopt the Commission’s recommendation of clemency was “arbitrary and capricious.”⁶ Specifically, Mr. Barton claims further that the Governor’s failure to follow the Commission’s recommendation was “so implausible that it cannot be ascribed to a difference in view or the product of agency experience” and was “the product of his unforgiving policy against lifer’s in general.”⁷

⁶ In a related argument, Mr. Barton claims that “the Governor’s failure to grant parole and/or commute the sentence of any inmate serving a life sentence *who has been recommended for parole* by the Maryland Parole Commission, amounts to (1) an abuse of discretion – acting in an arbitrary and capricious manner; (2) the Governor’s guidelines policy was designed only to be applied to juvenile lifers while excluding all lifers; (3) the current parole procedure for lifers constitutes impermissible double-counting, where the Governor considers the same factors the Parole Commission considers when, recommending parole, to deny and also fails to provide Appellant with written statement for its denial of parole/commutation of sentence.” (emphasis added). These arguments are not relevant in Mr. Barton’s case, as he was not recommended for parole by the Commission.

⁷ In a related argument, Mr. Barton contends that the “parole statutes in Maryland are unconstitutional because the Legislature has failed to enact a law providing any criteria and in compliance with due process as to when the Governor’s discretion should be exercised and under what circumstances.” Mr. Barton fails to cite any authority in support of that claim, nor does he explain exactly how the absence of such laws is unconstitutional. Furthermore, as discussed above, the Governor’s pardoning power is derived from the Maryland Constitution, which allows him to exercise that authority independently of legislative control and without any restrictions as to when it should be exercised. *Carter*, 461 Md. at 325-26; *See also Grandison*, 234 Md. App. at 585.

Mr. Barton argues, in addition, that he was “entitled by right to receive notice in writing of any decision with specific reasons as to why clemency was denied” and that the Governor’s failure to do so was a violation of due process.⁸ Mr. Barton maintains, therefore, that the Governor’s decision “should be invalidated by this Court.”

We hold that the Governor’s refusal to commute Mr. Barton’s life sentence is not subject to review by mandamus.⁹ Mr. Barton had no right, substantial or otherwise, to a commutation of his sentence. *See* Md. Rule 7-403 (stating that an administrative action may be reversed or modified “if any *substantial right* of the plaintiff may have been prejudiced”) (emphasis added). Rather, a commutation of sentence is an act of executive grace committed to the sole discretion of the Governor. Md. Const. Art. II § 20; Md. Code, Corr. Servs. § 7-601(a); *See also Solem v. State*, 463 U.S. 277, 301 (1983) (“Commutation ... is an *ad hoc* exercise of executive clemency. A Governor may commute a sentence at any time for any reason without reference to any standards.”). Accordingly, Mr. Barton’s

⁸ Mr. Barton asks that this Court to “mandate the Legislature to enact a law mandating the Governor to comply with due process when denying parole and/or clemency to any inmate serving a life sentence with a written decision specifying the reasons [] for his refusal to grant either relief.” Such an action is beyond the power of the courts. *See Maryland Committee for Fair Representation v. Tawes*, 228 Md. 412, 440 (1962) (noting that the courts cannot compel the General Assembly to enact a particular law).

⁹ The State argues that the separation of powers doctrine bars judicial review of the Governor’s decision. Because we affirm on a non-constitutional ground, we need not address that argument. *See Pollock v. Patuxent Institution Bd. of Review*, 358 Md. 656, 666-67 (2000) (discussing the appellate policy of avoiding decisions on constitutional issues in cases that can be disposed of on non-constitutional grounds). The State argues also that the Governor’s decision was not subject to mandamus because it was not a “quasi-judicial order.” We need not address that claim, either.

mandamus petition challenging the Governor’s decision was denied properly. *See Perry v. Department of Health and Mental Hygiene*, 201 Md. App. 633, 640-41 (2011) (holding that plaintiff’s challenge to administrative agency’s decision denying her a promotion was properly dismissed where the plaintiff did not have a substantial right to the promotion).

Even so, the Governor’s decision was in no way arbitrary, illegal, capricious or unreasonable. “A reviewing court is not authorized to overturn a lawful and authorized [discretionary decision] unless the disproportionality [of the decision] or abuse of discretion was so extreme and egregious that the reviewing court can properly deem the decision to be arbitrary and capricious.” *Maryland Aviation Admin. v. Noland*, 386 Md. 556, 581 (2005) (citing *MTA v. King*, 369 Md. 274, 291 (2002)). Here, the Governor was well-within his constitutional and statutory authority in refusing to adopt the Commission’s recommendation of clemency and in refusing to commute Mr. Barton’s sentence. In addition, the Governor stated that, in reaching his decision, he considered “all relevant and lawful factors and information.” The Governor made clear also that he had considered the same factors as the Commission, including Mr. Barton’s age, the time he had spent incarcerated, his level of remorse as to the crime committed, and the circumstances surrounding the crime. Patently, the Governor’s decision was both lawful and reasonable. Further, Mr. Barton presented no specific evidence or argument to show that the Governor’s decision was anything but reasonable. *See Maryland Office of People’s Counsel v. Maryland Public Service Commission*, 461 Md. 380, 399 (2018) (“[O]ne challenging an agency decision must show that the agency exercised its discretion

unreasonably or without a rational basis.”). Thus, we shall not disturb the Governor’s decision not to commute Mr. Barton’s life sentence.

We hold also that Mr. Barton’s due process rights were not implicated by the Governor’s decision or the lack of notice as to the reasons behind the decision. “To establish a violation of due process, one must show that the State deprived him or her of a protected liberty or property interest through constitutionally inadequate procedures.” *Town of La Plata v. Faison-Rosewick, LLC*, 434 Md. 496, 526 (2013). As noted, Mr. Barton did not have a protected liberty or property interest in a commutation of his sentence. Thus, his due process rights were not implicated.

Even so, we fail to see how the lack of notice as to the reasons behind the Governor’s decision was “constitutionally inadequate.” Mr. Barton fails to cite, and we could not find, any constitutional or statutory authority indicating that the Governor is required to notify an inmate regarding the denial of a commutation of sentence or the reasons behind such a decision. Moreover, we are at a loss as to how the lack of such notice violated procedural due process. The purpose of the notice requirement of due process is to “apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.” *Mayor of Baltimore v. Prime Realty Associates, LLC*, 468 Md. 606, 622-23 (2020) (citations and quotations omitted). The Governor’s commutation decision was final. There was nothing “pending” and no avenue for Mr. Barton to present his objections. *Pitsenberger v. Pitsenberger*, 287 Md. 20, 30 (1980) (“[D]ue process requires ... notice

and opportunity for hearing *appropriate to the nature of the case.*”) (citing *Goss v. Lopez*, 419 U.S. 565, 579 (1975)) (emphasis added).

In sum, the Governor’s refusal to commute Mr. Barton’s sentence is not subject to mandamus, was not arbitrary and capricious, and did not implicate Mr. Barton’s due process rights. Accordingly, the circuit court did not err in denying Mr. Barton’s petition for judicial review of the Governor’s decision.

2. The Commission’s Decision To Recommend Commutation

Mr. Barton’s next claim of error concerns the Maryland Parole Commission’s decision to recommend a commutation of his sentence. He claims that the Commission violated the law, violated his due process rights, and abused its discretion in recommending clemency, rather than parole. He insists that the Commission did not have the power to recommend clemency, but rather was “mandated by statute” to recommend parole pursuant to § 7-305 of the Correctional Services Article and COMAR 12.08.01.18A(1) and (2). He also contends that the Commission violated due process by not informing him of its recommendation or the Governor’s subsequent decision.

We hold that the Commission’s decision, like that of the Governor, was not subject to mandamus review. “Under the Maryland statutory scheme, until the Governor approves a parole recommendation for a lifer, and the court serves the inmate with an Order for Parole, the inmate has no due process right to parole or a parole hearing, and thus, has no liberty interest in meaningful parole consideration.” *Lomax*, 120 Md. App. at 329-30.

Absent such an interest, mandamus is inappropriate, and due process principles are inapplicable. *See* Md. Rule 7-403; *Town of La Plata*, 434 Md. at 526.

Regardless, the Commission’s decision was neither an abuse of discretion nor a violation of the law. To begin with, the statute and regulation relied on by Mr. Barton for the proposition that the Commission was “mandated” to recommend parole contain no such language. Section 7-305 of the Correctional Services Article sets forth merely certain enumerated factors that the Commission “shall consider” when “determining whether an inmate is suitable [for] parole[.]”¹⁰ Md. Code, Corr. Servs. § 7-305. Nothing in that statute, or any other relevant statute, requires the Commission to recommend parole for an inmate serving a life sentence. *See* Md. Code, Corr. Servs. § 7-205(a)(1) (stating that the Commission “has the exclusive power” to authorize parole). Similarly, COMAR 12.08.01.18A(1) and (2) merely outline the criteria the Commission considers; it does not indicate that the Commission is required to recommend parole. To the contrary, the regulation clearly states that “[t]he Commission shall have the exclusive power of parole release.” COMAR 12.08.01.18A(1).

To be sure, § 7-305 of the Correctional Services Article includes a mandatory provision, namely, that the Commission “shall” consider the enumerated factors set forth

¹⁰ The factors are: the circumstances of the crime; the inmate’s physical, mental, and moral qualifications; the inmate’s progress during confinement; the results of a drug or alcohol evaluation; the likelihood of recidivism; whether release is compatible with society’s welfare; any victim impact statements; any recommendations made by the sentencing judge; any information or testimony presented to the Commission by the victim or the victim’s representative; and compliance with the inmate’s case plan. Md. Code, Corr. Servs. § 7-305.

in the statute when determining whether an inmate is suitable for parole. Md. Code, Corr. Servs. § 7-305. State statutes that invoke explicit mandatory procedures or considerations may cause constitutional protections to attach to parole. *McLaughlin-Cox v. Maryland Parole Com'n*, 200 Md. App. 115, 122 (2011). For that to happen, however, the Maryland Legislature must enact “specific directives to the decisionmaker that if the regulations’ substantive predicates are present, a particular outcome must follow, that outcome being either to grant or to deny parole.” *McLaughlin-Cox v. Maryland Parole Com'n*, 200 Md. App. 115, 122 (2011). As we have explained, the language contained in § 7-305 does not meet that standard:

Parole in Maryland ... is not explicitly conditioned on some particular combination of findings. This is to say that none of the factors of CS § 7-305 – either independently or in some particular combination – is a necessary or sufficient condition of release. Instead, the factors are weighed against each other and taken as an undifferentiated but informative whole. Moreover, individual factors such as the circumstances surrounding the crime and victim impact statement give no objective direction as to how those factors should be considered, leaving commissioners with wide discretion in their ultimate determinations.... [T]he words “must” and “shall” ... are not “specific directives” instructing the [Commission] as to when, exactly, it must or must not grant parole.

Id. at 124-25 (emphasis and footnote removed).

We reject likewise Mr. Barton’s claim that the Commission did not have the authority to recommend a commutation of his sentence, in lieu of parole. The Commission was not obligated to recommend Mr. Barton for parole. Moreover, COMAR 12.08.01.15(B) expressly permits the Commission to “recommend to the Governor a commutation of a life sentence where the case warrants special consideration or where the

facts and circumstances of the crime justify special consideration, or both.” *See also* Md. Code, Corr. Servs. § 7-206 (“The Commission shall ... review and make recommendations to the Governor: (i) concerning parole of an inmate under a sentence of life imprisonment; and (ii) if requested by the Governor, concerning a pardon, commutation of sentence, or other clemency[.]”).

We are not persuaded that the Commission’s apparent failure to provide notice of its recommendations or of the Governor’s decision violated Mr. Barton’s due process rights. As noted, Mr. Barton did not have a recognizable liberty interest in parole, much less in the notification that he claims was lacking. Nevertheless, we fail to see how that lack of notice was constitutionally inadequate. As was the case following the Governor’s decision to deny clemency, Mr. Barton had no avenue of redress had he received notice of the Commission’s recommendation and decided to object. *See* COMAR 12.08.01.19A(3) (“Decisions of cases heard by two or more Commissioners are not subject to exceptions.”).

We recognize that both the Maryland Code and COMAR state that notice of the Commission’s decision is required. *See* Corr. Servs. § 7-307(c)(2); COMAR 12.08.01.18(E)(2). We recognize further that the Commission’s apparent failure to abide by those provisions rose to the level of actionable procedural violations. Neither the Maryland Code nor COMAR indicates the type or manner of relief in the face of such violations. Mr. Barton has provided no authority that would entitle him to the sort of relief he requested in his petition for judicial review and that he requests in this appeal. *See McLaughlin-Cox*, 200 Md. App. at 125 n. 5 (explaining that the notice requirement

contained in § 7-307 was a “paper tiger”). If anything, granting Mr. Barton such relief based solely on the Commission’s failure to provide notice would be extreme, particularly given that the totality of the circumstances suggest that the Commission otherwise followed the appropriate procedures. *See Brandywine Senior Living at Potomac, LLC v. Paul*, 237 Md. App. 195, 213 (2018) (“The concept of due process requires that we examine the totality of the procedures afforded rather than the absence or presence of particularized factors.”) (citing *Cecil Cty. Dep’t of Soc. Servs. v. Russell*, 159 Md. App. 594, 612-13 (2004)).

In sum, the Commission’s decision to recommend a commutation of Mr. Barton’s sentence is not subject to mandamus review, was not an abuse of discretion, and did not implicate Mr. Barton’s due process rights. Accordingly, the circuit court did not err in denying Mr. Barton’s petition for judicial review of the Commission’s action or inaction.

3. No Hearing By The Circuit Court

Mr. Barton’s final contention is that the circuit court erred in not holding a hearing on his petition for judicial review. He asserts that such a hearing was required pursuant to Maryland Rule 2-311(f).

Mr. Barton is mistaken. Indeed, Maryland Rule 2-311(f) states that, when a party to a civil action desires a hearing on a motion, “the court may not render a decision that is dispositive of a claim or defense without a hearing if one was requested as provided in this section.” That Rule is not applicable in Mr. Barton’s case, however, as he was not a party

to a civil action. *See generally* Md. Rule 2-101, *et. seq.* Rather, as discussed above, Mr. Barton’s action is governed by the Rules concerning writs of mandamus. Under those Rules, when an action for a writ of mandamus has been commenced in the circuit court, the court is permitted, but not required, to hold a hearing on that petition. *See* Md. Rule 7-402(f) (“The court *may* hold a hearing.”) (emphasis added). Thus, the court did not err in refusing to hold a hearing on Mr. Barton’s petition.

**JUDGMENT OF THE CIRCUIT COURT
FOR WICOMICO COUNTY AFFIRMED;
COSTS TO BE PAID BY APPELLANT.**