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Haas v. Craven Respondent's Brief Dckt. 40310

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I.

STATEMENT OF THE CASE

A. Nature of the Case

This case arises from the parole commission's denial of Appellant-Petitioner James Haas' denial of parole. Following the denial of his parole, Haas filed a petition for writ of habeas corpus. The district court summarily dismissed Haas' petition and he now appeals to this Court.

B. Statement of Facts and Course of Proceedings

James Haas was convicted of Lewd Conduct with a Minor under Sixteen. *R. Vol. I, p. 70, n. 4.* In 1993, following his conviction, Haas was sentenced to the custody of the Idaho State Board of Corrections for an indeterminate period not to exceed thirty years, with a minimum period of confinement of five years. *R. Vol. I, pp. 26-30.* The sentence was suspended and Haas was placed on probation for a period of ten years. *R. Vol. I, p. 70, n. 4.*

On June 18, 1999, Haas' probation was revoked after he admittedly violated the terms of probation. He was sentenced to five years fixed and ten years indeterminate. At the same time, he was sentenced on a second crime of Sexual Battery of a Minor Child Sixteen or Seventeen Years of Age. *R. Vol. I, pp. 37-40.* Haas was sentenced to a fixed term of nine years and indeterminate period of sixteen years for a unified sentence not to exceed twenty-five years. His sentences in both cases were ordered to run concurrently. Haas became parole eligible on April 17, 2006 with a full term expiration date of April 16, 2024. *R. Vol I, pp. 41-45, 59-60.*

The parole commission scheduled Haas for an initial parole hearing in December 2007. *R. Vol. I, pp. 41-45, 61.* In April 2003, after Haas' sentence calculation was changed, the parole

commission rescheduled his initial parole hearing for October 2005. *R. Vol. I, pp. 41-45, 59-60.* Haas' parole hearing was conducted in November 2005 and the parole commission denied parole because it found that Haas was a threat to the public with a lengthy criminal history that involved many victims. *R. Vol. I, pp. 41-45, 56-58.* The commission's decision was made in order to protect children. *Id.*

In November 2006, the parole commission reviewed Haas' Self Initiated Progress Report (SIPR), along with the minute entries from the prior parole hearing, and elected to deny the SIPR. *R. Vol. I, pp. 41-45, 54-55.* In May 2008, the parole commission reviewed a SIPR submitted by Haas, along with a letter of support, three disciplinary offense reports, and the minutes from the prior parole hearing. *R. Vol. I, pp. 41-45, 52-53.* After this review, the commission continued to have concerns about Haas' history of sexual offenses and the number of victims and believed that Haas was a risk to reoffend and denied the SIPR. *Id.* In July 2009, the parole commission reviewed a SIPR submitted by Haas, along with three disciplinary offense reports, the minutes from the prior parole hearing and the prior SIPR's and decided to grant Haas a parole hearing in April of 2012. *R. Vol. I, pp. 41-45, 50-51.*

On April 17, 2012, the commission held the parole hearing and recommended that parole be denied for lack of programming, seriousness of Haas' crime, nature of the crime, criminal history, institutional behavior, failure to internalize previous treatment and public safety. *R. Vol. I, pp. 41-49.* Parole was denied and the next parole hearing was scheduled for April 2022. *Id.*

On May 14, 2012, Haas filed his petition for writ of habeas corpus, which the district court dismissed on the grounds that the parole commission's decision was supported by a rational basis in the record. *R. Vol. I, p. 73*. This appeal followed. *R. Vol. I, pp. 78-82*.

C. Issues on Appeal

Petitioner Haas presents the following three issues on appeal:

1. Whether a twenty-five year sentence for a conviction of one count of sexual battery of a minor (sixteen or seventeen years old) violates the prohibition against cruel and unusual punishment.
2. Whether the district court violated Petitioner's right to due process when it *sua sponte* granted summary judgment in favor of Respondent Olivia Craven.
3. Whether there is a rational basis in the record to support the parole commission's discretionary decision to deny Haas parole.

Respondent Craven raises the following additional issues on appeal:

4. Whether this Court has an alternative basis to affirm the district court's decision because (a) Petitioner Haas has failed to state a claim for relief against Respondent Craven under the Idaho Habeas Corpus and Institutional Litigation and Procedures Act; and (b) Petitioner Haas has failed to properly plead a constitutional violation.
5. Whether Respondent Craven is entitled to attorney's fees on appeal.

II.

ARGUMENT

A. Standard of Review

“[T]he decision to issue a writ of *habeas corpus* is within the trial court’s discretion.” *Drennon v. Craven*, 141 Idaho 34, 36, 105 P.3d 694, 696 (2004). In an appeal from a summary judgment dismissing a *habeas corpus* petition, the appellate court is bound by the same standard of review as the trial court. *See Freeman v. Idaho Dep’t of Corr.*, 138 Idaho 872, 875, 71 P.3d 471, 474 (Ct. App. 2003). Summary judgment is proper only when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *See Hays v. State*, 132 Idaho 516, 519, 975 P.2d 1181, 1184 (Ct. App. 1999). “When assessing summary judgment on a *habeas corpus* petition, we treat all uncontroverted allegations in the petition as true, and we liberally construe all controverted facts and draw all reasonable inferences in favor of the nonmoving party.” *See Id.*; *see also Freeman*, 138 Idaho at 875, 71 P.3d at 474.

The Court is generally not “concerned with the truth or falsity of petitioner’s allegations [in an application for writ of *habeas corpus*]. . . . in examining the sufficiency of a petition for a writ of *habeas corpus*, all allegations set forth therein must be accepted as being true.” *Mahaffey v. State*, 87 Idaho 228, 230, 392 P.2d 279, 280 (1964).

B. Argument on Appeal

1. Whether a Twenty-Five Year Sentence for a Conviction of One Count of Sexual Battery of a Minor (Sixteen or Seventeen Years Old) Violates the Prohibition Against Cruel and Unusual Punishment

The Court should affirm the dismissal of Haas' petition because it is improperly brought pursuant to the Idaho Habeas Corpus and Litigation Procedures Act.

The writ of habeas corpus is a constitutional right in Idaho. Idaho Constitution, Article 1, § 5. "Although the legislature has made and provided reasonable regulation for its use (I.C. §§ 19-4201 through 19-4236), the writ is not a statutory remedy, but rather a remedy recognized and protected by the Idaho Constitution." *Mahaffey*, 87 Idaho at 231, 392 P.2d at 280.

A petition for writ of habeas corpus should contain a statement of the facts that constitute the illegal restraint, and failure to allege a ground of illegality precludes consideration thereof by the court. The statement should consist of direct averments of ultimate facts, as distinguished from conclusions of law, and the circumstances set forth must be such as to warrant the discharge of the prisoner in case they are established. In other words, to entitle the applicant to the writ, there must be at least a prima facie showing in the application that the detention or confinement is unlawful.

Mitchell v. Idaho, 105 Idaho 419, 422, 670 P.2d 520, 523 (1983) (quoting 39 Am.Jur.2d 267, § 123) (emphasis added). "There is no constitutional or inherent right of a convicted person to be conditionally released before the expiration of a valid sentence." *Greenholtz v. Inmates of the Nebraska Penal and Correctional Complex*, 442 U.S. 1, 7, 99 S.Ct. 2100, 2104 (1979). "The possibility of parole is not protected by due process. The constitutional protection afforded this limited expectation of parole is found in the procedures enacted to grant parole." *Vittone v. State*, 114 Idaho 618, 619, 759 P.2d 909, 910 (1988) (holding that a Court may not substitute its

judgment for the parole commission's discretionary decision as long there is a rational basis for that decision).

An application for writ of habeas corpus may be made on the following conditions: "(a) The conditions of his confinement; (b) The revocation of his parole; (c) Miscalculation of his sentence; (d) Loss of good time credits; or (e) A detainer lodged against him." I.C. § 19-4205. "Idaho law provides a number of avenues by which a convicted defendant may challenge a sentence as violating the Eighth Amendment; a habeas corpus action is not one of them." *Lake v. Newcomb*, 140 Idaho 190, 196, 90 P.3d 1272, 1278 (Ct. App. 2004) (stating that sentences may be challenged in direct appeals from convictions, under a Criminal Rule 35 motion, or by an action for post-conviction relief); *see also Abbott v. State*, 129 Idaho 381, 384, 924 P.2d 1225, 1228 (Ct. App. 1996) (stating that claims for post-conviction relief are improperly presented through a petition for a writ of habeas corpus). "The [Uniform Post-Conviction Procedures Act] comprehends and replaces all other common law, statutory or other remedies, including the writ of habeas corpus, that were previously available to collaterally challenge the validity of a conviction or sentence." *Eubank v. State*, 130 Idaho 861, 863, 949 P.2d 1068, 1070 (Ct. App. 1997) (stating that the UPCPA is the "exclusive vehicle to present claims regarding whether a conviction or sentence was entered in violation of constitutional or statutory law.") Therefore, the issue of whether the length of Haas' sentence violates the cruel and unusual punishment clause is improperly asserted through this petition for writ of habeas corpus and the Court should rule accordingly. Petitioner Haas has failed to raise an appealable issue and has used his habeas petition to improperly challenge his sentence.

2. Whether the District Court Violated Haas' Right to Due Process When it *Sua Sponte* Granted Summary Judgment in Favor of Respondent Olivia Craven

A court may grant summary judgment *sua sponte* on grounds not raised by the moving party as long as the non-moving party is given adequate notice and an opportunity to respond. *See Mason v. Tucker and Assoc.*, 125 Idaho 429, 432, 871 P.2d 846, 849 (1994).

After Olivia Craven moved to dismiss Haas' petition for habeas corpus, the district court gave notice to Petitioner Haas that the motion would be treated as one for summary judgment pursuant to Idaho Rule of Civil Procedure 56 and that a response from Haas should be filed for consideration by the Court. *R. Vol. I, pp. 62-63*. Haas did in fact file such a response. *R. Vol. I, pp. 64-67*. Therefore, the Court gave Haas, the non-moving party, adequate notice and the opportunity to respond to the Court's contemplated action. *See Mason*, 125 Idaho at 432, 871 P.2d at 849.

In Haas' Response he argued that there was no rational basis to deny parole based on conflicting evidence, specifically, the weight assigned to his prior crimes and the credibility of the statements made by his victims (his former spouse and step-daughter). *R. Vol. I, p. 66*. After outlining the evidence considered by the parole commission, the district court found that:

[t]he commission had a rational basis for denying the petitioner parole. He has a long history of committing sex crimes with multiple victims and is at medium-high to high risk to reoffend. With one of the prior sentences, '[i]t took 3 parole opportunities to complete his sentence.' He also violated probation with respect to one of his current sentences. Public safety reasons, therefore, provide a rational basis for the commission's decision.

R. Vol. I, pp. 71-72.

It is clear that the issue is not the district court's *sua sponte* decision, but Haas' disagreement with the court and the parole commission as to what constitutes a rational basis. Haas was provided notice of the contemplated dismissal and given the opportunity to respond to the arguments that were the basis of the district court's decision. Therefore, the district court did not err by *sua sponte* granting the summary dismissal.

3. Whether There is a Rational Basis in the Record to Support the Parole Commission's Discretionary Decision to Deny Haas Parole

"Idaho's statutory parole scheme allows for parole only in the discretion of the Commission for Pardons and Parole." *Vittone*, 114 Idaho at 619, 759 P.2d at 910. In Idaho, parole is a possibility and not an expectation[.]" *Id.*, (citing I.C. § 20-223).

The parole-release decision . . . depends on an amalgam of elements, some of which are factual but many of which are purely subjective appraisals by the Board members based upon their experience with the difficult and sensitive task of evaluating the advisability of parole release. . . . The parole determination, . . . may be made "for a variety of reasons and often involve[s] no more than informed predictions as to what would best serve [correctional purposes] or the safety and welfare of the inmate."

Vittone, 114 Idaho at 620, 759 P.2d at 911 (internal changes original) (quoting *Meachum v. Fano*, 427 U.S. 215, 225, 96 S.Ct. 2523, 2538 (1976)) (affirming the denial of parole based on drug-related crimes and the commission's desire to have the offender serve more time).

The parole commission has broad discretion in making a determination regarding parole. *Drennon*, 141 Idaho at 35, 105 P.3d at 695; *see also* I.C. § 20-223; *see also* IDAPA 50.10.10.250.01. A court reviewing a parole decision inquires as to whether there is a rational basis for the commission's conclusions. *Drennon*, 141 Idaho at 35-36, 105 P.3d at 695-96. "The Commission allows for parole consideration criteria, but no prediction regarding the granting of

parole can be based upon any hearing standard or criteria.” IDAPA 50.01.01.250.01.c. The commission considers (1) the seriousness and aggravation and/or mitigation involved in the crime; (2) prior criminal history; (3) failure or success of prior probation/parole; (4) institutional history, including conformance to rules, involvement in programs and jobs, custody level, and overall behavior; (5) evidence of the development of positive social attitudes and willingness to fulfill obligations of a good citizen; (6) information/reports regarding physical or psychological condition; and (7) strength and stability of proposed parole plan, including adequate home placement, employment, or maintenance and care. IDAPA 50.01.01.250.01.c(i)-(vii).

The minutes from the parole hearing held on April 17, 2012 show that the commission considered the Petitioner’s performance on probation, his institutional behavior, nature of the crimes and the victims, programming while incarcerated, letters of support, sex offender risk assessment, prior criminal history, petitioner’s statements, parole plan, victim statements and the hearing officer recommendations in making its determination. *R. Vol. I, pp. 41-49*. Based on the criteria above, the commission made a determination that it is in the best interest of society to deny parole. Contrary to Haas’ allegations, his rights have not been violated and the commission’s decision had a rational basis contained in the record.

Contrary to Haas’ argument to the district court, the denial of parole does not mean that the commission has extended the Petitioner’s sentence. Haas was sentenced to a fixed term of nine years and indeterminate period of sixteen years for a unified sentence not to exceed twenty-five years in Case No. 99-371. *Id.* This sentence was ordered to run concurrent with Case No. CR 99-21887. Haas became parole eligible in October 2005 with a full term expiration date of

April 2024. *R. Vol. I, pp. 41-45, 59-60.* By denying parole in April 2012, the commission did not extend Haas' twenty-five year maximum sentence because Haas' sentence is not complete. Denying an inmate a discretionary and conditional release does not increase the original sentence unless it occurs after the expiration of the full sentence. Haas has not completed his full sentence and any release prior to April 2024 is conditional and at the discretion of the parole commission.

4. Whether this Court has an Alternate Basis to Affirm the District Court's Decision

“An appellate court may affirm a lower court's decision on a legal theory different from the one applied by that court.” *Hays*, 131 Idaho at 763, 963 P.2d at 1200. Respondent moved the district court to dismiss the habeas petition on the following additional grounds: (a) Petitioner Haas failed to state a claim for relief against Respondent Craven pursuant to the Idaho Habeas Corpus and Institutional Litigation and Procedures Act; and (b) Petitioner Haas failed to properly plead a constitutional violation.

a) Petitioner Haas Failed to State a Claim for Relief Against Respondent Craven Pursuant to the Idaho Habeas Corpus and Institutional Litigation and Procedures Act

Idaho Code § 19-4201, *et. seq.*, codifies the Idaho Habeas Corpus and Institutional Litigation Procedures Act. The Idaho habeas statutes set forth certain requirements for a petition. “A petition filed by a prisoner . . . shall specify . . . the identity and address of the person or officer whom the prisoner believes is responsible for the alleged state or federal constitutional violations, and shall name the persons identified individually as respondents. . . . [and shall specify] a short and plain statement of the facts underlying the alleged state or federal constitutional violations.” I.C. §§ 19-4205(4)(a), (d).

Haas made no specific allegations against Respondent Craven or the parole commission in his petition and only mentions Respondent Craven in the caption. *R. Vol. I, p. 3*. Therefore, Haas failed to meet the basic pleading requirements of the habeas statutes and the dismissal of his petition should be upheld.

b) Petitioner Haas Failed to Properly Plead a Constitutional Violation

Idaho Code § 19-4205(4)(d) requires that a habeas corpus petition contain a “short and plain statement of the facts underlying the alleged state or federal constitutional violation.” The Idaho Rules of Civil Procedure require that a claim is pled with particularity. I.R.C.P. 9(b) (“In all averments of . . . violation of a civil or constitutional rights, the circumstances constituting [such violations] . . . shall be stated with particularity.”) Petitioner simply alleges that “the commission had no rational basis to deny parole circumvents their own statute [sic] in Idaho Code 20-223(c)” and “the commission had the same information [as] the judge who had sentenced is cruel and unusual punishment.” *R. Vol. I, p. 5*. The Petitioner failed to set forth a short and plain statement of facts underlying the state or federal constitutional violation and did not plead with the particularity required for a violation of his civil or constitutional rights. Therefore, the denial of his petition should be upheld.

5. Respondent Craven is Entitled to Attorney’s Fees on Appeal

The Court shall award attorney’s fees in a habeas corpus action when the petition is brought frivolously. I.C. § 12-122; I.A.R. 41. “[B]rought frivolously,” shall mean that the petitioner petitioned the court for a writ of habeas corpus based upon claims which either had no

basis in fact or, even if the factual allegations were true, they did not, as a matter of law, justify any relief to the petitioner[.]” I.C. § 12-122.

The district court found that this petition was brought frivolously and awarded Respondent Craven attorney’s fees. Petitioner Haas has not appealed that decision. Respondent Craven requests that this Court award attorney’s fees on the basis that this appeal, and the underlying petition, were brought frivolously. *See Swain v. State*, 122 Idaho 918, 922, 841 P.2d 448, 452 (Ct. App. 1992) (“Clearly, there is no language in I.C. § 12-122 prohibiting the state from asserting its claim for fees on appeal independent from a request for attorney fees for defending a frivolous action in the lower court.”)

III.

CONCLUSION

For the reasons set forth herein, Respondent Craven requests this Court affirm the judgment of the district court, dismissing Haas’ Petition for Writ of Habeas Corpus with prejudice.

RESPECTFULLY SUBMITTED this 6th day of February, 2013.

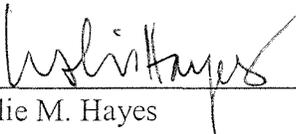
By Leslie M. Hayes
Leslie M. Hayes
Attorney for Respondent Craven

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 6th day of February, 2013, I caused to be served a true copy of the foregoing RESPONDENT OLIVIA CRAVEN'S BRIEF by the method indicated below, and addressed to each of the following:

James T. Haas, IDOC No. 37962
ICC
P.O. Box 70010
Boise, ID 83707

- U.S. Mail, Postage Prepaid
- Hand Delivered
- Overnight Mail
- E-mail
- Telecopy:



Leslie M. Hayes