

SUPREME COURT OF GEORGIA

Ray v. Carthen

275 Ga. 459 (2002) · Decided September 16, 2002

SUMMARY

The Georgia Supreme Court held that the State Board of Pardons and Paroles’ notice assigning an inmate a tentative parole month was not premature consideration for parole under OCGA § 42-9-45(b). Because the timing of parole consideration involved the Board’s discretion, mandamus was inappropriate, and the trial court’s judgment was reversed.

CASE DETAILS

COURT	Supreme Court of Georgia
WRITING FOR THE COURT	Thompson, Justice; All the Justices
JURISDICTION	Georgia
DECIDED	September 16, 2002
DISPOSITION	reversed
PROCEDURAL POSTURE	Carthen brought a mandamus action against the State Board of Pardons and Paroles and its chairman concerning the timing and effect of a parole decision guideline notice. The trial court granted mandamus to the extent of ordering the Board to give Carthen parole consideration within 45 days. The Supreme Court of Georgia granted discretionary review and reversed.
STANDARD OF REVIEW	The Supreme Court reviewed the mandamus judgment on discretionary review and applied the requirement that mandamus lies only to compel a clear legal duty, not an act involving official judgment or discretion.
PRECEDENTIAL VALUE	Published Georgia Supreme Court opinion; precedential.
PARTIES	State Board of Pardons and Paroles, Walter Ray, chairman v. Donald B. Carthen

TOPICS

- administrative law
- agency adjudication
- judicial review of agency action
- statutory interpretation
- remedies

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the Board's notice assigning a tentative parole month constituted premature consideration for parole before Carthen became eligible under OCGA § 42-9-45(b).
2. Whether mandamus was an appropriate remedy to compel the Board to consider Carthen for parole within 45 days.

HOLDINGS

1. The Board's Notice of Tentative Action was not premature consideration for parole because applying the parole guidelines to determine a tentative parole month is not itself consideration for parole under OCGA § 42-9-45(b).
2. Mandamus was inappropriate because Carthen could not show a clear legal duty requiring the Board to consider him for parole immediately upon statutory eligibility, and the timing of consideration was within the Board's discretion.

KEY QUOTATIONS

“The guidelines simply establish an initial date of eligibility for parole, and the ultimate grant or denial of parole to a prisoner who is eligible under the guidelines remains a discretionary matter for the Board.” (460)

“Mandamus is an appropriate remedy only where the petitioner can show that there is a clear legal duty which must be performed.” (461)

FACTUAL BACKGROUND

In April 1997, Donald B. Carthen was convicted of robbery by intimidation and sentenced to ten years in prison. In September 1998, the Board served him with a Parole Decision Guideline Notice of Tentative Action stating that the circumstances of his crime warranted serving more than 50 percent of his sentence and assigning a tentative parole month of December 2004, with possible consideration as early as December 2003. Carthen contended that OCGA § 42-9-45(a) entitled him to a parole hearing after serving one-third of his sentence.

PROCEDURAL HISTORY

Carthen was convicted of robbery by intimidation and sentenced to ten years in prison. After the Board issued a tentative parole-action notice assigning a tentative parole month and an earlier possible consideration date, Carthen sought mandamus under OCGA § 42-9-45(a), asserting a right to a parole hearing after serving one-third of his sentence. The trial court ordered consideration within 45 days, and the Supreme Court reversed.

DISPOSITION

reversed

CASES CITED

- Daker v. Ray, 275 Ga. 205, 206, 563 S.E.2d 429 (2002)
- Forsyth County v. White, 272 Ga. 619(2), 532 S.E.2d 392 (2000)
- Smith & Wesson Corp. v. City of Atlanta, 273 Ga. 431(1), 543 S.E.2d 16 (2001)
- Ray v. Barber, 273 Ga. 856(2), 548 S.E.2d 283 (2001)

OPINION

THOMPSON, J.

Thompson, Justice. In April 1997, appellee Donald B. Carthen was convicted of robbery by intimidation and was sentenced to serve ten years in prison. In September 1998, appellant State Board of Pardons and Paroles (“the Board”) served Carthen with a “Parole Decision Guideline - Notice of Tentative Action,” informing him that the circumstances of his crime warrant that he serve more than 50 percent of his sentence, which is greater than the suggested guidelines.

Carthen was further advised that he had been assigned a tentative parole month of December 2004, but that he may be considered for parole as early as December 2003. Carthen filed the present mandamus action against the Board and its chairman, Walter Ray, asserting that under OCGA § 42-9-45 (a) he had a right to a parole hearing once he had served one-third of his sentence.

Although the trial court determined that Carthen was not entitled to a hearing before the Board, it apparently concluded that Carthen had been ineligible for parole consideration at the time of the notice of tentative action because he had not yet served one-third of his sentence, and thus the notice was premature and ineffective.

The trial court granted the petition for mandamus *460“to the extent that Carthen be given consideration for parole within 45 days” of the entry of its order. We granted discretionary review, and for the reasons which follow, we reverse. 1.

The relevant statutes provide as follows: The board may adopt and promulgate rules and regulations, not inconsistent with this chapter, touching all matters dealt with in this chapter, including... the practice and procedure in matters pertaining to paroles....

The rules and regulations shall contain an eligibility requirement for parole which shall set forth the time when the automatic initial consideration for parole of inmates... shall take place. OCGA § 42-9-45 (a). Under subsection (b), an inmate serving a non-life felony sentence “shall only be eligible for consideration for parole after the expiration of nine months of his or her sentence or one-third of the time of the sentences, whichever is greater.” The Board is also required by statute to adopt a parole guidelines system for determining its parole actions on all inmates who will become eligible for parole, except for inmates serving life sentences.

OCGA § 42-9-40. Pursuant to that legislative mandate, the Board adopted the Parole Decision Guidelines System (PDG) which takes into account the severity of the crime and the inmate’s

likelihood of success on parole to produce a tentative parole month. Ga. Comp. R. & Regs. 475-3-.05 (5).

The tentative parole month serves as a recommendation to the Board, which may use its discretion in setting the month that the inmate will be considered for release or deny parole entirely. *Id.*; *Daker v. Ray*, 275 Ga. 205 (2) (563 SE2d 429) (2002). Once notified of their tentative parole month, inmates are permitted to contest the crime severity or likelihood of success factors that were used by the PDG, but the ultimate decision is left to the discretion of the Board.

Id. An analysis of the statutes and regulations governing the process by which an inmate becomes eligible for consideration and then release demonstrates that the “Notice of Tentative Action” was not premature consideration for parole.

The notice was the result of the Board’s application of the guidelines system to Carthen’s particular circumstances. “The guidelines simply establish an initial date of eligibility for parole, and the ultimate grant or denial of parole to a prisoner who is eligible under the guidelines remains a discretionary matter for the Board.” *Daker*, *supra* at 206.

The determination of the tentative parole month specified in the notice was in no way “consideration for parole” and therefore did not occur before Carthen was eligible for such consideration under OCGA § 42-9-45 (b). 2. Mandamus is an appropriate remedy only where the petitioner can show that there is a clear legal duty which must be performed. *Forsyth County v. White*, 272 Ga. 619 (2) (532 SE2d 392) (2000).

And where a duty involves judgment or discretion on the part of the actor, the writ of mandamus is not an appropriate remedy. *Smith & Wesson Corp. v. City of Atlanta*, 273 Ga. 431 (1) (543 SE2d 16) (2001). Decided September 16, 2002. Thurbert E. Baker, Attorney General, James J. Phillips, Assistant Attorney General, for appellants. Donald B. Carthen, pro se.

While the Board is required to adopt rules that provide for an automatic initial consideration for parole, it is not required by statute or rule to immediately consider an inmate once he becomes statutorily eligible.

The “Notice of Tentative Action” received by Carthen informed him of the date when he would automatically be considered for parole, in accordance with both the statutory duties imposed on the Board by the legislature and its own administrative rules.

The decision of when to consider Carthen for parole was well within the discretion permitted to the Board, and mandamus was therefore inappropriate. Compare *Ray v. Barber*, 273 Ga. 856 (2) (548 SE2d 283) (2001) (mandamus appropriate where the Board had followed neither its statutory duties nor its own adopted rules in determining a tentative parole month for an inmate).

Judgment reversed. All the Justices concur.

