

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)

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