

SUPREME COURT OF ARKANSAS

Mason v. Hobbs

2015 Ark. 20 (Ark. 2015) · No. CV-14-273 · Decided January 22, 2015

SUMMARY

The Supreme Court of Arkansas affirmed dismissal of Gary J. Mason’s petition for declaratory judgment and writ of mandamus concerning his parole eligibility. The court held that Arkansas Code Annotated section 16-93-611 required Mason to serve seventy percent of his rape sentence before parole eligibility, and that the Arkansas Department of Correction, rather than the sentencing court, determines parole eligibility. The court further concluded that the statute’s application did not violate due process, modify Mason’s sentence, or require a trial court order.

CASE DETAILS

COURT	Supreme Court of Arkansas
WRITING FOR THE COURT	Per Curiam
JURISDICTION	Arkansas
DECIDED	January 22, 2015
DOCKET	CV-14-273
DISPOSITION	affirmed
PROCEDURAL POSTURE	Pro se appeal from the Jefferson County Circuit Court's dismissal of a petition for declaratory judgment and writ of mandamus concerning appellant's parole eligibility.
STANDARD OF REVIEW	The court reviewed the circuit court's action de novo and upheld its decision in the declaratory-judgment and mandamus action unless clearly erroneous.
PRECEDENTIAL VALUE	Published Arkansas Supreme Court per curiam opinion; precedential.
PARTIES	Gary J. Mason v. Ray Hobbs, Director, Arkansas Department of Correction

TOPICS

- appellate procedure
- due process
- remedies
- statutory interpretation
- separation of powers

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether Mason was entitled to declaratory relief concerning application of Arkansas Code Annotated section 16-93-611(a)(1) to his rape sentence.
2. Whether the ADC's application of the seventy-percent parole-eligibility requirement unlawfully modified Mason's sentence or constituted a sentence enhancement without a court order.
3. Whether application of the parole-eligibility statute without notice violated due process.
4. Whether the ADC lacked authority to determine parole eligibility because the judgment did not cite the statute.
5. Whether Mason was entitled to a writ of mandamus compelling relief concerning his parole eligibility.

HOLDINGS

1. Mason was not entitled to declaratory judgment because he failed to establish the statutory and justiciability requirements for declaratory relief.
2. Mason was not entitled to a writ of mandamus because he failed to establish an enforceable right to the requested relief or a clear and certain right requiring performance of a nondiscretionary duty.
3. Application of the statute did not violate due process because there is no constitutional right or entitlement to parole.
4. Determining parole eligibility is within the authority of the ADC, not the sentencing court, and the ADC's determination does not modify the prison sentence.
5. The ADC properly applied section 16-93-611(a)(1), as in effect when Mason committed the offense, even though the judgment did not cite the statute.

KEY QUOTATIONS

“There is no constitutional right or entitlement to parole that would invoke due-process protection.” (3)

“The determination of parole eligibility is solely within the province of the ADC.” (4)

FACTUAL BACKGROUND

Mason was sentenced to 300 months' imprisonment for rape, 72 months for sexual indecency with a child, and 120 months for possessing matter depicting sexually explicit conduct involving a child. His offenses occurred between August 2007 and March 2008, when Arkansas Code Annotated section 16-93-611(a)(1) required a person convicted of rape to serve at least seventy percent of the sentence before becoming eligible for parole or transfer. The ADC applied that statute in determining Mason's parole-eligibility date, and Mason challenged the application as an unconstitutional sentence enhancement and modification of his sentence.

PROCEDURAL HISTORY

Mason was convicted of rape, sexual indecency with a child, and possessing matter depicting sexually explicit conduct involving a child, and received consecutive and concurrent sentences in an amended 2009 judgment. The Arkansas Court of Appeals affirmed the convictions and sentences. In 2013, Mason filed a petition for declaratory judgment and mandamus against the ADC director, challenging application of the seventy-percent parole-eligibility statute to his rape sentence. The circuit court dismissed the petition, and the Arkansas Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- Mason v. State, 2009 Ark. App. 598, 330 S.W.3d 445
- Carroll v. Hobbs, 2014 Ark. 395, 442 S.W.3d 834 (per curiam)
- Gardner v. Hobbs, 2013 Ark. 439 (per curiam)
- Girley v. Hobbs, 2014 Ark. 325, 445 S.W.3d 494 (per curiam)
- McCutchen v. City of Ft. Smith, 2012 Ark. 452, 425 S.W.3d 671
- Ark. Dep't of Human Servs. v. Ross-Lawhon, 290 Ark. 578, 721 S.W.2d 658 (1986)
- Cridge v. Hobbs, 2014 Ark. 153 (per curiam)
- Banks v. Hobbs, 2013 Ark. 377 (per curiam)
- Aguilar v. Lester, 2011 Ark. 329 (per curiam)
- Michalek v. Lockhart, 292 Ark. 301, 730 S.W.2d 210 (1987)
- Mitchem v. Hobbs, 2014 Ark. 233 (per curiam)
- Thompson v. State, 2009 Ark. 235 (per curiam)
- Pitts v. Hobbs, 2013 Ark. 457 (per curiam)
- Stephens v. Hobbs, 2012 Ark. 332 (per curiam)
- Johnson v. State, 2012 Ark. 212 (per curiam)
- Abdullah v. Lockhart, 302 Ark. 506, 790 S.W.2d 440 (1990)
- Fain v. State, 286 Ark. 35, 688 S.W.2d 940 (1985)
- Ritter v. Hobbs, 2014 Ark. 68 (per curiam)
- Anderson v. Hobbs, 2013 Ark. 354 (per curiam)

OPINION

PER CURIAM.

Cite as 2015 Ark. 20 SUPREME COURT OF ARKANSAS No. CV-14-273 Opinion Delivered January 22, 2015 PRO SE APPEAL FROM THE GARY J. MASON JEFFERSON COUNTY CIRCUIT APPELLANT COURT [NO. 35CV-13-540] V. HONORABLE JODI RAINES RAY HOBBS, DIRECTOR, DENNIS, JUDGE ARKANSAS DEPARTMENT OF CORRECTION

AFFIRMED. APPELLEE PER CURIAM In 2009, an amended judgment was entered reflecting that appellant Gary J. Mason had been found guilty of rape, sexual indecency with a child, and possessing matter depicting sexually explicit conduct involving a child for which he was sentenced to serve consecutive sentences of 300 months' imprisonment for rape and 72 months' imprisonment for sexual indecency with a child, with a concurrent sentence of 120 months' imprisonment for possessing matter depicting sexually explicit conduct involving a child.

The Arkansas Court of Appeals affirmed. *Mason v. State*, 2009 Ark. App. 598, 330 S.W.3d 445. In 2013, appellant filed in the Jefferson County Circuit Court a pro se petition for declaratory judgment and for writ of mandamus against the Director of the Arkansas Department of Correction ("ADC"), in whose custody appellant is being held, concerning his eligibility for parole based on the sentence for rape.

The circuit court dismissed the Cite as 2015 Ark. 20 petition, and appellant brings this appeal from the order.¹ We review the action of the circuit court de novo, and we will uphold the circuit court's decision in a declaratory judgment and mandamus action unless it is clearly erroneous. *Carroll v. Hobbs*, 2014 Ark. 395, 442 S.W.3d 834 (per curiam). Appellant's eligibility for parole was determined by the law in effect at the time his offenses were committed between August 2007 and March 2008.

See *id.* Under the provisions of Arkansas Code Annotated section 16-93-611(a)(1) (Repl. 2006) (repealed by Act 570 of 2011), as in effect at the time appellant committed the offenses, he was required to serve at least seventy percent of the 300-month sentence for rape before being eligible for parole or transfer.

The seventy-percent requirement applies notwithstanding any law allowing the award of meritorious good time or any law to the contrary. See *Gardner v. Hobbs*, 2013 Ark. 439 (per curiam). Appellant argued in the petition that the application of section 16-93-611(a)(1) to his sentence was an unconstitutional "sentence enhancement" illegally applied by the ADC without a court order, that he was denied due process of law by the application of the statute without notice, and that the ADC usurped the power of the judiciary by modifying his ¹ This court will consider only those issues raised below.

If an issue was not raised in the petition, or if the support for an issue was not included in the petition, the trial court did not have the opportunity to rule on the issue or to consider the grounds advanced in support of the issue, and this court will not consider issues on which there was no ruling below or arguments in support of a claim that are advanced for the first time on appeal.

See *Girley v. Hobbs*, 2014 Ark. 325, 445 S.W.3d 494 (per curiam). ² Cite as 2015 Ark. 20 sentence. The purpose of the declaratory-judgment statutory scheme is to settle and to afford relief from uncertainty and insecurity with respect to rights, statutes, and other legal relations.

McCutchen v. City of Ft. Smith, 2012 Ark. 452, 425 S.W.3d 671. This court has held that there are four requisite conditions before declaratory relief may be granted: (1) there must exist a justiciable controversy; (2) the controversy must be between persons whose interests are adverse; (3) the party seeking relief must have a legal interest in the controversy; (4) the issue involved in the controversy must be ripe for judicial determination.

Ark. Dep't of Human Servs. v. Ross-Lawhon, 290 Ark. 578, 721 S.W.2d 658 (1986). Here, appellant failed to state a basis for declaratory judgment under Arkansas Code Annotated sections 16-111-101 to -111 (Repl. 2006). Without establishing a right to declaratory judgment, appellant provided no basis for a writ of mandamus to issue. Cridge v. Hobbs, 2014 Ark. 153 (per curiam).

The purpose of a writ of mandamus is to enforce an established right or to enforce the performance of a duty. Banks v. Hobbs, 2013 Ark. 377 (per curiam). A writ of mandamus is issued by this court only to compel an official or a judge to take some action, and, when requesting a writ, a petitioner must show a clear and certain right to the relief sought and the absence of any other remedy.

Id. A writ of mandamus will not lie to control or review matters of discretion. Id.; see also Aguilar v. Lester, 2011 Ark. 329 (per curiam). With respect to appellant's argument that the appellee has denied him due process of law by applying the statute at issue to his case, there is no constitutional right or entitlement to parole that would invoke due-process protection.

Cridge, 2014 Ark. 153; see also Michalek 3 Cite as 2015 Ark. 20 v. Lockhart, 292 Ark. 301, 730 S.W.2d 210 (1987). As to appellant's contention that a trial court order was required before the ADC could apply certain statutes to appellant's parole-eligibility status, parole eligibility is not within the purview of the trial court. See Mitchem v. Hobbs, 2014 Ark.

233 (per curiam) (citing Thompson v. State, 2009 Ark. 235 (per curiam)) (holding that, because determining parole eligibility is the prerogative of the ADC, the trial court would not have had authority to place conditions as to parole eligibility on the sentence pronounced).

The arguments raised by appellant in his petition and in this appeal stem primarily from his erroneous characterization of section 16-93-611 as an enhancement statute. Parole-eligibility determinations by the ADC do not constitute a modification of a prison sentence. Cridge, 2014 Ark. 153.

The determination of parole eligibility is solely within the province of the ADC. Aguilar, 2011 Ark. 329. This court has repeatedly held that the ADC, not the sentencing court, determines parole eligibility. See Pitts v. Hobbs, 2013 Ark. 457 (per curiam) (rejecting the argument that a parole-eligibility statute cannot be applied to a sentence absent some reference to the particular statute on the judgment-and-commitment order); Stephens v. Hobbs, 2012 Ark.

332 (per curiam) (rejecting appellant's due-process argument that a parole-eligibility statute should not apply when the jury, the court, and the appellant were unaware of the statute and did not intend for it to apply to the judgment); *Johnson v. State*, 2012 Ark. 212 (per curiam) (holding that parole eligibility falls clearly within the domain of the executive branch and specifically the ADC, as fixed by statute); *Thompson v. State*, 2009 Ark.

235 (per curiam) (holding that, because determining parole eligibility is the prerogative 4 Cite as 2015 Ark. 20 of the ADC, the trial court would not have had authority to place conditions of parole eligibility on the sentence announced); see also *Abdullah v. Lockhart*, 302 Ark. 506, 790 S.W.2d 440 (1990); *Fain v. State*, 286 Ark. 35, 688 S.W.2d 940 (1985).

Here, appellant was found guilty of rape committed between August 2007 and March 2008, and the ADC, in accordance with section 16-93-611, applied the statute to appellant's sentence for that crime to determine his parole-eligibility date. Section 16-93-611, as in effect when appellant committed the offense, provided that any person who is found guilty of, or who pleads guilty or nolo contendere to, rape shall not be eligible for parole until the person serves seventy percent of the term of imprisonment to which the person is sentenced.

We have specifically recognized that the statute does not allow for parole or transfer until a person who has been found guilty of, or who pleads guilty or nolo contendere to, designated crimes has served seventy percent of his sentence. *Ritter v. Hobbs*, 2014 Ark. 68 (per curiam); *Anderson v. Hobbs*, 2013 Ark. 354 (per curiam).

Finally, to the extent that appellant contends that section 16-93-611 should not have been applied to his sentence by the ADC because the face of the judgment did not cite the statute, we rejected the same argument in *Pitts*, 2013 Ark. 457. Inasmuch as none of the claims for relief raised in appellant's petition demonstrated that he was entitled to any relief by means of a declaratory judgment or a writ of mandamus, the circuit court did not err in declining to grant the relief sought.

The order is affirmed. Affirmed. Gary J. Mason, pro se appellant. Dustin McDaniel, Att'y Gen., by: Nicana C. Sherman, Ass't Att'y Gen., for appellee. 5