

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

OMAR I. GARRIS,

Petitioner,

v.

RICHARD STIFF,

Respondent.

ORDER

03-C-11-C

This is a petition for a writ of habeas corpus. Petitioner Omar I. Garris, an inmate at the Federal Correctional Institution in Oxford, Wisconsin, claims that he is in custody in violation of the laws or Constitution of the United States. 28 U.S. §2241. Petitioner has paid the \$5 filing fee. Petitioner alleges that he was denied parole and had his parole rehearing date delayed because at his initial parole hearing the United States Parole Commission erroneously took into consideration a prison disciplinary infraction he committed and a juvenile offense of which he was acquitted. Because I conclude that the record evidence attached to petitioner's petition shows that neither the infraction nor the juvenile offense caused the commission to deny petitioner parole or push back his parole rehearing date, the petition will be dismissed for petitioner's failure to show that he is in

custody in violation of the Constitution or the laws of the United States.

From petitioner's verified petition and accompanying exhibits, I find the following facts.

FACTS

Petitioner's parole eligibility date was October 3, 2000. Around that time he had an initial parole hearing and was denied parole. The United States Parole Commission departed from the rehearing guidelines to delay petitioner's parole eligibility rehearing date for 60 months, until October 2005. In 1998, petitioner was found guilty of violating a prison rule after he failed to cooperate with guards administering an inmate count. Even though the infraction was below a "200" level incident, the commission considered it in determining his rehearing date. In petitioner's view, he would have been eligible for a rehearing in only 12 to 18 months if the commission had not considered the infraction.

The Parole Commission considered a prior commitment in which petitioner was charged with a juvenile offense but was not convicted. Petitioner was found not guilty of the juvenile offense.

OPINION

As an initial matter, I note that a petitioner seeking habeas corpus relief must exhaust

his administrative remedies before filing in federal court absent a showing of cause and prejudice. See Sanchez v. Miller, 792 F.2d 694, 697 (7th Cir. 1986) (federal prisoners are ordinarily required to exhaust administrative remedies before petitioning for writ of habeas corpus). For the purpose of this order only, I will assume petitioner has exhausted his administrative remedies because the exhibits he submitted with his petition include a notice from the United States Parole Commission informing him that he has been denied parole, setting his rehearing date and indicating that the commission's "DECISION IS NOT APPEALABLE."

Petitioner maintains that the commission improperly considered (or gave improper weight to) a minor prison disciplinary infraction when initially considering him for parole, in violation of the parole eligibility guidelines established in 28 C.F.R. § 2.80 (2002). I understand petitioner to contend that this caused the commission to schedule him for a parole rehearing in 60 months, even though the rehearing guidelines indicate that he should be eligible for a rehearing in 12 to 18 months. However, the exhibits petitioner submitted with his petition demonstrate that his prison disciplinary infraction was not the reason the commission departed from the guidelines to extend his rehearing date. Petitioner's rehearing date was calculated on the basis of his "Base Point Score." The base point score is calculated by considering whether petitioner's current or prior offenses involved violence, high level violence or the death of a victim, as well as a "Contribution from Salient Factor Score"

indicating the degree of risk involved in paroling petitioner. The salient factor score does not take into account prison disciplinary infractions. Such “Negative Institutional Behavior” is factored in only when calculating a “Total Point Score.” Because petitioner’s rehearing date was determined by reference to his base point score, rather than to his total point score, his disciplinary infraction did not come into play in determining his rehearing date. Moreover, according to the commission’s “Notice of Action,” the commission extended petitioner’s rehearing date not because of his disciplinary infraction, but because it viewed petitioner as

an unusually serious menace to public safety. You and others fired multiple (25) shots randomly at innocent bystanders on the street, including elderly individuals, children, and also at a plainclothes policeman, during the course of armed gang warfare on the streets of the District of Columbia.

I conclude that petitioner has failed to show that his parole rehearing date was improperly extended.

Similarly, to the extent petitioner argues that he was denied parole as a result of his prison disciplinary infraction, his exhibits do not bear out his argument. Petitioner was denied parole on the basis of his total point score, which was five. Petitioner’s total points score was calculated by adding one point for “Negative Institutional Behavior” to his base point score of four. Even if I assume that the addition of a point for negative institutional behavior was error, petitioner’s total point score would be four. At an initial parole hearing,

the guidelines that petitioner submitted with his petition indicate that an offender with a total point score of three or higher is ineligible for parole.

Finally, petitioner alleges that the commission considered as a conviction a juvenile offense of which he was actually acquitted. In calculating petitioner's salient factor score, the commission gave petitioner one point for a "[p]rior commitment of more than thirty days (adult or juvenile)." Petitioner maintains that this was error. However, petitioner's exhibits indicate that even if the commission erroneously considered his juvenile acquittal as a conviction, the error did not change the outcome of his parole hearing. A prisoner with a higher salient factor score is considered a better parole risk. Therefore, had the commission determined that petitioner did not have any prior commitments of thirty or more days, he would have received two points, rather than one. This would have given him a salient factor score of eight rather than seven. This improved salient factor score would have given petitioner a base point score of three. Assuming, as petitioner argues, that he did not deserve a point for negative institutional behavior, his total point score would have been three. As indicated earlier, the guidelines described in petitioner's exhibits instruct the commission to deny parole to a prisoner with a total point score of three or higher. Accordingly, petitioner has failed to show that he was denied parole because the Commission erroneously considered his juvenile acquittal as a conviction.

Because nothing in petitioner's petition and exhibits allows an inference to be drawn

that he is in custody in violation of the Constitution or laws of the United States, his petition for a writ of habeas corpus will be dismissed.

ORDER

IT IS ORDERED that Petitioner Omar I. Garris's petition for a writ of habeas corpus is DISMISSED and the clerk of court is directed to enter judgment for respondent Richard L. Stiff and close this case.

Entered this 11th day of February, 2003.

BY THE COURT:

BARBARA B. CRABB
District Judge