

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

WILLIAM J.R. EMBREY,

Petitioner,

MEMORANDUM and ORDER

v.

06-C-029-S

UNITED STATES PAROLE COMMISSION,

Respondent.

Petitioner filed the above entitled petition for a writ of habeas corpus under 28 U.S.C. § 2241 claiming that he is illegally confined. Respondent responded on February 21, 2006. Petitioner's traverse was filed on March 8, 2006.

FACTS

On June 15, 1967 petitioner was sentenced in the United States District Court for the Western District of Missouri to 15 years in prison for bank robbery. On April 22, 1969 the United States District Court for the Eastern District of Oklahoma sentenced petitioner to a concurrent sentence of 8 years in prison for bank robbery. On October 6, 1975 petitioner was released on parole from these sentences.

In 1979 and 1980 petitioner committed three separate criminal offenses involving armed bank robbery and kidnaping for which he was

convicted in the United States District Court for the Western District of Missouri. He was sentenced to 20 years in prison for armed bank robbery and to 20 years in prison consecutively for kidnaping.

On August 9, 1979 the United States Parole Commission issued a warrant for petitioner charging him with parole violations for committing new crimes while on parole. This warrant was placed as a detainer on petitioner while he served his 40 year sentence. On June 8, 1981 the Commission revoked petitioner's parole but decided to begin running the balance of his original 15 year sentence (2753) days when he was released from his 40 year sentence. On November 2, 1990 the Parole Commission decided to parole petitioner from his 40 year sentence on March 30, 2004.

On January 31, 1997 the United States Court of Appeals for the Eighth Circuit vacated petitioner's consecutive 20 year sentence for kidnaping. The Commission then executed petitioner's parole violator warrant. On May 12, 1997 petitioner was released on parole on the mandatory release date for the balance of his original 15 year sentence. On December 17, 1997 the United States Court of Appeals for the Eighth Circuit reinstated petitioner's consecutive 20 year sentence for kidnaping. Petitioner appealed the ruling and was granted bond to supervision in North Dakota. The United States Supreme Court denied petitioner's petition for writ of certiorari on October 5, 1998.

On December 5, 1998 while petitioner was free on bond he was arrested on a charge of felon in possession of firearms. Petitioner's bond was revoked and he was returned to prison to serve his 40 year sentence.

On April 24, 2000 the United States District Court for the Western District of Missouri sentenced petitioner to a 262 month prison sentence for the offense of felon in possession of a firearm. He is serving this sentence concurrently to his 40 year sentence.

On February 19, 2002 the Parole Commission ordered no change in its previous decision to parole petitioner on his 40 year sentence on March 30, 2004. On September 30, 2002 the Commission found that guidelines of 34-44 months should be added to petitioner's parole date because of his new conviction for felon in possession of a firearm. On October 24, 2002 the Commission issued its decision to parole petitioner on March 18, 2009.

MEMORANDUM

In his original petition petitioner claims that he was entitled to have his parole date set pursuant to the Sentencing Act of 1984. In his reply he argues that both his kidnaping sentence and his sentence for felon in possession of a firearm are illegal. The Court will not address the legality of these sentences because petitioner's proper remedy for challenging these sentences is a 28 U.S.C. § 2255 motion in the sentencing court.

The Court addresses petitioner's claim that he was denied due process when he was not given a parole date consistent with the applicable parole guidelines pursuant to the Sentencing Reform Act of 1984. The Act as originally enacted provided that the Parole Commission should set a release date that is within the range that applies to the prisoner under the applicable parole guideline. On December 7, 1987 the Act was amended to restore the Commission's pre-1984 authority under 18 U.S.C. § 4206(c) to set release dates outside the applicable parole guideline ranges.

Petitioner argues that under the original 1984 Act he was entitled to a parole date within the applicable parole guideline range. He is incorrect. The 1987 Amendment to the Act provides that all old law offenders be treated in the same manner by the Parole Commission as they had been prior to the enactment of the 1984 Act. See Norwood v. Brennan, 891 F.2d 179, 182 (7th Cir. 1989).

Petitioner also argues that the amendment to the Act is invalid on ex post facto grounds. The Ex Post Facto Clause of the Constitution forbids laws that restoratively change the definitions of crimes or increase the penalty for crimes after they are committed. Petitioner committed his crimes in 1979-1980. The 1997 amendment to the Act mirrored the law in effect at the time he committed his crimes. Accordingly, petitioner was not subject to

an ex post facto punishment. See Skowronek v. Brennan, 896 F. 2d 264, 269 n. 9 (7th Cir. 1990).

Petitioner was not entitled to have his parole date set pursuant to the Sentencing Act of 1984. Accordingly, petitioner's petition for a writ of habeas corpus will be dismissed with prejudice.

Petitioner is advised that in any future proceedings in this matter he must offer argument not cumulative of that already provided to undermine this Court's conclusion that his petition must be dismissed. See Newlin v. Helman, 123 F.3d 429, 433 (7th Cir. 1997).

ORDER

IT IS ORDERED that petitioner's petition for a writ of habeas corpus is DISMISSED with prejudice.

Entered this 9th day of March 6, 2006.

BY THE COURT:

S/

JOHN C. SHABAZ
District Judge