

substance abuse, habitual offender record, assaultive nature of the crime, potential for assaultive behavior, severity of the victim's injuries, failure to participate in a substance treatment program, an unfavorable recommendation from the Department of Corrections, and overall threat to the community. Petitioner did not seek review of the Board's decisions.

On November 4, 1997, Petitioner filed this Petition arguing that his rights under the First, Fifth, Eighth and Fourteenth Amendments to the Constitution have been violated. Specifically, he argues that he was denied access to the courts, denied due process, subjected to cruel and unusual punishment and denied equal protection. (Pet. at 4; Mem. Supp. at 1.) Petitioner further argues that there is no state court remedy available to him, and this court may therefore hear his Petition. (Pet. at 6.) On February 13, 1998, the Commonwealth filed a response. The action was referred to a United States magistrate judge. On February 25, 1998, the magistrate judge issued a report and recommendation. On March 12, 1998, Petitioner filed objections to the report and recommendation. For the following reasons, the court will approve and adopt the magistrate judge's report and recommendation and dismiss the Petition without an evidentiary hearing. Because the court is dismissing the action, the court will also deny the Motion for More Definite Answer.

II. JURISDICTION AND STANDARD OF REVIEW

Federal district courts have jurisdiction over state prisoners' petitions for habeas corpus pursuant to 28 U.S.C. § 2254¹ and review a magistrate judge's report and recommendation pursuant to 28 U.S.C. § 636(b)(1)(C).² When a petition is properly before the court, the role of judicial review is only to "insure that the Board followed criteria appropriate, rational and consistent with the statute and that its decision is not

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1. 28 U.S.C. § 2254(a) provides, in pertinent part:

a district court shall entertain an application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.

28 U.S.C. § 2254(a).

2. 28 U.S.C. § 636(b)(1)(C) provides, in pertinent part:

[a] judge of the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made. . . . [and] may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate.

28 U.S.C. § 636(b)(1)(C).

based on impermissible considerations."³ Block v. Potter, 631 F.2d 233, 236 (3d Cir. 1980).

III. DISCUSSION

Petitioner seeks redress in this federal court for the Board's refusal to grant him parole. Parole decisions of the Board are not adjudications subject to judicial review. Generally, prisoners in the Pennsylvania state system have no right of appeal from parole eligibility decisions. Weaver v. Pennsylvania Bd. of Probation and Parole, 688 A.2d 766, 775 (Pa. Commw. Ct. 1997). Only if the Board's decision clearly relied on factors outside its discretion may a state prisoner seek review of that decision. Id. In that event, the prisoner must petition the proper state court for a writ of mandamus or other appropriate remedy.

A. Exhaustion of State Remedies

State prisoners alleging violations of the Constitution or federal laws must exhaust all available state remedies before seeking federal habeas corpus relief. Rose v. Lundy, 455 U.S. 509, 515-20 (1982). This requirement serves the interests of comity in that it allows the State the first opportunity to

3. Such impermissible considerations include race, political beliefs, religion, and frivolous criteria that bears no relation to the purpose of parole, such as eye color. Bradley v. Dragovich, Civ. No. 97-7660, 1998 WL 150944 at *3 (E.D. Pa. Mar. 27, 1998).

correct any violations of a prisoners federal rights. Hankins v. Fulcomer, 941 F.2d 246, 251 (3d Cir. 1991). Only after a state prisoner has exhausted his state remedies--that is presented his federal claims to any and all appropriate state bodies--may the federal courts then address those claims. Prieser v. Rodriguez, 411 U.S. 475, 494-95 (1973). Petitioner has failed to exhaust his state remedies.

Before bringing his claims to federal court, Petitioner must attempt to redress any grievances in the state system even if he believes that effort will be fruitless. The court will dismiss the Petition for failure to exhaust state remedies. However, it will briefly address the merits of Petitioner's claim.

B. The Claims

Petitioner alleges constitutional violations, but provides no facts to support those claims. To permit such claims to go forward any time an unsupported federal claim is inserted would convert run-of-the-mill unappealable parole denials into baseless constitutional claims. Weaver, 688 A.2d at 770. A First Amendment right of access to the courts cannot be based upon the fact that there is no judicial review of the Board's legitimate decisions. Likewise, an Eighth Amendment cruel and unusual punishment claim cannot be based upon the fact that a prisoner thinks that he was unfairly denied parole. Petitioner has presented no facts to support an equal protection claim and there

is no basis upon which he can argue that he was denied due process.⁴ It appears that Petitioner's real argument is that the Board should have granted him parole because he has completed a number of prison programs. That is, he disagrees with the Board's exercise of its discretion. Even if this court agreed with Petitioner, he has not stated a federal constitutional claim and this court cannot disturb the Board's decision.

Petitioner appears to be proceeding under the assumption that if he performs certain functions he is entitled to parole. He is mistaken. Under Pennsylvania law, the sentence for a criminal offense is the maximum term imposed by the court. The minimum term merely sets the date on which a prisoner may request parole. Brown v. Pennsylvania Bd. of Probation and Parole, 668 A.2d 218, 220 (Pa. Commw. Ct. 1995). Therefore, if a prisoner is sentenced to ten to twenty years imprisonment, the actual sentence is twenty years.

4. The Fourteenth Amendment to the United States Constitution provides that no State shall "deprive any person of life, liberty, or property without due process of law." U.S. Const. amend. XIV. To establish a violation thereof, Petitioner must allege the deprivation of a protected liberty or property interest. The Constitution does not provide a liberty interest in parole. Further, in Pennsylvania, a prisoner has no liberty interest in parole or reparole. Reider v. Commonwealth, 514 A.2d 967, 971 (Pa. Commw. Ct. 1986). See also Rodgers v. Parole Agent SCI-Frackville, 916 F. Supp. 474, 476-77 (E.D. Pa. 1996); Hayes v. Muller, Civ. No. 96-3420, 1996 WL 583180 (E.D. Pa. Oct. 10, 1996)(stating that even if the Board unconditionally recommends a date, there is no constitutionally protected liberty interest in being released on that date.)

Parole is a favor granted by the State, it is not a right.⁵ Id. at 220. The decision to grant, rescind or revoke parole is not one of judicial discretion, but one of administrative discretion vested exclusively in the Board. The Board has broad discretion to determine if and when a prisoner shall be released on parole.⁶ Rivenbark v. Pennsylvania Bd. of Probation and Parole, 501 A.2d 1110 (Pa. 1985). The Board grants this "favor" only to prisoners who the Board believes have shown the probable ability to function as a law abiding citizen in society.⁷ Id.

In this case, the Board considered permissible factors and determined that Petitioner was not a good candidate for parole. Even if the Board had not considered Petitioner's failure to complete a substance program, which he contests, the Board could

5. Parole is not a release from sentence, but rather, a continuation during which the prisoner serves his sentence as the subject of society's rehabilitation efforts under supervision. Commonwealth v. Homoki, 621 A.2d 136 (Pa. Super. Ct. 1993).

6. Under Pennsylvania law, the Board may review any relevant factors in determining whether to grant parole. Those factors include, but are not limited to: the extent of risk to the community, the nature of the offense, criminal history, potential for employment, emotional and family stability, adjustment to prison, recommendations of the trial judge, district attorney, and each warden or superintendent, and the written personal statement or testimony of the victim or the victim's family. Johnson v. Pennsylvania Bd. of Probation and Parole, 532 A.2d 50 (Pa. Commw. Ct. 1987); 61 Pa. Stat. Ann. § 331.19.

7. The Board may grant parole "whenever, in its opinion the best interests of the convict justify or require his being paroled and it does not appear that the interests of the Commonwealth will be injured thereby." 61 Pa. Con. Stat. Ann. § 331.21.

properly have denied parole solely based on any of the other numerous permissible reasons given. Block, 631 F.2d at 236. The Board relied on permissible factors when rendering its decision and Petitioner's federal rights were not violated.⁸ Therefore, if the court were to decide this Petition on its merits, it would deny the Petition. The court will dismiss the Petition for failure to exhaust state remedies. Because the court will dismiss the Petition it will deny the motion as moot.

III. CONCLUSION

For the above reasons, the court will dismiss the Petition without an evidentiary hearing.

An appropriate Order follows.

8. The Commonwealth provided exhibits including a copy of Petitioner's lengthy criminal history record, documentation of the violent nature of the crimes committed and Petitioner's prison conduct reports. Each supports the Board's decision.

