

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

RONALD P. WALKER	:	CIVIL ACTION
	:	
v.	:	
	:	
DAVID DiGUGLIELMO, DISTRICT ATTORNEY OF PHILADELPHIA, ATTORNEY GENERAL OF PENNSYLVANIA, and PENNSYLVANIA BOARD OF PROBATION AND PAROLE	: : : : : : :	NO. 05-1685

Norma L. Shapiro, S.J.

March 29 2006

MEMORANDUM & ORDER

The Petitioner, Ronald P. Walker, a prisoner at Graterford State Correctional Institution, has filed a *pro se* petition for writ of *habeas corpus* pursuant to 28 U.S.C. § 2254. The Magistrate Judge’s Report and Recommendation (“Report”) is not approved or adopted at this time, and an evidentiary hearing will be scheduled.

I. Background

Walker’s petition for writ of *habeas corpus* alleges an unconstitutional denial of parole. He is currently serving an aggregate sentence of 19-49 years for two separate convictions involving domestic violence. His first conviction, in October 1986, was for possessing an instrument of crime, simple assault, recklessly endangering another person, unlawful restraint and criminal trespass. His second conviction, in May 1987, was for kidnaping, attempted kidnaping, burglary, simple assault and possessing an instrument of crime.

In 1961, Walker was arrested for statutory rape, fornication and bastardy. Walker pled guilty to fornication and bastardy, but it is unclear whether he was convicted of statutory rape.

Walker first became eligible for parole in 2004, but after review by the Pennsylvania Board of Probation and Parole (“Parole Board” or “Board”), he was denied parole on October 7, 2004. Parole was denied for three stated reasons: (1) Walker’s version, and nature and circumstances, of the offenses; (2) Walker’s lack of remorse; and (3) Walker’s interview with the Parole Board. Walker alleges he was never convicted of statutory rape and the Board’s reasons for denying his parole relate to his failure to accept responsibility for that crime.

Walker then filed a Petition for Administrative Relief, which was also denied. A Petition for Relief in the Commonwealth Court was dismissed and a subsequent petition for allowance of appeal to the Pennsylvania Supreme Court was dismissed for failure to perfect. This petition, filed in May 2005, was referred to United States Magistrate Judge Peter B. Scuderi for a Report and Recommendation. Magistrate Judge Scuderi recommended it be denied. Walker has filed objections to the Report.

II. Discussion

A. Standard of Review

A district court reviews *de novo* those portions of a magistrate judge’s report and recommendation to which objection is made. See 28 U.S.C. § 636(b).

B. Objections to the Report and Recommendation

Walker claims the denial of parole violated his Fourteenth Amendment right to procedural and substantive due process because his prison file incorrectly stated he was a sex offender. Walker contends the Parole Board’s decision denying him parole was based on this incorrect information in his prison file and, as he is not a convicted sex offender, the denial was unconstitutional. Walker argues that the Report wrongly assumed the Parole Board did not rely

on his incorrect status as a sex offender when making its decision because it is clear from the record that the Parole Board questioned him exclusively on his alleged sex offense; he had submitted an inmate version form in which he accepted responsibility for his actual offenses.

C. Discussion

A prisoner does not have a liberty interest in parole, Greenholtz v. Inmates of Nebraska Penal and Correctional Complex, 442 U.S. 1, 7 (1979), and Pennsylvania law does not give a prisoner a liberty interest in parole, Burkett v. Love, 89 F.3d 135, 139 (3d Cir. 1996). However, a parole board is not free to base its decision on arbitrary and capricious reasons. See Block v Potter, 631 F.2d 233, 236 (3d Cir. 1980). A petitioner can assert a substantive due process claim based on a denial of parole for constitutionally impermissible reasons. Burkett, 89 F.3d at 139; Block, 631 F.2d at 236; Lindeman v. Pennsylvania Bd. of Probation and Parole, C.A. 97-4824, 1999 WL 1240958, at * 2 (E.D. Pa. Dec. 17, 1999). These impermissible reasons include factors having no rational relationship to the interests of the Commonwealth. See Block, 631 F.2d at 237 (race is one impermissible criterion in denial of parole); cf. Jubilee v. Horn, 975 F. Supp. 761, 764-66 (E.D. Pa. 1997) (state prisoner may state a substantive due process claim under 42 U.S.C. § 1983 if the board relied on false information in denying him parole). Another circuit has held that a parole board's reliance on false information in denying parole may violate an inmate's substantive due process rights. Monroe v. Thigpen, 932 F.2d 1437, 1441-42 (11th Cir. 1991); see also Carter v. Kane, 938 F. Supp. 282, 285 (E.D. Pa. 1996) (Pollak, J.) (citing Monroe for this proposition).

The Parole Board may have considered inaccurate information in denying Walker parole; the board may have improperly considered Walker's failure to take responsibility for his alleged

1961 conviction of statutory rape. The record lends support to Walker's argument that he has been incorrectly labeled a sex offender. Walker's Pennsylvania State Police Central Repository Criminal History Report ("rap sheet") reflects that he was arrested for statutory rape, fornication and bastardy in 1961. In one place the rap sheet suggests that Walker was convicted of both charges, but at another place on the same page the rap sheet states that the statutory rape charge disposition was "unreported."¹ The original docket from the Court of Quarter Sessions for Walker's 1961 charges reflects that Walker was charged with statutory rape, fornication and bastardy in 1961, but does not state that he was convicted of the rape charge.² Apparently there are no other convictions in Walker's record relating to sex offenses. If Walker was never convicted of statutory rape, it appears unlikely that his conviction of "fornication and bastardy" would result in his classification as a sex offender.

The magistrate judge concluded that the Parole Board's reasons for denying parole were sufficient to withstand a constitutional challenge because at least some of those reasons were independent of Walker's failure to take responsibility for his alleged statutory rape conviction. See Report at 9, n.3. However, the record suggests that each of the Board's reasons – (1) Walker's version, and nature and circumstances, of the offenses; (2) Walker's lack of remorse; and (3) Walker's interview with the Parole Board – were intertwined with Walker's contested classification as a sex offender.

¹ Walker's rap sheet is available at Ex. 1 to Defs.' Opp. to Pl.'s Mot. to Dismiss Counsel (paper # 44) at 2 in a related § 1983 action before this court, Walker v. James, et al., C.A. 03-3541.

² The court docket is available at Ex. 2 to Defs.' Opp. to Pl.'s Mot. to Dismiss Counsel (paper # 44), C.A. 03-3541.

III. Conclusion

The Magistrate Judge's Report and Recommendation is not approved or adopted at this time, and an evidentiary hearing will be scheduled. An appropriate order follows.

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ORDER

AND NOW, this 29th day of March, 2006, upon consideration of Magistrate Judge Scuderi's Report and Recommendation, petitioner's objections thereto, and all other relevant papers, for the reasons included in the accompanying memorandum, it is **ORDERED**:

1. The Report and Recommendation (paper # 9) is **NOT APPROVED AT THIS TIME**. After further consideration of the record and supplemental submissions, if any, the court may approve and adopt all or part of the Report and Recommendation.

2. An evidentiary hearing is scheduled for **Tuesday, June 6, 2006** at **10:00 a.m.**. Counsel shall be prepared to present evidence and argument relating to petitioner's challenged status as a sex offender.

3. The Warden of SCI Graterford is directed to produce the body of Ronald Walker, Inmate No. AY-8060, for an evidentiary hearing to be held on June 6, 2006 at 10:00 a.m. before the Honorable Norma L. Shapiro in Courtroom 10-A, Tenth Floor, United States Courthouse, 601 Market Street, Philadelphia, PA. Immediately upon the termination of this proceeding Ronald Walker shall be returned to the custody of the Warden of SCI Graterford.

4. Daniel Siegel, Esq., is appointed to represent plaintiff. The Clerk is directed to add him to the docket at the following address: 601 Walnut St., Ste. 1150 W, Philadelphia, PA 19106; 215-925-4100 (office); 215-925-1596 (fax).

/s/ Norma L. Shapiro

Norma L. Shapiro, S.J.