

FILED

10/22/2019

Bowen Greenwood
CLERK OF THE SUPREME COURT
STATE OF MONTANA

Case Number: OP 19-0432

IN THE SUPREME COURT OF THE STATE OF MONTANA

OP 19-0432

FILED

OCT 22 2019

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Clerk of Supreme Court
State of Montana

ORDER

MAYSON L. SIMMONS,

Petitioner,

v.

WARDEN JENNIE HANSEN,

Respondent.

Representing herself, Mayson L. Simmons has filed a petition for a writ of habeas corpus alleging: (1) a parole report contained false disciplinary actions from prior incarceration; (2) her request to view her parole file was denied and left her without the ability to confirm or contest information in the report; (3) Board member Brad Newman incorrectly described Simmons's failure to follow Board recommendations as an inability to follow the law; and (4) that Simmons maintains she has a post-traumatic stress disorder (PTSD) which has not been considered by the Board or addressed during incarceration. Counsel for the Department of Corrections (Department or DOC) has filed a response.

The Department has provided the Court with Simmons's history. Simmons is currently incarcerated in the Montana Women's Prison (MWP) in Billings, Montana, where she is serving sentences imposed in two criminal cases arising in the Twenty-First Judicial District Court, Ravalli County. The Board granted Simmons parole on May 23, 2014, and Simmons remained on parole until her arrest on May 2, 2018.

On May 7, 2018, Simmons had an on-site hearing at the Missoula County Detention Center, at which time Hearing Officer Sean Goeddel found there was probable cause to believe Simmons was guilty of two parole violations: absconding out of state without permission and selling prescription drugs. Simmons was returned to MWP for a revocation hearing before the Board. Her first hearing was set for June 19, 2018, and Simmons

requested a continuance. The Board granted her request and Simmons appeared before the Board on July 24, 2018. Simmons participated via Skype. The Board determined Simmons violated her parole and returned her to MWP. In its Case Disposition, the Board noted a reappearance date of July 2019 and handwrote "May reappear before date upon completion of Recommended Programming." The Board also indicated that Simmons must complete evaluations and an improved release plan.

Following the July 24, 2018 hearing, Simmons sent a request to MWP Institutional Probation and Parole Officer (IPPO) Fred Sparks to review her parole file. IPPO Sparks responded: "Negative. We don't have one." Parole records are stored at the Board's office in Deer Lodge and were not available at MWP. At the July 24, 2018 hearing, Simmons did not request to review her parole records and the Board was not thereafter made aware of Simmons's request to IPPO Sparks.

On May 21, 2019, Simmons sent another kite to IPPO Sparks, asking to review her parole record. IPPO Sparks responded to Simmons's kite but did not address the request to review her file. Two days later, on May 23, 2019, Simmons wrote a letter to Board Chair Annette Carter and included at the end in a postscript: "ps I want to see my file also." In an affidavit submitted with the DOC's response, Chair Carter did not see the postscript and, as a result, did not respond to the request. She further indicated that had she seen Simmons's request she would have provided Simmons an opportunity to review her parole file.

Simmons's next parole hearing was July 16, 2019. During the period between the July 2018 hearing and the July 2019 hearing, Simmons sent more than 35 letters to the Board and received several responses from Chair Carter encouraging Simmons to complete the Board's recommendations. Simmons's correspondence to the Board did not contain any requests to see her parole file, nor did she advise the Board at the July 2019 hearing that she had not had an opportunity to review her parole file. Further, Simmons reviewed the parole report prepared for her July 2019 hearing on July 2, 2019, making several written corrections or explanations before she initialed each page of the report.

On July 12, 2019, prior to Simmons's hearing, Chair Carter responded to Simmons's concerns about previous disciplinary actions taken in 2012 and 2013, which were included in the parole report. Chair Carter indicated the Board would consider only Simmons's conduct during her recent incarceration.

On July 16, 2019, Simmons appeared for her parole hearing via Skype. The Board determined that Simmons had refused to follow recommended programming as required and passed her to discharge December 15, 2019. With this history set forth, we turn to the issues Simmons raises.

Generally, "habeas corpus relief is not available to determine whether other constitutional rights have been violated." *Sage v. Gamble*, 279 Mont. 459, 463, 929 P.2d 822, 824 (1996). However, if the inmate is alleging a due process violation which is directly related to the legality of continued incarceration, then habeas corpus relief may be appropriate. *Sage*, 279 Mont. at 463, 929 P.2d at 824.

The Board has authority to exercise broad discretion to determine when the statutory criteria for early release from incarceration have been met. In making this determination, the Board must consider "all pertinent information regarding the prisoner." *McDermott v. McDonald*, 2001 MT 89, ¶ 25, 305 Mont. 166, 24 P.3d 200. Parole may be offered when the Board determines that an offender "can be released without detriment to the prisoner or the community[.]" when "release is in the best interests of society[.]" when the offender is "able and willing to fulfill the obligations of a law-abiding citizen[.]" and when the offender does not require "continued correctional treatment" Section 46-23-208(1)(a)-(d)(i), MCA. The Board determined that Simmons had not satisfied the condition that she complete recommended programming. Accordingly, Simmons's refusal to follow the Board's recommendations led to the denial of her parole. Simmons's allegations that the DOC physician who evaluated her did not correctly diagnose her as having PTSD and that Brad Newman indicated she could not follow the law does not alter the basis upon which the Board determined she should not be granted parole. Regarding Simmons's allegation that the parole report contained false disciplinary

actions from prior incarcerations, the Board did not rely on this information and it is unnecessary to consider further this alleged error.

Simmons's remaining allegations concerning access to her parole file are disposed of pursuant to *Lacey v. Kirkegard*, No. OP 13-0828, 374 Mont. 542, 346 P.3d 364, 2014 Mont. LEXIS 209. In *Lacey*, this Court held that while an inmate has a right to review her parole file because the file contains documents of a public body to which the right to know applies, it is the inmate that is at fault when she fails "to request a delay in [the] parole hearing to allow [her] sufficient time to review the file." *Lacey*, 2014 Mont. LEXIS at *5. Here, Simmons corresponded to Chair Carter frequently and never made a request to see the Board's file, other than as a postscript after her parole revocation hearing. Simmons made corrections and reviewed her parole report and thereafter appeared for her reappearance hearing. She made no request to review her parole file. Pursuant to *Lacey*, Simmons was required to request a delay in the hearing in order to review her file.

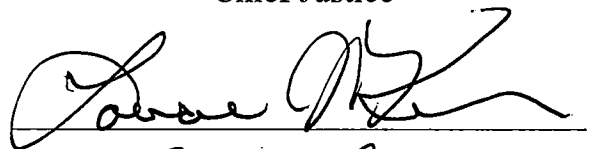
Accordingly,

IT IS ORDERED that Simmons's Petition for a Writ of Habeas Corpus is DENIED and DISMISSED.

The Clerk is directed to provide a copy of this Order to counsel of record and to Mayson L. Simmons.

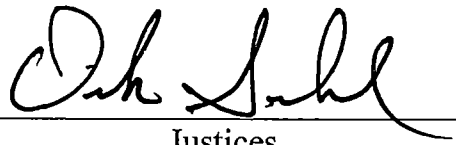
DATED this 22nd day of October, 2019.


Chief Justice







A handwritten signature in black ink, appearing to read "John Sahl", is written over a horizontal line.

Justices