

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2011 CA 1468

KEVIN B. EASLEY

VERSUS

**DEPARTMENT OF CORRECTIONS
PROBATION AND PAROLE BOARD, ET AL.**

Judgment Rendered: March 23, 2012

On Appeal from the 19th Judicial District Court
In and For the Parish of East Baton Rouge
Trial Court No. 598,196

Honorable Todd Hernandez, Judge Presiding

Kevin B. Easley
Homer, La.

Appellant
Pro Se

William Kline
Baton Rouge, La.

Counsel for Appellee
Louisiana Department of Corrections

BEFORE: GAIDRY, McDONALD, AND HUGHES, JJ.

HUGHES, J.

This is an appeal from a judgment of the Nineteenth Judicial District Court (JDC) that dismissed plaintiff/appellant's claim without prejudice. For the reasons that follow, we affirm.

FACTS AND PROCEDURAL HISTORY

On January 11, 2011, Kevin B. Easley, an inmate in the custody of the Louisiana Department of Public Safety and Corrections (DPSC), filed a petition for judicial review in the 19th JDC. The petition challenges the Louisiana Parole Board's failure to grant him release on parole. Pursuant to the screening requirements of LSA-R.S. 15:1178(B) and 15:1188(A), the petition was assigned to a commissioner at the district court to determine if it stated a cognizable claim or if the petition, on its face, was frivolous, malicious, failed to state a cause of action, or sought monetary damages from a defendant who was immune from liability for such damages. After completing the screening review, the commissioner issued a report recommending dismissal, without prejudice and without service on the defendants, because the petition failed to state a cause of action.

After a review of the record, the district court rendered judgment on March 21, 2011, adopting the written recommendation of the commissioner and dismissing the petition, with prejudice, at Mr. Easley's costs, for failure to state a cause of action.

Mr. Easley appeals the judgment of the district court assigning as error the district court's conclusion that it does not have judicial oversight authority over the actions of the parole board and that the court thus erred in dismissing his petition without service on the defendants.

LAW AND ANALYSIS

Louisiana's system of parole is set out in LSA-R.S. 15:574.2, *et seq.*

A Board of Parole is established within the DPSC and is vested with the authority to determine "the time and conditions of release on parole" for offenders sentenced to imprisonment and confinement in correctional or penal institutions in this state. LSA-R.S. 15:574.2(A) and (D). Parole is an administrative device for the rehabilitation of prisoners under supervised freedom from actual restraint, and the granting, conditions, or revocation of parole rest in the discretion of the Board of Parole. LSA-R.S. 15:574.11.

No prisoner or parolee shall have a right of appeal from a decision of the board regarding release or deferment of release on parole, the imposition or modification of authorized conditions of parole, the termination or restoration of parole supervision or discharge from parole before the end of the parole period, or the revocation or reconsideration of revocation of parole, **except for the denial of a revocation hearing under R.S. 15:574.9.** LSA-R.S. 15:574.11(A). (Emphasis added.)

Thus, only claims alleging the failure of the board to hold a revocation hearing for individuals already released on parole are reviewable by the district court. Decisions by the parole board at a hearing to deny parole are not entitled to review. Mr. Easley's petition urges this court to review the parole board's failure to grant him release on parole. And while in his petition and in brief to this court, Mr. Easley alleges that release on parole is a vested liberty interest, the Louisiana Supreme Court has concluded that Louisiana's parole statutes do not create an expectancy of release or liberty interest. **Bosworth v. Whitley**, 627 So.2d 629, 633 (La. 1993). The parole board has full discretion when passing on applications for early release. **Bosworth v. Whitley**, 627 So.2d at 633. Even if an inmate is fully

rehabilitated and is clearly eligible for parole consideration, the parole scheme simply does not require that he be paroled. **Sinclair v. Kennedy**, 96-1510 (La. App. 1 Cir. 9/19/97), 701 So.2d 457, 462, writ denied, 97-2495 (La. 4/3/98), 717 So.2d 645. The procedures used by the parole board in deciding whether an inmate should be released early “are beyond the scope of this court’s review.” See Sinclair, 701 So.2d at 462.

Essentially, Mr. Easley attacks the parole board’s ability to deny parole based upon the serious nature of the offense, and on his past criminal history, contending that the denial of parole on that basis evidences a “cop out” or pre-determination by the parole board, as the nature of the offense for which one is charged and one’s past criminal history never changes, cannot be altered or amended by any rehabilitative efforts, and is a factor with no penological goal. In support of his argument, Mr. Easley argues that the legislature clearly intended that the benefit of parole be available to anyone adjudicated guilty of violating certain offenses and that the parole board’s denial of parole on the basis of the serious nature of the offense or past criminal history precludes the realization of the benefit, as the legislature intended, and amounts to the parole board “re-sentencing” the offender. However, there is simply no statutory or jurisprudential basis for the relief he seeks. There is no basis to seek review of the parole board’s decision denying him early release on parole. Pleadings challenging actions of the parole board other than failure to act in accordance with LSA-R.S. 15:574.9 should be dismissed by the district court. **Madison v. Ward**, 00-2842 (La. App. 1 Cir. 7/2/02), 825 So.2d 1245, 1250-51. (*en banc*).

CONCLUSION

For the reasons assigned herein, the judgment of the 19th JDC is affirmed. All costs of this appeal are assessed to plaintiff/appellant, Kevin B. Easley.

AFFIRMED.