IN THE COURT OF APPEALS OF IOWA

No. 8-070 / 07-0707
Filed March 14, 2008

CARL BRIGHT,
Applicant-Appellant,

vs.

STATE OF IOWA,
Respondent-Appellee.

Appeal from the Iowa District Court for Linn County, Marsha M. Beckelman, Judge.

Carl Bright appeals from the district court's denial of his application for postconviction relief from the Iowa Board of Parole's rescission of its order granting him parole to federal custody. **AFFIRMED.**

David G. Thinnes and Kara L. McFadden of Thinnes & Lieveld, Cedar Rapids, for appellant.

Thomas J. Miller, Attorney General, Jeanie Kunkle Vaudt, Assistant Attorney General, Harold Denton, County Attorney, and Todd D. Tripp, Assistant County Attorney, for appellee.

Considered by Huitink, P.J., and Zimmer and Miller, JJ.

MILLER, J.

Carl Bright appeals from the district court's denial of his application for postconviction relief. We affirm.

In 1994 Carl Bright was convicted of three counts of attempt to commit murder and was sentenced to indeterminate terms of imprisonment totalling seventy-five years. On March 3, 2006, the Iowa Board of Parole (Board), without Bright appearing before it, considered Bright's circumstances and executed an order that he be paroled to a federal detainer to serve what the Board had been informed by the Iowa Department of Corrections (DOC) was a federal sentence of 151 months. On March 13, 2006, Bright's prison counselor presented the "parole order and agreement" to Bright and Bright signed it.

On March 13 or 14, 2006, officials of the DOC informed the Board that the 151 months was an error, and that the federal detainer was for the purpose of Bright serving a term of only twenty-two months. On March 15, 2006, the Board, without prior notice to Bright or Bright appearing before it, entered an order rescinding Bright's parole to the federal detainer. The order rescinding Bright's parole to the federal detainer was sent to his counselor who called Bright to his office and gave the order to Bright two or three days after March 13, 2006. It thus appears clear and undisputed that when Bright received the rescission order he had not been transferred to federal custody and remained in the custody of the DOC.

Bright filed an application for postconviction relief, asserting that the rescission of his parole without a hearing violated his rights to due process of law under the Fourteenth Amendment to the United States Constitution. Following

trial, the district court denied Bright's application. Bright appeals. He requests that this court order the Board to reinstate his parole.

On appeal Bright makes no express claim of error by the district court. He claims: "Appellant's Constitutional Right of Due Process Was Violated When His Parole Was Revoked Without a Hearing or Notice From the Parole Board." We will assume his claim is that the district court erred in ruling the Board's rescission of its order granting parole did not violate his right to due process of law.

In this appeal from the denial of an application for postconviction relief Bright bears the burden of proving by a preponderance of the evidence facts demonstrating entitlement to the relief he seeks. *State v. Todden*, 364 N.W.2d 195, 198 (Iowa 1985); *Watts v. State*, 257 N.W.2d 70, 71 (Iowa 1977); *Mark v. State*, 370 N.W.2d 609, 610 (Iowa Ct. App. 1985). "Postconviction proceedings are law actions ordinarily reviewed for errors of law." *Bugley v. State*, 596 N.W.2d 893, 895 (Iowa 1999). "But when the basis for relief is a constitutional violation, our review is de novo." *Harrington v. State*, 659 N.W.2d 509, 519 (Iowa 2003).

The parties appear to agree that our scope of review in this case is de novo. However, neither party suggests any factual dispute, we discern none, and the only issue is whether under the undisputed facts the Board may constitutionally rescind Bright's parole without a hearing.[1] We conclude that under these circumstances our review is for correction of errors of law. *See, e.g.*,

[1] We need not and do not address the question of whether Bright would have been entitled to a hearing if the rescission had not occurred until after he had been transferred to federal custody.

State v. Majeres, 722 N.W.2d 179, 181 (Iowa 2006) (holding that although the appeal implicated constitutional claims, usually reviewed de novo, where no factual dispute existed and the only issue was whether the court may constitutionally use prior uncounseled misdemeanor convictions to enhance a subsequent crime, review was for correction of errors at law).[2]

An Iowa statute provides authority for rescission of parole under circumstances such as those present in this case. It provides, in relevant part:

> If a parole officer has newly discovered evidence which indicates that a person released on parole should not have been granted parole originally, the parole officer shall present the evidence to the board of parole and the board may issue an order to rescind the parole.

Iowa Code § 908.1 (2005).[3]

In *Jago v. Van Curen*, 454 U.S. 14, 102 S. Ct. 31, 70 L. Ed. 2d 13 (1981) the Ohio Adult Parole Authority (OAPA) ordered that Van Curen be released on parole, Van Curen was not notified, but upon learning that certain information upon which it had based its parole order was not accurate the OAPA, without a hearing, rescinded its earlier grant of parole. *Jago*, 454 U.S. at 14-15, 102 S. Ct. at 33, 70 L. Ed. 2d at 15-16. The Supreme Court acknowledged and affirmed the determinations of the United States Court of Appeals for the Sixth Circuit that parole for Ohio prisoners lies wholly within the discretion of the OAPA and Ohio laws providing for parole do not create a protected liberty interest for due process

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[2] We do not suggest that under de novo review we would reach any different decision than the one we do reach. We would in fact reach the same result.

[3] Although this statute provides for rescission based on evidence provided by a parole officer, we do not read it as restricting the source of evidence supporting rescission to evidence so provided. We also note that Bright did not in the trial court, and does not on appeal, either claim the statute so restricts the source of evidence or challenge the accuracy of the information provided by the DOC to correct what was apparently its earlier mistake.

purposes, and held that Van Curen was not entitled to a hearing prior to rescission of his parole. *Id.* at 20-21, 102 S. Ct. at 35-36, 70 L. Ed. 2d at 19.

In Iowa the Board has largely unfettered discretion concerning whether to grant parole. *See* Iowa Code § 906.3 ("The board shall determine which of those persons who have been committed to the custody of the Iowa Department of Corrections . . . shall be released on parole or work release."); *Id.* § 906.4 ("The board shall release on parole or work release any person whom it has the power to release, *when in its opinion* there is reasonable probability that the person can be released without detriment to the community or to the person." (emphasis added)); *see also Doe v. State*, 688 N.W.2d 265, 271 (Iowa 2004) ("Thus, in Iowa, most parole decisions are legitimately *within the discretion* of the executive branch." (emphasis added)); *State v. Remmers*, 259 N.W.2d 779, 783 (Iowa 1977) ("[Prisoners] are usually paroled when the board of parole *in its discretion*, determines that its treatment objectives have been accomplished." (emphasis added)).

We conclude that under Iowa law and the facts presented, the Supreme Court's holding in *Jago* is controlling with respect to Bright's fourteenth amendment due process of law claim, and that he was not constitutionally entitled to a hearing before the Board rescinded its order granting him parole to a federal detainer. We therefore affirm the judgment of the district court.

AFFIRMED.