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January 22, 2014

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You are hereby notified that the Court has entered the following opinion and order:

2012AP1553 State of Wisconsin ex rel. Edward Belmares v. Steven Landreman, Wis. Parole Commission (L.C. # 2011CV16958)

Before Blanchard, P.J., Higginbotham and Sherman, JJ.

Edward Belmares, pro se, appeals an order of the circuit court denying his petition for certiorari review of a decision of the Wisconsin Parole Commission. Based upon our review of

the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2011-12).[1] We summarily affirm.

Belmares is an inmate serving two consecutive life sentences for two counts of first-degree murder, in addition to terms of ten years and five years for reckless injury and reckless endangerment, and one-year for attempted escape. *See* WIS. STAT. §§ 940.01, 939.63(1)(a), 940.23, 941.30, 946.42(2)(c), 939.32 (1983-84). The commission denied Belmares parole in a decision dated June 9, 2011, and deferred his next review for 48 months. Respondent Steve Landreman is the parole commissioner who approved the decision. Belmares petitioned the circuit court for certiorari review, and the court affirmed the commission's decision. Belmares now appeals.

The scope of this court's review on certiorari is identical to that of the circuit court. ***State ex rel. Ortega v. McCaughtry***, 221 Wis. 2d 376, 386, 585 N.W.2d 640 (Ct. App. 1998). On certiorari review, the reviewing court is limited to determining: (1) whether the parole commission kept within its jurisdiction; (2) whether it acted according to law; (3) whether its action was arbitrary, oppressive or unreasonable and represented its will and not its judgment; and (4) whether the evidence was such that the commission might reasonably make the order or determination in question. ***State ex rel. Hansen v. Circuit Ct. for Dane Cnty.***, 181 Wis. 2d 993, 998-99, 513 N.W.2d 139 (Ct. App. 1994). On appeal, Belmares argues for reversal of the commission's decision on each of these grounds.

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[1] All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

First, Belmares argues that Landreman did not keep within his jurisdiction because he acted both as the commissioner who made the parole decision and as the acting parole commission chairperson who approved the 48-month deferral period. We agree with the State that this argument must be rejected. The term "commissioner" is defined in WIS. ADMIN. CODE § PAC 1.03(3) (Dec. 2011) as "a member of the … commission, including the chairperson." Under WIS. ADMIN. CODE § PAC 1.06(5) (Dec. 2011), the chairperson may but is not required, to assign a commissioner to conduct the parole interview. Additionally, a "deferral greater than 12 months requires the written approval of the chairperson." WIS. ADMIN. CODE § PAC 1.06(9). Nothing in the applicable statutes or procedural rules prohibited Landreman from acting both as commissioner and the acting chairperson who approved the deferral.

Next, Belmares argues that the commission did not act according to law because it violated the *ex post facto* clause, U.S. CONST. art. I, §§ 9-10, by retroactively applying the "sufficient time so that release would not depreciate the seriousness of the offense" standard that has been in effect since 1993, rather than the "sufficient time for punishment" standard, which was in effect when Belmares committed the offenses in 1984. *See* WIS. ADMIN. CODE § PAC 1.06(16)(b) (Dec. 2011), § PAC 1.06(7)(b) (Jan. 1993), § HSS 30.05(7) (Sept. 1984). This argument fails because, aside from the different wording, the standards operate in the same way. Both standards require the commission to consider the nature of the offense committed and whether the length of time served demonstrates a sufficiently weighty consequence for that particular offense.

Belmares further argues that he was unlawfully denied parole based on an April 28, 1994 letter from former Governor Tommy Thompson to the Secretary of the Department of Corrections. The letter included a policy directive from Thompson to find a legal way to block

the release of violent offenders when they reached their mandatory release dates. Belmares argues that the directive constituted a significant change in parole policies that violated the *ex post facto* clause. Belmares' argument fails under ***State v. Delaney***, 2006 WI App 37, ¶24, 289 Wis. 2d 714, 712 N.W.2d 368, *abrogated on other grounds by* ***State v. Harbor***, 2011 WI 28, ¶¶47-48, 333 Wis. 2d 53, 797 N.W.2d 828, in which we concluded that the Thompson letter "did not have the force of law and otherwise did not constitute or produce a change in parole policy."

Finally, Belmares argues that the commission's decision was arbitrary, oppressive, unreasonable, and not supported by the evidence in the record. He asserts that he met the requirements of his parole plan and rehabilitation programs and that Landreman improperly relied on his own opinions, rather than a reasoned decision, in denying parole. After reviewing the commission's decision, we conclude that the decision to deny Belmares parole and defer consideration for 48 months was reasonable and well-supported by the evidence in the record.

Wisconsin has a discretionary parole system, and only the commission has the authority to exercise that discretion. ***State ex rel. Gendrich v. Litscher***, 2001 WI App 163, ¶7, 246 Wis. 2d 814, 632 N.W.2d 878. The parole scheme "does not create a protectible liberty interest in parole." ***Id.*** In determining whether Belmares should be released on parole, the applicable standards under WIS. ADMIN. CODE § HSS 30.05(7) (Sept. 1984) were: (a) whether he was statutorily eligible for parole; (b) whether he had served sufficient time for punishment, considering the nature and severity of the offense; (c) whether he demonstrated satisfactory adjustment to the institution and program participation at the institution; (d) whether he developed an adequate parole plan; and (e) whether he had reached a point at which, in the judgment of the commission, discretionary parole would not pose an unreasonable risk to the public.

Our review of the commission's decision indicates that the commission considered all of these factors and applied them to the facts in the record. The commission discussed Belmares' offenses, the time he had served, and the programming he had completed. Belmares' parole plan was to reside with his mother in Milwaukee upon release. The commission noted that Belmares had substantial family support, as evidenced by letters submitted on his behalf. However, the commission also stated in its decision that Belmares' offenses were serious ones, which resulted in multiple injuries and the loss of three lives. The commission concluded that Belmares had not served sufficient time based upon the nature of the offenses and the fact that he had only served 26 ½ years of his life sentences. The commission further concluded that Belmares posed an unreasonable risk to the public and that much more time, good conduct, and continued positive involvement in programming was needed to lower his risk, as well as eventual transition through reduced security with positive adjustment.

Belmares argues that the commission did not provide sufficient reasoning for the 48-month deferral period it imposed before he could be considered again for parole. However, "[n]either the rules nor the statutes provide a separate set of criteria the Commission is to apply when determining the length of a deferment." ***Richards v. Graham***, 2011 WI App 100, ¶14, 336 Wis. 2d 175, 801 N.W.2d 821. We are satisfied, based on the commission's consideration of the applicable factors and the evidence in the record, that the commission properly exercised its discretionary authority when it denied parole and deferred Belmares' next review for 48 months.

IT IS ORDERED that the order is summarily affirmed under WIS. STAT. RULE 809.21(1).

Diane M. Fremgen
Clerk of Court of Appeals