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March 6, 2019

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

2017AP2538

State of Wisconsin ex rel. Robert A. McRoberts v. Doug
Drankiewicz (L.C. #2017CV605)

Before Neubauer, C.J., Gundrum and Hagedorn, JJ.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Robert A. McRoberts, pro se, appeals from an order denying his petition for a writ of certiorari from 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 (2017-18).¹ We affirm.

In 1982, upon his convictions for three counts of first-degree murder, McRoberts received three consecutive life sentences. On February 9, 2017, a parole commissioner interviewed McRoberts and issued a written decision recommending that parole be denied and that further consideration of parole be deferred for sixty months. The commission chairperson reviewed and approved the recommendation. McRoberts sought certiorari review in the circuit court. After briefing on the merits, the circuit court affirmed the commission's decision. McRoberts appeals.

The scope of our review is identical to that of the circuit court. *State ex rel. Saenz v. Husz*, 198 Wis. 2d 72, 76, 542 N.W.2d 462 (Ct. App. 1995).

Our review is limited to determining: (1) whether the 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 it might reasonably make the order or determination in question.

Id. at 76-77. “The test is whether reasonable minds could arrive at the same conclusion reached by the commission.” *Id.* at 77; *see also State ex rel. Gendrich v. Litscher*, 2001 WI App 163, ¶12, 246 Wis. 2d 814, 632 N.W.2d 878 (“We will set aside the Commission’s decision to deny parole only if our review of the record convinces us that a reasonable person, acting reasonably, could not have reached the decision from the evidence and its inferences.” (citation omitted)).

¹ All references to the Wisconsin Statutes are to the 2017-18 version unless otherwise noted.

We conclude that the commission's decision was reasonable and supported by substantial evidence. In determining whether a prisoner should be released on parole, the commission considers whether the prisoner (1) has served sufficient time, (2) has completed required programming, (3) has an adequate release plan, and (4) would pose an unreasonable risk to the public if released. *See* WIS. ADMIN. CODE § HSS 30.06(7) (Apr. 1981); WIS. ADMIN. CODE § PAC 1.06(16) (Dec. 2011).

Here, the commission denied parole for all four reasons. First, it reasonably concluded that McRoberts had not served sufficient time in prison for taking the lives of three innocent people. Angered by his grandmother's refusal to give him drug money, McRoberts followed her into her bedroom and stabbed her to death. He then stabbed the two boarders simply because they were there. The sentencing court intentionally ordered three consecutive sentences in recognition of the offense severity.

Second, the commission reasonably concluded that McRoberts had not completed required programming in that he "continue[s] to have an unmet essential need of [cognitive intervention] programming." McRoberts's inmate classification report confirmed that he is in need of and on the wait list for cognitive intervention programming.

Third, the commission reasonably concluded that McRoberts had an inadequate release plan because it was "rather vague, as you report that most (if not all) of your support system has passed away, and you do not have contact with your brother or sister." This conclusion is supported by McRoberts's interview responses.

Fourth, the commission reasonably concluded that McRoberts would pose an unreasonable risk to the community if released. The commission cited several changes required

to reduce McRoberts's risk to a more reasonable level, including but not limited to, completion of programming, "eventual transition through reduced security with a positive adjustment along the way, and eventually an approved parole plan."

McRoberts asserts that the commission "placed too much emphasis on the seriousness of the offenses," and he takes issue with the commission's consideration of his risk, touting his "great prison record" and "very low" scores on a risk assessment tool. Indeed, the commission commended his institutional conduct. However, McRoberts's complaints do not negate the substantial evidence in the record supporting the commission's reasoned decision. *See Gendrich*, 246 Wis. 2d 814, ¶12 ("[W]hen reviewing the record, we look for evidence which supports the decision made by the Commission, not for evidence which might support a contrary finding that the Commission could have made, but did not.").

We also reject McRoberts's argument that the commission improperly used the current parole criteria rather than the criteria in effect in 1981. We agree with the State that McRoberts has failed to establish an ex post facto violation for at least three reasons. First, a change in the parole consideration factors does not necessarily increase a person's period of incarceration and does not fall within the parameters of the ex post facto doctrine. Second, there is no evidence showing that the commission applied different or newer criteria in deciding whether to parole McRoberts. Third, even if the commission relied on the so-called "new" factors, McRoberts has failed to articulate any material difference between the old and the new regulations.

Finally, we reject out of hand McRoberts's contention that the interviewing commissioner was biased. McRoberts points to statements made during his parole hearing such as "I don't know if you're going to get out of prison, Mr. McRoberts. I'm just being blatantly

honest with you,” and observing that though McRoberts was a “good inmate” and had “served a significant period of time,” he was “responsible for taking 3 lives. I mean that’s really really significant.” These comments accurately convey the factual circumstances and relevant parole considerations, and are not evidence of bias.

Upon the foregoing reasons,

IT IS ORDERED that the order of the circuit court is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Sheila T. Reiff
Clerk of Court of Appeals