Dickson

STATE OF VERMONT
WINDSOR COUNTY, SS

James Ashley Petitioner v. Vermont Department of Corrections Andrew Pallito, Comm. Respondents	SUPERIOR COURT Docket No. 823-11-09 Wrcv

DECISION ON MOTION FOR SUMMARY JUDGMENT

Petitioner, an inmate in the Department of Corrections custody, alleges that due to his medical condition he should be furloughed or paroled. Petitioner further alleges improper handling of his grievances concerning the Department's response to his medical condition. Respondents filed a motion for summary judgment on June 2, 2009. Petitioner has not filed a responsive pleading.

Undisputed Facts

James Ashley is an inmate currently incarcerated in Springfield, Vt. He is serving a sentence of 14-40 years for a variety of offenses, including three counts of sexual assault on a minor.

The Department of Corrections has established a grievance procedure concerning complaints of inmates. This grievance procedure is set forth in the Department Directive #320.01. The grievance procedure contains a formal grievance process which contains a number of steps. The grievance process is outlined in the directive, as well as the affidavit of John Murphy, a Department employee.

In order to exhaust administrative remedies, an inmate must follow the grievance procedure set forth in directive 320.01.

With respect to his assertions that his medical condition warrants a medical parole or furlough or that he did not receive proper medical care, Petitioner did not file any Decision Appeal to the Commissioner as required under Directive 320.01. The Directive requires inmates who are dissatisfied with the decision of the Corrections Executive to take such an appeal within 10 days of receiving the response of the Corrections Executive. The lack of appeal to the Commissioner is a failure by Petitioner to exhaust his administrative remedies concerning the medical parole/furlough issue and his allegations of improper medical care.

There are Department guidelines for releasing an inmate on medical furlough. These are contained in Department Directive 373.02. That directive provided that an inmate may be considered for medical furlough when his/her condition is either terminal or debilitated to the point where a higher level of care than can be realistically provided within the correctional facility is required.

In connection with his claim for medical furlough/parole, Petitioner was examined by Dr. Mitchell Miller. Dr. Miller felt Petitioner's several medical conditions were all being well addressed within the facility and were stable. Dr. Miller further felt that a medical furlough would not substantially change Petitioner's care. No qualified medical professional has recommended that petitioner be medically furloughed or paroled.

Conclusions of Law

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, referred to in the statements required by Rule 56(c)(2), show that there is no genuine issue as to any material fact and that any party is entitled to judgment as a matter of law." V.R.C.P. 56(c)(3). The party moving for summary judgment has the burden of demonstrating that no genuine issue of material fact exists and that he is entitled to judgment as a matter of law. *Price v. Leland*, 149 Vt. 518, 521 (1988). The non-moving party has the burden of setting forth specific facts showing a genuine dispute for trial. V.R.C.P. 56(e). The purpose of summary judgment is to "pierce the pleadings and to assess the proof in order to see whether there is a genuine need for trial." *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 586–87 (1986) (citation omitted). Summary judgment is mandated where the non-moving party fails to make a showing sufficient to establish the existence of an element essential to his or her case, and on which she has the burden of proof at trial. *Poplaski v. Lamphere*, 152 Vt. 251, 254–55 (1989); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986).

Under Vermont law, the Commissioner of Corrections has broad discretion to classify inmates in his custody. 28 V.S.A. § 102. The decision to release Petitioner on medical parole or furlough is one within the province of the Department of Corrections. *King v. Gorcryk*, 175 Vt. 220 (2003). In reaching that determination, the Commissioner is entitled to rely on the expertise of department employees. 28 V.S.A. § 102(b)(15). These classification decisions do not implicate any liberty interest of the inmate. *Moody v. Daggett*, 429 U.S. 78 (1976).

To the extent the Petitioner claims the Department abused it's discretion by not granting medical parole or furlough, his complaint is properly considered a review of governmental action pursuant to V.R.C.P. 75. However, in order to have subject matter jurisdiction review the exercise of discretion by the Department, a party must exhaust all administrative remedies before seeking relief in the court. *Jordan v. State*, 166 Vt. 509 (1997); *In re D. A. Associates*, 150 Vt. 18 (1988). When an agency has jurisdiction to

decide an issue, courts are not to interfere with an agency's decision-making unless and until all administrative remedies have been exhausted. *In re R.L.*, 163 Vt 168 (1995).

Here, Petitioner is afforded a number of administrative appeals of the Department's decision making process. The Petitioner has failed to exhaust those remedies in that he did not take an appeal to the Commissioner of Corrections regarding his claim that he was denied a medical furlough or parole without due process protections. As a result, he has not exhausted the administrative remedies afforded to him. Accordingly, this court lacks subject matter jurisdiction under V.R.C.P. 75 to review the department's decision not to grant the parole or furlough.

Further, offender classifications are discretionary acts of the Commissioner. 28 V.S.A. § 102. The Commissioner is given broad discretion in the area of prison administration. *Nash v. Coxon*, 155 Vt. 336 (1990). The decision to grant a medical furlough is entirely discretionary. 28 V.S.A. § 808 grants the Commissioner the authority to grant a medical furlough, should he choose, where an inmate suffers from a terminal or debilitating condition. 28 V.S.A. § 502a(d) grants the Commissioner similar discretionary authority for a medical parole to a hospital, hospice or other like facility.

There is no evidence that the Commissioner abused his discretion; on the contrary, the undisputed facts show the Commissioner's exercised of his discretion appropriately. It is not necessary to even reach the issue of the exercise of discretion since the Petitioner has not established the medical prerequisites for medical parole or furlough in any event as there is no showing of terminal illness or debilitation. To grant a medical furlough or parole without proof the Petitioner suffered from a terminal or debilitating illness would have been outside of the Commissioner's statutory discretionary authority.

Because the Petitioner had no liberty interest in the medical parole or furlough, and because he has failed to exhaust his administrative remedies concerning the exercise of discretion by the Commissioner, his claim should be dismissed. Further, to the extent necessary to reach the issue, the Commissioner did not err in the exercise of his discretion in not granting medical parole or furlough.

For the reasons stated herein, Respondents' Motion for Summary Judgment is **GRANTED**. Judgment is hereby entered for the Respondents. There being no further issues remaining for decision, this shall be considered a final order for purposes of V.R.C.P. 54.

Dated at Woodstock this 9th day of July, 2009.

Harold E. Eaton, Jr.
Superior Court Judge

FILED

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WINDSOR COUNTY CLERK