

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA	
COMMONWEALTH	: No. CR-916-2012
	:
vs.	:
	:
	: <b>Decision re: Petition for Habeas Corpus</b>
FRANK NIXON,	:
Defendant	:

**OPINION AND ORDER**

Defendant Frank Nixon (“Nixon”) filed a “Petition for Writ of Habeas Corpus Ad Testificandum” in which he disputes the reasons given by the Pennsylvania Board of Probation and Parole (“PBPP” or “Board”) for denying him parole and he seeks to be re-sentenced to time served.

On October 10, 2013, the court sentenced Nixon to undergo incarceration in a state correctional institution for twenty-four (24) to forty-eight (48) months for the charge of persons not to possess firearms, a misdemeanor of the first degree. In its sentencing order, the court recommended Nixon for parole at the expiration of his minimum sentence if he remained misconduct free and compliant with the terms and conditions of his incarceration. Nixon applied for parole but the Board denied his request. Believing that the Board violated his sentencing order because he was compliant, Nixon filed his petition for habeas corpus. He also asserts that the Board’s denial of parole amounted to him being re-sentenced without due process of law. Unfortunately, Nixon misconstrues both the court’s recommendation and the Board’s actions.

When the maximum sentence imposed is two years or more, the decision whether to grant parole is within the exclusive authority of the Board. 61 Pa.C.S.A. §6132;

Commonwealth v. Lee, 876 A.2d 408, 414 (Pa. Super. 2005). What that means is, despite the fact that the Board seeks input or recommendations from the court as well and the prosecutor and the victim, the Board has the final say over who gets paroled.

The court also notes that it is well-settled that an inmate does not have a right to parole at the expiration of his minimum sentence. As the Pennsylvania Supreme Court aptly stated in Commonwealth v. Brittingham, 442 Pa. 241, 275 A.2d 83 (1971): “The parole of a prisoner at the expiration of his minimum term is not a matter of right. Rather, it is a matter of grace and mercy, and the granting, reinstatement and revocation of parole is within the exclusive jurisdiction of the Board.” 275 A.2d at 85; see also Commonwealth v. Walters, 814 A.2d 253, 257 (Pa. Super. 2002); Myers v. Ridge, 712 A.2d 791, 794 (Pa. Commw. 1998).

The Board’s decision denying parole did not amount to a re-sentencing of Nixon without due process of law. It was an exercise of its exclusive parole authority, which this court does not have the power to alter.

The court also notes that it no longer has jurisdiction to modify Nixon’s sentence. 42 Pa.C.S.A. §5505. Furthermore, a claim of denial of parole is not cognizable under the Post Conviction Relief Act (PCRA) or a petition for habeas corpus. Walters, 814 A.2d at 257; Commonwealth v. Vega, 754 A.2d 714, 718 (Pa. Super. 2000).

Accordingly, the following order is entered:

**ORDER**

**AND NOW**, this \_\_\_ day of January 2015, the court DENIES Defendant Frank Nixon’s petition for writ of habeas corpus.

By The Court,

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Marc F. Lovecchio, Judge

cc: DA  
Frank Nixon, LF 7692  
PO Box 99991, Pittsburgh PA 15233  
Gary Weber, Esquire (Lycoming Reporter)  
Work file