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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

Richmond Division

GROVER CLEVELAND WILLIAMS,)	
)	
Petitioner,)	
)	
v.)	CIVIL ACTION NO. 81-0934-R
)	
UNITED STATES PAROLE COMMISSION,)	
<u>et al.</u> ,)	
)	
Respondents.)	

MEMORANDUM OPINION

Grover Cleveland Williams is a federal prisoner held at the Petersburg (Va.) Federal Correctional Institution. On October 27, 1981, he filed a habeas corpus petition under section 2241 asking the court to overturn the presumptive parole determination made by the United States Parole Commission (USPC). See 28 U.S.C. § 2241 (1976). The USPC moves to dismiss this petition for failure to state a valid claim. See Fed. R. Civ. P. 12(b)(6). The respondent requests, in the alternative, that the court grant it summary judgment under Rule 56(b). See id. 56(b). For the reasons stated below, the court grants the motion for summary judgment.

I. FACTUAL BACKGROUND

On July 7, 1980, Williams pleaded guilty to ten counts of robbery of a federal savings and loan association in violation of 18 U.S.C. § 2113(a) (1976). He received a twenty-year adult term of imprisonment on each of these ten convictions. These sentences were to run concurrently with one another. Williams began serving these sentences on June 5, 1980.

On January 21, 1981, the petitioner received his initial parole hearing. The examiner panel recommended that Williams be continued for a presumptive parole after serving 108 months with the special drug after-care condition. The panel based its recommendation on five factors. First, it noted that Williams had committed twice as many robberies as

necessary to attain an offense severity rating of Greatest II. Second, the panel took into account the fact that the petitioner was on multiple probations at the time of the robberies. Finally, the panel noted the presence of three mitigating circumstances: (1) Williams was not armed during any of the robberies; (2) Williams' drug addiction triggered the crimes; and (3) Williams is only thirty years old.

Upon review, the regional commissioner adopted the examiner panel's recommendation. The USPC advised Williams of this decision by a notice of action dated February 5, 1981. The petitioner then filed an appeal with the regional commissioner under 18 U.S.C. § 4215(a) (1976). The commissioner affirmed his prior decision. He notified Williams of this affirmance by a notice of action on appeal dated April 13, 1981. The petitioner has not filed an appeal with the National Appeals Board pursuant to 18 U.S.C. § 4215(b) (1976).

II. THE ADMINISTRATIVE EXHAUSTION ISSUE

The USPC first argues for dismissal of the petition on the ground that Williams has failed to exhaust the available administrative remedies. A prisoner seeking a writ of habeas corpus generally must exhaust administrative remedies. See Guida v. Nelson, 603 F.2d 261, 262 (2d Cir. 1979); Lambert v. Warden, 591 F.2d 4, 8 (5th Cir. 1979); United States ex rel. Sanders v. Arnold, 535 F.2d 848, 851 (3d Cir. 1976); Willis v. Ciccone, 506 F.2d 1011, 1015 (8th Cir. 1974). In particular, the courts have required federal prisoners requesting habeas review of parole determinations to exhaust their appeals before the USPC. See Guida v. Nelson, 603 F.2d 261, 262 (2d Cir. 1979); Carmel v. Thomas, 510 F. Supp. 784, 788 (S.D.N.Y. 1981); Six v. United States Parole Commission, 502 F. Supp. 446, 447-48 (E.D. Mich. 1980); Payton v. Thomas, 486 F. Supp. 64, 69-70 (S.D.N.Y. 1980); Albano v. Anderson, 472 F. Supp. 931, 934-35 (M.D. Pa. 1979); Leftwich v. Jett, 453 F. Supp. 879, 880 (C.D. Cal. 1978); Gelfuso v. Tennant, 451 F. Supp. 539, 540 (C.D. Cal. 1978).

Williams has failed to exercise his right of appeal to the National Appeals Board. See 18 U.S.C. § 4215(b) (1976). The court's normal procedure is to require the petitioner to file such an appeal before allowing him to pursue his habeas claims. In this case, however, the time period for appealing to the National Appeals Board has expired, because Williams did not submit an appeal within thirty days of receiving the notice of action on appeal. See id. Despite this time-bar problem, the court ordinarily would still require Williams to file with the national board. If the board were to deny the appeal as untimely, the court would not hear the merits of the case, unless the petitioner could demonstrate that his failure to file a timely appeal was due to excusable neglect. In this case, however, the court will consider the substantive issues, because their resolution is so clear.

III. THE SUBSTANTIVE ISSUES

Williams challenges the USPC's presumptive parole determination on three grounds. First, he asserts that the USPC's decision was arbitrary, capricious, and based on impermissible criteria. Second, he contends that the guidelines upon which the USPC relied are unconstitutional. Finally, he argues that the USPC's power to determine the length of incarceration violates the double jeopardy provision of the United States Constitution. The USPC moves to dismiss these claims under either Rule 12(b)(6) or Rule 56(b).

Williams' first contention is that the USPC's decision was arbitrary and capricious. The court must limit its review of this claim to determining whether the USPC acted within its own guidelines. See Garcia v. Neagle, 660 F.2d 983, 987-88 (4th Cir. 1981); Hawkins v. United States Parole Commission, 511 F. Supp. 460, 461-62 (E.D. Va. 1981). The USPC gave the petitioner an offense severity rating of Greatest II. This rating is correct under the applicable regulations. See 28 C.F.R. § 2.20 (1980). In addition, the USPC's presumptive parole determination of 108 months is within the range pro-

vided for Greatest II offenses. See id. The court, therefore, must hold that the USPC's decision was neither arbitrary nor capricious.

The petitioner's second assertion is that the USPC's guidelines are unconstitutional. The courts, however, have consistently held that the parole regulations comply with all statutory and constitutional requirements. See, e.g., Garcia v. Neagle, 660 F.2d 983, 989-91 (4th Cir. 1981); Priore v. Nelson, 626 F.2d 211, 215-17 (2d Cir. 1980); Moore v. Nelson, 611 F.2d 434, 439 (2d Cir. 1979); Hawkins v. United States Parole Commission, 511 F. Supp. 460, 461-62 (E.D. Va. 1981). But see Geraghty v. United States Parole Commission, 579 F.2d 238, 254-67 (3d Cir. 1978), rev'd on other grounds, 445 U.S. 388 (1980). Thus, the court must dismiss the second claim.

Williams' final allegation is that the USPC's parole determination power violates the double jeopardy clause. The court dismisses this claim as well, because the double jeopardy provision applies only to judicial proceedings. See Priore v. Nelson, 626 F.2d 211, 217 (2d Cir. 1980).

United States District Judge

Date: _____