

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

Richmond Division

PAUL ZIGLER,)
)
 Petitioner,)
)
 v.) Civil Action No. 81-0402-R
)
 UNITED STATES PAROLE COMMISSION,)
 et al.,)
)
 Respondents.)

M E M O R A N D U M

The petitioner is an inmate at the Federal Correctional Institute at Petersburg, Virginia where he is serving a five year term of imprisonment after having pleaded guilty in the United States District Court for the Southern District of New York to one count of distribution of heroin. He has been in federal custody since June 24, 1980. He filed this petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241, and the court granted the petitioner's motion to proceed in forma pauperis. The respondents countered with a motion to dismiss or for summary judgment; the petitioner was granted time to respond to the respondents' motion and chose not to do so. The motion is, therefore, ripe for decision.

The petitioner claims the following entitle him to relief:

A. The Commission's denial of parole for him was based on the Commission's guidelines without consideration of the sentencing court's original sentence and this is arbitrary and capricious and contrary to the intent of Congress. He claims that he should be eligible for parole after having served one-third of his sentence, or 20 months, and that the Commission has used its guidelines to come up with a "range" which would require him to serve 36-48 months of the sentence. This action, he claims, is, in effect, a re-sentencing by the Commission.

B. The Commission's guidelines exceed the authorization of Congress.

C. The Commission did not apply its guidelines fairly in his case but blindly adhered to its rules without considering his case on an individual basis.

The court will discuss these claims in the same order.

A. The Commission is to grant or deny parole in its sound discretion. Farmer v. United States Parole Commission, 588 F.2d 54 (4th Cir. 1978). The fact that the guidelines used by the Commission are based on different criteria than that which may have been used by the sentencing court does not mean that the application of those guidelines constitutes a resentencing of the inmate. Priore v. Nelson, 626 F2d 211 (2d Cir. 1980). As for the argument that the Commission in promulgating and using these guidelines has exceeded the scope of authority granted it by Congress when it passed the Parole Commission and Reorganization Act, 18 U.S.C. § 4203(a),

The guidelines fall well within the broad authority granted by Congress in 18 U.S.C. § 4203(a)(1) to the Commission. The Commission's establishment of a system for estimating customary release dates, moreover, is rational and in accordance with both the criteria set forth in 18 U.S.C. § 4206(a) and the intent of Congress as expressed in the . . . House Conference Report No. 94-838.

Id. at 216.

B. The petitioner's argument regarding the Commission's guidelines being beyond the scope of authority is discussed above in section A of this memorandum.

C. The petitioner also claims that the guidelines were applied unfairly in his case and that the Commission blindly followed the guidelines without considering his case on an individual basis. The affidavit of James E. Newman, who is a case analyst with the Commission and who has reviewed the petitioner's file indicates that the petitioner's bald allegation is unfounded. Further, the hearing summary filed as an exhibit with the Commission's motion clearly indicates that the Commission looked closely at the petitioner and came to its decision based on the petitioner as an individual.

For these reasons, therefore, the respondents' motion for summary judgment will be granted. An appropriate order will issue.

Richard L. Williams
United States District Judge

Date: _____