

STATE OF MICHIGAN
COURT OF APPEALS

RANDALL R. BALL,

Petitioner-Appellant,

v

DEPARTMENT OF CORRECTIONS,

Respondent-Appellee.

UNPUBLISHED

April 11, 2013

No. 313034

Ingham Circuit Court

LC No. 12-000934-AA

Before: BOONSTRA, P.J., and SAAD and HOEKSTRA, JJ.

PER CURIAM.

Petitioner, Randall R. Ball, appeals as of right the trial court's order dismissing his case for lack of subject-matter jurisdiction. Because we conclude that petitioner does not have a liberty interest in his potential parole and because he is not entitled to judicial review of the parole board's decision to deny parole, we affirm.

Petitioner is currently imprisoned for failure to register as a sex offender in violation of MCL 28.729. On February 21, 2012, the Michigan Parole Board considered petitioner's case and concluded that, "[r]easonable assurance exists that the prisoner will not become a menace to society or to the public safety." Accordingly, pending investigation and approval, petitioner's projected parole date was July 26, 2012. Notice of this decision was mailed to petitioner on February 27, 2012. On May 25, 2012, the Michigan Department of Corrections (MDOC) suspended petitioner's parole pending a psychological evaluation because Mich Admin Code, R 791.7715(5)(b) requires that potential parolees with a history of predatory or assaultive sexual offenses, such as petitioner, undergo a psychological evaluation as part of their parole review. Petitioner's evaluation found "substantial aggravating factors which would justify increasing his actuarial risk level." After reviewing the evaluation, the Parole Board elected to deny petitioner parole for a period of 18 months. Petitioner filed a grievance in response to the parole board's decision; however, respondent returned the grievance because decisions of the parole board are non-grievable pursuant to department policy. Thereafter, petitioner petitioned the trial court for judicial review of the denial. The trial court issued a sua sponte order of dismissal, finding that it lacked subject-matter jurisdiction over the case. The trial court denied petitioner's motion for reconsideration, and this appeal ensued.

On appeal, petitioner argues that the trial court erred by dismissing his appeal for lack of subject-matter jurisdiction. Specifically, petitioner maintains that denial of his appeal violates his right to due process and that he is entitled to an appeal pursuant to MCL 791.255.

“Whether a trial court has subject-matter jurisdiction is a question of law that this Court reviews de novo.” *Etefia v Credit Technologies, Inc*, 245 Mich App 466, 472; 628 NW2d 577 (2001). We also review de novo questions of constitutional law. *People v Bennett*, 290 Mich App 465, 481; 802 NW2d 627 (2010).

Our state and federal constitutions both guarantee that a person may not be deprived of life, liberty, or property without due process of law. US Const, Am XIV; Const 1963, art 1, § 17. “Whether the due process guarantee is applicable depends initially on the presence of a protected ‘property’ or ‘liberty’ interest.” *Hanlon v Civil Serv Comm*, 253 Mich App 710, 723; 660 NW2d 74 (2002). “It is only when a protected interest has been found that we may proceed to determine what process is due.” *Williams v Hofley Mfg Co*, 430 Mich 603, 610; 424 NW2d 278 (1988). The possibility of parole is insufficient to confer a protected liberty interest to a prisoner. *In re Parole of Hill*, 298 Mich App 404; __ NW2d __ (2012), slip op at 4. This Court has held that

a potential parolee who remains in prison has no liberty to protect. As noted by the United States Supreme Court, “parole *release* and parole *revocation* are quite different. There is a crucial distinction between being deprived of a liberty one has, as in parole, and being denied a conditional liberty that one desires.” A prisoner awaiting release on parole remains “confined and thus subject to all of the necessary restraints that inhere in a prison.” The “mere hope that the benefit” of parole “will be obtained” is too general and uncertain and, therefore, “is not protected by due process.” [*In re Parole of Haeger*, 294 Mich App 549, 575; 813 NW2d 313 (2011), quoting *Greenholtz v Inmates of Neb Penal & Correctional Complex*, 442 US 1, 9-11; 99 S Ct 2100; 60 L Ed 2d 668 (1979) (citations omitted).]

In this case, petitioner was never released from prison and, thus, possessed no protected liberty interest subject to due process protection. The possibility of parole is insufficient to trigger due process protection. *Id.* Thus, we conclude that petitioner’s constitutional due process claim must fail because he has not been deprived of any constitutionally protected liberty interest.

We similarly find petitioner’s claim that he is entitled to judicial review pursuant to MCL 791.255(1) unavailing. MCL 791.255(1) provides that “[a] prisoner aggrieved by a final decision or order of a hearings officer shall file a motion or application for rehearing in order to exhaust his or her administrative remedies before seeking judicial review of the final decision or order.” MCL 791.255 applies to contested case proceedings conducted before hearing officers regarding prison misconduct, the loss of disciplinary credits, punitive segregation, etc. See MCL 791.251. The Parole Board is neither a hearing officer nor does it conduct contested case hearings. Judicial review of a Parole Board decision is governed by MCL 791.234(11), which provides:

Except as provided in section 34a, a prisoner's release on parole is discretionary with the parole board. The action of the parole board in granting a parole is appealable by the prosecutor of the county from which the prisoner was committed or the victim of the crime for which the prisoner was convicted. The appeal shall be to the circuit court in the county from which the prisoner was committed, by leave of the court.

Accordingly, MCL 791.234 does not provide for judicial review of a Parole Board denial.

Moreover, in *Morales v Mich Parole Bd*, 260 Mich App 29, 52; 676 NW2d 221 (2003), this Court held that “[p]arole decisions are not reviewable by the judiciary under the Department of Corrections act, the [Administrative Procedures Act], or the [Revised Judicature Act].” This Court reiterated that “prisoners have no legal right to parole.” *Id.* Thus, this Court concluded that “in Michigan prisoners have no legal right to seek judicial review of the denial of parole by the Parole Board.” *Id.* The rule in *Morales* is applicable to petitioner's case. Petitioner has no legal right to seek judicial review of his parole denial. Accordingly, the trial court did not err by dismissing petitioner's appeal because it lacked subject-matter jurisdiction. *In re AMB*, 248 Mich App 144, 166-167; 640 NW2d 262 (2001) (“Subject-matter jurisdiction is so critical to a court's authority that a court has an independent obligation to take notice when it lacks such jurisdiction, even when the parties do not raise the issue.”).

Affirmed.

/s/ Mark T. Boonstra
/s/ Henry William Saad
/s/ Joel P. Hoekstra