

RICHARD LYNN NORTON,)	
)	
Petitioner/Appellant,)	
)	Davidson Chancery
)	No. 93-3426-II
VS.)	
)	Appeal No.
)	01-A-01-9601-CH-00030
DON EVERHART, WARDEN,)	
TENNESSEE BOARD OF PAROLES,)	
)	
Respondents/Appellees.)	

<p>FILED</p> <p>May 17, 1996</p> <p>Cecil W. Crowson Appellate Court Clerk</p>

IN THE COURT OF APPEALS OF TENNESSEE
MIDDLE SECTION AT NASHVILLE

APPEAL FROM THE CHANCERY COURT OF DAVIDSON COUNTY
AT NASHVILLE, TENNESSEE

HONORABLE ELLEN HOBBS LYLE, CHANCELLOR

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MODIFIED, AFFIRMED AND REMANDED

HENRY F. TODD
PRESIDING JUDGE, MIDDLE SECTION

CONCUR:
SAMUEL L. LEWIS, JUDGE
BEN H. CANTRELL, JUDGE

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OPINION

The captioned petitioner has appealed from the judgment of the Trial Court sustaining the respondent's motion to dismiss his suit for certiorari from the action of the Board of Paroles.

The history of this controversy and reasons for the ruling of the Trial Court are aptly stated in the Memorandum and Order of the Trial Court as follows:

... [T]he petitioner was convicted of aggravated and simple assault on May 18, 1989 and was sentenced to serve ten years. On January 31, 1991, the petitioner was released on parole, ... A warrant for parole revocation was issued on April 8, 1991, and a parole revocation hearing was held on June 6, 1991.

... Three board members adopted the hearing officer's recommendation and voted to revoke petitioner's parole and declined to grant parole for the balance of petitioner's sentence. ...

On August 28, 1991, the petitioner filed a petition for writ of habeas corpus in the Criminal Court for Morgan County, challenging the legality of his parole revocation. On December 1, 1993, petitioner filed a document with the Chancery Court for Davidson County at Nashville requesting that his petition for habeas corpus be transferred to the Davidson County Chancery Court and be treated as a petition for writ of certiorari. The Criminal Court for Morgan County dismissed the petition on January 14, 1992, determining that it did not have subject matter jurisdiction over the Board of Paroles, and that any remedy the petitioner had was through a writ of certiorari which should have been filed in Davidson County.

The decision of the Criminal Court for Morgan County was appealed to the Court of Criminal Appeals and thereafter to the Supreme Court. The Supreme Court affirmed the ruling of the Court of Appeals as to the Trial Court's inherent authority and

duty to convert the petition to the proper form. Under the doctrine of equitable estoppel, the Supreme Court allowed the petitioner to file a petition for writ of certiorari in Davison County and affirmed the judgment of the Court of Criminal Appeals.

The Trial Court held:

. . . Although the petitioner and his ex-wife controverted this testimony, that question of fact and its resolution against the petitioner do not present claims that the Board exceeded its jurisdiction or was acting illegally, fraudulently or arbitrarily. The petitioner's complaint is clearly his disagreement with the intrinsic correctness of the decision rendered by the Board. Thus, the petitioner presents no facts which warrant a review of the matter in which the Board reached its decision to revoke his parole or any evidence in the record to indicate that the Board exceeded its jurisdiction or acted illegally.

. . . .

. . . [T]he petitioner's right to due process at the parole revocation hearing has not been denied. . . .

. . . [T]here is no right to counsel for parole revocation hearings, and that the State has no constitutional duty to provide counsel for indigents in parole revocation cases. . . .

It is, therefore, Ordered that the respondent's motion to dismiss is Granted, and the petition for writ of certiorari is dismissed with prejudice. In that the petitioner has filed as a pauper, only state litigation tax is taxed to the petitioner.

On appeal, plaintiff presents the following issues:

1. Whether the Trial Court properly dismissed the petition of Writ of Certiorari, rather than hear the case on the merits.
2. Whether revoking appellant's state parole on two parole violations under a previous sentence was illegal.
3. Whether revoking appellant's state parole without the appointment of counsel to representation, denied the appellant substantial justice and fundamental fairness.
4. The testimony of Officer Dixon alone violates due process and fundamental fairness.

The suit was properly dismissed without trial because the complaint failed to state a claim for which relief can be granted. T.R.C.P. Rule 12.02. No facts are alleged which would support a charge that the Board acted illegally, fraudulently or arbitrarily, which is the

sole basis for review of actions of the Parole Board. *Powell v. Parole Board*, Tenn. App. 1994, 879 S.W.2d 871.

The legality or illegality of the sentence or sentences being served are not relevant to review of a Parole Board decision. The present proceeding is civil in nature and is within the jurisdiction of this Court. Review of criminal convictions is not within the jurisdiction of this Court.

A prisoner is not entitled to appointed counsel in a parole revocation proceeding. *Young v. State*, Tenn. Cr. App. 1978, 539 S.W.2d 850.

No allegation of fact which constitutes violation of due process or fundamental fairness is found in this record.

The findings and conclusions of the Trial Court are affirmed, except that no justification is found for waiver of costs which are adjudged against the plaintiff. This appeal is determined to be frivolous. On remand, the Trial Court will hear evidence and assess a suitable damage for frivolous appeal. Costs of this appeal are taxed against appellant. The cause is remanded for entry and enforcement of a judgment for Trial Court costs and damages for frivolous appeal.

Modified, Affirmed and Remanded.

HENRY F. TODD
PRESIDING JUDGE, MIDDLE SECTION

CONCUR:

SAMUEL L. LEWIS, JUDGE

BEN H. CANTRELL, JUDGE