

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1953

September Term, 2014

DANIEL HARNEY

v.

MARYLAND PAROLE COMMISSION

Krauser, C.J.,
Nazarian,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: October 28, 2016

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Daniel Harney, appellant, was convicted, in the Circuit Court for Howard County, of first-degree murder, attempted second-degree murder, and two handgun violations. Although the record does not disclose the exact date of those convictions, it does reveal that in 1995, Harney was sentenced to life imprisonment for first-degree murder, and to a total of 40 years' imprisonment for his remaining convictions, which were to run consecutively to the sentence of life imprisonment.

In 2013, Harney filed a petition for a writ of mandamus, in which he claimed that he had become eligible for parole in 2010, and therefore was entitled to an order compelling the Maryland Parole Commission, appellee, to hold a parole hearing. The circuit court denied the petition on grounds that it lacked the authority to grant the relief he sought. Harney appeals, asserting that the circuit court erred in so ruling. We affirm.

Assuming, without deciding, that appellee may be compelled by writ of mandamus to hold a parole hearing, Harney was not eligible for parole at the time his petition for a writ of mandamus was denied, and will not be eligible for parole until the year 2024. Code of Maryland Regulations (“COMAR”) 12.08.01.17(A)(8)(b) provides:

When a term of confinement includes a life sentence or sentences and a fixed term or terms to be served consecutively, regardless of the order in which they are to be served, the eligibility of the prisoner for parole shall be determined by aggregating the number of years required for parole eligibility on the fixed term or terms with the number of years required for parole eligibility for the life sentence or sentences.

Accordingly, because Harney's confinement includes a life sentence as well as consecutive fixed-term sentences, his parole eligibility is determined by adding (1) the number of years he must serve against his life sentence before he is eligible for parole

(fifteen); and, (2) the number of years he must serve against his consecutive 40-year sentences (half, or twenty).

Harney maintains that the governing regulation is invalid because it conflicts with the statute governing eligibility for parole under a life sentence, Maryland Code (1999, 2008 Repl. Vol.), Correctional Services Article (“CS”), § 7-301(d), which provides that “an inmate who has been sentenced to life imprisonment is not eligible for parole consideration until the inmate has served 15 years[.]”¹ The regulation and statute conflict, Harney claims, because the statute “allows [him] consideration for parole after serving 15 years on a life sentence,” while the regulation “denies [him] the opportunity for parole consideration because it includes time calculated on aggregating all of [his] sentences.”

We disagree. Both the statute and the regulation provide that a prisoner who is serving sentences for violent crimes committed on or after October 1, 1994, is not eligible for parole until the prisoner has served one-half of the sentences for the violent crimes. CS § 7-301(c); COMAR 12.08.01.17.(A)(3). The regulation at issue clarifies that prisoners such as Harney, who are serving both a life sentence and a consecutive fixed term sentence, are not eligible for parole until they have served the number of years required for parole eligibility on a life sentence plus the number of years required for parole eligibility on a fixed term sentence. Moreover, we see nothing in the statute that suggests, as Harney

¹ See *Lussier v. Maryland Racing Com’n*, 343 Md. 681, 688 (1996) (“[W]here the Legislature has delegated such broad authority to a state administrative agency to promulgate regulations in an area, the agency’s regulations are valid under the statute if they do not contradict the statutory language or purpose.”)

contends, that the Legislature intended that inmates must be considered for and granted parole on a life sentence before becoming eligible for parole on consecutive sentences.

We conclude that the circuit court properly determined that Harney will not become eligible for parole until 2024 and, consequently, that the court properly denied the relief he requested.

**ORDER OF THE CIRCUIT COURT FOR
HOWARD COUNTY AFFIRMED. COSTS
TO BE PAID BY APPELLANT.**