

Circuit Court for Somerset County
Case No.: C-19-CV-22-000109

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND*

No. 1029

September Term, 2023

IN THE MATTER OF
MARCUS BROADNAX

Wells, C.J.,
Leahy,
Eyler, Deborah S.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Leahy, J.

Filed: August 27, 2024

* This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Maryland Rule 1-104(a)(2)(B).

On April 13, 2021, the Maryland Division of Correction (“DOC”) conditionally released Marcus Broadnax, (“Appellant”) from confinement and placed him on mandatory supervision.^{1,2} A little less than a year later, on March 24, 2022, the DOC issued a warrant charging Appellant with violating various conditions of his release. On June 13, 2022, a hearing was held on those charges before a parole commissioner who, after finding Appellant to be in violation of the terms of his release, revoked his release on mandatory supervision sending Appellant back to confinement in the DOC to serve the remainder of his sentence.

Shortly thereafter, on July 18, 2022, Appellant filed a petition for judicial review of the commissioner’s decision in the Circuit Court for Somerset County. On May 25, 2023, following a hearing, the circuit court denied Appellant’s petition thereby affirming the commissioner’s revocation decision. Appellant, acting *pro se*, then noted an appeal to this Court from the denial of his petition for judicial review raising various claims of error.³

¹ Over a decade earlier, on October 28, 2010, Appellant began serving an 18-year sentence for first-degree rape that had been imposed by the Circuit Court for Wicomico County.

² In Maryland, most inmates are eligible to receive diminution of confinement credits which have the effect of reducing the length of their imprisonment by one day for each credit. The DOC is required by statute to release an inmate from confinement once the inmate has served their term of confinement less the diminution of confinement credits they have earned to that point. At that point, the person’s release is supervised by the Maryland Parole Commission. *See generally* Md. Code, Correctional Services § 3-701 et. seq. & § 7-501 et. seq.

³ Appellant filed an Application for Leave to Appeal which we treated as a Notice of Appeal.

The State has moved to dismiss this appeal on the basis that Appellant has no right of appeal under the circumstances presented by this case. Specifically, the State argues that Appellant had no right to an appeal in this Court from the decision of the circuit court to deny his petition for judicial review because any right to an appeal must come from a statutory grant of that right and no statute applies to this case. Moreover, the State argues that the Administrative Procedure Act (“APA”), which grants the right to appeal from certain judicial review actions, does not apply to the Maryland Parole Commission.⁴

In his briefs before this Court, Appellant claims that he was entitled to file an application for leave to appeal from the denial of his petition for judicial review, but does not provide any authority for his right to appeal. For the reasons explained, we must dismiss this appeal because there is no right to appeal to this Court from the circuit court’s decision on judicial review of the Parole Commission’s decision to revoke Appellant’s release on mandatory supervision.

DISCUSSION

As mentioned, Appellant noted an appeal from the circuit court’s denial of his petition for judicial review of the decision of the Maryland Parole Commission to revoke his release on mandatory supervision. The Code of Maryland Regulations (“COMAR”),

⁴ The State also contends that an appeal provision found in the statute governing revocation of release on mandatory supervision does not create a right to appeal directly from the decision to revoke Appellant’s release to this Court. As explained in n. 7 *infra*, we do not reach this issue because it is not properly before us for consideration.

section 12.08.01.13, titled “Mandatory Release” succinctly describes release on, and revocation of, mandatory supervision, as follows:

A prisoner may shorten the period of his incarceration, even in the absence of parole, if he maintains a satisfactory institutional adjustment. [Diminution of confinement] credits serve to decrease the length of incarceration. These prisoners are released by action of the Division of Correction upon termination of sentence less credit for good conduct and industrial time earned, but by statute, are supervised “as if on parole” and are subject to the jurisdiction of the Parole Commission after release and bound by the rules and conditions of parole until the legal expiration date of their sentence. A violation of any rules and conditions of parole shall subject the releasee to parole revocation procedures.

COMAR § 12.08.01.13. Generally speaking, therefore, by operation of law the DOC releases inmates who have accrued sufficient diminution of confinement credits. The person’s release is then supervised by the Parole Commission, and it is the Parole Commission that determines whether the releasee has violated the conditions of release and, if so, the sanction. These procedures are governed by Title 7 of the Correctional Services Article titled “Parole, Release on Mandatory Supervision, and Executive Clemency” and COMAR 12.08.01.21-22.

Under section 7-401(f) of the Correctional Services Article of the Maryland Code (“CS”) (1999, 2017 Repl. Vol., 2023 Supp.), a decision of the Maryland Parole Commission is subject to judicial review in the circuit court with the limitation that the circuit court is only permitted to “hear the action on the record.” CS § 7-401(f). The APA does not apply to such judicial review as the APA specifically does not apply to “the Maryland Parole Commission[.]” Md. Code, State Gov’t Art. (“SG”) (2021 Repl. Vol.), § 10-203(a)(3)(iv). “In those circumstances where there is no statutory provision for judicial

review, however, [the Maryland Supreme Court] has consistently held that the Legislature cannot divest the courts of the inherent power they possess to review and correct actions by an administrative agency which are arbitrary, illegal, capricious or unreasonable.” *Harvey v. Marshall*, 389 Md. 243, 275 (2005) (quotation marks and citation omitted).

As just discussed, the right to judicial review of the underlying decision by the Parole Commission in the circuit court is provided under Title 7 of the Correctional Services Article. From there, however, the right to an appeal “is not a right required by due process of law, nor is it an inherent or inalienable right.” *Mayor & City Council of Baltimore v. ProVen Mgmt., Inc.*, 472 Md. 642, 664–65 (2021) (quotation marks and citations omitted). “Accordingly, unless constitutionally authorized, appellate jurisdiction is determined entirely by statute, and therefore, a right of appeal only exists to the extent it has been legislatively granted. *Id.* at 665 (quotation marks and citations omitted).

Section 12-301 of the Courts and Judicial Proceedings Article of the Maryland Code (“CJP”), (1984, 2021 Repl. Vol., 2022 Supp.), titled “Appeal of final judgments,” generally authorizes appeals from “from a final judgment entered in a civil or criminal case by a circuit court.” It also allows appeals from other final judgments “unless in a particular case the right of appeal is expressly denied by law.” *Id.*

Section 12-302(a) of the Courts and Judicial Proceedings Article, titled “Appeals not permitted,” expressly denies the right to certain appeals and thus provides a limitation on the broad right to appellate review set forth in CJP § 12-301. Of importance to this case, CJP § 12-302 denies a right of appeal “from a final judgment of a court entered or made in the exercise of appellate jurisdiction in reviewing the decision of ... an administrative

agency[.]” unless “a right to appeal is expressly granted by law[.]” CJP § 12-302(a). That means that, unless expressly provided by law, there is no right to appeal from a circuit court’s judicial review of an administrative agency’s decision. Accordingly, because the Parole Commission is an administrative agency, there is no right to appeal from judicial review of one of its decisions absent specific statutory authorization.⁵ We are unaware of any such statutory authorization applicable to this case.^{6 7}

⁵ At least one unreported decision of this Court has come to the same conclusion. *See Davis v. Maryland Parole Comm’n*, No. 1169, Sept. Term, 2018 (filed unreported Sept. 5, 2019, per curiam) (Dismissing an appeal because “there is no statute which permits appellate review before this Court of a ruling by a circuit court reviewing a decision of the Maryland Parole Commission.”).

⁶ While it is true that the APA generally provides a right of appeal from judicial review of an administrative agency pursuant to Section 10-223 of the State Government Article, that is immaterial to this case because, as explained earlier, the Parole Commission is specifically excluded from the APA.

⁷ We observe that CS 7-504(b)(3)(iv) provides that certain findings and actions of the Parole Commission when revoking an inmate’s release on mandatory supervision are “subject to appeal under Title 12, Subtitle 3 or Title 12, Subtitle 4 of the Courts Article.” *Id.* It is unclear whether CS 7-504(b)(3)(iv) provides for appeal that would ostensibly bring the non-prevailing party at the administrative agency level directly to this Court for review. We note that the presumptive penalties for technical violations, and the appeal provision concerning them, were created by the “Justice Reinvestment Act” (JRA) in 2016. Moreover, similar, if not identical, language was added to the statutory provisions governing violations of parole and violations of probation (“VOP”). *See* Crim Proc. § 6-223(e)(4) & CS § 7-401(d)(4)(iv).

In *Conaway v. State*, 464 Md. 505 (2019), Conaway argued that the newly added appeal provision for violations of probation (which is analytically indistinct from the newly added appeal provision for revocation of release on mandatory supervision and parole) gave him the right to a direct appeal from his VOP proceedings. Maryland’s Supreme Court disagreed and found that the JRA’s newly added appeal provision did not affect the existing provision which requires that review of an order of a circuit court revoking probation is done by filing an application for leave to appeal to this Court pursuant to CJP § 12-302(g). *Id.* at 527.

(continued)

CONCLUSION

Because there is no constitutional or statutory authorization for an appeal from the

Appellee has provided us with a letter from the Attorney General of Maryland to the Governor of Maryland addressing the “constitutionality and legal sufficiency” of the JRA. In that letter, the Attorney General points to an appeal provision created by the JRA which contains identical language to CS 7-504(b)(3)(iv) except the appeal provision at issue in the letter concerns revocation of release on parole. As noted earlier, both revocation release on parole and revocation of release on mandatory supervision proceedings are more or less identical. In any event, the Attorney General noted the following about that appeal provision:

The first issue relates to the provision of a right to appeal. In Senate Bill 1005, on pages 128 and 129, new § 7-401(d)(a)(iv) of the Correctional Services Article (“CS”) provides that a finding by a parole commissioner that adhering to limits on imprisonment for a parole violation under the bill creates a risk to public safety or to a victim or witness under new CS § 7-401(d)(4)(ii), or an action taken by a commissioner based on such a finding under new CS § 7-401(d)(4)(iii), “is subject to appeal under Title 12, Subtitle 3 or Title 12, Subtitle 4 of the Courts Article.” Neither the bill nor current law, however, authorizes a right of appeal of such an administrative finding or action under Courts and Judicial Proceedings Article, Title 12, Subtitle 3 or Subtitle 4. Those provisions enumerate specific rights of appeal of final judgments and certain interlocutory orders made by a circuit court or District Court and establish the jurisdiction of the State appellate courts in reviewing such final judgments and orders by trial courts. Under existing CS § 7-401(f), an inmate may seek judicial review in a circuit court of a written decision of the Parole Commission. As the General Assembly clearly intended in Senate Bill 1005 to provide some right to appeal a parole commissioner’s finding or action under new CS § 7-401(d)(4)(ii) or (iii), the legislature may wish to clarify its specific intended procedure for judicial or appellate review of a parole commissioner’s finding or action under the bill.

The question of the contours and procedures concerning Appellant’s right to appeal directly from the commissioner’s decision to revoke his supervised release to this Court is simply not before us in this appeal because Appellant never attempted an appeal pursuant to CS § 7-504(b)(3)(iv). Thus, we save those questions for another day.

circuit court’s denial of Appellant’s petition for judicial review of the decision of the Maryland Parole Commission to revoke his release on mandatory supervision, we lack jurisdiction over this appeal. Therefore, we must dismiss the appeal.

**APPEAL DISMISSED. COSTS TO BE
PAID BY APPELLANT.**