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IN THE
COURT OF APPEALS OF INDIANA

GEORGE PATRICK,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 71A04-1001-CR-1
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE ST. JOSEPH SUPERIOR COURT
The Honorable R.W. Chamblee, Jr., Judge
Cause No. 71D08-9102-CF-164

April 7, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

BRADFORD, Judge

In this *pro se* appeal, Defendant-Appellant George Patrick challenges the trial court's denial of his motion for relief from judgment by claiming that his obligation to comply with certain conditions of his parole violates the prohibition against ex post facto laws in the Indiana and United States Constitutions. We affirm.

FACTS AND PROCEDURAL HISTORY

Patrick was convicted on September 4, 1991, of two counts of Class C felony criminal confinement (Counts I and II), and two counts of Class B felony rape (Counts III and IV). On October 1, 1991, Patrick was sentenced to serve an aggregate thirty-two-year sentence.

On August 14, 2009, Patrick filed a Motion to Remove Defendant from Indiana's Sex Offender Registry. The trial court deemed the motion moot on the basis that Patrick was imprisoned at the time and not presently required to register. On September 29, 2009, Patrick filed a Motion to Vacate Non-Applicable Sex Offender Stipulations and Remove Petitioner from Sex Offender Registry. In this motion, Patrick alleged that he was released to parole on September 17, 2007, but that the Parole Board revoked his parole on December 18, 2007, on the basis that he violated certain sex offender stipulations which were conditions of his parole. In seeking relief, Patrick alleged that application of these sex offender stipulations to him violated the ex post facto clause of the Indiana and United States Constitutions. On September 30, 2009, the trial court denied Patrick's motion on the grounds that, *inter alia*, it lacked jurisdiction to consider Patrick's challenge to the administrative decisions of the Parole Board.

On October 26, 2009, Patrick filed a Motion for Relief from Order of Judgment in which he contended, *inter alia*, that he had exhausted his administrative remedies by filing a grievance with the Department of Correction. On December 10, 2009, the trial court denied Patrick's motion. This appeal follows.

DISCUSSION AND DECISION

On appeal Patrick points to the Indiana Supreme Court opinions of *Wallace v. State*, 905 N.E.2d 371 (Ind. 2009), *reh'g denied*, and *State v. Pollard*, 908 N.E.2d 1145 (Ind. 2009), in which application of certain provisions of the Indiana Sex Offender Registration Act to defendants whose charges, convictions, and sentences predated the enactment of these provisions was found to violate the Indiana Constitution's prohibition of ex post facto laws. Patrick relies on *Wallace* and *Pollard* in challenging the trial court's denial of relief with respect to the Parole Board's revocation of his parole.

It has long been the law in Indiana that the Parole Board has almost absolute discretion in carrying out its duties and that it is not subject to the supervision or control of the Courts. *White v. Ind. Parole Bd.*, 713 N.E.2d 327, 328 (Ind. Ct. App. 1999), *trans. denied*. Indeed, there is no constitutional or inherent right to parole release. *Id.* Thus, our review of a decision from the Parole Board is limited to a determination of whether "'the requirements of Due Process have been met and that the Parole Board has acted within the scope of its powers.'" *Id.* (quoting *Murphy v. Ind. Parole Bd.*, 272 Ind. 200, 204, 397 N.E.2d 259, 261 (Ind. 1979)). These powers are defined by statute. *Id.* Consequently, any right to parole release in Indiana must emanate from the parole release statutes. *Id*.

Patrick does not make a due process challenge in the instant appeal, nor does he contend that the Parole Board acted outside of its statutory powers in revoking his parole. Patrick's challenge is instead based upon *Wallace* and *Pollard* and other cases involving the Act. Even if this were a cognizable challenge, Patrick fails to demonstrate that the Act—or those parts relevant to the *Wallace* and *Pollard* analyses—is applicable to him.

According to Patrick, the Parole Board should not have relied upon certain allegedly invalid conditions. Those conditions included the following: (1) that he "not reside, visit, or be within 1000 feet of parks, schools, day care centers . . . or other places where children congregate as ordered by the Parole Board"; (2) that he "not stay overnight with any adult and /or establish an intimate or sexual relationship without any prior approval . . . that was ordered by the Parole Board"; (3) that he "enroll in, actively participate in, and successfully complete an approved sex offender treatment program"; and (4) that he "agree to permit the installation, maintenance, and operation of any electronic monitoring equipment in both [his] home and on [his] body that was ordered by the Parole Board." Appellant's App. pp. 25-26.

Apart from Patrick's claims, there is no official documentation in the record supporting the claimed language of these conditions or Patrick's violation of them. Pursuant to Indiana Appellate Rule 50(A)(2)(f), Patrick was required to include in his appendix all documents necessary for resolution of the issues raised on appeal. To the extent the above conditions exist and applied to Patrick, Patrick fails to demonstrate that they were the product of the Act or another statute rather than mere Parole Board guidelines. Indeed, Patrick points to no Indiana Code section exactly tracking the

language of the above conditions as it applies to parolees. This suggests that the conditions are likely the product of Parole Board guidelines. The prohibition against ex post facto laws is generally directed to the legislative branch of government rather than to the other branches. *See Prater v. U.S. Parole Comm'n*, 802 F.2d 948, 951-52 (7th Cir. 1986). "If judges get tougher on crime by meting out stiffer sentences or resolving more close procedural questions against criminal defendants, or prosecutors drive harder plea bargains, or the Parole Commission takes a more jaundiced view of applications for parole, the ex post facto prohibition is not violated, even though a criminal's punishment may end up being longer or harsher than he hoped when he committed the crime." *Id.* at 952.

To the extent Patrick argues that his parole conditions were the product of legislation, he fails to develop an argument relating to the ex post facto nature of Indiana Code section 11-13-3-4, which, as the State points out, is the relevant statutory provision for parole conditions for sex offenders. Significantly, neither *Wallace*, which concerned Indiana Code sections 11-8-8-1 through 11-8-8-22, nor *Pollard*, which concerned section 35-42-4-11, addressed this provision. Accordingly, we reject Patrick's challenge to the trial court's denial of relief with respect to the revocation of his parole.[1]

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[1] Patrick also dedicates a significant portion of his brief to the argument that future application of the Sex Offender Registry to him upon his release from incarceration violates ex post facto prohibitions. There is nothing in the record demonstrating that Patrick is required to comply with registry requirements under threat of prosecution rather than as a mere condition of his parole. Because such application of the registry is purely speculative at this time, Patrick's claim on this point is not ripe for review. *See Gardner v. State*, No. 47A01-0908-CR-399, 2009 WL 5874405, __ N.E.2d __, (Ind. Ct. App. Dec. 29, 2009) (concluding that speculative registry requirements for prisoner contemplating future release are not ripe for review), *trans. denied*.

The judgment of the trial court is affirmed.

RILEY, J., and MATHIAS, J., concur.