

**NOTICE**  
This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

2014 IL App (4th) 4130595-U

NO. 4-13-0595

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

**FILED**  
April 23, 2014  
Carla Bender  
4<sup>th</sup> District Appellate  
Court, IL

BRUCE SHARP,	)	Appeal from
Plaintiff-Appellant,	)	Circuit Court of
v.	)	Sangamon County
THE PRISONER REVIEW BOARD,	)	No. 13MR149
Defendant-Appellee.	)	
	)	Honorable
	)	Patrick W. Kelley,
	)	Judge Presiding.

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JUSTICE HOLDER WHITE delivered the judgment of the court.  
Justices Harris and Steigmann concurred in the judgment.

**ORDER**

¶ 1 *Held:* The appellate court affirmed, concluding the prisoner review board's decision to deny defendant's parole could not be reviewed under a writ of *certiorari*.

¶ 2 In November 2012, the prisoner review board (Board) denied the parole of defendant, Bruce Sharp, who was serving a 30- to 125-year sentence for the 1970 murder of a Chicago police officer. The Board reasoned that allowing defendant's parole would deprecate the seriousness of the offense and promote disrespect for the law. In January 2013, defendant filed a petition for a common law writ of *certiorari* in the circuit court, asking the court to review the Board's decision. Following a July 2013 telephone conference, the court dismissed defendant's petition, finding (1) a common law writ of *certiorari* was not available to review Board decisions denying parole and (2) the Board had authority to deny defendant parole.

¶ 3 Defendant appeals, arguing the circuit court erred by dismissing his petition because the Board enlarged what defendant claims is "the sentence determined by the trial court to be adequate" for his offense, a 30-year sentence. For the reasons that follow, we disagree and affirm.

¶ 4 I. BACKGROUND

¶ 5 Defendant is currently serving an indeterminate prison sentence of 30 to 125 years for the June 1970 murder of Chicago police officer Kenneth Kaner. In November 2012, the Board denied defendant parole. The Board found that defendant, who was 66 years old and had served 42 years in prison, was "deeply remorseful," had "strong parole plans and family support," and continued to be a "strong role model" for other prisoners. Nonetheless, the Board voted to deny parole to defendant because it would deprecate the seriousness of the offense and promote disrespect for the law. The Board set defendant's next parole review for October 2015.

¶ 6 In January 2013, defendant filed a common law writ of *certiorari* in the circuit court naming the Board as defendant. Defendant asserted the Board lacked the ability to deny him parole because the trial court had determined 30 years was an adequate sentence given the seriousness of defendant's crime and 125 years was the amount of time that could be necessary for defendant to achieve rehabilitation. By denying him parole, defendant claimed, the Board "enlarge[d] the period of time determined by the trial court to [be] adequate for his offense (which is 30 years)." Defendant posited the Board's denial of parole violated the proportionate penalties and separation of powers clauses of the Illinois Constitution of 1970. Ill. Const. 1970, art. I, § 11; art. II, § 1. He also argued that the Board's denial failed to give the "great deference and weight" to which a judge's sentence is entitled. Based on the foregoing, defendant requested

the court grant a writ of *certiorari* and order a new parole hearing or reconsideration of the facts so that a new finding could be rendered without consideration of the seriousness of the offense.

¶ 7 In May 2013, the Board filed a memorandum of law in support of its decision. The Board argued that, under *Hanrahan v. Williams*, 174 Ill. 2d 268, 673 N.E.2d 251 (1996), *certiorari* was not available to review its parole decisions. In the alternative, the Board asserted that its decision was not against the manifest weight of the evidence or contrary to law because the Board set forth the rationale for its decision—namely, that releasing defendant would deprecate the seriousness of defendant's offense and promote disrespect for the law. The Board noted the Unified Code of Corrections (Unified Code) provides the Board "shall not parole a person \*\*\* if it determines," among other things, that "his release \*\*\* would deprecate the seriousness of his offense or promote disrespect for the law." See 730 ILCS 5/3-3-5(c)(2) (West 2012). In June 2013, defendant filed a reply, arguing the circuit court should order the Board to reconsider the facts of his hearing "without considering the criterion found in 730 ILCS 5/3-3-5(c)(2)" because the Board lacked jurisdiction to change the 30-year sentence that defendant claimed the trial court determined was adequate for the offense. Alternatively, if the circuit court found section 3-3-5(c)(2) of the Unified Code granted the Board the ability to "change the portion of the sentence the trial court determined was adequate for the offense," the court should find the statute was unconstitutional.

¶ 8 Later that month, the Board filed a surrebuttal, asserting (1) the Illinois Supreme Court's decision in *Hanrahan* made clear that *certiorari* is unavailable to review the Board's parole decisions, (2) the Unified Code provided the Board authority to review defendant's parole, and (3) defendant was afforded all due process by the Board. Defendant filed a sursurrebuttal,

raising as an additional claim that he was entitled to relief under article I, section 12 of the Illinois Constitution (Ill. Const. 1970, art. I, § 12).

¶ 9 Following a July 2013 telephone conference, the circuit court dismissed defendant's petition, finding (1) a common-law writ of *certiorari* was not available to review Board decisions denying parole and (2) the Board had authority to deny defendant parole. This appeal followed.

¶ 10 II. ANALYSIS

¶ 11 On appeal, defendant argues the circuit court erred by dismissing his petition. Specifically, defendant argues the Board enlarged what defendant claims is "the sentence determined by the trial court to be adequate" for his offense, a 30-year sentence. We disagree.

¶ 12 In Illinois, parole is not a right, but rather, a matter of grace and executive clemency. *Hill v. Walker*, 241 Ill. 2d 479, 486, 948 N.E.2d 601, 605 (2011). The Board is an administrative agency, created by the legislature, charged with the duty of determining "whether an eligible inmate should be granted or denied parole." *Id.* The Unified Code provides that the Board must deny parole where, among other things, an inmate's "release at that time would deprecate the seriousness of his offense or promote disrespect for the law[.]" 730 ILCS 5/3-3-5(c)(2) (West 2012). The Unified Code does not, however, provide criteria under which the Board must *grant* parole. *Hill*, 241 Ill.2d at 487, 948 N.E.2d at 605.

¶ 13 The Board has also developed its own regulations, as authorized by the legislature. See 730 ILCS 5/3-3-2(d), 3-3-5(h) (West 2012). These regulations provide, in relevant part, that "[t]he Board grants parole as an exercise of grace and executive discretion" and the Board's "parole release decision is a subjective determination based on available relevant information." 20 Ill. Adm. Code 1610.50(a), (b) (1985).

¶ 14 In *Hanrahan*, the Illinois Supreme Court concluded "Illinois' statutory criteria and the Board's rules do not provide standards for release on parole sufficiently objective to allow a court to evaluate the Board's decision to deny parole." *Hanrahan*, 174 Ill. 2d at 276, 673 N.E.2d at 255. Accordingly, the supreme court concluded the legislature intended to give the Board "complete discretion in determining whether to grant parole when the denial of parole is not mandated by statute." *Id.* Thus, the supreme court reasoned a common-law writ of *certiorari* could not be issued to review the merits of the Board's decision to deny the defendant's parole. *Id.* at 281, 673 N.E.2d at 257.

¶ 15 Notwithstanding the decision in *Hanrahan*, defendant asserts his case should be reviewed because the Board unlawfully enlarged the "sentence determined by the trial court to be adequate for the offense." Defendant's theory is that, by imposing a 30- to 125-year sentence, the trial court determined 30 years was an adequate prison sentence given the seriousness of defendant's offense but 125 years could be necessary for defendant to achieve rehabilitation. Thus, defendant claims, as of the date he served a 30-year sentence, he fully satisfied the length of time required for the seriousness of his offense. We disagree. By imposing a 30- to 125-year sentence, the trial court merely set forth a minimum and maximum sentence, allowing the Board discretion to determine after 30 years whether defendant could be released on parole. In exercising that discretion, the Board found, consistent with section 3-3-5(c)(2) of the Unified Code (730 ILCS 5/3-3-5(c)(2) (West 2012)), that allowing defendant to be released would deprecate the seriousness of the offense and promote disrespect for the law.

¶ 16 In sum, the supreme court in *Hanrahan* made clear that a common-law writ of *certiorari* could not be issued to review the merits of a Board's decision to deny parole to a defendant. *Hanrahan*, 174 Ill. 2d at 281, 673 N.E.2d at 257. Here, defendant sought a writ of

*certiorari* to review the Board's decision as to his parole. Thus, the circuit court properly dismissed defendant's petition.

¶ 17

### III. CONCLUSION

¶ 18

For the reasons stated, we affirm the circuit court's judgment.

¶ 19

Affirmed.