

United States Court of Appeals  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17-5285

September Term, 2018

1:15-cv-01623-BAH

Filed On: December 19, 2018

Oliver M. Boling,

Appellant

v.

United States Parole Commission, et al.,

Appellees

Exhibit (A) #1

**BEFORE:** Tatel, Griffith, and Srinivasan, Circuit Judges

**ORDER**

Upon consideration of the motion for summary affirmance, the opposition thereto, and the "cross motion for summary affirmance by appellant," which the court construes as a motion for summary reversal, and the court's order to show cause filed September 13, 2018, it is

**ORDERED** that the order to show cause be discharged. It is

**FURTHER ORDERED** that the motion for summary affirmance be granted and the motion for summary reversal be denied. The merits of the parties' positions are so clear as to warrant summary action. See Taxpayers Watchdog, Inc. v. Stanley, 819 F.2d 294, 297 (D.C. Cir. 1987) (per curiam).

The district court correctly dismissed the complaint for damages against the U.S. Parole Commission and the individual appellees acting in their official capacities as barred by sovereign immunity. See Settles v. U.S. Parole Comm'n, 429 F.3d 1098, 1106 (D.C. Cir. 2005); Wilburn v. Robinson, 480 F.3d 1140, 1148 (D.C. Cir. 2007).

The district court also correctly concluded that appellant failed to state a claim upon which relief can be granted in seeking equitable relief and damages against the individual appellees. Appellant's claims under 42 U.S.C. §§ 1985(3) and 1986 fail because he did not allege a conspiracy motivated by "some class-based, invidiously discriminatory animus." Hoai v. Vo, 935 F.2d 308, 314 (D.C. Cir. 1991). Appellant also failed to state a claim under 18 U.S.C. §§ 241 and 242 because those provisions are criminal statutes that do not provide a private cause of action. See Johnson v. Fenty, No. 10-5105, 2010 WL 4340344, at \*1 (D.C. Cir. Oct. 1, 2010). Finally, appellant failed

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to state a claim under 42 U.S.C. § 1983. Appellant's ex post facto claim has already been rejected by the Tenth Circuit in Boling v. Mundt, 261 F. App'x 133, 137 (10th Cir. 2008), and is barred by issue preclusion. See Yamaha Corp. of Am. v. United States, 961 F.2d 245, 254 (D.C. Cir. 1992). Appellant's due process claim fails because neither the Constitution nor D.C. law creates a due process liberty interest in parole. See Ellis v. District of Columbia, 84 F.3d 1413, 1415 (D.C. Cir. 1996); D.C. Code § 24-404.

Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate herein until seven days after resolution of any timely petition for rehearing or petition for rehearing en banc. See Fed. R. App. P. 41(b); D.C. Cir. Rule 41.

Per Curiam

E4h.b.T(A)-2

United States Court of Appeals  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17-5285

September Term, 2018

1:15-cv-01623-BAH

Filed On: March 14, 2019 [1777534]

Oliver M. Boling,

Appellant

EXHIBIT (B)

v.

United States Parole Commission, et al.,

Appellees

**MANDATE**

In accordance with the order of December 19, 2018, and pursuant to Federal Rule of Appellate Procedure 41, this constitutes the formal mandate of this court.

**FOR THE COURT:**  
Mark J. Langer, Clerk

BY: /s/  
Ken R. Meadows  
Deputy Clerk

[Link to the order filed December 19, 2018](#)

United States Court of Appeals  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

**No. 17-5285**

**September Term, 2018**

**1:15-cv-01623-BAH**

**Filed On: March 6, 2019**

Oliver M. Boling,

Appellant

(B)

v.

United States Parole Commission, et al.,

Appellees

**BEFORE:** Garland, Chief Judge, and Henderson, Rogers, Tatel, Griffith, Srinivasan, Millett, Pillard, Wilkins, and Katsas, Circuit Judges

**ORDER**

Upon consideration of the petition for rehearing en banc, and the absence of a request by any member of the court for a vote, it is

**ORDERED** that the petition be denied.

**Per Curiam**

**FOR THE COURT:**  
Mark J. Langer, Clerk

BY: /s/  
Ken Meadows  
Deputy Clerk

U.S. DEPARTMENT OF JUSTICE  
United States Parole Commission

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August 19, 2010

Oliver Boling, Reg. No. 36688-118  
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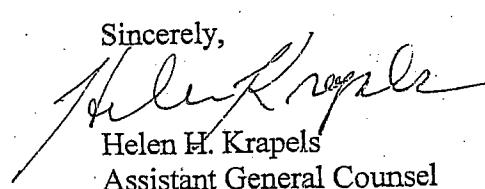
Dear Mr. Boling,

This is in response to your letter to Judge Huvelle concerning your case. The Commission conducted a hearing for you in December 2003 following revocation of your release by the D.C. Board of Parole. After issuing its decision, the Commission determined that it had significant adverse information that had not been considered in making its decision and decided to reopen the case and conduct a reconsideration hearing so that you could respond to this information. The information that prompted the reopening of your case was found (misfiled) in your Parole Commission file and was the basis for the decision to reopen your case.

In the June 5, 2004 notice of action, the Commission advised you that it was reopening your case based upon "significant adverse information in your file that was not considered in making the decision contained in the notice of action dated December 19, 2003." The Commission stated that it was reopening your case pursuant to 28 C.F.R. § 2.28, a regulation that is generally used for reopening U.S. Code cases, and the analogous provision for D.C. Code cases is found at 28 C.F.R. § 2.86(b), which states that the Commission may "reconsider any grant of parole prior to the prisoner's actual release on parole." These two provisions achieve the same result, namely, providing the Commission with the opportunity to reconsider its decision in light of new adverse, or favorable, information. The Commission disclosed the information that it would be considering before the hearing, you had counsel to assist you with this proceeding, but then you refused to participate. There is no indication that you were prejudiced by the Parole Commission citing to the wrong section of the Code of Federal Regulations; therefore, the Commission will not take further action.

Further, since the D.C. Board of Parole's regulations permitted it to schedule special hearings, there is no merit to your claim that the application of the Commission's regulations violated the Ex Post Facto Clause.

Sincerely,

  
Helen H. Krapels  
Assistant General Counsel

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