



**In the
Missouri Court of Appeals
Western District**

EARNEST LEE LANGSTON,

Appellant,

v.

**MISSOURI BOARD OF PROBATION
AND PAROLE,**

Respondent.

WD82037

ORDER FILED:

April 16, 2019

**Appeal from the Circuit Court of Cole County, Missouri
The Honorable Daniel Richard Green, Judge**

**Before Division Four: Karen King Mitchell, Chief Judge Presiding,
Mark D. Pfeiffer, and Thomas N. Chapman, Judges**

ORDER

Per Curiam:

Earnest Langston (Langston) appeals from the order of the Circuit Court of Cole County (Circuit Court) dismissing his Petition for Review of an Administrative Agency Decision, brought under § 536.150, the Administrative Procedures Act (APA). We affirm. Rule 84.16(b).

APPENDIX A



**In the
Missouri Court of Appeals
Western District**

EARNEST LEE LANGSTON,

Appellant,

v.

**MISSOURI BOARD OF PROBATION
AND PAROLE,**

Respondent.

WD82037

MEMORANDUM FILED:

April 16, 2019

MEMORANDUM¹

Earnest Langston (Langston) filed a Petition for Review of an Administrative Agency Decision under § 536.150, the Administrative Procedures Act (APA), contesting the determination of the Missouri Board of Probation and Parole (Board) establishing the date he would be eligible for parole. The Circuit Court of Cole County (Circuit Court) granted the Board's Motion to dismiss, finding that Langston's claim was not cognizable under the APA, barred by res judicata and collateral estoppel, untimely, and failed to state a claim. In two points

¹This informal, unpublished memorandum is provided to the parties to explain the rationale for the order affirming judgment. This memorandum is not a formal opinion and is not uniformly available. It shall not be reported, cited, or used in unrelated cases before this court or any other court. A copy of this memorandum shall be attached to any motion filed for rehearing or for transfer to the Supreme Court.

on appeal, Langston argues that the Circuit Court erred in granting the Board's Motion to Dismiss because (1) his petition alleged that an earlier judicial affirmation of the Board's decision was based on fraud; and (2) that the Board's determination retrospectively applied a statute in violation of his constitutional rights, entitling him to a hearing under the provisions of the APA. We affirm.

Factual Summary.

In 1973, Langston was convicted by the Circuit Court of Saint Louis City of robbery with a deadly weapon and assault with intent to kill with malice, and sentenced to fifty years and a term of life, to be served concurrently in the Missouri Department of Corrections (DOC). After receiving parole, Langston violated that parole and returned to the custody of the DOC in 1991. Langston was later sentenced for a series of felonies he committed while on parole, including first degree robbery (33 years), armed criminal action (75 years), kidnapping (15 years), armed criminal action (75 years), first degree sexual abuse (7 years), armed criminal action (life imprisonment), stealing a motor vehicle (7 years), rape (life imprisonment), second degree robbery (15 years), and first degree robbery (life imprisonment).

With the exception of the initial thirty-year sentence for first degree robbery, all of the sentences were set to run consecutively to each other and to the sentences in the 1973 case. After the 1991 conviction and sentences were added to his earlier sentences, Langston was originally declared ineligible for parole. Following this Court's decision in *Wolfe v. Missouri Department of Corrections*, 199 S.W.3d 219 (Mo. App. W.D. 2006), the Board recalculated Langston's mandatory minimum prison term and determined that he would be eligible for parole in 2082.

In 2009 Langston filed a petition for declaratory judgment contesting the Board's recalculated parole date. The circuit court in that case granted the Board summary judgment and Langston appealed. *Langston v. Missouri Bd. of Prob. & Parole*, 391 S.W.3d 473, 474 (Mo. App. W.D. 2012). This Court found that "[t]he Parole Board correctly applied section 217.690.5 in adding the minimum prison term of each of Langston's consecutive sentences to reach the minimum term he must serve before being eligible for parole." *Id.* at 476. Langston's Motion for Rehearing or Transfer to the Missouri Supreme Court was denied.

Langston filed the instant action seeking review of an administrative decision as provided by the APA, contending that the Board's determination was in error because it failed to properly apply the statute in effect at the time of his offenses and violated his rights by giving him a life sentence. The Circuit Court granted the Board's Motion to Dismiss. This appeal followed.

Standard of Review

"We review *de novo* the grant of a motion to dismiss, examining the pleadings to determine whether they invoke principles of substantive law." *Weems v. Montgomery*, 126 S.W.3d 479, 484 (Mo. App. W.D. 2004). "The pleadings are liberally construed and all alleged facts are accepted as true and construed in a light most favorable to the pleader." *Fuller v. Partee*, 540 S.W.3d 864, 867–68 (Mo. App. W.D. 2018) (quoting *Weems*, 126 S.W.3d at 483). However, "[i]f the motion to dismiss can be sustained on any ground alleged in the motion, the trial court's ruling will be affirmed." *Foster v. State*, 352 S.W.3d 357, 359 (Mo. banc 2011).

Analysis

Both of Langston's points on appeal rely on his incorrect assertion that he was entitled to Circuit Court review of the Board's determination of his parole eligibility under § 536.150, which provides, in pertinent part, as follows:

“When any administrative officer or body...shall have rendered a decision which is not subject to administrative review, determining the legal rights, duties or privileges of any person,...***and there is no other provision for judicial inquiry into or review of such decision***, such decision may be reviewed by suit for injunction, certiorari, mandamus, prohibition or other appropriate action....”

(Emphasis added.)

In the previous action Langston had challenged the Board’s parole calculation as provided in § 217.690.5. *Langston*, 391 S.W.3d at 475. Section 217.670.3 provides limited review of Board decisions: “The orders of the board shall not be reviewable except as to compliance with the terms of sections 217.650 to 217.810 or any rules promulgated pursuant to such section.”

In *Ladd v. Missouri Bd. of Prob. & Parole*, 299 S.W.3d 33 (Mo. App. W.D. 2009), this Court considered whether a prisoner was permitted to seek review of the Board’s parole eligibility determination under the APA. *Id.* at 36. The Court noted that “generally, the APA’s judicial review provisions are applicable where an agency’s organic statutes are silent as to judicial review of its decisions, or where the organic statute fails to address particular procedural issues.” *Id.* at 37. The Court then set out that when “a specific statute exists concerning judicial review of administrative procedures, it is to be followed exclusive of the general provisions for judicial review of administrative decisions found in Chapter 536.” *Id.* (quoting *Hundley v. Wenzel*, 59 S.W.3d 1, 4–5 (Mo. App. W.D. 2001)). Applying that principle to decisions of the Board, the Court found that “the Board’s powers, duties, and procedures are set forth in §§ 217.650 to 217.810.” *Id.* The Court noted that review of the Board’s decisions was specifically provided for in § 217.670.3. *Id.* As a consequence, *Ladd* held that, since “it specifically addresses the scope of review of decisions of the Board of Probation and Parole, § 217.670.3

renders the general judicial review provisions of Chapter 536 inapplicable” and that Ladd’s claims under the APA were “clearly foreclosed.” *Id.*

The Board’s recalculation of Langston’s parole did not entitle him to judicial review as provided under the APA. *Id.* The Circuit Court did not err in dismissing Langston’s Petition for Review of an Administrative Agency Decision.

Conclusion

The judgment of the Circuit Court is affirmed.

of the sentence imposed, whichever occurs first. Section 558.019.4(1) explicitly provides that in determining the minimum prison term to be served, a life sentence shall be calculated to be thirty years. Eighty-five percent of thirty years is 25.5 years. Eighty-five percent of his ten-year sentence is 8.5 years. Thus, the circuit court correctly determined that Wolfe's minimum prison term prior to parole eligibility should be calculated as thirty-four years (25.5 years plus 8.5 years).

MDOC concedes that section 558.019.4(1) [**9] requires that, for purposes of determining the mandatory minimum prison term to be served, a life sentence is considered to be thirty years; therefore, Wolfe becomes "theoretically" parole eligible on the life sentence after eighty-five percent of that sentence, or 25.5 years. However, because MDOC interprets a life sentence that is coupled with a ten-year consecutive sentence to be more than seventy-five years, MDOC argues that section 558.019.4(2) applies in this instance. That section provides that "[a]ny sentence either alone or in the aggregate with other consecutive sentences for crimes committed at or near the same time which is over seventy-five years shall be calculated to be seventy-five years." As a matter of law, asserts MDOC, Wolfe's two sentences are aggregated into a single seventy-five-year sentence under subparagraph (2). Under this method of calculation, MDOC argues, Wolfe's mandatory minimum prison term will be completed on Wolfe's seventieth birthday.

In another twist to its argument, MDOC asserts that Wolfe cannot serve eighty-five percent of his ten-year sentence, as he must under section 558.019.3, until [**10] that sentence begins to run. MDOC contends, until a prisoner dies, a life sentence is not completed, thus his second sentence will never begin.

We will not interpret section 558.019 to permit an unreasonable result. See Carroll v. Mo. Bd. of Prob. & Parole, 113 S.W.3d 654, 658 (Mo.App. W.D. 2003). As previously discussed, section 558.019.4(1) clearly establishes that for the purpose of determining the minimum prison term to be served, a life sentence shall be calculated to be thirty years. MDOC's argument that the provision applicable here is that Wolfe's sentences, in the aggregate, are over seventy-five years and thus should be calculated as seventy-five years is nonsensical in light of the clear language of section 558.019.4(1).

The judgment of the circuit court is affirmed.

Victor C. Howard, Chief Judge

Breckenridge and Hardwick, JJ., concur.

Footnotes

17

All statutory references are to RSMo 2000.

APPENDIX 'A-1'

IN THE CIRCUIT COURT OF COLE COUNTY
STATE OF MISSOURI

EARNEST L. LANGSTON, #23783,

Petitioner,

v.

MISSOURI BOARD OF
PROBATION & PAROLE,

Respondent.

Case No. 17AC-CC00536

MEMORANDUM, ORDER AND JUDGMENT

The matter is before the Court on the motion to dismiss the petition for review of Administrative Agency decision and Langston's opposition to the motion. After consideration, the motion to dismiss is granted.

The record before the Court reflects the following: In May 1973, in case 72-1381, the Circuit Court of St. Louis City sentenced Langston to fifty years imprisonment for first-degree robbery and a concurrent term of life imprisonment for assault with intent to kill with malice. *State v. Langston*, 515 S.W.2d 852 (Mo. App. St. Louis D. 1974); *Langston v. State*, 615 S.W.2d 501 (Mo. App. E.D. 1981). Langston was parole from these sentences, but he returned as a parole violator in January 1991.

In December 1991, in case 901-1748, the Circuit Court of St. Louis City sentenced Langston for new felonies that he committed while on parole, including thirty years for first-degree robbery, seventy-five years for armed criminal action, fifteen years for kidnapping, seventy-five years for armed criminal action, seven

APPENDIX "B"

years for first-degree sexual abuse, life imprisonment for armed criminal action, seven years for stealing a motor vehicle, life imprisonment for rape, fifteen years for second-degree robbery, and life imprisonment for first-degree robbery. All of these sentences, except the first thirty-year sentence for first-degree robbery, run consecutively to each other and to the sentences in case 72-1381. *Langston v. Missouri Board of Probation and Parole*, 291 S.W.3d 473 (Mo. App. W.D. 2012).

Originally, the Missouri Board of Probation and Parole determined that Langston was parole ineligible. But after the court of appeals decision in *Wolfe v. Missouri Department of Corrections*, 199 S.W.3d 219 (Mo. App. W.D. 2006) and *Edger v. Missouri Board of Probation and Parole*, 307 S.W.3d 718 (Mo. App. W.D. 2010), the Board recalculated Langston's mandatory minimum prison term. On March 15, 2012, the Missouri Board of Probation and Parole determined that Langston was parole ineligible until 2082, and it scheduled him for a parole hearing in May 2080 (Petitioner's Exhibit 2-E). Langston challenged the Board's determination by filing a petition for declaratory judgment. The Missouri Court of Appeals approved the Board's calculation of the mandatory minimum prison term. *Langston*, 391 S.W.3d at 477.

The Court dismisses the petition for four independent reasons. First Langston presents the challenge as a "review of administrative agency decision" (Petition, p. 1) under section 536.150, RSMo (Petition, p. 1) because it is a non-contested case (Petition, p. 1). A claim for judicial review of a parole board decision is not cognizable as a review of an administrative agency decision. *Ladd v. Missouri*

Board of Probation and Parole, 299 S.W.3d 33 (Mo. App. W.D. 2009). Accordingly, Langston's petition is dismissed.

Second, principles of res judicata and collateral estoppel preclude Langston's re-litigation of the correctness of the mandatory minimum. As noted earlier, the Cole County Circuit Court and the Missouri Court of Appeals have already determined that the Board has correctly calculated Langston's parole ineligibility (Respondent's Exhibit A); *Langston*, 391 S.W.3d at 477. Langston seems to suggest in his petition that he has a new theory under the Ex Post Facto Clause (Petition, p. 2). But it is not a new theory. The court of appeals rejected an ex post facto claim in the 2012 decision. *Langston*, 391 S.W.3d at 477. Langston may suggest that it is a new theory. If so, then he does not provide any explanation for failing to present it in the earlier litigation. Principles of res judicata and collateral estoppel preclude such piecemeal litigation of claims.

Third, the petition is untimely. Langston complains about the March 2012 Board decision to schedule him for a parole hearing in May 2080. But the statute of limitations for a challenge to an action by the Department of Corrections is one year. Section 516.145, RSMo. Missouri law provides a one-year limitations period for offenders to file suit against any employee or entity of the Department of Corrections. Section 516.145. Section 516.145, which specifies what actions must be brought within one year, provides: "Within one year: all actions brought by an offender, as defined in section 217.010, against the department of corrections or any entity or division thereof, or any employee or former employee for an act in an

official capacity, or by the omission of an official duty.” The one-year statute of limitations applies to all actions brought by an offender. *Kinder v. Missouri Dept. of Corrections*, 43 S.W.3d 369, 373 (Mo. App. W.D. 2001) (“The word ‘all’ prefacing the word ‘actions’ indicates that the legislature did not intend for there to be any type of claim that an offender could bring that would be an exception to the one-year time limit in § 516.145.”). “The Missouri Supreme Court has held that the one-year statute of limitations prescribed by Section 516.145 is consistent with the United States Constitution and the Missouri Constitution. *Cooper v. Minor*, 16 S.W.3d 578, 582 (Mo. 2000).

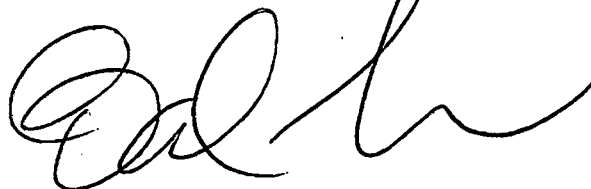
This Court must give effect to the plain and ordinary meaning of the language of a statute. *State v. Bazell*, 497 S.W.3d 263, 266 (Mo. 2016). “If the words are clear, the Court must apply the plain meaning of the law.” Here, the language of Section 516.145 is clear. The Board of Probation and Parole is a division of the Missouri Department of Corrections. Petitioner is an offender because he is in the custody or supervision of the Department. Section 217.010.12. A petition for administrative review is a civil action against the Board.

Under Missouri law, the statute of limitations for Petitioner’s claim began on March 15, 2012, when the Board scheduled his parole hearing date for May 2080. Section 516.100 (action accrues when damage resulting from alleged wrong is capable of ascertainment). Petitioner filed his petition in this Court on October 17, 2017, well outside of the one-year statute of limitations mandated by Section 516.145. As a result, the petition is time-barred for review.

Fourth, the petition fails to state a claim. As noted before, Langston's mandatory minimum prison term is calculated correctly under the *Wolfe* and *Edger* decisions. The court of appeals determined that Langston showed no violation of the Ex Post Facto Clause. *Langston*, 391 S.W.3d at 477. The court was well aware that Langston committed his crimes while section 558.019 RSMo Cum. Supp. 1989 was in effect. *Id.* at 476. Langston fails to allege facts that show an entitlement to relief.

Date

7/9/18



Judge Daniel R. Green

IN THE CIRCUIT COURT OF COLE COUNTY
STATE OF MISSOURI

EARNEST LANGSTON,

Petitioner,

v.

09AC-CC00541-01

MISSOURI BOARD OF PROBATION
AND PAROLE,

Respondent.

DECISION JUDGMENT AND ORDER

Earnest Langston raises statutory, regulatory, and constitutional challenges to the Parole Board's determination of his parole eligibility date. All of these challenges are based misinterpretations of Missouri law. Langston's parole eligibility date has been correctly calculated by aggregating the ineligibility periods on his consecutive sentences, and where applicable giving him the benefit of the 75-year rule of 558.019.4(2). *Wolfe v. Missouri Dept. Of Corrections*, 199 S.W.3d 219 (Mo. App. W.D. 2006); *Edger v. Missouri Bd. of Probation and Parole*, 307 S.W.3d 718 (Mo. App. W.D. 2010). Langston has no entitlement under Missouri law to have his numerous consecutive sentences all treated as a single 30-year sentence or a single 50-year sentence, for purposes of analyzing parole eligibility, and no right to have all his consecutive sentences converted to concurrent sentences.

Langston's Due Process Clause, Equal Protection Clause, and Ex Post Facto Clause claims are all without legal merit, as are his claims under Missouri statutes and parole regulations. Langston has not been disadvantaged by the use of

current parole statutes or regulations and he has no liberty interest in the use of earlier versions of the parole statutes or regulations. *See State ex. rel. Cavallaro v. Groose*, 908 S.W.2d 133 (Mo. banc 1995). He fails to set out an Equal Protection Clause claim by alleging that two inmates with life sentences or sentences more than 45 years had parole hearings after 13 years. Langston has many consecutive sentences with statutory or regulatory mandatory-minimum prison terms, and those sentences make his case distinguishable from inmates who become parole eligible after 15 years and therefore receive a hearing after 13 years.

Because all Langston's claims fail as a matter of law and there are no genuinely disputed facts material to that determination summary judgment is granted for the Missouri Board of Probation and Parole.

5/14/12
Date

[Signature]
Circuit Judge

~~2~~

APPENDIX B-1

27

Missouri Court of Appeals

WESTERN DISTRICT

May 28, 2019

IMPORTANT NOTICE

To: All Attorneys of Record

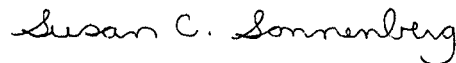
Re: EARNEST LEE LANGSTON #23783, APPELLANT,

vs.

MISSOURI BOARD OF PROBATION AND PAROLE, RESPONDENT.

WD82037

Please be advised that Appellant's motion for Rehearing is **OVERRULED** and motion for transfer to Supreme Court is **DENIED**. See Rule 83.04.



Susan C. Sonnenberg
Clerk

cc: PATRICK JOSEPH LOGAN
EARNEST LEE LANGSTON m/o

APPENDIX D

**Additional material
from this filing is
available in the
Clerk's Office.**