No. _____

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IN THE

SUPREME COURT OF THE UNITED STATES

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WILLIE PERRY WOODS, PETITIONER,

vs.

FCI HAZELTON FCI WARDEN H RAY, RESPONDENT.

_____

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

[West Virginia (WV) USDC]

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APPENDIX

BY PETITIONER PRO SE

_____

Mr Willie Perry Woods
Fed BOP Reg #01917-285
FCI Hazelton
P O Box 5000
Bruceton Mills, West Virginia
26525

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

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**No. 23-6565**

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WILLIE PERRY WOODS,

Petitioner - Appellant,

v.

WARDEN H. RAY, FCI Hazelton,

Respondent - Appellee.

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Appeal from the United States District Court for the Northern District of West Virginia, at Wheeling. John Preston Bailey, District Judge. (5:22-cv-00294-JPB-JPM)

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Submitted: October 19, 2023 Decided: October 24, 2023

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Before KING and WYNN, Circuit Judges, and TRAXLER, Senior Circuit Judge.

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Affirmed by unpublished per curiam opinion.

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Willie Perry Woods, Appellant Pro Se.

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PER CURIAM:

Willie Perry Woods, a federal prisoner, appeals the district court's order denying relief on his 28 U.S.C. § 2241 petition in which Woods challenged the execution of his sentence. We have reviewed the record and find no reversible error. Accordingly, we affirm the district court's order. *Woods v. Ray*, No. 5:22-cv-00294-JPB-JPM (N.D.W. Va. May 18, 2023). We deny Woods' motion for a copy of the district court record. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

*AFFIRMED*

FILED: October 24, 2023

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

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No. 23-6565
(5:22-cv-00294-JPB-JPM)

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WILLIE PERRY WOODS

Petitioner - Appellant

v.

WARDEN H. RAY, FCI Hazelton

Respondent - Appellee

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JUDGMENT

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In accordance with the decision of this court, the judgment of the district court is affirmed.

This judgment shall take effect upon issuance of this court's mandate in accordance with Fed. R. App. P. 41.

/s/ NWAMAKA ANOWI, CLERK

**IN THE UNITED STATES DISTRICT COURT**
**FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**
**Wheeling**

**WILLIE PERRY WOODS,**

Petitioner,

v.

**Civil Action No. 5:22-CV-294**
Judge Bailey

**H. RAY, WARDEN, FCI HAZELTON,**

Respondent.

**ORDER GRANTING SUMMARY JUDGMENT**

Pending before this Court are respondent's Motion to Dismiss, or in the Alternative for Summary Judgment [Doc. 18], as well as petitioner's Ex Parte Motion with Affidavit and Memorandum of Law for a Temporary Restraining Order (TRO) [Doc. 4], petitioner's Motion to Amend with Memorandum by Petitioner/Movant (PM) [Doc. 30], and petitioner's Motion to Strike Respondent's 3-27-2023 Submissions or Alternative Motion for Judicial Notice, with Supporting Memorandum and Index of Respondent's Inadmissible Data [Doc. 34].

On December 2, 2022, Mr. Woods[1] filed a Petition for Writ of Habeas Corpus Pusuant to 28 U.S.C. § 2241, citing nineteen (19) grounds for relief. The grounds are as follows:

[1] Petitioner's birth name is Curtis Tate, but he has used the alias Willie Perry Woods since 1974. The Michigan Department of Corrections listed petitioner under his birth name. Some courts have used his birth name, but also use his alias. The Bureau of Prisons lists him under his alias, which is the name that the Parole Commission uses. ***Woods v. United States***, 2022 WL 1632542, at *4 (E.D. Mich. May 23, 2022).

1. Longer execution of petitioner's fed sentence occurs partly because the USPC exceeded its power on 3-30-2022 by acting as Mich officers to find evidence of Mich crimes by him and that exceeding makes that execution fundamentally unfair (in violation of PDP) as well as an egregious abuse of USPC power (in violation of SDP);

2. Longer execution of petitioner's fed sentence occurs partly because the USPC on 3-30-2022 falsely claimed that MDOC "found evidence of new criminal conduct" did by him at MDOC and that falsity (makes that execution fundamentally unfair (in violation of PDP) as well as an egregious abuse of USPC power (in violation of SDP);

3. Longer execution of petitioner's fed sentence occurs partly because the USPC on 3-30-2022 irrationally refused to be guided by "1987 US Dist Lexis 9223" in answering if he infringed MDOC rules and that irrationality makes that execution fundamentally unfair (in violation of PDP) as well as an egregious abuse of USPC power (in violation of SDP);

4. Longer execution of petitioner's fed sentence occurs partly because the USPC on 3-30-2022 irrationally refused to be guided by "2001 US Dist Lexis 248" in answering if he infringed MDOC rules and that irrationality makes that execution fundamentally unfair (in violation of PDP) as well as an egregious abuse of USPC power (in violation of SDP);

5. Longer execution of petitioner's fed sentence occurs partly because the USPC on 3-30-2022 irrationally refused to be guided by "Martin v MDOC" in answering if he infringed MDOC rules and that irrationality makes that execution fundamentally unfair (in violation of PDP) as well as an egregious abuse of USPC power (in violation of SDP).

6. Further execution of petitioner's fed sentence occurs partly because the USPC on 3-30-2022 irrationally disregarded the especially mitigating circumstance of the 2021 waiver by MDOC of its PDR and that irrationality makes that execution fundamentally unfair (in violation of PDP) as well as an egregious abuse of USPC power (in violation of SDP).

7. Further execution of petitioner's fed sentence occurs partly because the USPC irrationally concluded on 3-30-2022 that there is a "reasonable probability" of recidivism in his case and that irrationality makes that execution fundamentally unfair (in violation of PDP) as well as an egregious abuse of USPC power (in violation of SDP).

8. Further execution of petitioner's fed sentence occurs partly because the USPC irrationally did not review his case on 20 individual occasions since 1978 and that irrationality makes that execution fundamentally unfair (in violation of PDP) as well as egregious abuse of USPC power (in violation of SDP);

9. Further execution of petitioner's fed sentence occurs partly because of national appeals bd (NAB) falsity that fed DHO hearings found that he did infractions at fed BOP and that falsity makes that execution fundamentally unfair (in violation of PDP) as well as an egregious abuse of NAB power (in violation of SDP);

10. Further execution of petitioner's fed sentence occurs partly because the NAB falsely claimed that the USPC did not "rely on disciplinary infractions found by MDOC" and that falsity makes that execution fundamentally unfair as well as an egregious abuse of NAB power (in violation of SDP);

11. Continued execution of petitioner's fed sentence occurs partly because the NAB falsified sentences 3-4 of paragraph 2 on page 1 of its 6-17-2022 NOA and that falsification makes that execution fundamentally unfair (in violation of PDP) as well as an egregious abuse of NAB power (in violation of SDP);

12. Continued execution of petitioner' s fed sentence occurs partly because the NAB falsely claimed that the USPC gave him a statutory "two-thirds parole hearing" on 3-30-2022 and that falsity makes that execution fundamentally unfair (in violation of PDP) as well as an egregious abuse of NAB power (in violation of SDP);

13. Continued execution of petitioner's fed sentence occurs partly because the NAB falsified sentence 2 of paragraph 4 on page 2 of its 6-17-2022 NOA and that falsification makes that execution fundamentally unfair (in violation of PDP) as well as an egregious abuse of NAB power (in violation of SDP).

14. Continued execution of petitioner's fed sentence occurs partly because the NAB falsified paragraph 1 on page 1 of its 6-17-2022 NOA and that falsification of the true nature of his appeal to the NAB makes that execution fundamentally unfair in violation of PDP as well as an egregious abuse of NAB power in violation of SDP;

15. Continued execution of petitioner's fed sentence occurs partly because the NAB falsified the last sentence of paragraph 3 on page 1 and sentence 6 in paragraph 4 on page 2 of its 6-17-2022 NOA, and that falsification makes that execution fundamentally unfair in violation of PDP as well as an egregious abuse of NAB power in violation of SDP;

16. More execution of petitioner' s fed sentence occurs partly because of an irrational misleading NAB claim that "at no point while serving your life sentence has the commission found you suitably for parole" and that misleading makes that execution

fundamentally unfair in violation of PDP as well as an egregious abuse of NAB power in violation of SDP.

17. More execution of petitioner's fed sentence occurs partly because of irrational NAB claim that above ground 8 does not show unjust prejudice and that irrationality is fundamentally unfair in violation of PDP as well as is an egregious abuse of NAB power in violation of SDP;

18. More execution of petitioner's fed sentence occurs partly because the USPC and NAB irrationally refused to remedy above grounds 1-16, and that irrationality makes that execution fundamentally unfair in violation of PDP as well as an egregious abuse of USPC and NAB power in violation of SDP;

19. The USDC has good cause to enter a declaratory judgment referring this case to the DOJ (crim div) because the 3-30-2022 NOA and 6-17-2022 NOA were intentionally falsified, in violation of 18 USC 1001 and 18 USC 1519, to maliciously deprive petitioner of his constitutional rights in violation of 18 USC 241 and 18 USC 242.

Petitioner Willie Perry Woods is a Federal BOP inmate currently designated to FCI Hazelton in Bruceton Mills, West Virginia.

Until March 2021, petitioner was held by the Michigan Department of Corrections ("MDOC") following his conviction on a charge of kidnapping by the Saginaw County Circuit Court, ***Tate v. Michigan Parole Bd.***, 2021 WL 1152890, at *1 (W.D. Mich. Mar. 26, 2021). He was also in custody pursuant to the judgment of the United States District Court for the Eastern District of Michigan for kidnapping in violation of 18 U.S.C. § 1201 and sentence of life imprisonment. ***Woods v. United States***, 2022 WL 1632542, at *1 (E.D. Mich. May

23, 2022). The court ordered the federal sentence to run concurrently with the state-imposed life sentence. ***Tate***, *supra* at *1.

Details of the federal offense reveal that on November 17, 1974, the subject and a codefendant kidnapped and transported two victims from Saginaw, Michigan, to Chicago, Illinois. During the course of the trip to Chicago, one victim was shot and one was sexually and physically assaulted. They stopped at a rest area where the codefendant robbed another victim and he was placed in the trunk of the car and transported with the two other victims to Chicago. Upon arrival in Chicago, the subject and codefendant committed an armed robbery of a grocery store and then released the victims. There is additional information that on November 23, 1974, in an effort to silence two other government witnesses in the instant case, the subject shot at them. Both of these persons sustained injuries from the shooting; one was shot in the head and the other in the chest.

On December 10, 1974, while being returned to the Saginaw County Jail after a preliminary examination, petitioner overpowered the deputy with him. He took the deputy's gun from its holster and forced the deputy to go with him as he exited the Courthouse building. When outside, petitioner attempted to commandeer a van driven by an employee of the Saginaw County Community Hospital. Petitioner entered the van and moments later fired a shot from the deputy's weapon while in the van. The bullet did not strike anyone and petitioner ran from the van to another parked car in the area, threatening the three occupants in the car and attempting to leave in that vehicle. After officers confronted petitioner, he threw down his weapon and was taken into custody. Petitioner was later convicted for Kidnapping and three counts of Felonious Assault in the Saginaw County, Michigan, Circuit Court, and sentenced to Life, concurrent with the federal Life sentence.

The BOP designated the MDOC facility where petitioner was held on his state sentence to be the institution for service of his federal term as well. The United States Marshal for the Eastern District of Michigan issued a detainer requesting that the MDOC provide notice if petitioner was to be released from MDOC custody to permit the Marshal to assume custody. ***Tate***, 2021 WL 1152890, at *1.

On March 30, 2021, the Michigan Parole Board paroled petitioner with a 4-year state parole term. He arrived at FCI Hazelton on September 27, 2022.

Petitioner's federal sentence provided for immediate parole eligibility and, in 1977, the U.S. Parole Commission conducted an initial parole review for him. Following that hearing, the Parole Commission ordered that he be continued to a statutory interim hearing in 1979. The notice of action dated March 15, 1977, explained that the parole guidelines indicated 5 years to be served before release for cases with good institutional adjustment, and that the guidelines did not have a maximum limit. The Commission advised him that it had found that his release at that time would "depreciate the seriousness of your offense behavior and thus is incompatible with the welfare of society."

Following the interim review in 1979, the Commission reiterated the information in the previous decision and ordered a four-year reconsideration hearing in 1983. Similarly, following an interim review in 1981, the Commission restated the information from the initial decision and ordered that petitioner be continued to a 10-year reconsideration hearing in 1991.

Following an interim review in 1986, the Commission ordered a reconsideration hearing in 2001. Revisions were made to the parole guidelines in 1982 (effective January 31, 1983). *See* 28 C.F.R. § 2.20 (Dec. 16, 1982). "Greatest II" category offenses were

replaced by Category Seven and Category Eight offense severity ratings. ***Nkosi v. Warden FCI-Allenwood Low***, 2022 WL 16855577, at *7 (M.D. Pa. Nov. 10, 2022). In its decision for petitioner, the Commission compared the two offense severity ratings to determine whether either was more favorable to him, and found that retroactive application of the new guidelines was not warranted.

Petitioner submitted an administrative appeal of this decision to the Commission's National Appeals Board ("NAB"), which affirmed the Commission's decision. The NAB corrected the reasons for the decision, using the previous Greatest Category of offense, and a minimum guideline of 60 months to be served before release.

The Commission conducted an interim review in 1988. The hearing examiner noted numerous instances of misconduct. The misconduct information was provided by the MDOC. The Commission ordered no change in the reconsideration hearing in 2001. In its reasons for the decision, the Commission stated that this decision would result in the service of over 48 months above the minimum guideline because of the aggravating circumstances of his offense conduct, namely, that his attempted murder offense justified the Greatest severity rating, but he also attempted to murder another witness, attempted to rape a person, and committed kidnappings, robbery and other offenses.

In 1994, the Parole Commission sent the state prison a request for a progress report and sent petitioner a parole application form where he could indicate that he wanted parole consideration on the record. After receiving no response, the Commission followed-up with a second letter and form and advised petitioner that if the Commission had not received the form in 30 days it would assume that he did not want the review.

The Commission did not take further action until 2007, when it received a parole application form signed by petitioner. The Commission requested copies of all misconduct reports from the Michigan DOC, but for reasons not reflected in the file, no further action was taken to conduct the review and the Commission did not conduct any further reviews.

On March 9, 2022, after petitioner was paroled by the Michigan Parole Board, and transported to FCI Hazelton, the Commission conducted a hearing for him. In the prehearing assessment prepared for the hearing, the hearing examiner listed 52 misconduct reports from July 21, 1976, to November 19, 1993. Since the time of his last review in 1988 until 1993, petitioner had approximately 26 misconducts which included assault, threatening, and refusing to obey orders. Petitioner admitted at his hearing that he had additional misconduct after 1993. He claimed that as the result of several court cases, all disciplinary hearings prior to 2001 were invalidated.

The hearing examiner reviewed the cases cited by petitioner and decided, based on the opinion in ***Knop v. Johnson***, 977 F.2d 996, 1014 (6th Cir. 1992), to exclude all non-assaultive major disciplinary infractions from consideration, limiting his consideration to only the misconduct that involved assault and threatening. The examiner also reviewed the misconducts to exclude any that were heard by specific DOC hearing officers that petitioner claimed were cited in the opinions as being racially biased.

Petitioner admitted to 4 incidents of assault on an inmate and 1 incident in 2009 of threatening behavior. Despite petitioner's claims that the other incidents were invalidated by court rulings, the hearing examiner found that petitioner had committed more infractions than he was willing to admit. The examiner concluded that between August 23, 1983, and January 2009, petitioner committed 10 disciplinary infractions adjudicated by a disciplinary

hearing officer that were considered to be serious violations of the rules of the institution because they all involved assaultive and threatening conduct in a prison facility.

Petitioner also discussed programs he participated in while in the Michigan DOC, his health, and the fact that he had 3 brain aneurisms and a stroke.

On March 30, 2022, the Commission issued its decision denying two-thirds parole, finding that he had frequently and seriously violated institutional rules and that there was a reasonable probability that he would commit another crime if released. The Commission advised petitioner that he would be scheduled for an interim hearing in March 2024.

Petitioner appealed the Commission's decision to the NAB. He claimed that the Commission had committed procedural errors, and he challenged the Commission's finding that there was a reasonable probability that he would commit another crime. Petitioner also claimed that he should be released because the Commission failed to conduct hearings for him in the intervening years. On June 17, 2022, the NAB affirmed the Commission's decision. The NAB specified that while in the custody of the MDOC, petitioner committed ten (10) major disciplinary infractions that are serious violations of the rules of the institution because they involved either assaultive or threatening behavior. The NAB explained that the ten (10) serious violations of the rules of the institution include four (4) infractions for assault on a correctional officer, four (4) infractions for assaults on other inmates, and two (2) infractions for threatening behavior. The NAB concluded that these constitute serious and frequent violations of the rules of the institution and support the finding that petitioner is likely to commit another crime if released. The NAB then mistakenly states that the infractions were found by a Bureau of Prisons Disciplinary Hearing Officer and explains why the Commission is entitled to rely on those findings. The

NAB also refuted petitioner's claim that the Commissioner erred in finding that there was a reasonable probability that he would commit another crime because the Michigan Parole Board granted him parole. The NAB found that petitioner had not been prejudiced by the Commission failing to conduct reviews during the years he was serving both the state and federal sentence in Michigan custody and that the remedy is not release.

**Discussion**

This Court agrees with the respondent that petitioner couches his sentence incorrectly throughout his filings. While he repeatedly claims that he is serving a "longer execution of Petitioner's fed sentence" due to various legal errors, he is not serving a sentence any longer than was imposed upon him. Instead, his parole was simply denied. Even though the Parole Commission and Reorganization Act, codified at 18 U.S.C. §§ 4201–4218, which granted the U.S. Parole Commission the authority to grant or deny parole for federal prisoners, was repealed under the Comprehensive Crime Control Act of 1984, it remains in effect for persons, like petitioner, who committed their crimes before November 1, 1987. *See* ***Martin v. U.S. Parole Comm'n***, 108 F.3d 1104, 1106 (9th Cir. 1997).

Federal prisoners subject to the Parole Commission and Reorganization Act may qualify for one of two types of parole: discretionary parole or two-thirds parole, which are available to inmates at different times and are subject to different standards. A prisoner may be released on discretionary parole if the Commission determines that (1) the prisoner has substantially observed institutional rules; (2) release would not depreciate the

seriousness of the inmate's offense or promote disrespect for the law; and (3) release would not jeopardize the public welfare. 18 U.S.C. § 4206(a).

A prisoner who is not released on discretionary parole may be considered for two-thirds parole after the service of two-thirds of the sentence or sentences, or after thirty years for a sentence longer than forty-five years. 18 U.S.C. § 4206(d). A prisoner considered for two-thirds parole will not be released if the Commission determines either, (1) that the prisoner has "seriously or frequently violated institution rules and regulations" or (2) that there is a "reasonable probability" the prisoner "will commit any Federal, State, or local crime." Id.

Between the initial and reconsideration hearings, the Commission is statutorily required to conduct interim hearings, but the outcome of these hearings is only to order no change in the previous decision, determine whether to advance the reconsideration hearing date, or advance or rescind a previously set presumptive parole date. 28 C.F.R. § 2.14(a)(2).

The purpose of an interim hearing conducted pursuant to 18 U.S.C. § 4208(h) is "to consider any significant developments or changes in the prisoner's status" since the last hearing. At interim hearings, the Commission only considers developments, either positive or negative, since the last hearing and whether these developments change the previous decision. 28 C.F.R. § 2.14(a).

Petitioner lists the U.S. Parole Commission as respondent citing ***Dunn v. U.S. Parole Comm'n***, 818 F.2d 742 (10th Cir. 1987). However, since that case was decided it has been settled that in a habeas corpus petition, brought pursuant to 28 U.S.C. § 2241, the proper respondent is the prisoner's immediate custodian, i.e., the warden of the

institution in which the prisoner is confined. *See* 28 U.S.C. § 2243; ***Rumsfeld v. Padilla***, 542 U.S. 426, 435 (2004) (holding that habeas petitioner should name his warden as respondent and file petition in the district of confinement). In that regard, Mr. Woods has filed a Motion to Amend with Memorandum by Petitioner/Movant (PM) [Doc. 30], which this Court **GRANTS [Doc. 30]**.

With regard to claims 1 and 2, it appears that Mr. Woods is objecting to the fact that the Parole Commission categorized certain events as "new criminal conduct." The phrase, "new criminal conduct," is merely a term used by the Commission to distinguish different types of misconduct. The Commission classifies institutional misconduct as (1) an Administrative Rule Infraction, (2) Escape or New Criminal Behavior in a Prison Facility, or (3) New Criminal Behavior in the Community. *See* 28 C.F.R. § 2.36(a). These labels are significant when determining the parole guidelines because they signify different "rescission" guidelines that are added to the base guidelines for misconduct committed while serving the sentence. 28 C.F.R. § 2.36. Based upon the description of petitioner's assaults, the Commission determined that his conduct came within the category of New Criminal Behavior in a Prison Facility. However, these parole guidelines are used for discretionary parole consideration and do not apply for parole consideration under 18 U.S.C. § 4206(d), which requires strict consideration of the statutory criteria.

To determine whether it should grant parole under 18 U.S.C. § 4206(d), the Parole Commission can consider a broad range of relevant information to make its determination. The Commission's statute and regulations permit it to take into account any available substantial information in determining the prisoner's parole guidelines, "provided the

prisoner is apprised of the information and afforded an opportunity to respond." *See* 18 U.S.C. § 4207; 28 C.F.R. § 2.19(c). The Parole Commission may consider official reports of a prisoner's prior record, reports from the staff of the facility where the prisoner is confined, and any other relevant information concerning the prisoner that is reasonably available. *See* ***Jorgenson v. O'Brien***, 2012 WL 1565292, at *9 (N.D. W.Va. Mar. 19, 2012) (Seibert, M.J.), *report and recommendation adopted*, 2012 WL 1565289 (N.D. W.Va. May 2, 2012) (Bailey, J.), *aff'd*, 477 F. App'x 141 (4th Cir. 2012).

It is well settled that the Commission can consider unadjudicated, dismissed, and uncharged criminal offenses. *See* ***Marshall v. Garrison***, 659 F.2d 440, 446 (4th Cir. 1981) (the Commission may consider other criminal conduct, but must have "some reasonably reliable information"); ***Mullen v. U.S. Parole Commission***, 756 F.2d 74, 75 (8th Cir. 1985) (Commission may make an independent finding of the offender's commission of a crime); ***Robinson v. Hadden***, 723 F.2d 59, 62 (10th Cir. 1983), *cert denied*, 466 U.S. 906 (1984) (Commission may consider dismissed charges to determine prisoner's likelihood of success, if released on parole); ***Young v. United States***, 747 F.Supp. 305, 310 (E.D. N.C. 1990), *aff'd*, 915 F.2d 1566 (4th Cir. 1990) (Commission has the authority to consider information other than charges for which defendant pleaded guilty).

The fact that petitioner was not charged by local law enforcement authorities with the crime of assault is of no consequence. The information from the MDOC and its findings of petitioner's guilt after a hearing establishes "some reasonably reliable information" to support the Commission's finding. *See* ***Marshall***, 659 F.2d at 446.

The information that a prisoner committed an assault while in prison custody is the type of relevant information that the Commission would ordinarily consider to determine whether a prisoner is fit for release on parole. *See* 28 C.F.R. § 2.19(a).

Once the Michigan prison authorities made a determination of guilt, as the result of a disciplinary proceeding, the Commission was entitled to rely on that determination. *See* ***Kramer v. Jenkins***, 803 F.2d 896, 901 (7th Cir. 1986). Petitioner was informed of the misconduct information provided by the MDOC and given the opportunity to respond at his hearing. *See* 28 C.F.R. § 2.19(c). The opportunity to be heard is all that the Constitution requires for the Commission to conduct its fact-finding. ***Kramer***, 803 F.2d at 901; ***Van Curen v. Jago***, 641 F.2d 411, 417 (6th Cir. 1981).

The Commission has complied with the regulations and has acted within the scope of its discretion in considering petitioner's misconduct, which it termed "new criminal conduct" in the institution.

With respect to claims 3, 4 and 5, petitioner claims that the Parole Commission was precluded from considering the findings of misconduct in the MDOC based on a series of class action lawsuits filed against the Michigan Department of Corrections which petitioner claims demonstrate that the MDOC's disciplinary proceedings were biased.

Petitioner's reliance on these cases is misplaced. In none of these cases did the courts order disciplinary findings expunged and none of the decisions ordered full retroactivity. In ***Martin v. Dep't of Corr.***, 424 Mich. 553, 384 N.W.2d 392 (1986), the Michigan Supreme Court found that that the disciplinary directives of the Department of Corrections were not properly promulgated as rules pursuant to the Administrative

Procedures Act. Subsequently, in ***Martin v. Dep't of Corr.***, 168 Mich. App. 647, 653, 425 N.W.2d 205, 208 (1988), the Court of Appeals held that the decision was entitled to limited retroactivity only and thus had no effect on past violations which had ripened into final adjudications. In ***Knop v. Johnson***, 977 F.2d 996, 1014 (6th Cir. 1992) the Court denied a request to expunge past misconduct violations which have already ripened into final adjudications. In ***Heit v. Van Ochten***, 126 F.Supp.2d 487, 489–90 (W.D. Mich. 2001), the Court approved a settlement in which DOC agreed to among other things, not keep statistics on disciplinary hearing outcomes for specific hearing officers and prohibited the DOC from using disciplinary threats against hearing officers to influence the conviction rates from prisoner disciplinary hearings.

Even if this Court were to assume that all disciplinary proceedings prior to the Michigan Supreme Court's decision were expunged through 2001, petitioner admitted to several instances of serious misconduct and in ***Tate v. Howes***, a petition for writ of habeas corpus filed in the United States District Court for the Western District of Michigan soon after petitioner had been paroled by Michigan authorities, the court points out that petitioner was found guilty in 2009 by Michigan DOC of threatening behavior, creating a disturbance and sexual misconduct. ***Tate v. Howes***, 2010 WL 2231815, at *1 (W.D. Mich. Feb. 4, 2010), *report and recommendation adopted*, 2010 WL 2231812 (W.D. Mich. June 2, 2010). In addition, petitioner admitted to one of these incidents at his hearing before the Parole Commission hearing examiner.

Also, the hearing examiner who conducted his hearing determined that not all disciplinary hearing officers that conducted his disciplinary hearings were the ones alleged

to have been biased in the cases petitioner cited. Petitioner did not make specific allegations in regard to his own disciplinary hearings and whether the officers exhibited bias towards him or prevented him from having a fair hearing. The Commission is entitled to rely on petitioner's admission to committing misconduct while in Michigan DOC custody to conclude that he frequently and seriously violated the rules of the institution. *See* ***Dufur v. U.S. Parole Comm'n***, 314 F.Supp.3d 10, 19 (D.D.C. 2018), *aff'd sub nom.* ***Dufur v. United States Parole Comm'n***, 34 F.4th 1090 (D.C. Cir. 2022) (prisoner failed to state claim that the Commission lacked discretion to consider violation of prison rules or risk that he would commit future crimes).

With regard to claims 6 and 7, petitioner challenges the Commission's discretionary decision to deny parole. The information that another parole agency has found petitioner suitable for release on parole is information that the Commission may consider under 18 U.S.C. § 4207, but the Commission is not required to place significant weight on that decision. The Commissioners are vested with the sole responsibility of making the decision to grant parole for a federal prisoner. See 28 C.F.R. § 2.24.

For consideration of parole at two-thirds of the sentence (or after 30 years of a sentence of 45 years or more), Section 4206(d) of Title 18 U.S. Code provides as follows:

> Any prisoner, serving a sentence of five years or longer, who is not earlier released under this section or any other applicable provision of law, shall be released on parole after having served two-thirds of each consecutive term or terms, or after serving thirty years of each consecutive term or terms of more than forty years including any life term, whichever is earlier: Provided,

> however, that the Commission shall not release such prisoner if it determines that he has seriously or frequently violated institution rules and regulations or that there is a reasonable probability that he will commit any Federal, State, or local crime.

The statute is clear and direct: the Commission shall not release the prisoner if he has seriously and frequently violated the rules of the institution or if he is likely to commit crimes. ***Dufur***, *supra* at 19. ; ***Bruscino v. True***, 708 F. App'x 930 (10th Cir. 2017) (statute creates rebuttable presumption favoring release on parole); ***Walker v. Adams***, 1998 WL 516780, at *2 (unpublished disposition) (7th Cir. 1998). ***LaMagna v. U.S. Bureau of Prisons***, 494 F.Supp. 189, 194 (D. Conn. 1980) ("'mandatory' parole... at the two-thirds point is not a certainty; this parole is expressly conditioned upon a Parole Commission finding that the inmate will not be a risk to himself or society...").

Petitioner's claim of entitlement to release on parole after serving 30 years in prison and his claim that he has a low probability of committing further crimes is based only on his subjective conclusion regarding when he should be released. *See* ***Greenholtz v. Inmates of Nebraska Penal and Correctional Complex***, 442 U.S. 1 (1979) (there is no inherent or constitutional right for a convicted person to be released prior to the expiration of a valid sentence); ***Sandin v. Conner***, 515 U.S. 472, 487 (1995) (the possibility of early release is not a liberty interest).

To the extent petitioner is asking this court to second-guess the Parole Commission's decision, it is well settled that judicial review is limited where Congress has committed the action to agency discretion. ***Garcia v. Neagle***, 660 F.2d 983, 987 (4th Cir.

1981), *cert denied*, 454 U.S. 1153 (1982) (judicial review of Parole Commission decisions to grant or deny parole is limited to whether the Commission complied with the applicable statute or rule, and may not extend to the decision itself); ***Wallace v. Christensen***, 802 F.2d 1539, 1544–45 (9th Cir. 1986) (en banc) (substantive actions committed by Congress to the Commission's discretion); ***Jones v. Bureau of Prisons***, 903 F.2d 1178, 1183 (8th Cir. 1990); ***Farkas v. United States***, 744 F.2d 37, 38–39 (6th Cir. 1984).

When factual findings are challenged, the court's review is limited to whether there is "some evidence" in support of the Commission's decision. ***Superintendent, Massachusetts Correction Institution v. Hill***, 472 U.S. 445, 456–57 (1985) (due process not violated so long as there is "some evidence" in support of prison disciplinary board's decision). This Court is not required to conduct "examination of the entire record, independent assessment of the credibility of the witnesses, or weighing of the evidence" in support of the challenged administrative decision. ***Superintendent***, 472 U.S. at 455; ***Kramer***, 803 F.2d at 901 (upholding Commission's reliance on IRS' disposition as "some evidence" of tax liability); ***Maddox v. U.S. Parole Commission***, 821 F.2d 997, 1000 (5th Cir. 1987) (upholding Commission's decision to consider sentencing judge's statements as "some evidence" of continued criminal involvement after indictment); ***Hackett v. U.S. Parole Commission***, 851 F.2d 127, 131 (6th Cir. 1987).

The Parole Commission complied with the statute and regulations, finding that petitioner had seriously and frequently violated the rules of the institution and that there was a reasonable probability that he would commit another crime if released. With such findings, the statute required that the Commission deny parole.

With regard to claim 8, petitioner claims that he is entitled to relief because of the Commission's failure to conduct required parole reviews for him. The petitioner is only entitled to a writ of mandamus to require the Commission to conduct the required review, which is moot because the Commission has conducted a hearing and denied parole.

The appropriate remedy for the Commission's lapse in conducting hearings is not release, but to have the hearing conducted as soon as possible. ***Bayerle v. Godwin***, 825 F.Supp. 113, 115 (N.D. W.Va. 1993) (Maxwell, C.J.); *see also* ***United States ex rel. Pullia v. Luther***, 635 F.2d 612, 616–617 (7th Cir. 1980) (parolee seeking consideration for early termination of parole may seek aid of court in mandamus action to compel decision as to his status); ***Bryant v. Grinner***, 563 F.2d 871, 872 (7th Cir. 1977) (the remedy for late revocation hearing is to conduct the hearing); ***Jones v. U.S. Bureau of Prisons***, 903 F.2d 1178, 1181(8th Cir. 1990) (prisoner not entitled to relief in habeas corpus for Commission's failure to conduct timely initial hearing); ***Sacasas v. Rison***, 755 F.2d 1533, 1535–36 (11th Cir. 1985) (the appropriate remedy for Commission's non-compliance is a mandamus action to compel the required hearing); ***Northington v. U.S. Parole Commission***, 587 F.2d 2, 3 (6th Cir. 1978) (the remedy for a delayed hearing is not automatic release via habeas corpus).

The Commission conducted petitioner's hearing. Therefore the issue concerning his delayed hearing is moot. ***Little v. Graber***, 2002 WL 221572, at *2 (N.D. Ill. Feb. 13, 2022) (petition moot because petitioner had received all the relief to which he was entitled); ***Berg v. U.S. Parole Commission***, 735 F.2d 378, 379 n.3 (9th Cir. 1984) (parolee was only

entitled to a writ of mandamus compelling compliance, which was moot because the required hearing had been held).

Of course, until March 20, 2021, when he was paroled by the Michigan Parole Board, Mr. Woods was in the custody of the MDOC.

In ***Moody v. Daggett***, 429 U.S. 78 (1976), the United States Supreme Court held that there is no constitutional duty on the part of the Parole Commission to hold a revocation hearing until the parolee is released from his state sentence. *See also*, ***Reese v. U.S. Board of Parole***, 530 F.2d 231 (9th Cir.), *cert. denied*, 429 U.S. 999 (1976); ***Spotted Bear v. McCall***, 648 F.2d 546 (9th Cir. 1980).

This Court believes that the same logic applies to the facts of this case. As long as Mr. Woods was in the lawful custody of the State of Michigan, there could be no prejudice in any delay in providing a parole hearing.

Where a prisoner seeks habeas relief alleging a denial of his statutory or constitutional rights, he must show prejudice to obtain such relief. ***Gaddy v. Michael***, 519 F.2d 669, 673 (4th Cir. 1975), *cert denied*, 429 U.S. 998 (1976) ("mere lapse of time or delay, without more, will no more violate the due process of a parolee than will a delay of trial in the ordinary criminal case offend the speedy trial provision of the Constitution"); ***Hanahan v. Luther***, 693 F.2d 629, 634–35 (7th Cir. 1982) (to determine whether a delay in a revocation hearing has violated a prisoner's due process rights the court looks to the length of the delay, the reasons for the delay, the prisoner's assertion of his right to the hearing, and the prejudice the prisoner has suffered as a result of the delay); ***Page v. U.S.***

***Parole Commission***, 651 F.2d 1083, 1087 (5th Cir. 1981) (finding that absent a showing of prejudice caused by the delay, petitioner is not entitled to relief).

Petitioner has not alleged that he has suffered any prejudice by the delay in his hearing. The burden of proof is on a petitioner to show that the delay was unreasonable and that it caused him prejudice. ***Berg***, 735 F.2d at 379 n.3 (where parole revocation hearing delayed 36 months and petitioner alleged no facts showing delay unreasonable or prejudicial, petitioner is entitled only to writ of mandamus compelling compliance).

With respect to claims 9, 10, and 11, petitioner claims that he is entitled to relief in habeas corpus because of claimed "false statements" on the notice of action on appeal. The statements in question are essentially errors by the NAB which do not affect the substantive decision to affirm the Commission's decision on administrative appeal and do not entitle petitioner to relief.

Mr. Woods claims that he is entitled to relief because of certain statements in the notice of action on appeal relating to the findings from disciplinary hearings by the MDOC. Petitioner states that "continued execution" of his sentence occurs because the NAB "falsified" statements in the notice of action on appeal and this "falsification" makes continued enforcement of his sentence "fundamentally unfair" and an "abuse of power." While the respondent concedes that the NAB notice of action on appeal contains errors in claiming that it was the Federal Bureau of Prisons that conducted disciplinary hearings for petitioner and made these findings, the errors are the result of a misunderstanding by the NAB as to whether the findings were made by a state or federal disciplinary hearing officer. Although the NAB erred in attributing the disciplinary findings to the BOP, the errors were harmless because it was nonetheless correct that the Commission can

consider disciplinary findings as part of its 18 U.S.C. § 4206(d) analysis to determine whether he had frequently or seriously violated institutional rules. It is the duty of the Commission to consider information relating to the prisoner's conduct while serving his sentence. ***Lewis v. Beeler***, 949 F.2d 325, 329 (10th Cir. 1991), *cert. denied*, 504 U.S. 922 (1992) (Commission's function is to "make the best possible determination of a prisoner's parole risk based on a continuing evaluation."). The Parole Commission should not be estopped from considering information from the State of Michigan because of the NAB's errors in attributing the source of information considered by the Parole Commission.

Moreover, petitioner is not entitled to relief because the NAB's decision is well supported by other reasons contained in the notice of action on appeal. ***Kartman v. Parrat***, 535 F.2d 450, 454 (8th Cir. 1976) (relief not justified where basis for decision on other charges was proper).

Petitioner is not entitled to relief for these harmless errors. Further, even if this was error that required court intervention, release would not be the correct remedy, but simply remanding for further or clarified proceedings. ***Zannino v. Arnold***, 531 F.2d 687, 692 (3d Cir. 1976) (in absence of unusual circumstances, remand is the appropriate remedy).

With regard to claim 12, petitioner claims that he did not receive a two-thirds parole hearing as the NAB stated. In fact, he received his hearing on March 9, 2022. The issue of delay, is addressed above.

In claim 13, petitioner claims that he is entitled to relief because the statement in the notice of action on appeal that he waived parole hearings is incorrect. Even if respondent was to concede that the NAB erred in stating that petitioner had waived parole, the remedy

for the Commission's failure to conduct his parole review was to have that review conducted as soon as possible. Petitioner has received a hearing, a decision denying parole, with the reasons for the decision. He is not entitled to further relief. ***Greenholtz v. Inmates of Nebraska Penal & Corr. Complex***, 442 U.S. 1, 16 (1979) (an opportunity to be heard, and, when parole is denied, information as to why he falls short of qualifying for parole, is all that required by due process).

In claim number 14, petitioner states that "continued execution" of his sentence occurs because the NAB "falsified" statements in the notice of action on appeal and this "falsification" makes continued enforcement of his sentence "fundamentally unfair" and an "abuse of power." Petitioner is correct that he submitted an administrative appeal with 8 grounds, but these grounds were consolidated based on their subject matter and addressed by the NAB within 4 grounds. Petitioner is not entitled to relief because the NAB's decision to consolidate his claims for administrative efficiency does not keep him in custody in violation of law.

In claim number 15, petitioner claims that the Commission erred by considering one unfavorable factor to deny parole. He claims that rather than using 28 C.F.R. § 2.14(a)(1)(ii), the USPC decided eligibility for release on two-thirds parole based on prison conduct. Petitioner's reliance on that regulation is misplaced. The regulation cited by petitioner pertains to "statutory interim hearings," which are required by 18 U.S.C. § 4208(h). The purpose of the interim hearings is to consider any significant developments or changes in the prisoner's status since the initial hearing. 28 C.F.R. § 2.14(a). Because petitioner had reached two-thirds of his sentence (or 30 years), under 18 U.S.C. § 4206(d), the Commission was required to grant parole unless it found that he had frequently or

seriously violated institutional rules or found that there was a reasonable probability that he would violate any law if released. For that decision, if the Commission finds that he frequently or seriously violated institutional rules it may not grant parole. ***Dufur v. U.S. Parole Comm'n***, 314 F.Supp.3d 10, 19 (D.D.C. 2018), *aff'd sub nom.* ***Dufur v. United States Parole Comm'n***, 34 F.4th 1090 (D.C. Cir. 2022). The Commission found that he had both frequently and seriously violated institutional rules. The Parole Commission correctly applied the criteria at 18 U.S.C. § 4206(d) and denied parole after finding that all three criteria applied.

In claim number 16, petitioner claims that the NAB's statement that "at no point has the USPC found suitable for parole" on the notice of action on appeal is misleading and he is entitled to relief. Petitioner is correct that the Commission did not conduct a review or hearing for him for numerous years, but the NAB is correct that when the Commission did consider him for parole, it found that his offense conduct involved aggravating factors and release would depreciate the seriousness of those offenses. By ordering a parole reconsideration hearing in 15 years, the Commission recognized that unless there was new significant information, he would not be paroled for at least another 15 years. 28 C.F.R. § 2.14(a)(2)(ii)(2) (presumptive parole date or reconsideration hearing date will only be advanced for "superior program achievement" or "clearly exceptional circumstances.") Therefore, this statement was not misleading.

In claim 17, petitioner asserts, contrary to the NAB's conclusion, that he has indeed been prejudiced by the Parole Commission's failure to conduct record reviews for him because he was required to serve the federal sentence while serving the state sentence.

The NAB is correct that absent a showing of prejudice caused by the delay in his hearing, petitioner is not entitled to relief. ***Gaddy***, 519 F.2d at 669. However, petitioner's claimed prejudice does not support release in habeas corpus. Any claim that he would have been granted parole from the federal sentence is speculative given that the last decision issued by the Commission required him to serve until at least 2001, and his record in the institution had not improved in the intervening years.

Moreover, even if the Commission granted him parole, he would not have been released from custody because he continued to serve the state sentence. ***Gaddy***, 519 F.2d at 678 (speculating as to why prisoner did not avail himself of available remedies, but concluding that whatever reason, prisoner could not "sleep on his administrative remedies for fear that he has no case and then claim prejudice by reason of the passage of time."); ***Spotted Bear v. McCall***, 648 F.2d 546, 547 (9th Cir. 1980) (no prejudice for delay in parole revocation hearing where state sentence was the basis of custody). As discussed, *supra*, petitioner is only entitled to a hearing to remedy the delay in conducting parole hearings.

In claim number 18, petitioner claims that the Parole Commission and NAB refused to remedy claims 1–16 in this petition which makes the execution of his sentence fundamentally unfair. The NAB found no error in the Commission's decision. As explained *supra*, there is no merit to petitioner's claims that require release from custody. Respondents admit that some statements in the notice of action on appeal issued by the NAB were inaccurate, but those inaccuracies do not require a reversal of the Commission's decision, nor do they warrant relief in habeas corpus.

In addition to generally requesting release from custody, in Claim number 19, petitioner requests this Court issue a declaratory judgment and refer the case to the DOJ's Criminal Division because he claims that the Commission issued false statements in its notices of action. The Parole Commission conducted a hearing for petitioner in compliance with the parole statute and regulations and issued its decision denying two-thirds parole and explained to petitioner a valid basis for its decision. Petitioner is not entitled to further relief.

This Court finds that the grounds asserted by Mr. Woods are simply insufficient to support the relief that he seeks.

With respect to the Motion to Strike Respondents' 3-27-2023 Submissions or Alternative Motion for Judicial Notice, with Supporting Memorandum and Index of Respondent's Inadmissible Data [Doc. 34], this Court finds the same to be a rehash of previous arguments and insufficient to trigger any relief.

For the reasons stated above:

Respondent's Motion to Dismiss, or in the Alternative for Summary Judgment [Doc. 18] is **GRANTED**;

Petitioner's Ex Parte Motion with Affidavit and Memorandum of Law for a Temporary Restraining Order (TRO) [Doc. 4] is **DENIED**;

Petitioner's Motion to Amend with Memorandum by Petitioner/Movant (PM) [Doc. 30] is **GRANTED**; and

Petitioner's Motion to Strike Respondents' 3-27-2023 Submissions or Alternative Motion for Judicial Notice, with Supporting Memorandum and Index of Respondent's Inadmissible Data [Doc. 34] is **DENIED**.

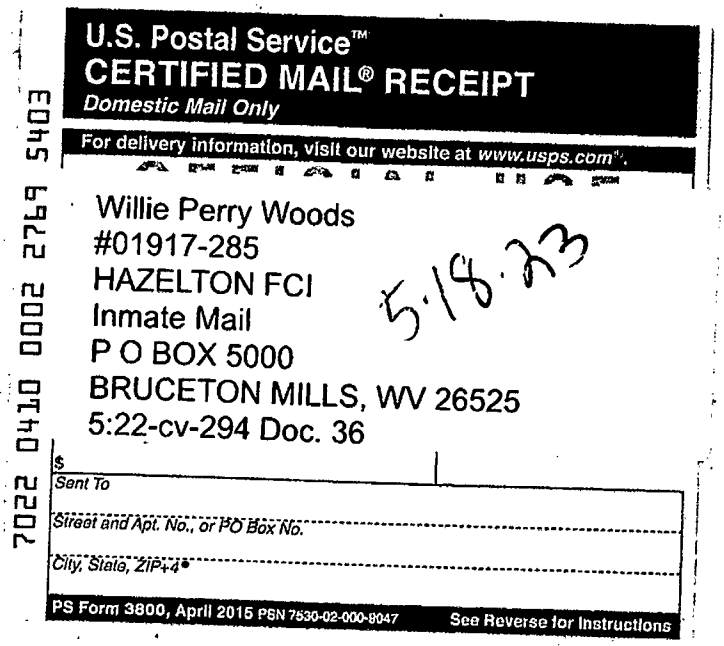
The Clerk is **DIRECTED** to **ADD** H. Ray, Warden, FCI Hazelton as a respondent to the above-styled docket and **STRIKE** United States Parole Commission (USPC) as a respondent.

It is so **ORDERED**.

The Clerk is directed to transmit copies of this Order to all counsel of record herein and to mail a copy to the *pro se* petitioner.

**DATED:** May 18, 2023.

**JOHN PRESTON BAILEY**
**UNITED STATES DISTRICT JUDGE**



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