

**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX**

GLEN EDWARDS,

Petitioner,

SX-15-CV-489

v.

RICK MULLGRAV, Director of B.O.C.,
and **SHERN MORRIS**, Acting Assistant
Warden of the Golden Grove Adult
Correctional Facility,

**PETITION FOR A
WRIT OF HABEAS CORPUS**

Respondents.

MEMORANDUM OPINION

THIS MATTER is before the Court on Petitioner Glen Edwards' (hereinafter "Petitioner" or "Edwards") Petition for a Writ of Habeas Corpus filed on August 6, 2015. For the following reasons, the Petition will be denied.

BACKGROUND

On January 20, 1998, in Criminal No. SX-1997-CR-396, Glen Edwards entered into a plea agreement. Edwards pled guilty to the lesser included offense in Count One of the Amended Information, Murder in the Second Degree, in violation of Title 14 V.I.C §922(b). On May 8, 1998, the Court entered an Order sentencing Edwards to a period of incarceration of fifty (50) years with credit for time served in pre-trial detention.¹

On September 31, 2014, Petitioner was transferred from the Golden Grove Adult Correctional Facility (hereinafter "GGACF") "to a private correctional facility, the Corrections Corporation of America operated Citrus County Detention Facility in Lecanto Florida."²

¹ Pet. ¶4, Ex. A, Order entered May 8, 1998, SX-1997-CR-396.

² Pet. ¶6.

Edwards asserts that his imprisonment, detention, confinement and restraint are illegal based on the following grounds:³

- (1) On April 26, 2010, Petitioner was issued a Time Sheet indicating his Parole Eligibility Date is October 29, 2022 and this Parole Eligibility Date is not in conformity with the provisions of 5 V.I.C §4601.⁴
- (2) Petitioner became eligible for a parole hearing on April 8, 2013, pursuant to the parole eligibility provisions of 5 V.I.C §4601.⁵
- (3) The Bureau of Corrections refuses to correct the Parole Eligibility date of October 29, 2022 in order to have the Time Sheet be in conformity with the parole eligibility provisions of 5 V.I.C §4601.⁶
- (4) In the span of time since Petitioner's initial eligibility date to present, the Board of Parole has convene to consider applications for parole and the Petitioner has not been afforded a parole hearing.⁷
- (5) That no legitimate cause, reason or justification was given to the Petitioner nor were the dictates of due process satisfied in denying the application of the parole eligibility requirements of 5 V.I.C. §4601.⁸
- (6) That the lack of application of 5 V.I.C. §4601 to the Petitioner's Time Sheet constitutes a deprivation of a statutorily created liberty interest, in violation of the Due Process and Equal Protection Clauses of the Fifth and Fourteenth Amendments of the United States Constitution, in violation of the Revised Organic Act of 1954, §3 [Rights and Prohibitions], paragraph 23.⁹
- (7) That the lack of application of 5 V.I.C. §4601 to the Petitioner and denying him statutorily required hearings constitutes a deprivation of a statutorily created liberty interest, in violation of the Due Process and Equal Protection Clauses of the Fifth and Fourteenth Amendments of the United States Constitution, in violation of the Revised Organic Act of 1954, §3 [Rights and Prohibitions], paragraph 23.¹⁰

On August 6, 2015, Edwards filed the instant Petition for Writ of Habeas Corpus. Edwards petitions this court to inquire into his eligibility for parole.

³ Pet. at 2-3.

⁴ Pet. ¶5, Ex. B, Time Sheet.

⁵ Pet. ¶8.

⁶ Pet. ¶9.

⁷ Pet. ¶10.

⁸ Pet. ¶11.

⁹ Pet. ¶12.

¹⁰ Pet. ¶13.

STANDARD OF REVIEW

Pursuant to Title 5, Section 1301 of the Virgin Islands Code, "[e]very person unlawfully imprisoned or restrained of his liberty, under any pretense whatever, may prosecute a writ of habeas corpus, to inquire into the cause of such imprisonment or restraint." 5 V.I.C. §1301. A petition must satisfy the following requirements set forth in Title 5, Section 1302 of the Virgin Islands Code:

- (1) It shall specify that the person in whose behalf the writ is applied for is imprisoned or restrained of his liberty and the officer or person by whom, and the place where, he is so confined or restrained, naming all the parties, if they are known, or describing them, if they are not known.
 - (2) If the imprisonment is alleged to be illegal, the petition shall state in what the alleged illegality consists.
 - (3) The petition shall be verified by the oath of the party making the application.
- 5 V.I.C. § 1302.

DISCUSSION

Edwards petitions for habeas corpus relief under Title 5, Section 1301 of the Virgin Islands Code.¹¹ As explained in *Rivera-Moreno*, "when presented with a petition for a writ of habeas corpus, the court must first determine whether the petition states a prima facie case for relief—that is, whether it states facts that, if true, entitle the petitioner to relief—and also whether the stated claims are for any reason procedurally barred." *See Rivera-Moreno v. Government of the Virgin Islands*, 61 V.I. 279, 311 (V.I. 2014) (internal quotation marks omitted). "If the court determines that the petition does not state a prima facie case for relief or that the claims are all procedurally barred, the court will deny the petition outright, but if it appears that the writ out to issue, the Superior court shall grant the writ of habeas corpus without delay." *Id.* (citations omitted and internal quotation marks omitted).

¹¹ Pet. at 1.

“Granting the writ of habeas corpus constitutes an intermediate step in the statutory procedure.” *Id.* “It does not address the underlying merits of the petition's allegations, nor does it entitle the petitioner to the ultimate relief sought in the petition.” *Id.*; *cf. Blyden v. Gov't of the V.I.*, 2016 V.I. Supreme LEXIS 5, *8 (VI. 2016) (internal quotation marks omitted). Instead, “issuing the writ and serving it on the Government respondents simply requires the Government to file a return responding to the petition and to produce the petitioner in court for a hearing on the merits of his allegations.” *Id.*

1. The Petition Satisfies the Specification of Respondent Requirement under Title 5 V.I.C. § 1302(1).

The Court's first determination is whether the writ was directed to the person having custody of petitioner and whether the writ names all the parties or describes them if they are unknown. 5 V.I.C. §§ 1305 and 1302(1).¹² Petitioner must be in substantial compliance with the requirements in order to satisfy the specification requirement under Section 1302 (1).

Here, Edwards names Basil Richards, Warden of the Golden Grove Adult Correctional Facility and Dwayne Benjamin, Director of the Bureau of Corrections as the Respondents. (Pet. ¶3).¹³ Edwards also states that he is currently incarcerated at the Citrus County Detention Facility in Lecanto Florida under the custody and care of the Virgin Islands Bureau of Corrections. (Pet. ¶¶3,6). The Court finds that the Petition is in substantial compliance with the specification requirement under Section 1302(1).

¹² Title 5, Section 1305 of the Virgin Islands Code requires that “[t]he writ shall be directed to the person having custody of or restraining the person on whose behalf the application is made.” 5. V.I.C. §1305.

Section 1302 (1) also states that the writ should “name [sic] all the parties ... or describe them, if they are not known.” 5 V.I.C. §1302 (1).

¹³ The Court *sua sponte* amended the caption substituting Shern Morris, the current Acting Assistant Warden and Rick Mullgrav, the current Director of the Bureau of Corrections, as the Respondents in place of Richards and Benjamin respectively.

2. The Petition Does Not Satisfy the Illegality Requirement under Title 5 V.I.C. § 1302(2).

Next, the Petition must state the alleged illegality by stating a *prima facie* case for relief. 5 V.I.C. §1302 (2); *see also Blyden* at *8-10. *See also Rivera –Moreno*, 61 V.I. at 311. The court must determine whether the Petition states facts that, if true, entitle the Petitioner to relief and whether any claims are procedurally barred. *Id.*

Specifically, Edwards states the following as grounds for his Petition:

- (1) On April 26, 2010, Petitioner was issued a Time Sheet indicating his Parole Eligibility Date is October 29, 2022 and this Parole Eligibility Date is not in conformity with the provisions of 5 V.I.C §4601.
- (2) Petitioner became eligible for a parole hearing on April 8, 2013, pursuant to the parole eligibility provisions of 5 V.I.C §4601.
- (3) The Bureau of Corrections refuses to correct the Parole Eligibility date of October 29, 2022 in order to have the Time Sheet be in conformity with the parole eligibility provisions of 5 V.I.C §4601.
- (4) In the span of time since Petitioner's initial eligibility date to present, the Board of Parole has convene to consider applications for parole and the Petitioner has not been afforded a parole hearing.
- (5) That no legitimate cause, reason or justification was given to the Petitioner nor were the dictates of due process satisfied in denying the application of the parole eligibility requirements of 5 V.I.C. §4601.
- (6) That the lack of application of 5 V.I.C. §4601 to the Petitioner's Time Sheet constitutes a deprivation of a statutorily created liberty interest, in violation of the Due Process and Equal Protection Clauses of the Fifth and Fourteenth Amendments of the United States Constitution, in violation of the Revised Organic Act of 1954, §3 [Rights and Prohibitions], paragraph 23.
- (7) That the lack of application of 5 V.I.C. §4601 to the Petitioner and denying him statutorily required hearings constitutes a deprivation of a statutorily created liberty interest, in violation of the Due Process and Equal Protection Clauses of the Fifth and Fourteenth Amendments of the United States Constitution, in violation of the Revised Organic Act of 1954, §3 [Rights and Prohibitions], paragraph 23.

The Virgin Islands parole statute provides,

Except for a prisoner sentenced to a term of life imprisonment without parole, every prisoner confined in any penitentiary, jail or prison for a violation of the Virgin Islands law for a definite term or terms of over 180 days or for the term of his natural life, whose record of conduct shows that he has observed the rules of the institution in which he is confined, ***upon recommendation of the Director of the Bureau of Corrections*** supported by the recommendation of a psychiatrist and/or psychologist, ***may be released on parole*** after serving one-half of such term or terms or after serving 15 years of a life sentence or of a sentence of 30 years or more or after serving the minimum sentence required by law, whichever is greater; Provided, however, That ***the Board of Parole, in its discretion*** by at

least a two-thirds affirmative vote of all its members, *upon recommendation by the Directors of the Bureau of Corrections*, supported by the recommendation of a psychiatrist and/or psychologist, *is authorized to fix an earlier eligibility date for the release of a prisoner on parole* after serving one-third of his term or terms or after serving 10 years of a life sentence or of a sentence of 30 years or more.

5 V.I.C. § 4601(emphasis added). After conducting an extensive analysis of Section 4601, in *Smith*, the Supreme Court of the Virgin Islands (hereinafter “Supreme Court”) explained that “[n]othing in this statute provides that any inmate possesses a right to parole, whether early or otherwise.” *See Smith v. Emps. of the Bureau of Corr.*, 64 V.I. 383, 388 (2016). The Supreme Court determined that the parole statute was purely discretionary and that “[t]here is no constitutional or inherent right of a convicted person to be conditionally released before the expiration of a valid sentence.” *Id.* The Court went on to state that “[o]n the contrary, the statute expressly provides that an inmate may not even be considered for parole without the recommendation of the Director of the Bureau of Corrections. *Id.* In sum, “early parole is a privilege and not a right.” *Id.*

Petitioner erroneously asserts that his statutory rights under 5 V.I.C. § 4601 are being violated because he was denied a parole hearing, his eligibility for parole should be earlier than October 29, 2022, and no reason was given for denying his application for parole. In light of *Smith*, Petitioner does not have a right to parole and the Director of the Bureau of Corrections has discretion whether to consider Petitioner for parole. Edwards has failed to establish that he has a right to a parole hearing or to be considered for parole. Consequently, the Petition does not state a prima facie case that would entitle Edwards to relief. The Court finds that the Petition does not satisfy the illegality requirement of Section 1302 (2).

3. The Petition Satisfies Verification Requirement under Title 5 V.I.C. § 1302(3).

Last, the Petition must satisfy the verification requirement. Title 5, Section 1302(3) requires the Petition to be “verified by the oath of the party making the application.” 5 V.I.C. §1302(3).

Here, Edward’s Petition was verified by oath and was signed by the Petitioner. (Pet. at 4). The Court finds that the Petition satisfies the verification requirement under Section 1302(3).

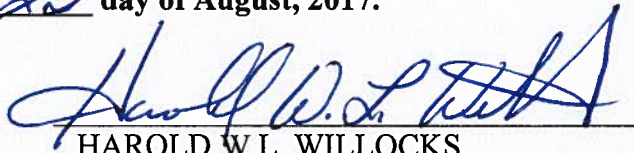
CONCLUSION

Based on the foregoing analysis, the Petition must be denied. The Court finds that Edwards has not satisfied all the requirements set forth in Title 5, Section 1302 of the Virgin Islands Code. Significantly, the Petition fails to state a *prima facie* case for habeas corpus relief. Consequently, Edwards is not entitled to a writ of habeas corpus. The Court will enter an Order consistent with this Memorandum Opinion.

DONE and so ORDERED this 23rd **day of August, 2017.**

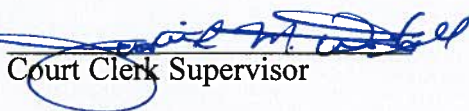
ATTEST:

Estrella H. George
Clerk of the Court



HAROLD W.L. WILLOCKS
Administrative Judge of the Superior Court

By:


Court Clerk Supervisor

Dated: 8/30/17