

**IN THE CHANCERY COURT FOR THE STATE OF TENNESSEE
TWENTIETH JUDICIAL DISTRICT, DAVIDSON COUNTY**

WAYNE POTEE,

Petitioner,

v.

TENNESSEE BOARD OF PAROLE,

Respondent.

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Case No.: 24-0679-II

FINAL MEMORANDUM & ORDER

Petitioner Wayne Potee (“Petitioner” or “Mr. Potee”), an inmate in the custody of the Tennessee Department of Correction (“TDOC”) filed a Petition for Writ of Certiorari on June 6, 2024, seeking review of Respondent Tennessee Board of Parole’s (“Respondent’s” or “the Board’s”) decision to return Petitioner’s application for commutation without making a nonbinding recommendation to the Governor. The parties completed briefing on January 30, 2025, and a hearing on the matter was held on February 12, 2025. Having reviewed the record, the parties’ briefs, and the relevant law, the Court is now ready to rule.

Relevant Facts and Procedural History

On February 16, 2016, in the Criminal Court for Lincoln County, Tennessee, Mr. Potee was convicted of selling more than half of a gram of a Schedule II Drug in a school zone, and he was sentenced to serve fifteen years at 100%.

At all times relevant to this case, Bill Lee was Governor of the State of Tennessee (“Governor Lee”). Governor Lee was inaugurated in 2019 and again on January 21, 2023, after being re-elected to serve a second term.

In 2020, Mr. Potee submitted his first application for commutation, which was denied by the Board on August 18, 2020, because the Board determined that his case did not merit clemency.

(A.R. 285). On December 23, 2023, Mr. Potee submitted his second commutation request, which was submitted specifically under Governor Lee’s specialized review process for Drug-Free School Zone offenses. (A.R. 185-187). The specialized review process was discontinued, and, on April 30, 2024, Mr. Potee re-submitted his commutation request through the standard review process. (A.R. 11).

On May 8, 2024, the Board “returned” this application to Mr. Potee for the following reason:

Other: Petitioner previously applied under the same criteria and the Board determined your case does not meet the Governor’s criteria. Petitioner may re-apply during the next Governor’s administration.

(A.R. 1).

Mr. Potee timely filed this Petition for Writ of Certiorari, seeking an order that requires the Board to consider and make a nonbinding recommendation to the Governor on Mr. Potee’s application.

Standard of Review

Under the common law writ of certiorari, decisions of the Board of Parole are subject to judicial review but are limited to consideration of whether the Board exceeded its jurisdiction or acted illegally, fraudulently, or arbitrarily. *Arnold v. Tenn. Bd. of Paroles*, 956 S.W.2d 478, 480 (Tenn. 1997) (citing *Powell v. Parole Eligibility Review Bd.*, 879 S.W.2d 871, 873 (Tenn. Ct. App. 1994)). A reviewing court may reverse or modify a board’s action only where the board “acted in violation of constitutional or statutory provisions or in excess of its own statutory authority; has followed unlawful procedure or been guilty of arbitrary or capricious action; or acted without material evidence to support its decision.” *Watts v. Civil Service Bd. for Columbia*, 606 S.W.2d 274, 277 (Tenn. 1980). The reviewing court may not reweigh the evidence or substitute its own

judgment for that of the Board. *Greenwood v. Tenn. Bd. of Parole*, 547 S.W.3d 207, 216-17 (Tenn. Ct. App. 2017) (citing *Young v. City of LaFollette*, 353 S.W.2d 121, 124 (Tenn. Ct. App. 2011)).

Legal Analysis

Collateral Estoppel

Prior to the hearing, Petitioner filed a Notice of Filing raising the issue of collateral estoppel which the parties addressed during oral argument. Petitioner relied upon Part I of the Davidson County Chancery Court’s decision in *Lanier v. Tenn. Bd. Of Parole*, No. 23-1274-I, entered on January 8, 2025 and made a final judgment prior to the hearing. In the *Lanier* decision, the Court found the Board acted illegally or exceeded its jurisdiction and remanded the matter to the Board to make a nonbinding recommendation to the Governor on Lanier’s clemency application pursuant to Tenn. Code Ann. § 40-28-104(a)(10).

Whether collateral estoppel applies is a matter of law for the Court to determine. *Bowen ex rel. Doe v. Arnold*, 502 S.W.3d 102, 106 (Tenn. 2016) (citing *Mullins v. State*, 294 S.W.3d 529, 535 (Tenn. 2009)). The doctrine of collateral estoppel “promotes finality, conserves judicial resources, and prevents inconsistent decisions . . . by barring the same parties from relitigating in a later proceeding legal or factual issues that were actually raised and necessarily determined in an earlier proceeding.” *Id.* at 107 (internal citations and quotations omitted). When used offensively, a plaintiff attempts “to prevent a defendant from relitigating an issue that the defendant has previously litigated and lost.” *Id.* at 108. To prevail on a claim of collateral estoppel, the following elements must be established:

1. That the issue to be precluded is identical to an issue decided in an earlier proceeding;
2. That the issue to be precluded was actually raised, litigated, and decided on the merits in the earlier proceeding;
3. That the judgment in the earlier proceeding has become final;

4. That the party against whom collateral estoppel is asserted was a party or is in privity with a party to the earlier proceeding; and
5. That the party against whom collateral estoppel is asserted had a full and fair opportunity in the earlier proceeding to contest the issue now sought to be precluded.

Id. at 107.

In the *Lanier* case, the Board denied Lanier's first request for commutation after finding that his case did not merit a hearing and did not make a nonbinding recommendation to the Governor. *Lanier v. Tenn. Bd. Of Parole*, No. 23-1274-I (Davidson Cty. Chancery Ct. Jan. 8, 2025) Final Order, p. 2. In the current matter, the Board returned Mr. Potee's subsequent application because he had previously applied under Governor Lee's administration and his application did not meet the Governor's guidelines to be considered and reviewed by the Board. (A.R. 1). While the same statutes and rules are relevant in both cases, the Court finds the facts and procedural history are sufficiently distinguishable that the issue is slightly different than that presented in *Lanier*.

Writ of Certiorari

The Board asserts that a writ of certiorari is inappropriate because the Board did not perform any judicial functions. In particular, it contends that no hearing was conducted and that there is no full record of administrative proceedings.

The common law writ of certiorari is available where the court reviews an administrative board or agency decision in which that agency is acting in a judicial or quasi-judicial capacity. Tenn. Code Ann. § 27-8-101; *Duracap Asphalt Paving Co. Inc. v. City of Oak Ridge*, 574 S.W.3d 859, 864 (Tenn. Ct. App. 2018). To qualify as an administrative, judicial, or quasi-judicial act, "the discretionary authority of the government body must be exercised within existing standards and guidelines." *Duracap*, 574 S.W.3d at 864. Agency decisions not made in conformity with

“judicial conventions” can be considered administrative or quasi-judicial decisions that are subject to review under a writ of certiorari. *McFarland v. Pemberton*, 530 S.W.3d 76, 104 (Tenn. 2017). Where there is a record of evidence and a final agency decision, certiorari is appropriate. *Bernard v. Metro. Gov’t. of Nashville and Davidson Cnty.*, 327 S.W.3d 658, 664 (Tenn. Ct. App. 2007) (citations omitted).

The Board applied the Governor’s criteria to Mr. Potee’s application, created a record of the proceeding, and issued a determination that effectively denied his clemency request. The Court, therefore, finds that the Board’s decision to deny Petitioner’s clemency request was judicial or quasi-judicial in nature, and is, therefore, subject to judicial review by a petition for writ of certiorari.

Separation of Powers

The Board also contends that review of the Board’s application of the Governor’s clemency criteria is barred by the doctrine of separation of powers. In the Petition, Mr. Potee contends that the Board did not consider his April 30, 2024 clemency application, review it, or make a nonbinding recommendation to the Governor contrary to Tenn. Code Ann. § 40-28-104(a)(10). Accordingly, Petitioner challenges only the Board’s failure to make a nonbinding recommendation on his clemency application to the Governor. He does not contest the Governor’s clemency criteria.

Whether the Board exceeded its jurisdiction or acted illegally

The Tennessee Constitution, Article III, § 6 vests power in the Governor to grant reprieves and pardons, including sentence commutations. *Carroll v. Raney*, 953 S.W.2d 657, 659 (Tenn. 1997).

The vestiture of the power to grant reprieves and pardons in the chief executive is exclusive of all other departments of the state, and the Legislature cannot, directly or indirectly, take it from his control, and vest it in others, or authorize or require it to be exercised by any other officer or authority. It is a power and a duty [e]ntrusted

to his judgment and discretion, which cannot be interfered with, and of which he cannot be relieved.

Id. (quoting *State ex rel. Rowe v. Connors*, 61 S.W.2d 471, 472 (Tenn. 1933)).

When the Governor commutes a sentence, he imposes a lesser sentence than that imposed by the judgment of conviction. *Id.* While this power belongs exclusively to the Governor and cannot be regulated or controlled by another branch of government, *id.* at 660, the legislature has, however, vested in the Board:

The duty, upon the request of the governor, to consider and to make nonbinding recommendations concerning all requests for exonerations, pardons, reprieves or commutations. The board shall have discretion to make either favorable or unfavorable recommendations based upon its application of guidelines and criteria adopted by the governor.

Tenn. Code Ann. § 40-28-104(a)(10).

In a letter dated July 10, 2019 from Governor Lee to the Chairman of the Board, he requested “under Tenn. Code Ann. § 40-28-104(a)(10), that the Board of Parole consider and make nonbinding recommendations concerning requests for exonerations, pardons, and commutations in non-capital cases.” He enclosed “applications, guidelines, and directives” to provide guidance to the Board in the exercise of its discretion in making favorable or unfavorable recommendations. (Resp’t Br., Ex. 1).

The guidelines explained the criteria under which an inmate could apply for commutation: Petitioners applying under criteria iii. must provide:

1. Proof of Petitioner’s rehabilitation, self-development and self-improvement, and likelihood of being a law-abiding citizen and positive contributor to society upon release.

If all required documentation has been provided with the application, the following factors should also be considered **before** the application is sent to the Board:

. . .

b. If the petitioner has already applied for clemency and was denied a hearing by the Board during this **administration**, carefully review the current and previous application.

...

If the Petitioner is applying under the same criterion as the previous application and there is no new information, the application should be returned to the petitioner and not reviewed by the Board.

(*Id.* at pp. 5-6) (Emphasis in original).

Pursuant to these criteria, on May 8, 2024, the Board “returned” Petitioner’s clemency application because “Petitioner previously applied under the same criteria and the Board determined [Petitioner’s] case does not meet the Governor’s criteria. Petitioner may re-apply during the next Governor’s administration.” (A.R. 1).

Petitioner contends that the Board acted illegally or exceeded its authority pursuant to Tenn. Code Ann. § 40-28-104(a)(10) by failing to consider his application and make a nonbinding recommendation to the Governor. In contrast, the Board asserts it followed the guidelines when it returned Petitioner’s application because he had previously requested clemency under the same criteria during the same administration, and his subsequent application contained no new information to consider. In other words, because Petitioner’s application did not meet the Governor’s guidelines to be considered by the Board and instead required the application to be returned, the Governor did not “request” a nonbinding recommendation from the Board. Further, that the Board’s interpretation of “this administration” did not distinguish between Governor Lee’s two gubernatorial administrations. Petitioner disputes this interpretation and contends that his 2024 clemency request should have been considered since it was submitted during a separate gubernatorial term and included new information.

It is well settled in Tennessee that only the Governor may decide whether to commute an inmate’s sentence. *Carroll*, 953 S.W.2d at 659; *see also State v. Dalton*, 72 S.W. 456 (Tenn. 1903)

(holding that allowing judges and workhouse commissioners to exercise pardoning power would contravene Article III, § 6 of the Tennessee Constitution). “Any and all attempts of the Legislature to vest [the pardoning] power in any officer, board, or commissioners to any extent, or in any form, advisory or otherwise, or to regulate its exercise, is in violation of the provision of the Constitution referred to, and an absolute nullity.” *State v. Dalton*, 72 S.W. at 457.

The plain language of Tenn. Code Ann. § 40-28-104(a)(10) provides that the Board has “[t]he duty, upon the request of the governor, to consider and to make nonbinding recommendations concerning all requests for exonerations, pardons, reprieves or commutations.” It further provides that the Board has “discretion to make either favorable or unfavorable recommendations based upon its application of guidelines and criteria adopted by the governor” The Governor invoked this duty by his July 10, 2019 letter to the Chairman of the Board in which he requested “under Tenn. Code Ann. § 40-28-104(a)(10), that the Board of Parole consider and make nonbinding recommendations concerning requests for exonerations, pardons, and commutations in non-capital cases.” The guidelines and criteria enclosed therein provided guidance to the Board in considering and making favorable or unfavorable recommendations to the Governor.

The Court finds that when the Board returned Mr. Potee’s application without forwarding it to the Governor with a nonbinding recommendation pursuant to Tenn. Code Ann. § 40-28-104(a)(10), the Board in effect denied his application and acted illegally or exceeded its jurisdiction. The July 10, 2019 letter did not otherwise limit the Board’s duty to consider and make nonbinding recommendations other than “in non-capital cases.” While the Board contends the Governor “requested” recommendations only for those applications that meet his criteria as set forth in the guidelines, the guidelines were enclosed to provide guidance to the Board in

determining whether its nonbinding recommendation should be favorable or unfavorable, not whether or not to make a nonbinding recommendation. Therefore, the Board exceeded its jurisdiction and acted illegally by returning Mr. Potee's application which effectively denied his commutation request without providing a nonbinding recommendation to the Governor.

Judicial review of a writ of certiorari is limited, and the Court may not "inquire into the intrinsic correctness of the lower tribunal's decision," "reweigh the evidence," or "substitute their judgment for that of the lower tribunal." *State v. Lane*, 254 S.W.3d 349, 355 (Tenn. 2008). Accordingly, the Court declines to consider the interpretation of "this administration" or whether new information was included in Petitioner's April 30, 2024 application.

Conclusion

The Court finds that the Board exceeded its jurisdiction and acted illegally when it returned Mr. Potee's application for commutation without providing a nonbinding recommendation to the Governor, as required under Tenn. Code Ann. § 40-28-104(a)(10).

It is, therefore, ORDERED, ADJUDGED, and DECREED that Petitioner's Petition for Writ of Certiorari is GRANTED.

It is further ORDERED, ADJUDGED, and DECREED that this matter is REMANDED to Respondent Tennessee Board of Parole to consider and make a nonbinding recommendation to the Governor on Petitioner Wayne Potee's April 30, 2024 application for commutation, either favorable or unfavorable in the Board's discretion, based on the Governor's guidelines and criteria. The Board's non-binding recommendation should be made within sixty (60) days after the date of entry of this Order.

Court costs shall be taxed to Respondent.

It is so ORDERED.

s/Anne C. Martin

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RULE 58 CERTIFICATION

A copy of this Order has been served by U.S. Mail upon all parties or their counsel named above.

s/Megan Carter
Deputy Clerk & Master

March 17, 2025
Date