

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-4123
Conference Calendar

DEVON GLENDON DALEY,

Petitioner-Appellant,

versus

U.S. PAROLE COMMISSION,

Respondent-Appellee.

- - - - -
Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 5:92-CV-65
- - - - -
August 20, 1993

Before JOLLY, JONES, and DUHÉ, Circuit Judges.

PER CURIAM:*

Devon Glendon Daley was convicted of conspiracy to distribute cocaine, possession with intent to distribute cocaine and crack cocaine, and unlawful possession of a firearm and was sentenced to 20 years of imprisonment on these charges. Following his initial parole hearing, Daley was assigned a severity category of seven, a salient factor score (SFS) of seven, and a presumptive parole date of November 23, 1994. Daley appealed this decision.

* Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

At the Parole Commission's request, the assistant U.S. attorney provided information "that this conspiracy distributed well in excess of 18.75 kilograms of cocaine, with purity of this cocaine being very high, ranging from 64% to 98%." Based on this information, a special reconsideration hearing was held and Daley's offense severity category was determined to be an eight, with a presumptive parole date of July 21, 2000. This decision was affirmed by the National Appeals Board/Full Commission.

Daley filed a petition for habeas corpus relief under 28 U.S.C. § 2241 contending that the Parole Commission erred in assigning him an offense severity rating of eight based on the information supplied by the assistant U.S. attorney. In Maddox v. United States Parole Com'n, 821 F.2d 997, 999 (5th Cir. 1987) the Court held that "Congress has given the Parole Commission absolute discretion concerning matters of parole. The Court went on to note that the Parole Commission could consider all relevant available information including "dismissed counts of an indictment, hearsay evidence, and allegations of criminal activity for which the prisoner had not even been charged." Id. (footnotes omitted). The judicial role in parole matters is limited to determining if there "is some evidence" to support the Commission's actions. Maddox, 821 F.2d at 1000. In this case, the Commission fully articulated the factual basis for its decision and although Daley disputes the truth of the information supplied by the assistant U.S. attorney, it is sufficient to support the Commission's findings.

Daley also contends that the Parole Commission did not consider mitigating circumstances in determining the offense severity rating. The review summary shows that the panel found that Daley was only a mid-level dealer in an "overall conspiracy [that] reached into the hundreds of kilograms of cocaine." Additionally, the Parole Commission panel noted that Daley had provided documented cooperation. The Parole Commission has broad discretion in weighing all factors involved in the decision on parole. Such decisions will only be overturned in the face of evidence of "flagrant, unwarranted or unauthorized action." Shahid v. Crawford, 599 F.2d 666, 670 (5th Cir. 1979). Daley has not produced any evidence to show that his presumptive parole date should have been earlier because of the "mitigating circumstances." He has not demonstrated that the Parole Commission acted in a flagrant abuse of its broad discretion.

AFFIRMED.