

STATE OF RHODE ISLAND
DEPARTMENT OF CORRECTIONS
40 HOWARD AVENUE
CRANSTON, RHODE ISLAND

In the Matter of the Petition of
Raymond J. Clements for a
Declaratory Ruling

:
:
:
:
:
:
:
:
:

RIDOC2024PDR009

DECISION

Introduction

On May 13, 2024, the Department of Corrections (“Department”) received Petitioner’s *Petition for Declaratory Ruling* (“Petition,” attached hereto as Exhibit A.) In the Petition, the Petitioner requests that the Department issue a “declaratory order on how it interprets and applies R.I. Gen Laws, Section 13-8-13(d), insofar as it pertains to establishing my aggregated parole eligibility.” *Exhibit A*. The Petition contains no factual allegations.

Issue

Whether the Department shall issue a declaratory order, decline to issue an order, or schedule the matter for further consideration.

Discussion

The applicable law regarding petitions for declaratory orders in the

administrative law context begins with R.I. Gen. Laws § 42-35-8(a), which states: “[a] person may petition an agency for a declaratory order that interprets or applies a statute administered by the agency or states whether, or in what manner, a rule, guidance document, or order issued by the agency applies to the petitioner.” Additionally, R.I. Gen. Laws § 42-35-8(c) provides: “[n]ot later than sixty (60) days after receipt of a petition under subsection (a), an agency shall issue a declaratory order in response to the petition, decline to issue the order, or schedule the matter for further consideration.” If an agency declines to issue a declaratory order, the decision must be in a record and must include a brief statement of the reasons for declining. An agency decision to decline to issue a declaratory order is subject to judicial review for abuse of discretion.

The Rhode Island Supreme Court has stated that R.I. Gen. Laws § 42-35-8 is “an administrative counterpart of the Declaratory Judgments Act.” *Liguori v. Aetna Casualty & Surety Company*, 384 A.2d 308, 312 (R.I. 1978). It is well-settled rule that “the Superior Court is without jurisdiction under the Uniform Declaratory Judgments Act unless it is confronted with an actual justiciable controversy.” *McKenna v. Williams*, 874 A.2d 217, 226 (R.I. 2005); *see also State v. Cianci*, 496 A.2d 139, 146 (R.I. 1985) (“the main prerequisite to successful prosecution of an action for declaratory judgment is the existence of an actual or justiciable controversy”). This principal applies equally to declaratory rulings under § 42-35-8. *See City of Providence Board of Licenses v. Department of Business Regulation of R.I.*, 2013 R.I. Super. LEXIS 195, *9 (November 18, 2013).

“It is fundamental that, to be entitled to a declaratory judgment, a plaintiff must both demonstrate a personal stake in the outcome of the controversy and advance allegations claiming an entitlement to actual and articulable relief.” *McKenna*, 874 A.2d at 227. “A declaratory-judgment action may not be used for the determination of abstract questions or the rendering of advisory opinions, nor does it license litigants to fish in judicial ponds for legal advice.” *Sullivan v. Chafee*, 703 A.2d 748, 751 (R.I. 1997)(internal quotations omitted). Additionally, a claim must be ripe for judicial review. “[A] claim is not ripe for adjudication if it rests upon contingent future events that may not occur as anticipated, or indeed may not occur at all.” *State v. Gaylor*, 971 A.2d 611, 614 (R.I. 2009). Ripeness is ultimately a “justiciability doctrine which seeks to avoid premature adjudication.” *Barletta/Aetna I-195 Wash. Bridge North Phase 2 JV v. State*, 2020 R.I. Super. LEXIS 107, *11 (PC-2020-06551).

The Petitioner’s request for a declaratory ruling is not justiciable. Petitioner has not presented the Department with any allegations or facts to support a finding that there is an actual case or controversy surrounding his “aggregated parole eligibility.” Furthermore, Petitioner has not advanced any allegations to suggest that he has standing, specifically that he has suffered an injury in fact or that he is immediately in danger of sustaining some direct injury. Petitioner is currently serving three consecutive life sentences retroactive to January 17, 2011. See Exhibit B. Petitioner is thus a life prisoner whose parole eligibility date is governed by R.I. Gen Laws § 13-8-13, Life prisoners and prisoners with lengthy sentences.

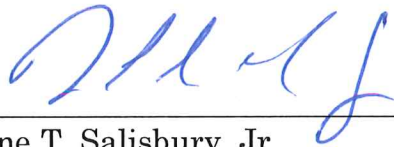
According to this statute, Petitioner is not eligible for parole for at least another thirty-one and a half (31.5) years. Petitioner's initial parole eligibility date is so afar that it is inconceivable that Petitioner has suffered any injury or is in danger of suffering any imminent injury as it pertains to his parole eligibility.

Additionally, the Department believes that this matter is currently not ripe for adjudication as a result of the Rhode Island Supreme Court's decision in *Neves v. State of Rhode Island*, SU-2022-0092-MP (PM-2022-00259); *Nunes v. State of Rhode Island*, SU-2022-0093-MP (PM-2022-00901); *Ortega v. State of Rhode Island*, SU-2022-0094 (PM-2022-00260); and *Monteiro v. State of Rhode Island*, SU-2023-167-MP (PM-2023-00921) (consolidated) which was issued on July 2, 2024. In this decision, the Court addressed chapter 8 of title 13 of the Rhode Island General laws, the statutory scheme that governs parole, and set forth specific findings regarding the calculation of parole eligibility. As a result of this decision, the Department is reviewing its methodology for calculating parole eligibility dates to ensure that's its methodology is in accord with the Court's findings. Accordingly, the Department believes that this matter is unripe for adjudication until it fully implements changes to its parole calculation methodology and reviews Petitioner's parole eligibility date in the coming months.¹ *See Sasso v. State*, 686 A.2d 88, 91 (R.I. 1996)("that which is not ripe for decision cannot and should not be decided in a declaratory-judgment action").

¹ The Department is in the process of reviewing all prisoner parole eligibility dates that are affected by the Rhode Island Supreme Court's decision.

Petitioner's ultimate failure to establish the essential prerequisites of standing and the existence of an actual controversy demonstrate that this matter is not justiciable and that Plaintiff's request for declaratory ruling is nothing more than a request for an advisory opinion. Mindful of the Department's position that this matter is currently unripe for adjudication and in light of there being no justiciable basis for the requested declaratory ruling, the Department will not render an opinion on this matter.

For these reasons, the Department declines to issue a declaratory ruling.



Wayne T. Salisbury, Jr.
Director
Rhode Island Department of Corrections

July 12, 2024

NOTICE OF APPELLATE RIGHTS

This decision constitutes a denial to issue a declaratory order requested under R.I. Gen. Laws § 42-35-8(a). Pursuant to R.I. Gen. Laws § 42-35-8(d), this order may be subject to judicial review.

Certification

I hereby certify that on this 15th day of July 2024, that a copy of the within Decision was sent by inter-departmental mail to:

Raymond Clements (#534780)
Maximum Security
P.O. Box 8273
Cranston RI 02929



Exhibit A

TO: Acting Director Salisbury
40 Howard Avenue.

Rhode Island
Department of Corrections

MAY 13 2024

Office of the Director

FROM: Raymond J. Clements
#534780
Maximum Security

RE: Petition for a Declaratory Order

14 May, 2024

Acting Director Salisbury,

Pursuant to R.I. Gen Laws, Section 42-35-8 (a),
I hereby petition the RIDOC to issue a declaratory
order on how it interprets and applies R.I Gen
Laws, Section 13-8-13(d), insofar as it pertains
to establishing my aggregated parole eligibility.

Sincerely,
Raymond J. Clements
Raymond J. Clements
#534780

MAXIMUM SECURITY