

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

May 11, 2000

Cornelia G. Clark  
Clerk, Court of Appeals  
of Wisconsin

**NOTICE**

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**No. 99-2479**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT IV**

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**STATE OF WISCONSIN EX REL. HARLAN RICHARDS,**

**PETITIONER-APPELLANT,**

**V.**

**JERRY SMITH, CHAIRPERSON, WISCONSIN PAROLE  
COMMISSION,**

**RESPONDENT-RESPONDENT.**

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APPEAL from an order of the circuit court for Dane County:  
P. CHARLES JONES, Judge. *Affirmed.*

Before Dykman, P.J., Eich and Deininger, JJ.

¶1 PER CURIAM. Harlan Richards, pro se, appeals the trial court's order denying his petition for a writ of certiorari. The issue is whether the Wisconsin Parole Commission properly denied Richards' request for release on parole. We affirm.

¶2 Our review of the commission’s decision is limited to: (1) whether the commission kept within its jurisdiction; (2) whether it acted according to law; (3) whether its actions were arbitrary, oppressive or unreasonable; and (4) whether the evidence was such that the commission might reasonably make the determination it did. *See Von Arx v. Schwarz*, 185 Wis. 2d 645, 655, 517 N.W.2d 540 (Ct. App. 1994). We may not substitute our judgment for that of the commission and, even though the evidence may support a contrary determination, we must affirm if substantial evidence supports the commission’s decision. *See id.* at 656.

¶3 Richards contends that the commission erred because its decision to deny parole was based in part on a standard that has since been repealed and replaced. The commission considered whether Richards had served “sufficient time for punishment,” a factor enumerated in the regulations that were in effect when Richards was convicted, rather than whether Richards had “served sufficient time so that release would not depreciate the seriousness of the offense,” the standard in effect since 1993. *See* WIS. ADMIN. CODE § PAC 1.06(7)(b). The State, however, contends that the “sufficient time for punishment” standard applies because the regulations that were in effect when Richards was *convicted* govern this case, not those in effect when Richards applied for parole.

¶4 Although the parties disagree about which standard applies, we agree with the trial court that, regardless of which standard is applied, the result would be the same. The trial court explained:

[E]ven if the new standard had been applied, I find that the difference between “sufficient time for punishment” and “sufficient time so that release would not depreciate the seriousness of the offense” is a semantic one and would, if applied, give the same result. ... Both standards require a consideration of the nature of the offense committed and

whether the length of time served under the circumstances demonstrates a sufficiently weighty consequence for that particular offense.

In this case, Richards was convicted of first-degree murder. While his accomplishments and efforts towards rehabilitation while incarcerated are worthy of note, his offense remains a crime for which our justice system reserves its most severe punishment. It is this severity that the parole commissioner considered in determining that consideration of Richards's release demanded "extreme caution." There is substantial evidence to support this conclusion; I cannot substitute my judgment for that of the Commission.

The commission did not err in concluding that Richards had not yet served enough time.

¶5 Richards next contends that the commission's finding that his release on parole would constitute an unreasonable risk to the public is not supported by substantial evidence in the record. He notes that the information relied on by the commission existed *before* he came to prison, but that there was no evidence in the record that release *at this time* would constitute an unreasonable risk to the public. Richards further points out that he did well when previously on probation or parole, that he had lived freely in society for seven years before the current offense, that he has made many positive strides in prison, and that he has met all of his treatment needs.

¶6 Although Richards would prefer that the commission look at his behavior since incarceration, the commission is free to consider his behavior prior to incarceration in assessing whether his release would constitute an unreasonable risk to the public. Again, we agree with the trial court:

Richards's first conviction occurred in 1970 when he was incarcerated for auto theft as a juvenile. In the

intervening years, he was convicted of selling LSD, manslaughter, and first-degree murder. Richards points out that these convictions took place over an extended period of time and were interspersed with long periods of uneventful and lawful behavior. In addition, he cites his behavior during his current incarceration as exemplary, and his academic achievements [as] commendable.

This Court may not substitute its judgment for that of the Commission; it must uphold the Commission's decision if supported by any reasonable view of the evidence. In this case, the denial of Richards's parole was based on his history of criminal activity which, while sporadic, resulted in violence and death on more than one occasion. Most of the extended periods of time during which Richards's behavior was lawful occurred when he was either incarcerated or on probation or parole [footnote omitted]. Richards's prior record is substantial evidence [supporting the commission's decision]; on that basis, this Court cannot draw any contrary inference and must uphold the judgment of the Commission.

*By the Court.*—Order affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5 (1997-98).

