IN THE SUPREME COURT
TERRITORY OF GUAM

GEORGE D. TAISIPIC
Appellee,
vs.
FRANCISCO L. MARION, Chairman; ROY S. TAIJERON, Member; JOSE Q. SALAS, Member MAXINE CHARFAUROS, Member; MICHAEL P. QUINATA, Chief Parole Officer; ROBERT D. CAMACHO, Parole Officer III; MARIA C. CRUZ, Parole Officer I; TERRITORIAL PAROLE BOARD; and EDUARDO C. BITANGA, Director, Department of Corrections,
Appellants.

Civil Case No. CVA96-008
Filed: December 13, 1996
Cite as: 1996 Guam 9

Appeal from the Superior Court of Guam

Argued and Submitted 26 November 1996
Agana, Guam

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OPINION

BEFORE: PETER C. SIGUENZA, Chief Justice, JANET HEALY WEEKS, and MONESSA G. LUJAN, Associate Justices.

WEEKS, J.:

[1] Appellants, the Territorial Parole Board, its individual members, various parole officers, and the Director of the Department of Corrections, appeal from an order of the Superior Court, the Honorable Benjamin J.F. Cruz presiding, placing Appellee Taisipic into the Parole Release and Enhancement Plan and Reintegration Activities (APREPARA@) Program pursuant to Taisipic=s petition for writ of habeas corpus. Appellants contend that the Superior Court=s order is erroneous as a grant of habeas corpus relief, and that the order usurps the authority of the Territorial Parole Board in violation of the separation of powers doctrine. We agree with Appellants and reverse the order of the Superior Court.

BACKGROUND

[2] Appellee Taisipic has been incarcerated since 1985 for a number of crimes including second and third degree robbery, possession and use of a deadly weapon during the commission of a felony, criminal sexual conduct, theft of a motor vehicle, aggravated arson, third degree aggravated assault, second degree armed robbery, third degree criminal mischief, and misdemeanor assault. Taisipic pled guilty to all of these crimes, and was originally given a fifty (50) year sentence. He served the first few years of this sentence in a federal prison in Phoenix Arizona.

[3] Taisipic=s sentence was reduced twice by the Superior Court. On 17 July 1988 the Superior Court reduced Taisipic=s sentence from fifty (50) years to thirty five (35) years because it had been determined on appeal that Taisipic=s consecutive sentences should have been concurrent sentences. On 8 February 1989 Superior Court Judge Benjamin J.F. Cruz issued a Decision and Order which further reduced Taisipic=s sentence from thirty five (35) years to thirteen (13) years, because, according to Judge Cruz, Ain comparison to his co-defendants= sentences, Taisipic=s sentence was unduly harsh.@

[4] In January of 1990 Taisipic was returned to the federal prison in Phoenix because he had assaulted a guard at the Department of Corrections (AD.O.C.@). The following year he was tried before a jury in Superior Court for aggravated assault and found guilty of the lesser included offense of assault. For the assault conviction, Judge Cruz, on 20 September 1991, sentenced Taisipic to one (1) year in D.O.C. less credit for four months of pretrial confinement. Taisipic=s sentence ended up totaling thirteen (13) years and eight (8) months. He was returned to prison off-island the next month.

[5] On 29 November 1994, Taisipic attended his first parole desirability hearing on Guam. The Territorial Parole Board denied parole, and Taisipic was returned off-island.

[6] Taisipic=s next parole desirability hearing was scheduled for 25 January 1996, approximately two months past the maximum one year interval between hearings as provided by 9 G.C.A. ' 80.72(b). Taisipic attended the January hearing with his attorney, David Lujan. At the hearing, Lujan requested that Taisipic=s hearing be rescheduled until the next time the parole board was to convene. The board granted Lujan=s request and rescheduled the hearing for 29 February 1996.

[7] Taisipic attended the February hearing, again with his attorney, David Lujan. At the February hearing, Lujan informed the board that both Lujan and his client Taisipic desired that the hearing be again tabled until the next parole board meeting. The board again granted the request and rescheduled the hearing for 28 March 1996.

[8] Taisipic=s second parole hearing was finally held on 28 March 1996. At the hearing the board denied parole and scheduled Taisipic=s next parole hearing for 27 March 1997, exactly one year later.

[9] In May of 1996, Taisipic filed with the Superior Court a petition for a writ of habeas corpus, requesting release from confinement because his second parole desirability hearing was not held within one year of his first hearing as required by ' 80.72(b). His petition also requested Asuch other different relief as this Court deem [sic] just and proper as justice so requires.@

[10] The Superior Court, Judge Cruz presiding, held a hearing on Taisipic=s petition for a writ of habeas corpus on 16 August 1996. At the hearing, Taisipic=s attorney, this time Daniel J. Berman, orally requested that Taisipic=s next parole desirability hearing be set for 28 November 1996 instead of 27 March. The November date would be one year from when Taisipic=s second parole hearing would have taken

place had it been timely. Berman also requested that the Parole Officer assigned to Taisipic=s case prepare Taisipic=s application for the Parole Release Enhancement Plan and Reintegration Activities (APREPARA@) Program. In the PREPARA Program, parole offenders spend a period of time living in a parole residence facility or AHalfway House@ prior to being fully released on parole. The Program is intended to provide inmates convicted of violent crimes who are determined by the parole board to be good candidates for parole with a transition period prior to being released into the community.

[11] During this first habeas corpus hearing, the court recessed to allow the parties to discuss Taisipic=s request for a PREPARA application. When the hearing resumed, the Government, through Assistant Attorney General Eric A. Heisel, and through parole officer Bob Camacho, stated that the Government would prepare an application for Taisipic for PREPARA and that the parole board would accept the application for consideration. According to Heisel, however, the Government would not agree to move up the date of Taisipic=s next parole hearing.

[12] The court held further proceedings on the habeas corpus petition on 6 September 1996. At the 6 September hearing, Taisipic=s attorney Berman informed the Judge that, following the previous habeas corpus hearing, Berman and the Attorney General=s Office had arrived at an agreement. According to Berman, the Attorney General=s Office had agreed to the following:

> (1) the Government would make efforts to complete and enroll Taisipic in PREPARA;
>
> (2) the Government would schedule a hearing before the parole board to address moving up the date of Taisipic=s next parole desirability hearing;
>
> (3) the AG=s Office would have no objection to the advancement of Taisipic=s next parole hearing date by two (2) months from March of 1997 to January of 1997;
>
> (4) the Government agreed to allow Taisipic and Berman to argue to the parole board to advance Taisipic=s next parole hearing an additional two (2) months to November of 1996, and that the Attorney General=s Office would not oppose them in this argument before the board.

Berman then stated that he was in fact allowed to make his desired argument to the parole board unopposed by the AG=s Office. The board, however, granted only a two (2) month advancement of the parole hearing date to 24 January 1997, rather than the full four (4) month advancement Berman had requested.

[13] Berman told Judge Cruz that, as far as Berman was concerned, the Attorney General=s Office had fulfilled their part of the agreement as he understood it. Berman added, however, that he was in disagreement with his client Taisipic as to the terms of the agreement. According to Berman, his client Taisipic was under the impression that the Government had already agreed to a four month advancement of his parole hearing date, and that the Government had also agreed not just to submit his application for PREPARA, but to actually accept Taisipic into the program. Berman stated that he may have been unclear in relating to his client that the Government was only agreeing to make efforts to complete and submit an application for Taisipic.

[14] Having ascertained his client=s understanding of the agreement, Berman abandoned the agreement with the Attorney General=s Office and presented to Judge Cruz three requests for relief: (1) to order Taisipic into the PREPARA Program; (2) to order Taisipic=s parole hearing date advanced to 28 November 1996; and (3) to grant Taisipic=s petition for writ of habeas corpus and release Taisipic because his due process rights were violated by the delayed second parole hearing.

[15] At the 6 September 1996 habeas corpus hearing, the court also received testimony from another parole officer, James Moylan. Judge Cruz asked Moylan if the parole board had taken any action yet on Taisipic=s PREPARA application. Moylan explained that Taisipic must first be granted parole by the board before he can be accepted into the program and that that determination would have to be made at Taisipic=s next parole desirability hearing on 24 January 1997. At the January hearing, according to Moylan, the board would determine whether to grant full parole, deny any parole, or grant parole into the PREPARA Program.

[16] Further proceedings on this matter continued on 13 September 1996. At this final hearing, Judge Cruz ordered that Taisipic be placed immediately into the PREPARA Program.[1]

[17] Appellants filed a timely notice of appeal of the Superior Court=s Order on 16 September 1996.

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[1]The written Order, filed on 1 October 1996 contains the following language: AThat the Petitioner, George D. Taisipic, without being placed on parole, be placed, immediately, into the Parole Release and Enhancement Plan and Reintegration Activities (APREPARA@) as administered by the Department of Corrections and Territorial Parole Board.@ Throughout the record, PREPARA is described as a program only open to paroled offenders. Nonetheless, the Order seems to contemplate placement of Taisipic into the program without a grant of parole.

[18] Appellants= application to the Superior Court for a stay of the Order was denied on 18 September 1996. Appellants= Emergency Motion to this Court for a stay of the Superior Court=s Order Pending Appeal was granted on 20 September 1996.

[19] Appellants advance four arguments on appeal. First, Appellants argue that, by releasing Appellee Taisipic into a post-parole program prior to a grant of parole by the Territorial Parole Board, the Superior Court exceeded its authority under Guam statutory law, and in violation of the doctrine of separation of powers. Second, Appellants argue that Appellee Taisipic is not entitled to habeas corpus relief due to the delay of his second parole hearing. Third, Appellants argue that Appellee Taisipic does not have a constitutional right to be entered into a work release program. Fourth, Appellants argue that Appellee Taisipic should be bound by the agreements and actions of his attorneys, which should have had the effect of settling Appellee=s petition for writ of habeas corpus. We find Appellants= first two arguments persuasive. Accordingly, we need not consider Appellants= arguments three and four.

I.

[20] Appellants= first contention is that the Superior Court=s Order is not authorized under Guam law, and that it violates the doctrine of separation of powers. We agree.

[21] Title 9, Chapter 80 of the Guam Code Annotated defines the authority and functions of the Territorial Parole Board, of the Department of Corrections, and of the court

DISCUSSION

relative to the disposition of offenders on Guam. Upon conviction of an offense, it is the function of the court to impose a sentence. 9 G.C.A. ' 80.10. In determining the sentence to impose, the court has a variety of options, including, but not limited to, imprisonment, fines, community service, and rehabilitative programs. Id.. Depending upon the offense, the court may be required to impose a sentence of imprisonment within certain guidelines as to duration. See e.g., 9 G.C.A ' 80.30.

[22] At the time of sentencing, the court in its discretion may extend the physical limits of an offender=s confinement for such purposes as employment or education of the offender. 9 G.C.A. ' 80.48(a). After the offender has been sentenced by the court, however, the decision to extend the limits of his confinement lies with the Director of Corrections. Id. The court is only authorized to revoke the extension Aif the limits of confinement were originally extended by the court.@ 9 G.C.A. ' 80.48(c). In the event that the limits of confinement were extended by the Director of Corrections, then the Director may revoke the extension. Id.

[23] An offender becomes eligible for parole upon completion of two-thirds (2/3) of his sentence. 9 G.C.A. ' 80.70. Once an offender becomes eligible for parole, the Territorial Parole Board is authorized to grant or deny parole to the offender according to certain specified review standards. 9 G.C.A. ' 80.76. The Territorial Parole Board may also impose conditions upon grants of parole, and may revoke parole if these conditions are violated. 9 G.C.A ' 80.80. One such condition is that the paroled offender reside in a parole residence facility, commonly referred to as a AHalfway House.@ 9 G.C.A. ' 80.80(a)(6).

[24] The PREPARA Program, into which the Superior Court ordered Appellee Taisipic, was established as a program available to the Territorial Parole Board to be imposed as a parole condition pursuant to 9 G.C.A. ' 80.80(a)(6). The policy statement with regard to PREPARA, issued by the Department of Corrections, cites ' 80.80(a)(6) as the program=s statutory basis. Dep=t. Corr. Gen. Order No. 88-002, p.1 (Oct. 14, 1988). According to testimony before the Superior Court from parole officers and from the Attorney General=s Office, participation in PREPARA is a condition of parole, and, as such, is only open to offenders who have been granted parole.

[25] From the above cited provisions of Title 9, it is clear that, with regard to persons convicted of crimes on Guam, the functions of the Territorial Parole Board, of the Department of Corrections, and of the courts have been specifically delineated by the Legislature. Neither the Department of Corrections, nor the Territorial Parole Board have the power to impose a sentence of any kind upon a person convicted of violating the laws of Guam. Such a function has been properly entrusted to the Judicial Branch. Conversely, regardless of the substantial involvement of the Judicial Branch in most phases of an offender=s progression through the criminal justice system, the courts of Guam are without the power to grant or deny parole. That power has been vested in the Territorial Parole Board of the Executive Branch. Thus, in the instant case, the Superior Court=s order placing Appellee Taisipic into a parole program, without a grant of parole from the Territorial Parole Board, encroaches upon the function of the Parole Board in violation of Guam law.

[26] In addition, as Appellant correctly points out, to allow the courts of Guam to grant or deny parole would be inconsistent with the doctrine of separation of powers as embodied in the Organic Act of Guam, 48 U.S.C. ' 1421 et seq. The Organic Act of Guam is Guam=s Constitution. *Bordallo v. Baldwin*, 624 F.2d 932, 934 (1980). The Organic Act specifically provides that A[t]he government of Guam shall consist of three

branches, Executive, Legislative, and Judicial ... .@ 48 U.S.C. ' 1421(a). By its very language, therefore, the Organic Act requires application of the constitutional doctrine of separation of powers to government of Guam functions. *People v. Camacho,* 1 Guam R. 501, 506 (1975).

[27] Through strict adherence to the doctrine of separation of powers, courts throughout the United States have sought to protect the legislative and executive branches of government from judicial interference. This is true of the Supreme Court of the United States, the Circuit Courts of Appeal, and the Federal District Courts. See e.g., *Green v. Frazier,* 253 U.S. 233, 40 S.Ct. 499 (1920); *Dakota C.Tel. Co. v. South Dakota,* 250 U.S. 163, 39 S.Ct. 507 (1919); *City of New Orleans v. Paine,* 147 U.S. 261, 13 S.Ct. 303 (1893); *Ainsworth v. Barn Ballroom Co.*, 157 F.2d 97 (4th Cir. 1946) *Jones v. United States Bureau of Prisons,* 903 F.2d 1178 (8th Cir. 1990); *de la Cova y Gonzalez Abreu v. United States*, 611 F.Supp. 137(D.C. Puerto Rico 1985).

[28] In *Green v. Frazier*, the United States Supreme Court considered the constitutionality of certain South Dakota tax laws. The Court upheld the legislation holding that courts should not concern themselves with the wisdom of legislation, and that courts have no general supervisory authority over other departments of government. Green, 253 U.S. at 240. Likewise, in *City of New Orleans v. Paine,* the United States Supreme Court refused to enjoin certain actions of the Secretary of the Interior over matters within the authority of the land department. The Court held that Athe judicial power will not interpose by mandamus or injunction to limit or direct the action of departmental officers in respect to pending matters within their jurisdiction and control.@ City of New Orleans, 147 U.S. at 268.

[29] Even when misuse of power by a government official has been identified, courts remain unwilling to invade the functions of the other branches. In *Dakota C.Tel. Co. v. South Dakota*, the Supreme Court rejected an attack upon the actions of the President in taking over South Dakota telephone and telegraph lines during wartime. The Court held that Athe judicial may not invade the legislative or executive departments so as to correct alleged mistakes or wrongs arising from asserted abuse of discretion.@ Dakota C.Tel. Co., 250 U.S. at 184. The Fourth Circuit Court of Appeals, in *Ainsworth v. Barn Ballroom Co.*, reached this same conclusion with regard to an official Military Order, the enforcement of which had been enjoined by a Federal District Court. Citing Dakota C.Tel. Co., the Fourth Circuit reversed the injunction allowing enforcement of the Military Order. Ainsworth, 157 F.2d at 100.

[30] In the area of parole determinations, courts have adhered to the doctrine of separation of powers by refusing to perform the functions of a parole board. In *Jones v. United States Bureau of Prisons*, the Eighth Circuit Court of Appeals held as follows:

> While it is correct that the Commission failed to comply with federal regulations by failing to give Jones a parole hearing on the record in 1981, neither the A[d]istrict [c]ourt nor this [c]ourt has the right to correct the mistake by ordering the petitioner released. The most we can do is require the Parole Board to give the petitioner a fair hearing in accordance with its rules and regulations at the earliest possible date.

Jones, 903 F.2d at 1181 (citing *Burton v. Ciccone*, 484 F.2d 1322, 1323 (8th Cir. 1973)). Similarly, in *de la Cova y Gonzalez Abreu v. United States*, the Federal District Court of Puerto Rico held that it lacked the authority to order an offender released on parole. In so holding, the court reasoned that ACongress, in the proper discharge of its legislative functions, vested in the Parole Board and not in the courts the power and discretion to grant or deny parole.@ de la Cova y Gonzalez Abreu, 611 F.Supp. at 141.

[31] Like the federal courts cited above, state courts have also been concerned with preventing overreaching by the Judiciary. In *Parkinson v. Watson*, 291 P.2d 400 (Utah 1955), the Supreme Court of Utah considered legislation that allowed for representation in the state Legislature disproportionate to the number of residents of each district. The court upheld the legislation, refusing to disturb the balance of power which, according to the court, Ahas contributed greatly to the success of our system of government and to the strength of the judiciary itself.@ Parkinson, 291 P.2d at 403.

[32] The Supreme Court of California has been equally mindful of the separation of powers doctrine in cases involving parole determinations. For example, in In re Walker, 10 Cal.3d 764 (Cal. 1974) the court held that a prisoner was entitled to have the words without the possibility of parole deleted from his sentence, but refused to decide whether the prisoner should be granted parole because the parole power in California is vested in the Adult Authority and not in the courts. In re Walker, 10 Cal.3d at 790. See also, In re Bowers, 40 Cal.App.3d 359, 362 (Cal. Dist. Ct. App. 1974).

[33] We agree with the reasoning of the federal and state court opinions cited above, and conclude that the Superior Court=s Order placing Appellee Taisipic into the PREPARA Program is inconsistent with the Organic Act in that it impermissibly

encroaches upon the powers of the Territorial Parole Board to grant or deny parole. Furthermore, the Order usurps the power of the Guam Legislature, which vested authority over parole determinations in the Parole Board and not in the courts. The following statement from the Supreme Court of Florida is particularly persuasive:

> The Courts have been diligent in striking down acts of the Legislature which encroached upon the Judicial or the Executive Departments of the Government. They have been firm in preventing the encroachment by the Executive Department upon the Legislative or Judicial Departments of Government. The Courts should be just as diligent, indeed, more so, to safeguard the powers vested in the Legislative from encroachment by the Judicial branch of Government.

Pepper v. Pepper, 66 So.2d 280, 284 (Florida 1953).

II.

[34] We are also persuaded by Appellants= second argument that the Superior Court=s Order placing Appellee Taisipic into the PREPARA Program is invalid as a habeas corpus remedy.

[35] Guam=s habeas corpus statute, 8 G.C.A. ' 135.38 entitles an offender to be discharged from confinement by Guam courts if the process pursuant to which he is held is in some manner defective.

> **' 135.38. When Defendant May be Discharged if Held Under Process From Guam Courts.** If it appears on the return of the writ that the prisoner is in custody by virtue of process from any court of this Territory, or judge or officer thereof, such prisoner may be discharged in any of the following cases, subject to the restrictions of 135.36:
>
> (a) When the jurisdiction of such courts or officer has been exceeded;
>
> (b) When the imprisonment was at first lawful, yet by some act, omission, or event which has taken place afterwards, the party has become entitled to a discharge;
>
> (c) When the process is defective in some matter of substance required by law, rendering such process void;
>
> (d) When the process, though proper in form, has been issued in a case not allowed by law;
>
> (e) When the person having the custody of the prisoner is not the person allowed by law to detain him;
>
> (f) Where the process is not authorized by any order, judgment, or decree of any court, nor by any provision of law;

> (g) Where a party has been committed on a criminal charge without reasonable or probable cause.

[36] Appellee Taisipic claims that because his second parole hearing was four months late, he is entitled to be discharged on the basis of subsections (b) and (c) of ' 135.38. There appears to be no authority for this proposition in any federal jurisdiction, or in California, the source of Guam=s habeas corpus statutes.

[37] Federal circuit courts confronted with this type of habeas corpus petition have consistently held that a delay in a parole hearing does not entitle the petitioner to release absent a showing of prejudice as a result of the delay. This was precisely the holding in each of the following cases: *Clifton v. Attorney General of State of California*, 997 F.2d 660 (9th Cir. 1993); *Poyner v. U.S. Parole Commission*, 878 F.2d 275, 276 (9th Cir. 1989); *Heath v. U.S. Parole Commission*, 788 F.2d 85 (2nd Cir. 1986); *Goodman v. Keohane*, 663 F.2d 1044, 1046 (11th Cir. 1981); *Beck v. Wilkes*, 589 F.2d 901 (5th Cir. 1979); *Smith v. United States*, 577 F.2d 1025, 1027 (5th Cir. 1978).

[38] In *Beck v. Wilkes*, the Fifth Circuit held that a thirteen (13) month delay between the execution of the petitioner=s parole revocation warrant and his final revocation hearing did not entitle the petitioner to habeas corpus relief. The court reasoned that A[w]hatever the applicable time limitation, ... this circuit requires a showing of both unreasonable delay and prejudice before a person is entitled to release because of a delay in obtaining a final hearing.@ Beck, 589 F.2d at 903. Likewise, in *Heath v. U.S. Parole Commission*, a detainer warrant was filed against a paroled offender who had committed robbery while on parole. The offender filed a habeas corpus petition because of a delay in the dispositional review of the detainer. The Second Circuit held that even assuming the dispositional review was untimely, habeas corpus relief requires a showing of prejudice or bad faith. Heath, 788 F.2d at 89.

[39] There is no indication in Taisipic=s petition for writ of habeas corpus or anywhere else in the record that Taisipic=s second parole hearing was unreasonably delayed, delayed in bad faith, or that Taisipic suffered prejudice of any kind as a result of the delay. Furthermore, Taisipic did in fact receive his second hearing on 28 March 1996, at which hearing Taisipic=s parole request was denied for the second time. A case from the Eighth Circuit addressed this issue in the context of a much more egregious delay of a parole hearing. In Jones v. U.S. Bureau of Prisons, 903 F.2d 1178 (8th Cir. 1990), the habeas corpus petitioner, Jones, was not given his initial

parole hearing until six years after he became eligible for parole. The delay was in violation of a federal statute that required a parole hearing at least ninety (90) days prior to Jones= eligibility date, or as soon thereafter as practicable. When Jones finally received his hearing, the Commission denied parole. In affirming the dismissal of Jones= petition, the Eighth Circuit held that A[a]lthough Jones did not receive a parole hearing within the time limit required by federal law, we hold that he is not entitled to habeas relief because he did eventually receive a hearing.@ Jones, 903 F.2d at 1179.

[40] California courts also refuse to grant habeas corpus relief based on non-compliance with parole hearing scheduling requirements. For example, In re Bowers, 40 Cal.App.3d 359 (Cal. Dist. Ct. App. 1974), was a habeas corpus proceeding by a petitioner who had his parole revoked without ever being afforded the required in-community prerevocation hearing. The trial court granted habeas corpus relief and released the petitioner from prison. The California Court of Appeal held that the trial court went too far in releasing the petitioner. The court held that Athe proper function of the courts in respect to parole and revocation of parole is simply to ensure that the prisoner is accorded due process.@ Bowers, 40 Cal.App.3d at 362.

[41] We reject Taisipic=s claim that he is entitled, if not to full release, then to be placed in the PREPARA Program due to the violation of his liberty interest in being considered for parole. Taisipic=s claim that he has a liberty interest in being considered for parole is supported by a number of cases, including at least three from the Ninth Circuit. *Bermudez v. Duenas,* 936 F.2d 1064 (9th Cir. 1991); *Kelly v. Risley,* 865 F.2d 201 (9th Cir. 1989); *Board of Pardons v. Allen,* 107 S.Ct 2415 (1987); *Parker v. Corrothers,* 750 F.2d 653 (8th Cir. 1984); *Bowles v. Tennant,* 613 F.2d 776 (9th Cir. 1980); *Greenholtz v. Inmates of Nebraska Penal & Correctional Complex,* 99 S.Ct. 2100 (1979); *Christopher v. U.S. Board of Parole,* 589 F.2d 924 (7th Cir. 1978). Not one of these cases, however, involves the release of an offender or the ordering of an offender into a parole program of any kind.

[42] Instead, the appropriate remedy for denial or delay of a parole hearing is an order directing that the hearing be given. *Clifton v. Attorney General of California*, 997 F.2d 660 (9th Cir. 1993); *Kelly v. Risley,* 865 F.2d 201 (9th Cir. 1989) (remanding matter to Montana Parole Board with orders to provide annual review of Board=s parole decision); *Heath v. U.S. Parole Commision,* 788 F.2d 85 (2nd Cir. 1986) (holding that appropriate remedy for untimely dispositional review on the part of the Commission is a writ of mandamus to compel compliance); *Jones v. Bureau of Prisons,* 903 F.2d 1178 (8th Cir. 1990); *de la Cova y Gonzalez Abreu v. United States,*

611 F.Supp. 137 (D.C. Puerto Rico 1985) (holding that the only remedy is to order the board to correct abuses); *In Re Bowers*, 40 Cal.App.3d 359 (Cal. Dist. Ct. App. 1974).

[43] Appellee Taisipic advances a variety of additional arguments in support of the Superior Court=s Order, none of which deserve serious consideration. First, we decline Taisipic=s invitation to ignore the wealth of case law cited above on the subject of parole functions. While we agree with Taisipic that this Court is free to approach its decisions without regard to the approaches of other jurisdictions, we will not sacrifice sound and considered reasoning in order to affirm our independence.

[44] We also refuse Taisipic=s request that this Court ignore errors of law in the Superior Court, and consider only whether the Superior Court properly exercised jurisdiction. As Taisipic himself points out, this type of limited review is generally applied in the absence of a statute specifically authorizing habeas corpus appeals. See e.g., Ex Parte Maro, 248 P.2d 135 (Cal. Dist. Ct. App. 1952); In re Larabee, 21 P.2d 132 (Cal. Dist. Ct. App. 1933). Such a statute exists on Guam. 8 G.C.A. ' 135.74.

[45] Finally, we reject Taisipic=s argument that the Superior Court=s Order should be affirmed as a means of enforcing Appellants= promise to enroll Taisipic into the PREPARA Program. There is no indication anywhere in the record that any Government official ever made such a promise to Appellee Taisipic. In fact, Taisipic=s own counsel stated on the record before the Superior Court that, based on his own understanding of Taisipic=s agreement with the Government, the Government was only obligated to help Taisipic apply for acceptance into the program.

[46] We hold, therefore, that the Superior Court=s Order of Taisipic into the PREPARA Program is inappropriate as a habeas corpus remedy. Taisipic has already been given his second parole hearing. While Taisipic may have suffered a violation of his rights in the delay of his second hearing, in view of the fact that the hearing has already taken place, he is no longer in need of a remedy. Even assuming that, based upon the delay of his second hearing, he is in need of relief from the fact that his next hearing will be two months later than it would have been had his second hearing been timely, then the appropriate remedy would be an order directing that his next hearing be held immediately. Taisipic, however, did not request such an order in his petition for habeas corpus. Furthermore, because Taisipic=s third hearing is already scheduled for next month, such an order is at this point unnecessary.

CONCLUSION

[47] For the foregoing reasons, the Order of the Superior Court placing Appellee Taisipic into the PREPARA Program is REVERSED.

Dated: 13 December 1996.

JANET HEALY WEEKS,
Associate Justice

MONESSA G. LUJAN,
Associate Justice

PETER C. SIGUENZA,
Chief Justice