

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT – CHANCERY DIVISION

DARRELL CANNON, )  
Plaintiff, )

v. )

ILLINOIS PRISONER REVIEW BOARD, )  
JORGE MONTES, Chairman of the Illinois )  
Prisoner Review Board, ANDREW FOX, )  
Member of the Illinois Prisoner Review )  
Board and DAVID FRIER, Member of the )  
Illinois Prisoner Review Board. )  
Defendants. )

No. 04 CH 16620

Judge James F. Henry  
Cal. 6

**MEMORANDUM OPINION AND ORDER**

The two matters before the Court include: (1) a complaint for administrative review; and (2) a motion to enforce settlement. The First Amended Complaint (“Complaint”) brought by Plaintiff Darrell Cannon (“Cannon”) against Defendant, the Illinois Prisoner Review Board (“IPRB”) contains six counts. The Complaint seeks relief based on a writ of mandamus or writ of certiorari, ordering the IPRB immediately release Cannon on parole or enter an order reversing the IPRB’s parole revocation decision and directing the IPRB to rehear Cannon’s case. The Court having considered the briefs and oral arguments in connection with the motion; the Court hereby enters the following Memorandum Opinion and Order directing the IPRB to rehear Cannon’s case consistent with the law as set forth herein:

**I. BACKGROUND**

In 1971, Cannon was convicted of the murder of Emanuel Lazar and sentenced to an indeterminate sentence of 100-200 years. In January 1983, Cannon was paroled after serving 12 years of his sentence. On November 2, 1983, Cannon was arrested while on parole. He confessed to participation in the murder of Darren Ross (“Ross”), but asserts that torture by Chicago Police resulted in his confession. On November 18, 1983, Cannon was given notice of violation of parole for committing the crime of murder. On December 19, 1983, a preliminary hearing was held before the IPRB hearing officer. The IPRB hearing officer concluded there was probable cause to believe that Cannon was

guilty. On June 20, 1984, on the basis of his confession alone, Cannon was found guilty for the murder of Ross. On August 7, 1984, the IPRB found, based upon Cannon's conviction and without an additional hearing, Cannon was a parole violator. Therefore, Cannon's previous parole was revoked.

Cannon's criminal case continued in several proceedings before the Circuit Court of Cook County and two appeals before the Illinois Appellate Court. In 1994, a retrial was held and Cannon was again found guilty. In 1997, the Illinois Appellate Court vacated Cannon's murder conviction a second time and the case was remanded for a full evidentiary hearing on Cannon's Motion to Suppress. For the first time, Cannon was permitted to introduce evidence of the torture he endured after his arrest for the murder of Ross *and* the similar torture that the same detectives had inflicted on other arrestees.

On January 19, 2001, before the hearing was completed on this issue, Cannon accepted a plea bargain agreement whereby he agreed to plead guilty to the reduced charges of armed violence and conspiracy to commit murder. At the plea hearing Cannon stipulated that the factual basis was sufficient to support a conviction but did not admit guilt. Cannon continues to assert his innocence. The plea agreement was to result in his release in August 2003. However, the plea agreement did not mention Cannon's parole violation for the 1983 arrest.

On February 20, 2003, the IPRB conducted a parole release hearing. The IPRB asserted it had authority to continue to hold Cannon as a parole violator until following the completion of his sentence under the plea agreement plus the completion of his maximum sentence for the 1971 murder.<sup>1</sup> At that time, the Cook County State's Attorney did not object to the release of Cannon on parole due to the extenuating circumstances of his case. Despite this, the IPRB did not release him and continued his case for a subsequent parole release hearing in 2006.

On October 22, 2003, Cannon filed a petition for post-conviction relief, under the Post Conviction Hearing Act, 725 ILCS 5/122-1. This petition claimed his counsel had provided ineffective assistance for failing to notify him of the possibility that the IPRB

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<sup>1</sup> Specifically, the IPRB asserted the right to hold Cannon until 2064 based on the August 7, 1984 parole revocation.

could continue to hold him as a parole violator, notwithstanding the plea agreement. The petition further alleged the State had breached the plea agreement.

The State, in its response to Cannon's petition, gave no objection to vacating Cannon's guilty plea and moved to *nolle prosequere*, thereby dismissing all charges against Cannon. Thus, on April 14, 2004, the trial court dismissed all charges against Cannon. On April 26, 2004, Cannon wrote to the IPRB stating that because the previous parole revocation document found Cannon to be a parole violator based on the fact of his criminal conviction, the IPRB had no further basis to continue to hold Cannon as a parole violator now that the conviction had been vacated and dismissed.

The IPRB refused to release Cannon on parole and chose instead to hold a parole revocation hearing. Cannon objected on the basis that a parole revocation hearing conducted with respect to an alleged violation in 1983 (when Cannon was arrested, while on parole, for the Ross murder) would contravene the due process principle that parole revocation hearings must be conducted in a reasonably timely manner. The IPRB overruled this objection and on August 27 and September 3, 2004, the IPRB held a parole revocation hearing.

At the hearing, the record consisted of four categories of evidence relating to the Ross murder: (1) his confession alleged to have been obtained by torture; (2) evidence concerning the torture that led to the confession; (3) the October 31, 1983 grand jury testimony of Tyrone McChristian ("Tyrone") and an affidavit recanting that testimony; (4) Cannon's own testimony from his 1994 trial and the revocation hearing regarding his presence at the scene of Ross' murder.

Cannon testified at the 2004 revocation hearing that he had confessed to the Ross murder only because he was tortured. Specifically, Cannon testified to having his hands handcuffed behind his back with two Chicago police detectives standing on either side of him. Cannon stated one detective repeatedly forced a shotgun into his mouth, each time demanding Cannon tell the Police what they wanted to hear. Cannon testified that when he refused, the detective would pull the trigger. Cannon also described being shocked on his testicles with an electric cattle prod.

As to the killing of Ross, Cannon testified that he was driving the automobile Ross was killed in. Cannon testified that A.D. McChristian, a passenger in the car and a

close friend of Cannons, without warning and without foreknowledge on Cannon's part, repeatedly shot Ross. Cannon further testified that following the murder the body was removed from the car and, acting on instructions from A.D. McChristian, he fled the scene with A.D. McChristian and did not report the offense to the police.

Chicago Police representatives (including the officers who allegedly tortured Cannon) did not testify, asserting their Fifth Amendment rights. Transcribed testimony was heard from two other arrestees regarding similar torture experiences within days of Cannon's torture and from a Chicago Police Office of Professional Standards investigator which sustained Cannon's torture allegations. In addition, the Report of the Special State's Attorney recently released provides additional support for the likelihood Cannon suffered torture at the hands of the Chicago Police.

Tyrone's grand jury testimony asserted that Cannon had been involved in planning the murder of Ross and supplied the weapon to A.D. McChristian. Tyrone did not testify at Cannon's criminal trials and has never been cross-examined on this issue. At the revocation hearing, Cannon submitted a 2004 affidavit signed by Tyrone in which Tyrone recanted his implication of Cannon in the murder. Tyrone's affidavit states the police had coerced him to testify and that the police threatened to charge him with the Ross murder if he did not testify that Cannon had been involved in the planning of Ross' murder.

On September 9, 2004, the IPRB issued a written decision revoking Cannon's parole. The IPRB found that Cannon had violated his parole by committing the crime of murder. The decision was based on Tyrone's grand jury testimony and Cannon's testimony. The IPRB found that there was "good cause" to admit Tyrone's testimony despite the fact that he was not cross-examined by Cannon because of its reliability and corroboration of Cannon's testimony. The IPRB disregarded the 2004 affidavit in which Tyrone recanted his prior testimony. The IPRB found that since Cannon had retrieved the gun, passed it off to A.D. McChristian, and drove the car in which the victim was shot, he voluntarily attached himself to the common criminal design and participated in each and every phase of the crime. According to the IPRB, "justice requires that the inmate be held accountable."

In addition, the IPRB added that even without the grand jury testimony of Tyrone and relying solely on the sworn testimony of Cannon they would have reached the decision that Cannon was accountable for the crime of murder. The IPRB notes that it did not consider Cannon's confession, coerced by police torture, except those portions that he admitted in motions and during the trial to be true. The IPRB found that Cannon's role was "active, participatory, and responsible under a theory of accountability."

## **II. PROCEDURAL HISTORY**

On October 8, 2004, Cannon filed a Complaint for Mandamus and Common Law Writ of Certiorari. The Complaint contained seven counts asking that the Court grant a writ of mandamus or certiorari regarding procedural and substantive deficiencies with the IPRB decision. On May 6, 2005, the Court granted the IPRB's motion to dismiss as to Counts I, IV, V, VI and VII.

On June 6, 2005, Cannon filed an amended complaint containing six counts, as set forth below. Two of those counts were previously dismissed by the Court's May 6, 2005 Order and are simply re-pleaded for purposes of appeal. Count V of Cannon's initial complaint has not been repleaded. Each count in Cannon's Complaint requests the Court issue a common law writ of certiorari directing the IPRB to vacate its finding that Cannon violated the conditions of his parole and request Cannon's release.

Count I is based on allegations the IPRB failed to provide written notice of the claimed violation of parole. The written notice provided to Cannon stated he was alleged to have committed the crime of murder. Count I claims the IPRB considered evidence irrelevant to whether Cannon was guilty of the Ross murder and, therefore, violated their duty to limit their parole revocation consideration to the charge alleged in the notice of violation.

Count II is based on the allegation that Cannon was denied his right to confront and cross exam a key witness. In this count Cannon alleges the IPRB relied on the grand jury testimony of Tyrone, who was not subpoenaed as a witness to the parole revocation hearing.

Count III alleges the IPRB failed to follow Illinois law on accountability. This claim provides that according to the law of accountability a person may not be accountable for a crime merely by being present at the time of the crime or by actions he

or she takes subsequent to the completion of the crime. Cannon claims the IPRB did not follow the law of accountability when it determined Cannon was accountable for the Ross murder based on his actions following the completion of the murder.

Count IV alleges a breach of a purported plea agreement the Illinois State's Attorney made with Cannon on behalf of the State. Cannon claims the IPRB illegally refused to honor the oral agreement whereby Cannon would be released from custody in August 2003.

Cannon repleads Count V only for purposes of appeal. Count V seeks a writ of mandamus for failure to provide a neutral forum for parole revocation hearings. Count V further claims the IPRB harbored a hostile bias towards Cannon and had determined, prior to the parole revocation hearing, that Cannon would not be released on parole.

Cannon repleads Count VI only for purposes of appeal. Count VI seeks a writ of mandamus resulting from the IPRB's denial of a timely parole revocation hearing based on the allegation that the IPRB could have held a prompt parole revocation in the weeks following the November 18, 1983, notice. Instead, Cannon alleges the IPRB chose to defer to the criminal process and base its parole revocation upon Cannon's criminal conviction.

### III. STANDARD OF REVIEW

The standards of review under a common law writ of certiorari are essentially the same as those applied under the Administrative Review Law. Hanrahan v. Williams, 174 Ill.2d 268, 272 (1996). The Administrative Review Law extends to all questions of fact and law presented by the record. See Abramson v. The Ill. Dept. of Prof'l Regulation, 153 Ill.2d 76, 88 (1992). The standard of review, which determines the degree of deference given to the agency's decision, depends upon whether the question presented is one of fact, one of law, or a mixed question of law and fact. See AFM Messenger Service v. Dept. of Employment Sec., 198 Ill.2d 380, 390 (2001). When a decision presents a pure question of law, the standard of review to be applied is *de novo*. See Carpetland v. Ill. Dep't of Employment Sec., 201 Ill.2d 351, 369 (2002). However, the statute mandates that the "findings and conclusions of the administrative agency on questions of fact shall be held to be prima facie true and correct." 735 ILCS 5/3-110.

A mixed question of law and fact involves an analysis of the legal effect of a given set of facts. City of Belvidere v. Ill. State Labor Relations Bd., 181 Ill. 2d 191, 205 (1998). A mixed question is found where “the issue is whether the facts satisfy the statutory standard, or ... whether the law as applied to the established facts is or is not violated.” AFM Messenger Service, 198 Ill.2d at 391 (quoting Pullman-Standard v. Swint, 456 U.S. 273, 289 n.19 (1982)).

This matter involves purely a question of whether the proper legal standards were followed by the IPRB. Thus, the standard of review to be applied is *de novo*.

#### IV. ANALYSIS

The two matters before the Court are: (1) Cannon’s Complaint requesting review of the IPRB’s September 9, 2004 decision that Cannon violated his parole conditions; and (2) Cannon’s Motion to Enforce Settlement. The Court will first address Cannon’s four arguments as to why the IPRB’s determination that Cannon is a parole violator must be reversed. The Court will then address Cannon’s Motion to Enforce Settlement.

##### A. The IPRB’s September 9, 2004 Decision

Cannon proffers four arguments as to why the IPRB’s determination that Cannon is a parole violator must be reversed: (1) the IPRB failed to provide written notice of the claimed violation of parole; (2) Cannon was denied his right to confront and cross exam a key witness; (3) the IPRB failed to follow Illinois law on accountability; and (4) the IPRB breached a plea agreement the Illinois State’s Attorney made with Cannon on behalf of the State.

##### I. NOTICE

First, Cannon claims the IPRB failed to provide written notice of his purported parole violation, as required under the law. See Morrissey v. Brewer, 408 U.S. 471, 489 (1972) (listing the six due process guarantees afforded a parolee in their final revocation hearing, stating due process requires a written notice of claimed violations of parole). This, Cannon asserts, violated his basic due process rights and constitutes an independent reason for reversing the IPRB’s decision. The written notice provided to Cannon stated he was alleged to have committed the crime of murder in connection with the Ross homicide. However, Cannon’s argument is that the IPRB stated, at the September 9,

2004 hearing, that it could find Cannon to be a parole violator on *other* grounds than simply the charge identified in the notice. Specifically, Cannon contends IPRB member Andrew Fox stated the IPRB could revoke Cannon's parole by finding Cannon guilty of the Ross murder or by finding Cannon had committed any crime at all during Cannon's parole period.

Consistent with this argument, Cannon notes the IPRB included in the record as evidence against him the transcript of his June 1984 sentencing hearing, the pre-sentence investigation report prepared after Cannon's 1984 conviction, and disciplinary records relating to Cannon's behavior while in the custody of the Illinois Department of Corrections. Cannon contends all these documents are prejudicial and violate his due process rights because none of these materials relate to Cannon's involvement in the Ross murder. Therefore, Cannon argues it is a fundamental violation of due process for the IPRB to have considered these undisclosed grounds to revoke his parole, requiring reversal of the IPRB's decision.

In contrast, the IPRB claims its decision at the September 9, 2004 hearing was based on the actual charge made in the notice. The IPRB explains the notice of charges at issue simply stated Cannon violated the rule that required him to obey all municipal, county, state and federal law because he committed murder. The IPRB revoked Cannon's parole by relying on this charge.

Review of the IPRB's decision shows the notice of charges was sufficient to inform Cannon of the charges against him. The notice used extremely broad catch-all language in that it claimed Cannon violated "MSR Rule #2, 'You must obey all municipal, county, state, and federal laws and ordinances.'" Thus, the notice at issue did not violate Cannon's due process guarantee.

## II. CROSS-EXAMINATION

Second, Cannon contends the IPRB's decision finding he violated his parole was improperly predicated upon the grand jury testimony of Tyrone. Principally, Cannon argues he was not allowed to cross-exam Tyrone, in violation of his right to do so. See Morrissey, 408 U.S. at 489 (listing the six due process guarantees afforded a parolee in their final revocation hearing, stating that a parolee has the right to confront and cross-exam adverse witnesses).



Cannon further asserts the IPRB's decision was improper due to Tyrone's August 7, 2004 affidavit stating he was coerced by Police to testify against Cannon (which the IPRB acknowledged it did not consider) and on the finding from the Office of Professional Standards of the Chicago Police Department that Cannon was indeed tortured. Cannon asserts Tyrone's testimony was far too questionable to be relied upon by the IPRB without allowing Cannon the right to cross-examination. Cannon notes the IPRB listed similarities between Tyrone's account of the events on the day of the Ross murder and Cannon's description in his 1994 testimony. These similarities were apparently what the IPRB relied upon, claiming Tyrone's testimony implicated Cannon's testimony.

However, Cannon contends the so-called corroboration between the two testimonies concern matters not in dispute. Cannon explains the disputed issues, such as Cannon's alleged foreknowledge of the Ross murder, were not corroborated (except by Cannon's tortured confession). Thus, Cannon argues the lack of corroboration on points the IPRB relied upon from Tyrone's grand jury testimony constitutes unreliable hearsay testimony.

In line with this argument, Cannon asserts there was not "good cause" for doing away with the confrontation requirement. Cannon refers the Court to Downie v. Klincar, 759 F. Supp. 425, 426 (N.D. Ill. 1991), where the federal district court explained the balancing test used to determine "good cause." The Downie court noted "good cause" is determined by weighing the reliability of hearsay evidence and the difficulty of producing the witness. 759 F. Supp. at 426. Here, the IPRB explained there was "good cause" for admitting Tyrone's grand jury testimony because it found Tyrone's testimony to implicate Cannon's testimony. Thus, the IPRB found it to be reliable. Specifically, the IPRB stated the testimony fit within the "category of evidence that provides that a hearsay declarant's reasonably detailed statement is to be admitted."

Cannon argues the IPRB could not rightfully conclude there was "good cause" because: (1) Tyrone recanted his grand jury testimony in his August 7, 2004 affidavit; (2) independent corroboration exists showing the Chicago Police coerced Tyrone into testifying against Cannon; (3) the only corroboration the IPRB can rely on is Cannon's tortured confession; and (4) the IPRB did not find it would be costly or difficult to

procure Tyrone as a witness. Therefore, Cannon asserts “good cause” was not properly shown and, thus, his due process rights were violated because he was not able to cross-exam Tyrone.

In contrast, the IPRB argues Tyrone’s testimony was properly relied upon because it dovetailed to Cannon’s testimony, regarding date, time and location of the incidents as well as words used on the day of the Ross murder. Specifically, the IPRB references the similarity between the two testimonies as to conversations Tyrone and A.D. McChristian had on that day and the words Cannon used when the murder was complete. The IPRB asserts those are only a few of the many similarities. In all, the IPRB claims the similarities constitute more than sufficient evidence of the reliability of Tyrone’s testimony – making it admissible without violating Cannon’s right to confront witnesses.

The Court strongly disagrees. As explained in Downie, of the six due process rights guaranteed a parolee, the right to confront and cross-examine an adverse witness is qualified by the language, “unless the hearing officer specifically finds good cause for not allowing confrontation.” 759 F. Supp. at 426. Nonetheless, the Downie court outlines the benefits of live testimony and notes some cases require live testimony to ensure a certain degree of reliability. Id. Here, the live testimony of Tyrone would have produced the most reliable version of facts. Furthermore, the process of cross-examination would have promoted candor and truth.

The IPRB made an explicit finding of good cause in the record in that it stated sufficient aspects of Tyrone’s testimony corroborated with Cannon’s story, justifying its decision to excuse Tyrone’s live testimony. However, the allegations of torture by Chicago Police seriously undermined the reliability of Tyrone and Cannon’s testimonies. The IPRB’s decision “disregarded” Tyrone’s August 7, 2004 affidavit where he recanted his grand jury testimony and did not consider independent evidence that Cannon’s confession was a result of torture. Rather, the IPRB’s decision found Cannon “shot and killed the victim Darrin Ross...” The record evidences this determination was based on Cannon’s sworn testimony and Tyrone’s grand jury testimony, both of which fail to bear sufficient indicia of reliability.

Here, the IPRB contends it only considered the portions of Cannon’s tortured confession that Cannon admitted to be true, though the record does not provide as such.

However, assuming that to be true does not dismiss Cannon's guarantee to confront an adverse witness. Parole revocation hearings are designed to be informal and flexible. Yet, the desire for flexibility does not eliminate procedures where doing so might jeopardize the accuracy of the fact-finding process. Downie, 759 F. Supp. at 429. Here, the tainted reliability of evidence and the clear likelihood torture occurred leaves the IPRB without any legal basis for their conclusion. Thus, the Court finds the balancing test used to determine "good cause," excusing Tyrone's testimony, was not met. Further, because of the significant lapse in time since the hearing, it would be a violation of Cannon's constitutional due process rights to revisit the issue at this time.

### III. ACCOUNTABILITY

Third, Cannon claims the IPRB failed to follow Illinois law on accountability. Rather, Cannon contends the IPRB wrongfully inferred his guilt from actions he took after the crime was complete, when he assisted A.D. McChristian in avoiding detection. Again, this Court agrees.

According to the law of accountability, a person may not be accountable for a crime merely by being present at the time of the crime or by actions he or she takes subsequent to the completion of the crime. The Illinois Criminal Code provides a person may be found legally accountable for the actions of another only if the individual, with the intent to promote or facilitate the offense, "solicits, aids, abets, agrees or attempts to aid such another person in the planning or commission of the offense." 720 ILCS 5/5-2(c). To prove intent, the State is required to show either the defendant shared the criminal intent of the principal or there was a common criminal design. People v. Perez, 189 Ill. 2d 254, 266 (2000).

Cannon argues evidence he fled the crime scene, aided or abetted the perpetrator after the crime, or failed to report the crime are insufficient as a matter of law to establish intent. Cannon cites People v. Perez, 189 Ill. 2d 254, 267 (2000), where the Illinois Supreme Court examined whether the intent requirement of the accountability statute was satisfied by the defendant's participation in a common criminal design. In that case, the Court noted the defendant was present at the scene of the crime and fled the scene after the crime was committed, but such was not sufficient to prove accountability. Perez, 189 Ill. 2d at 268. Rather, the Court held evidence supported the defendant did not know the

crime was going to be committed. *Id.* Thus, the Court reversed the defendant's conviction holding no rational trier of fact could have found, beyond a reasonable doubt, the defendant intended to facilitate the commission of the crime. *Id.* 269.

However, *Perez* does find that accountability may be established through the defendant's knowledge and participation in the crime. *Id.* at 267. Specifically, proof a defendant was present during the offense, that he or she fled the scene, that he or she maintained a close affiliation with those who took part in the crime after the crime was committed, and that he or she failed to report the crime are factors a trier of fact may consider when determining accountability. *Id.* at 267. Therefore, though Cannon is correct in asserting his mere presence at the crime scene does not render him accountable, he incorrectly posits that actions he took after the occurrence of the crime are insignificant.

The IPRB asserts both Tyrone and Cannon's testimonies sufficiently establish Cannon's accountability. Specifically, the IPRB references Tyrone's October 26, 1983 testimony where he explained he met A.D. McChristian at the pool hall, that A.D. McChristian told him he was going to meet someone about cocaine and that he was waiting for Cannon. AR 1646-47. Tyrone also testified A.D. McChristian told him to tell Cannon to get a gun and for them to meet A.D. McChristian and Ross at 107<sup>th</sup> and Langley. AR 1653. Tyrone then testified as they were driving to the location, he told Cannon Ross was going to die. AR 1657.

The IPRB claims Tyrone's testimony reinforces the inferences drawn by the IPRB from Cannon's testimony. Essentially, the IPRB asserts it properly inferred Cannon was part of the plan to kill Ross even before Cannon joined up with Tyrone and A.D. McChristian at the crime scene.

The problem with the IPRB's reliance on the above account, however, is Cannon's principal argument that both Tyrone and Cannon were tortured into testifying as they did. Therefore, it is impossible to show, beyond a reasonable doubt, the intent required to satisfy the accountability statute. If both Tyrone and Cannon's testimonies are disregarded, no evidence shows Cannon was a part of the plan to kill Ross. Thus, the Court agrees the IPRB's reliance on Cannon's former murder conviction was misplaced. The IPRB has broad discretion when it determines what evidence to consider in a parole

revocation hearing. Nonetheless, such evidence must be reliable. See 20 Ill. Admin. Code 1610.40(b)(2) (providing that “[t]he Board is not bound by strict rules of evidence in the conduct of a parole release hearing and will consider all evidence presented, so long as the evidence is not cumulative, repetitive or inherently unreliable...”). Therefore, the Court agrees the IPRB improperly based its ruling solely on testimony allegedly procured through torture. Reliance on such testimony alone is insufficient as a matter of law to deny parole based on an accountability theory.

#### IV. PLEA AGREEMENT

Cannon asserts the IPRB has refused to honor a 2001 plea agreement because that agreement stipulated Cannon was to be released in August 2003. The IPRB argues it has the right to hold Cannon as a parole violator because there is no indication the plea agreement required Cannon’s release in 2003. Furthermore, the IPRB asserts no plea agreement entered into by the Cook County State’s Attorney’s Office can bind the IPRB on its parole decisions.

As previously set forth in the Statement of Facts, in January 2001, after Cannon’s murder conviction had again been vacated, Cannon was preparing to go to trial for the third time. This time Cannon was to introduce evidence of the torture he endured after his arrest for the murder of Darren Ross. However, on January 19, 2001, before trial, Cannon accepted a plea bargain agreement. Cannon agreed to plead guilty to the reduced charges of armed violence and conspiracy to commit murder. At the plea hearing Cannon stipulated that the factual basis was sufficient to support a conviction but did not admit guilt.

There is no indication in the record that the 2001 plea agreement stipulated Cannon would be released in August 2003. Rather, the plea agreement provides Cannon would serve a combined 40 years for the offenses of armed violence and conspiracy to commit murder.<sup>2</sup> Thus, the IPRB asserts the plea agreement did not address whether Cannon would be required to serve out the term of his 1971 conviction. This argument is illogical. Why would Cannon plea to a crime, which would have no practical effect on

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<sup>2</sup> Nonetheless, Cannon argues both Cannon and the State understood that, with credit for time served, Cannon would be released from custody in August 2003. The transcript of the plea agreement stipulates Cannon would receive “day for day credit” but does not provide further detail.

his incarceration. This is borne out by subsequent actions of the State's Attorney, *i.e.*, dismissing the charges.

However, Cannon argues the State's Attorney even attempted to send a message to the IPRB that Cannon should be released. For example, Cannon claims that when the IPRB refused to honor the plea agreement, he filed a post conviction petition. The State's Attorney apparently attempted, at that time, to elicit the IPRB's cooperation in honoring the plea agreement. Then, when the attempt was unsuccessful, the State's Attorney dismissed the criminal charges against Cannon to send a message to the IPRB that Cannon should be released.

Cannon quotes purported statements made by the Cook County State's Attorney, including "[a]t the time of the plea, the People believed that Cannon would be released in August 2003" and "the People have determined that there is only one option that honors the intent of the parties at the time of the plea ... to dismiss the substantive case." However, Cannon does not state where in the record this language is found or identify to the Court who made the statement.<sup>3</sup> Acknowledging the argument made by the IPRB, such a statement must be disregarded because it is impermissible to consider matters outside the record in a writ of certiorari review action. See Lapp v. Village of Winnetka, 359 Ill. App. 3d 152, 166 (2005).

Next, the IPRB claims that someone in the State's Attorney's office may have thought Cannon would be released in August 2003 as a result of the plea bargain, but such does not bind the IPRB. The IPRB notes the plea transcript contains no indication the parole revocation was even considered. Further, the IPRB claims it is not a Cook County agency represented by the Cook County State's Attorney's Office but rather is a state board appointed by the governor. See 730 ILCS 5/3-3-1. It is advised by its own counsel and represented in court by the Office of the Attorney General. See 15 ILCS 205/4. Therefore, the IPRB contends it made no agreement regarding Cannon's parole revocation, it was not included in the plea negotiations, and thus it has not breached the 2001 plea agreement.

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<sup>3</sup> It appears these statements were made by the State's Attorney working on the Cannon case in a letter to the IPRB, explaining the reasoning for its non-objection to Cannon's release at a parole release hearing in February 2003.

The Court agrees. The Court acknowledges the actions of the State's Attorney in February 2003 – when it did not object to Cannon's parole – and in April 2004 – when it dismissed all charges against Cannon relating to the Ross murder. It is the Court's opinion that such action clearly reflected the State's intention that Cannon be paroled. However, the IPRB controls who will and will not be paroled. See 730 ILCS 5/3-2(a)(2) (providing that a panel of at least 3 members decide the time of discharge from parole); 20 Ill. Admin. Code 1610.40(e)(1) (stating that “the Parole Release Panel will vote on the question of granting or denying parole”). Therefore, though the IPRB's decision to revoke Cannon's parole may have been contrary to fair play under the circumstances, the IPRB is the controlling body and holds the authority to do so. Thus, the IPRB did not breach Cannon's plea agreement.

**V. SUMMARY**

When a decision presents a pure question of law, the standard of review to be applied is *de novo*. See Carpetland v. Ill. Dep't of Employment Sec., 201 Ill.2d 351, 369 (2002). Upon review of the evidence in the record, the Court concludes certain considerations made by the IPRB were improper. Therefore, the Court reverses the IPRB's September 9, 2004 decision and remands the case for purposes of a re-hearing consistent with this Court's Opinion as to the constitutional rights of a parolee.

**B. CANNON'S MOTION TO ENFORCE**

Cannon argues the IPRB wrongfully withdrew from its agreement to settle with Cannon under a settlement agreement entered into in 2005. In contrast, the IPRB asserts the purported settlement Cannon references was merely a part of preliminary settlement discussions and was not a binding agreement.

Enforcement and construction of settlement agreements is governed by the law of contracts. Lampe v. O'Toole, 292 Ill. App. 3d 144, 146 (1997). A contract requires an offer, acceptance, and the meeting of minds as to the terms of the offer. Lampe, 292 Ill. App. 3d at 146. The determination as to whether a valid settlement occurred is in the discretion of the trial court. Kim v. Alvey, Inc., 322 Ill. App. 3d 657, 669 (2001).

In May 2005, after receiving Judge McGann's initial ruling on the IPRB's motion to dismiss, the Assistant Attorney General (“AG”) handling the case initiated settlement discussions with counsel for Cannon. The discussions continued for several weeks. On

September 8, 2004, the AG transmitted a written settlement offer in a letter to Cannon's counsel. That letter provided the IPRB would agree to release Cannon on the 1983 parole violation in two years, followed by a five year parole. The settlement letter also stipulated that under this agreement, Cannon's case would have to be dismissed.

Cannon contends that following the receipt of the AG's letter, he and his counsel deliberated over whether to accept the offer. Cannon notes communication between him and his counsel was limited due to Cannon's incarceration at the time. On October 13, 2005, Cannon's counsel accepted the IPRB's offer on behalf of Cannon via a telephone conversation with the AG's office. On November 14, 2005, counsel for Cannon wrote to the AG handling the case to confirm acceptance in writing.

Then, on November 16, 2005, the AG's office sent a letter to Cannon's counsel stating after discussions with the members of the IPRB, "the Defendants are not interested in settling under the terms that had been discussed." Cannon argues the IPRB does not have the right, once a settlement has been reached, to unilaterally withdraw from its bargain. Thus, Cannon asserts the Court should enter an order enforcing the settlement agreement.

However, the IPRB claims: (1) the evidence shows no agreement was ever made between the parties; and (2) defense counsel had no legal authority to enter into a binding agreement. First, the IPRB argues no agreement was finalized because in Cannon's November 2005 letter, purporting to accept the AG's offer, Cannon asks defense counsel to "clarify that the two-year term of imprisonment will begin to run on September 1, 2005." The IPRB asserts this "clarification" amounted to a counter-offer.

Furthermore, the IPRB contends the only terms in any of the various letters discuss only the length of Cannon's remaining prison term and the length of his parole. What was not discussed in the letters, but yet would be material to any settlement, include terms of parole governing restrictions placed on Cannon, participation in drug and alcohol treatment programs, and prohibition of contact with the victim's family. The IPRB claims such terms are not ancillary but, rather, their inclusion would be necessary to constitute a settlement.

In addition, the IPRB claims the AG's office made it clear to Cannon that any settlement discussions were not final. For example, on November 8, 2005, the AG's



office informed Cannon that his “counterproposal” would be relayed to the IPRB. This, the IPRB asserts, made it clear to Cannon that no agreement had yet been formed. Thus, Cannon’s November 14, 2005 letter, which Cannon claims was the written acceptance of the settlement offer, was not in fact an “acceptance.” Rather, the AG’s letter drafted on November 15, 2005, a day after Cannon’s purported acceptance letter, explained the AG’s office had not made an “agreement to settle this case on October 13” and stated it did not “have an agreement today.” The November 15 letter further provided any settlement resulting in Cannon’s release required “the approval of the individual defendants” and required “approval from the full Prisoner Review Board.” Finally, the AG’s November 15 letter admitted that its previous communications may have been “inartfully drafted” but stated any conversations the AG’s office had with Cannon’s counsel always lacked settlement authority.

In line with this argument, the IPRB cites to the Unified Code of Corrections and the Illinois Administrative Code, asserting Cannon cannot be released on parole without the favorable vote of a majority of the full Prisoner Review Board. See 730 ILCS 5/3-3-2(a)(2) (providing that a panel of at least 3 members decide the time of discharge from parole); 20 Ill. Admin. Code 1610.40(e)(1) (stating that “the Parole Release Panel will vote on the question of granting or denying parole”). Thus, the IPRB claims any settlement discussions were simply discussions, nothing more, because the IPRB as a whole did not authorize any settlement.

Lastly, the IPRB argues the AG did not approve any agreement. The IPRB claims the AG on the case, Heidi Hildebrand (“Hildebrand”), made this clear in her communications to Cannon when she stated she would *forward* Cannon’s proposals to the IPRB. Furthermore, the IPRB asserts the AG’s office had always communicated with Cannon’s counsel that approval of any settlement agreement would have to come from senior members of the AG’s staff.

The Court agrees the September 8, 2005 letter from the AG’s office, when read alone, appeared to propose a settlement offer Cannon could accept. From that communication alone, one could presume Cannon’s acceptance would constitute a settlement because the letter stated “[t]he PRB will agree to release Mr. Cannon on the 1983 parole violation in two years...” The AG’s office now recognizes it should have

chosen different language so as to clarify that the letter was merely a settlement discussion, yet to be approved by the IPRB or senior AG staff members.

Nonetheless, following review of the various letters transmitted between the parties and the evidence of oral communications between the parties from September to November 2005, this Court determines there was an offer, acceptance, and the meeting of minds as to most of the terms of the offer. Only the length of parole and certain terms and conditions were left to be determined. Those conditions are not insignificant but considering all of the major issues that had been agreed to in principle, they should hardly have been deemed a “deal breaker.”

However, as explained above, the IPRB members must vote to parole a prisoner. Thus, any settlement that stipulates to paroling a prisoner must come from the IPRB members. Here, the evidence merely shows Assistant Attorney General Hildebrand communicated a settlement proposal to Cannon. When the Court looks at all communications transmitted between the parties, there is not sufficient evidence to prove a majority of the IPRB members agreed to the specific terms in Hildebrand’s September 8, 2005 letter as a final settlement offer. For example, Hildebrand’s November 8, 2005 letter, which pre-dates Cannon’s purported acceptance letter, explains Cannon’s “counterproposal” would be relayed to the chairman of the IPRB. In addition, the November 8 letter clarifies Cannon’s proposal “would have to be submitted to the full board for its consideration.” Therefore, the evidence shows the IPRB did not wrongfully withdraw from an agreement to settle with Cannon. Thus, Cannon’s Motion to Enforce is denied.

**V. ORDER**

IT IS HEREBY ORDERED:

- A. The IPRB's September 9, 2004 decision is REVERSED, for the reasons outlined in this memorandum opinion and order and the matter is REMANDED for further proceedings not inconsistent with this Opinion;
- B. Cannon's Motion to Enforce Settlement is DENIED.

**JAMES F. HENRY**

Entered:

**NOV 22 2006**

**Circuit Court - 1526**

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Judge James F. Henry  
Circuit Court of Cook County, Illinois  
County Department, Chancery Division