

STATE OF MICHIGAN
COURT OF APPEALS

WAYNE COUNTY PROSECUTOR and JANE DOE,

Plaintiffs-Appellees,

v

CHARLES SHOCKLEY, JR.,

Defendant-Appellant.

UNPUBLISHED

May 2, 1997

No. 198160

Wayne Circuit Court

LC No. 94-435021-AA

Before: Holbrook, Jr., P.J., and Fitzgerald and Smolenski, JJ.

PER CURIAM.

Defendant was granted parole by the parole board for the fourth time, and on appeal by the prosecutor and defendant's victim, the circuit court vacated the parole board's decision for a fourth time. This Court denied defendant's application for leave to appeal, but the Michigan Supreme Court has remanded the matter to us for expedited consideration as on leave granted. *In re Parole of Shockley*, 453 Mich 902 (1996). We remand to the circuit court.

Defendant contends that the trial court erred in failing to consider the parole guidelines in reviewing the board's exercise of discretion. We agree. In reviewing a decision of the parole board regarding parole, the trial court must determine whether, in light of the record and the statutory requirements, the decision constituted an abuse of discretion. *Wayne Co Prosecutor v Parole Bd*, 210 Mich App 148, 154 (1995). See also MCR 7.104(D)(5)(b).

The parole board's discretion to grant or deny parole is not unfettered; rather, it is circumscribed by the various requirements of the parole statute. *Id.* at 153. The most basic limitation on the board's discretion is found in MCL 791.233; MSA 28.2303, which provides, in pertinent part, that "[a] prisoner shall not be given liberty on parole until the board has reasonable assurance, after consideration of all of the facts and circumstances, including the prisoner's mental and social attitude, that the prisoner will not become a menace to society or to the public safety." MCL 791.233(1)(a); MSA 28.2303(1)(a); *In re Parole of Johnson, supra*, 219 Mich App 595, 598; ___ NW2d ___ (1996). The Legislature also enacted provisions authorizing the creation of parole guidelines intended to "govern the exercise of the parole board's discretion" regarding the release of prisoners on

parole. MCL 791.233e(1); MSA 28.2303(6)(1); *In re Johnson, supra* at 598-599. The guidelines are an attempt to quantify the applicable factors that should be considered in determining whether the prisoner will become a menace to society or to the public safety upon his release. MCL 791.233(1)(a), 791.233e; MSA 28.2303(1)(a), 28.2303(6).

The 1992 amendment to the parole statute directed the Department of Corrections to formulate the parole guidelines and submit them to the legislative committee on administrative rules by April 1, 1994. MCL 791.233e(5); MSA 28.2303(6)(5). The guidelines were not filed until January 10, 1996, and did not take effect until fifteen days later. See 1996 MR 1, R 791.7716. Because the guidelines were filed and became effective after the parole decision was made in this case, the trial court refused to consider the guidelines in reviewing the board's exercise of discretion. This was error.

Even before the rules took effect, the parole board was required to consider the proposed guidelines in making release decisions. MCL 791.233e(5); MSA 28.2303(6)(5). Here, the board prepared a guideline score sheet in making the decision to grant defendant parole. The factors considered by the board were similar to those set forth in the parole statute and in the guidelines which were ultimately filed by the Department of Corrections. See MCL 791.233e; MSA 28.2303(6); 1996 MR 1, R 791.7716. Defendant scored a "+4" under the guidelines, indicating a high probability of parole. Accordingly, we conclude that the trial court was required to review the board's decision as "governed by the parole guidelines." See *In re Johnson, supra* at 599.

In denying defendant's motion for rehearing, the trial court relied heavily on the "absence of supporting evidence as to the likelihood of Shockley's future dangerousness." As noted, the parole guidelines are an attempt to quantify the applicable factors that should be considered in making release decisions that affect the public safety. MCL 791.233e(1); MSA 28.2303(6)(1). Because the trial court failed to consider the guidelines in evaluating the board's exercise of discretion, we remand to the trial court for a determination whether the court finds that the board abused its discretion in light of the guideline score that defendant received.

Given our resolution of this matter, we need not address defendant's remaining issues on appeal.

Remanded to the trial court for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Donald E. Holbrook, Jr.
/s/ E. Thomas Fitzgerald
/s/ Michael R. Smolenski