

STATE OF MICHIGAN  
COURT OF APPEALS

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HERMAN T. CULKAR,

Plaintiff-Appellant,

v

DEPARTMENT OF CORRECTIONS,

Defendant-Appellee.

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UNPUBLISHED  
October 31, 1997

No. 191368  
Ingham Circuit Court  
LC No. 95-081240 AW

Before: Holbrook, Jr., P.J., and Michael J. Kelly and Gribbs, JJ.

MEMORANDUM.

Plaintiff appeals as of right from the trial court's dismissal of plaintiff's petition for a writ of mandamus. We affirm.

Assuming *arguendo* that plaintiff had a due process entitlement to a hearing at which to present evidence in mitigation of the parole violation charges, see *Witzke v Withrow*, 702 F Supp 1338 (WD Mich, 1988), the only remedy available to plaintiff for such a due process violation is the grant of a mitigation hearing, *id.*, 1340, 1354-1355. Plaintiff did not request such relief in his petition for a writ of mandamus. Instead, plaintiff requested a form of relief to which he is not entitled. Accordingly, because plaintiff had no clear legal right to the relief requested, the trial court correctly dismissed the mandamus request. *Riley v Parole Bd*, 216 Mich App 242, 243; 548 NW2d 686 (1996); *Radecki v Director of Bureau of Worker's Disability Compensation*, 208 Mich App 19, 22; 526 NW2d 611 (1994).

Affirmed.

/s/ Donald E. Holbrook, Jr.  
/s/ Michael J. Kelly  
/s/ Roman S. Gribbs