# STATE OF MICHIGAN

# COURT OF APPEALS

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OAKLAND COUNTY PROSECUTOR,

Plaintiff-Appellant,

v

JON WALLACE GUMBLE and MICHIGAN PAROLE BOARD,

Defendants-Appellees.

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UNPUBLISHED
March 13, 1998

No. 196237
Oakland Circuit Court
LC No. 95-501875-AP

Before: O'Connell, P.J., and Gribbs and Smolenski, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court order affirming the order of parole of defendant Jon Gumble. We affirm.

The underlying case in this matter has a long history before this Court. Defendant Gumble (hereafter "defendant") was convicted, after a prior appeal and remand for new trial, of one count of manslaughter, MCL 750.321; MSA 28.553, and one count of possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). He was sentenced to serve two years' imprisonment for the felony-firearm conviction and six to fifteen years' imprisonment for the manslaughter conviction.

Defendant was transferred to the custody of the Department of Corrections in December 1987. During his incarceration, he received a total of five "major misconduct" citations: one for "possession of a forged document," two for insolence, one for being "out of place" and one for "possession of dangerous contraband" (an improvised weapon he claimed he needed for self-protection). As a result of the last misconduct, he was reclassified as a "high" rather than a "middle" assaultive risk. He successfully completed several work assignments and earned credits at a community college, but also had other less-than-successful work placements.

Between 1987 and 1994, defendant wrote a number of menacing letters to several prosecutors who had been involved in the proceedings against him. Defendant also filed at least one

complaint against members of plaintiff's staff with the Attorney Grievance Commission. When it was dismissed, he wrote to the chairman of the commission.

Pursuant to MCL 791.235(7); MSA 28.2305(7), defendant was considered for parole in the spring of 1995. Application of the statutory guidelines, MCL 791.233e; MSA 28.2303(6), resulted in his being classified as having an "average" probability of parole. He was granted parole in an order dated June 29, 1995. Plaintiff knew defendant was being considered for parole but did not find out that it had been granted until after defendant had been released, on July 3, 1995.

Plaintiff promptly obtained defendant's file from the DOC and determined that the 1987, 1993 and 1994 letters were not included in it. Plaintiff then wrote to the chairman of the Parole Board, asking that defendant's parole be rescinded and describing the letters, which were enclosed, as "clearly pertinent to the issue of menace on parole."

The Parole Board responded by amending defendant's parole to include a condition that he not have contact with the named members of plaintiff's staff or enter Oakland County for a period of two years. Plaintiff filed an application for delayed leave to appeal to the circuit court. The court granted the application but ultimately affirmed the order of the Parole Board. Plaintiff appeals.

The Legislature has entrusted the decision whether to grant or deny parole to the Parole Board. *In re Parole of Johnson*, 219 Mich App 595, 596; 556 NW2d 899 (1996), citing MCL 791.234(7); MSA 28.2304(7). The decision whether to grant or deny parole is explicitly entrusted to the Parole Board's discretion. *Wayne Co Prosecutor v Parole Board*, 210 Mich App 148, 153; 532 Mich App 899 (1995).

Plaintiff argues that a prisoner should not be paroled unless he can demonstrate "substantial, positive changes" since he began his sentence. Plaintiff has not presented any authority for this argument. The Legislature, however, has directed that consideration be given to the offense for which the prisoner was incarcerated, his institutional program performance and behavior, his prior criminal record and "other relevant factors." MCL 791.233e(2); MSA 28.2303(6)(2). In the absence of a specific requirement of a "substantial, positive change," we will not impose one.

Here, the Parole Board evaluated defendant in keeping with the parole guidelines and concluded that he had an "average" probability of parole. After thoroughly reviewing the record submitted with plaintiff's brief on appeal, we can find no abuse of the Parole Board's discretion. Defendant was something less than a model prisoner, but of his five "major misconduct" offenses only one (possession of a weapon) arguably implied a risk of physical assault. Defendant was incarcerated for seven and a half years without presenting a significant danger to anyone else.

Plaintiff's other points may be dealt with quickly. Proof of employment was not required. *Wayne Co Prosecutor, supra*, 210 Mich App 154. It is not clear that defendant's reference to being "back on TV" is anything more than a reference to his friendship with a local television new reporter. And defendant was not eligible to participate in "Impulse Control Therapy" because he insisted he was innocent of the underlying charge. There is no indication in the record that defendant was in need of

mental health services after his initial evaluation in 1988. The order of parole states that defendant must participate in any mental health services "to which you are referred by the field agent"; it does not order that defendant receive mental health services. We will not substitute our judgment for that of the Parole Board that defendant's behavior in prison justified his release on parole.

Affirmed.

/s/ Peter D. O'Connell
/s/ Roman S. Gribbs
/s/ Michael R. Smolenski