

STATE OF MICHIGAN
COURT OF APPEALS

OAKLAND COUNTY PROSECUTOR,

Plaintiff-Appellee,

v

RONALD TYRER,

Defendant-Appellant.

UNPUBLISHED

August 1, 2000

No. 222990

Oakland Circuit Court

LC No. 99-015982-AP

Before: Hood, P.J., and Sawyer and Cavanagh, JJ.

PER CURIAM.

On May 3, 1999, the Michigan Parole Board granted defendant parole. The prosecution appealed the parole board's decision to the circuit court. The circuit court reversed the decision of the parole board and vacated defendant's parole. Defendant appeals as on leave granted. We reverse.

The Parole Board's decision whether to parole a prisoner is reviewed for a clear abuse of discretion. MCR 7.104(D)(5)(b); *Hopkins v Michigan Parole Bd*, 237 Mich App 629, 632; 604 NW2d 686 (1999); *In re Parole of Roberts*, 232 Mich App 253, 257; 591 NW2d 259 (1998). Generally, an abuse of discretion is found where an unprejudiced person, considering the facts on which the decisionmaker acted, would say there is no justification or excuse for the ruling. *Hopkins, supra*, 237 Mich App 633. "The reviewing court may not substitute its judgment for that of the Parole Board." *Hopkins, supra*, 237 Mich App 633; *Wayne Co Prosecutor v Parole Bd*, 210 Mich App 148, 153-154; 532 NW2d 899 (1995).

"The Legislature has entrusted to the Parole Board the decision whether to grant or deny parole. MCL 791.234(8); MSA 28.2304(8)." *Hopkins, supra*, 237 Mich App 632. The decision whether to grant or deny parole is within the parole board's discretion. *Id.* "The board's discretion is limited, however, by statutory guidelines, and whether it abused its discretion must be determined in light of the record and these statutory requirements." *Id.*, citing *In re Parole of Johnson*, 219 Mich App 595, 598; 556 NW2d 899 (1996).

In this case, the parole guidelines scored for defendant indicated that he had a high probability of parole. The prosecution did not challenge the scoring of the guidelines. The parole board found

reasonable assurance, after consideration of all the facts and circumstances, that defendant would not become a menace to society or to the public safety, as required by MCL 791.233(1)(a); MSA 28.2303(1)(a). The parole board was required to follow the recommendation of the guidelines, unless it found substantial and compelling reasons to deviate from the guidelines. *Scholtz v Michigan Parole Bd*, 231 Mich App 104, 109-110; 585 NW2d 352 (1998); *Johnson, supra*, 219 Mich App 598-599.

The trial court expressed concern that defendant had not completed an assaultive offender program. The court also stated that it found “fault with the guidelines.” We conclude that the trial court impermissibly substituted its own judgment for that of the parole board. We find no abuse of discretion in the parole board’s grant of parole. Defendant has participated in educational and vocational programs, as well as a substance abuse program. The psychologist noted that defendant has not exhibited assaultive behavior during his thirteen years of incarceration, “which may support his subjective opinion that he is not assaultive.” Defendant has a high school diploma and a job waiting for him upon his release. There was ample support for the parole board’s determination. The circuit court erred in vacating defendant’s parole.

Reversed.

/s/ Harold Hood

/s/ David H. Sawyer

/s/ Mark J. Cavanagh