

STATE OF MICHIGAN
COURT OF APPEALS

In re Parole of EARL YOUNG.

WAYNE COUNTY PROSECUTOR,

Appellee,

v

PAROLE BOARD,

Appellant,

and

EARL YOUNG,

Defendant.

UNPUBLISHED

October 30, 2012

No. 304837

Wayne Circuit Court

LC No. 09-025099-FH

Before: STEPHENS, P.J., and WHITBECK and BECKERING, JJ.

WHITBECK, J. (*concurring in part and dissenting in part*).

In this parole case, the majority concludes that the prosecutor's failure to pay a filing fee did not deprive the circuit court of jurisdiction to hear this parole appeal. I agree with that portion of the majority's decision. But the majority reverses the circuit court's determination that the Parole Board (the Board) abused its discretion when it granted Earl Young parole. On that point I disagree. I believe that the majority has misapprehended our standard of review. Under the appropriate standard of review, I would affirm the circuit court's decision that the parole board abused its discretion when it granted Young parole.

I. STANDARD OF REVIEW

As the majority states, the circuit court is required to review the parole board's grant of parole for a clear abuse of discretion.¹ However, neither the majority nor this Court's decision in

¹ *In re Parole of Elias*, 294 Mich App 507, 538; 811 NW2d 541 (2011).

In re Elias addresses under which standard this Court determines whether the circuit court substituted its judgment for that of the Board when the circuit court determined that the Board abused its discretion. I believe we must review the circuit court's decision for clear error.

When the panel stated in *In re Elias* that “[j]udicial review of the Board’s decision to grant parole is limited to the abuse-of-discretion standard,” it cited *Wayne Co Prosecutor v Parole Bd.*² The decision in *Wayne Co Prosecutor* makes it clear that the circuit court “is not to substitute its judgment for that of the Parole Board,”³ citing *Marrs v Bd of Medicine*.⁴ In *Marrs*, the Michigan Supreme Court concluded that, in this Court’s review of the Board of Medicine’s decision, we “clearly erred in finding an abuse of discretion on the part of the Board of Medicine . . . the Court had no authority to substitute what it believed to be a sounder sanction for the discipline imposed by the board.”⁵

Thus, while I agree that the circuit court may not substitute its judgment for that of the Board, I believe that we must review for clear error the circuit court’s determination that the Board abused its discretion. The circuit court clearly errs even if there is evidence to support its determination, but we are definitely and firmly convinced that it has made a mistake.⁶

II. LEGAL STANDARDS

Although matters of parole lie solely within the discretion of the Board, “the Legislature has clearly imposed certain statutory restrictions on the Board’s exercise of its discretion.”⁷ The Board may not grant parole if it has not made satisfactory arrangements for the prisoner’s care and the prisoner is mentally ill, or if there are no reasonable assurances that the prisoner will not become a menace to society or public safety.⁸ The Board abuses its discretion if its decision falls outside of the reasonable range of principled outcomes.⁹ The Board also does not have discretion to violate a statute, administrative rule, or agency regulation.¹⁰

² *Wayne Co Prosecutor v Parole Bd*, 210 Mich App 148; 532 NW2d 231 (2003).

³ *Id.* at 154.

⁴ *Marrs v Bd of Medicine*, 422 Mich 688; 375 NW2d 321 (1985).

⁵ *Id.* at 695.

⁶ *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010); *In re Forfeiture of \$180,975*, 478 Mich 444, 450; 734 NW2d 489 (2007).

⁷ *In re Elias*, 294 Mich App at 521-522.

⁸ *Id.* at 522; MCL 791.233(1)(e); MCL 791.233(1)(a).

⁹ *In re Elias*, 294 Mich App at 538; *People v Babcock*, 469 Mich 247, 269; 666 NW2d 231 (2003).

¹⁰ *In re Elias*, 294 Mich App at 538.

III. APPLYING THE STANDARD

I would conclude that the circuit court did not clearly err when it determined that the parole board abused its discretion. I am not definitely and firmly convinced that the circuit court made a mistake under the circumstances of this case.

A. BASIS OF THE CIRCUIT COURT'S DECISION

I disagree with the majority's determination that the circuit court did not clearly articulate the basis for its decision. At the hearing, the prosecutor argued that the Board abused its discretion in granting Young parole because "Young will inevitably fail to take his medication, and will injure either himself or another person." The prosecutor detailed Young's history of assaultive crimes as a result of Young's failure to take his medication. The victim indicated that the Board's decision would have Young living within 500 feet of her workplace, and attending treatment at that workplace, both of which would be violations of the victim's protection order.¹¹ The circuit court outlined the following reasons for its belief that the Board abused its discretion:

I . . . particularly remember this . . . case, when we did the sentencing.

There was kind of a balancing between [the victim], trying to get her restitution, because this basically ruined not only her career, but ruined her life.

It was an assaultive contact, and it was one that, I believe, was the result of Mr. Young not taking his medication.

¹¹ At the post-conviction motion on June 9, 2011, Dr. Boore stated the following:

I wanted to point out a few things, as I work for Gateway, and most of the Gateway Hospitals.

So, as part of his probation and restraining Order, that he not be within five hundred feet of me, or my place of work.

So that eliminates the Gateway system.

His [aunt] lives on Schaefer, which is by Sinai Grace Hospital, at which I'm also employed.

That would violate the restraining Order immediately, as well.

* * *

THE COURT: Okay. And just to keep the record straight, [Dr. Boore], did you have any input [sic] from the Parole Board in contacting you in any way? . . . Did they have any input as to, maybe where you live, when they decided to do placement at Gateway, or [the proposed placement], or whatever?

[Dr. Boore]: No.

THE COURT: Okay. Well, that just goes to solidify my . . . decision.

We left it to the Parole Board, so that they can do the treatment, and then, supposedly, if he would be cured, so to speak, that he could come out and begin paying the restitution, rather than do a long incarceration.

It appears to me as though, even though the records that the Parole Board has, or that [sic] relied on, indicated that, that he does have a history of not taking his medication.

And just the fact that the Parole Board puts up a program, indicating that he's gonna—he has a program to comply with, I have no reason to believe that he's gonna actually comply with that program when he gets out.

You know, just from what I see here, I don't think that Mr. Young is in any better shape now than he was when I sentenced him.

And that was with mental . . . health recommendation.

So, I think there's plenty of evidence that the Parole Board didn't consider, that would call for me to grant the Prosecutor's motion to appeal the parole, and I'm gonna issue an order to that effect.

From the circuit court's articulation, I believe it is clear that the basis of its decision was that the Board abused its discretion and did not comply with the statutory requirements to make satisfactory arrangements for Young's care, and when it determined that it could safely parole Young. I believe that the circuit court made it clear that the "evidence that the Parole Board didn't consider" was the evidence of Young's history of failing to take his medication and engaging in assaultive crimes, in the reports upon which the Board relied. The circuit court stated that because the Board did not contact the victim to determine whether Young's placement would violate her protection order, "that just goes to solidify my . . . decision."

B. THE CIRCUIT COURT DID NOT CLEARLY ERR

I would conclude that the circuit court did not clearly err when it determined that the Board did not make adequate arrangements for Young's care under the circumstances of this case. Though the Board has broad discretion, it does *not* have the discretion to release a prisoner who is reasonably likely to become a menace to society or public safety.¹² Nor does it have the discretion to release a mentally ill prisoner without making satisfactory arrangements for his or her care.¹³

Here, the Board's decision states that Young accepted responsibility for his assault on the victim; but the Department of Corrections' psychiatric report indicates that Young did not actually remember attacking the victim, and states that Young lacks insight into his illness and

¹² MCL 791.233(1)(a).

¹³ MCL 791.233(1)(e).

symptoms. Young's criminal record is evidence that he has repeatedly engaged in serious assaultive crimes when he has failed to take his medication, but the Board's decision does not contain any mechanisms to ensure that Young takes his medication. Similarly, the Board's case summary noted that Young has mental health issues, and "needs continued medical treatment either in a secured environment or a closely monitor residential environment." The summary then goes on to state that "[a]rrangements have been made for Young to live with his aunt. Apparently the experts feel that this will be sufficient."

However, the documents do not indicate that the aunt agreed to allow Young to live with her, or that she would be willing to monitor his mental health. I am not convinced that the circuit court erred when it determined that the Board had not made satisfactory arrangements for Young's care, and as a result, Young could become a menace to society or public safety.

Further, the circuit court indicated that the Board's failures to investigate the victim's protection order solidified its decision. The Board's decision requires Young to comply with the victim's protection order. Despite this, Young's placement with his aunt would violate the protection order because he would live within 500 feet of the victim's workplace. Indeed, the Board ordered Young to undergo a mental health evaluation *at the hospital where the victim works*. Therefore, the Board's decision falls outside of the reasonable and principled range of outcomes. Frankly, it is illogical to require Young not to go within 500 feet of his victim's workplace and then to require him to receive his mental health treatment at that same workplace. I agree with the circuit court that this logical inconsistency solidified the basis for its decision.

Therefore, I would conclude that the circuit court did not clearly err when it determined that the Board abused its discretion. The Board did not provide adequate arrangements for Young's medical care. It did not provide reasonable assurances that Young would not become a menace to himself and society. It contradicted itself and the documents that it purported to rely on. Finally, its decision requires Young to live within 500 feet of where the victim works—which violates his victim's protection order—and to receive treatment at the hospital where the victim works—also violating her protection order. For these reasons, I do not think the circuit court clearly erred when it determined that the Board's decision fell outside of the reasonable and principled range of outcomes, and did not comply with the statutory limits on the Board's discretion.

I would affirm.

/s/ William C. Whitbeck