

STATE OF MICHIGAN
COURT OF APPEALS

ROBIN DALE LIBBEY,

Petitioner-Appellee,

v

PAROLE BOARD,

Respondent-Appellant.

UNPUBLISHED

September 24, 1999

No. 204231

Wexford Circuit Court

LC No. 96-012565 AP

Before: Bandstra, C.J., and Markman and Meter, JJ.

MEMORANDUM.

Respondent Michigan Parole Board appeals by leave granted from an order holding that it must reconsider petitioner Robin Libbey for parole every twelve months. We reverse.

After denying petitioner parole, respondent issued a two-year continuance until petitioner's next parole eligibility interview. Petitioner appealed this decision to the circuit court, arguing, among other things, that 1979 AC, R 791.7710(2), which prior to December 1988 mandated a parole eligibility interview every twelve months, applied to him. Petitioner argued that the 1988 version of the rule, which leaves the length of continuances to the discretion of respondent, see 1988 AACs, R 791.7710(2), was invalid under MCL 24.207(k); MSA 3.560(107)(k). This statute provides, in relevant part, that the following is excluded from the definition of an administrative rule:

Unless another statute requires a rule to be promulgated under this act, a rule or policy that only concerns the inmates of a state correctional facility and does not directly affect other members of the public, except that a rule that only concerns inmates which was promulgated before December 4, 1986, shall be considered a rule and shall remain in effect until rescinded but shall not be amended. [MCL 24.207(k); MSA 3.560(107)(k); emphasis added.]

Petitioner argued that because 1979 AC, R 791.7710 was promulgated before December 4, 1986, it could not be amended, making the 1988 change invalid. The trial court agreed, ordering that respondent comply with 1979 AC, R 791.7710 by reconsidering petitioner for parole every twelve months.

On appeal, respondent argues that because the no-amendment provision of MCL 24.207(k); MSA 3.560(107)(k) took effect December 26, 1989 and because the Legislature evidenced no intent that it apply retroactively, the 1988 change to rule 791.7710, which took effect December 29, 1988, was not subject to the no-amendment provision and is therefore valid. We need not address this argument, since this Court recently held that 1988 AACS, R 791.7710 implicitly *rescinded*, rather than amended, 1979 AC, R 791.7710, meaning that the 1988 change did not violate MCL 24.207(k); MSA 3.560(107)(k). See *In re Parole of Roberts*, 232 Mich App 253, 256-257; 591 NW2d 259 (1998). *Roberts* is directly analogous to the present appeal and mandates that we reverse the trial court's order and leave the length of time between petitioner's parole eligibility interviews to the discretion of respondent.

Reversed.

/s/ Richard A. Bandstra

/s/ Stephen J. Markman

/s/ Patrick M. Meter