

STATE OF MICHIGAN
COURT OF APPEALS

OAKLAND COUNTY PROSECUTOR,

Petitioner-Appellee,

v

JOEL D. PIETRANGELO,

Respondent-Appellant.

UNPUBLISHED

April 21, 2000

No. 222422

Oakland Circuit Court

LC No. 98-010246-AP

Before: Griffin, P.J., and Holbrook, Jr., and J.B. Sullivan*, JJ.

PER CURIAM.

Respondent appeals by leave granted from an order of the circuit court vacating the parole board's grant of parole. We reverse.

On March 29, 1993, respondent pleaded guilty to three counts of first-degree criminal sexual conduct, MCL 750.520b(1)(a); MSA 28.788(2)(1)(a), for engaging in several incidents of oral sex with his girlfriend's nine-year old daughter in 1988. Respondent was sentenced to concurrent terms of seven to twenty years' imprisonment.¹ On September 16, 1998, the Michigan Parole Board granted respondent parole, effective December 1, 1998, for a two-year term. The prosecution appealed the parole board's decision to the circuit court. The circuit court reversed the parole board and vacated respondent's parole.

On appeal, respondent argues that the circuit court erred in concluding the parole board abused its discretion in granting parole. We agree. A prisoner's release on parole is within the discretion of the parole board. MCL 791.234(8); MSA 28.2304(8); *In re Parole of Johnson*, 235 Mich App 21, 24; 596 NW2d 202 (1999). The parole board's decision whether to grant parole is reviewed for a clear abuse of discretion. MCR 7.104(D)(5)(b); *Killebrew v Dep't of Corrections*, 237 Mich App 650; ___ NW2d ___ (1999). An abuse of discretion will be found if an unprejudiced person, considering the facts on which the decision maker acted, would say that there was no justification or excuse for the ruling made. *Id.* The parole board's discretion is limited by statutory guidelines. *Hopkins v Michigan Parole Bd*, 237 Mich App 629; ___ NW2d ___ (1999). The foremost guideline being:

* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

A prisoner shall not be given liberty on parole until the board has reasonable assurance, after consideration of all of the facts and circumstances, including the prisoner's mental and social attitude, that the prisoner will not become a menace to society or to the public safety. [MCL 791.233(1)(a); MSA 28.2303(1)(a); see *Hopkins*, *supra* at 643, n 7; *Killebrew*, *supra* at 653.]

A reviewing court may not substitute its judgment for the judgment of the parole board. *Killebrew*, *supra* at 653. The parole board is required to utilize parole guidelines to assist it in making release decisions. MCL 791.233e(2); MSA 28.2303(6)(2) sets forth factors that should be considered in a parole decision, providing:

In developing the parole guidelines, the department shall consider factors including, but not limited to, the following:

(a) The offense for which the prisoner is incarcerated at the time of parole consideration.

(b) The prisoner's institutional program performance.

(c) The prisoner's institutional conduct.

(d) The prisoner's prior criminal record. As used in this subdivision, "prior criminal record" means the recorded criminal history of a prisoner, including all misdemeanor and felony convictions, probation violations, juvenile adjudications for acts that would have been crimes if committed by an adult, parole failures, and delayed sentences.

(e) Other relevant factors as determined by the department, if not otherwise prohibited by law.

In the present case, the record indicates respondent completed sex offender group therapy, having attended all thirty-six weekly sessions. Psychologist Mark Skinner indicated in his first report, completed after respondent participated in two months of group therapy, that respondent was an active group member, who accepted responsibility for engaging in oral sex with the victim on several occasions and was willing to discuss the incidents. Skinner's second report, completed after respondent underwent one year of therapy, indicated respondent continued to acknowledge two separate sexual assaults upon the victim, but denied the frequency of his contact with the victim as expressed in the presentence investigation. Skinner reported that respondent identified the thoughts, feelings and behaviors that caused him to commit the offenses and demonstrated remorse for the damage he caused the victim. Skinner's final report indicated respondent accepted responsibility for his actions and no longer justified his actions.² Respondent recognized that his actions were due to sexually deviant fantasies, not educational motivations.³ Skinner indicated respondent completed a Relapse Prevention Plan, which, if implemented, would reduce the likelihood that respondent would re-offend. Skinner did not mandate further therapy, but stated the decision to continue treatment should most properly be left

to respondent. Skinner recommended that standard procedure for parole of sex offenders be implemented in respondent's case.

In granting parole, the parole board placed several conditions on respondent designed to prevent him from contacting children and from possessing sexually stimulating material. The parole board determined respondent accepted full responsibility for his offenses, demonstrated satisfactory conduct while incarcerated, met his therapeutic goals, adequately involved himself in the prison work program and showed suitable arrangements for work. Overall, the parole board determined respondent's parole guideline score fell within the "high probability of parole" range.

The circuit court ruled that the parole board abused its discretion because it did not adequately consider respondent's prior conviction in 1988 for malicious use of telephone-offensive and vulgar⁴ and because the psychiatric reports did not provide reasonable assurance respondent would not become a menace to society. We conclude, however, that the record indicates the contrary and the circuit court improperly substituted its judgment for that of the parole board. *Killebrew, supra* at 2. Skinner's first report indicated he was aware of respondent's prior convictions for OUIL and malicious use of telephone-offensive and vulgar. The parole board also stated in its January 21, 1999, letter to the circuit court that it was aware of respondent's criminal history at the time it made its decision to grant parole. Although petitioner contends respondent's acknowledgment during therapy that dating women with underage daughters was a "high risk factor" and respondent's admission that he has an attraction for teenage girls, is proof respondent would present a danger to society, Skinner opined that respondent accomplished the goals of therapy and was eligible for implementation of parole procedures without further mandated therapy. We recognize that respondent disputes the frequency of his contact with the victim as set forth in the presentence report. However, respondent has never disputed engaging in the acts to which he pleaded guilty. Overall, the circumstances do not indicate there was no justification or excuse for the parole board's decision. Accordingly, the circuit court erred in granting petitioner's motion to vacate parole because the parole board's decision was not an abuse of discretion.

Reversed.

/s/ Richard Allen Griffin

/s/ Donald E. Holbrook, Jr.

/s/ Joseph B. Sullivan

¹ Oakland Circuit Court case nos. 92-116950-FC and 92-116951-FC.

² At the time of his sentencing and at the beginning of his incarceration, respondent claimed that he engaged in the incidents of sexual contact with the victim in order to educate her and to satisfy the victim's own curiosities about sex.

³ We recognize that Skinner indicated at one point in his final report that respondent attempted to intellectualize his actions and “through a great deal of coaching from the group” acknowledged that he acted due to sexual deviant fantasies. However, we also note that Skinner indicated later in that final report that respondent was able to acknowledge his deviant behavior without qualification, after re-completing several assignments.

⁴ That conviction was based on respondent’s conduct of proposing to a woman on a party-line that her thirteen-year-old son come to his apartment, watch pornographic movies and perform sex acts for money.