

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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ROBERT C. HICKS,

Plaintiff-Appellee,

v

MICHIGAN DEPARTMENT OF  
CORRECTIONS,

Defendant-Appellant.

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UNPUBLISHED

July 23, 2002

No. 225518

Ingham Circuit Court

LC No. 98-089013-AW

Before: Bandstra, P.J., and Hoekstra and O'Connell, JJ.

PER CURIAM.

Defendant Michigan Department of Corrections (MDOC) appeals as of right from an order granting summary disposition for plaintiff, an inmate in the custody of the MDOC, under MCR 2.116(I)(2) and ordering the MDOC either to enroll plaintiff in its group sex offender therapy program pursuant to the program classification report prepared for plaintiff or remove the therapy program requirement from his classification report and dispense with his participation in the program. We reverse.

In 1993, plaintiff was convicted of first-degree criminal sexual conduct and sentenced to 8 to 30 years' imprisonment. As part of his MDOC orientation, he underwent a reception center psychological evaluation that resulted in a recommendation in his program classification report that he participate in sex offender therapy during his incarceration. Plaintiff subsequently sought participation in a sex offender therapy program but the MDOC refused to allow him to participate. The apparent basis for the decision was a sex offender program statement providing that the MDOC no longer considered the reception center recommendations as binding, but would evaluate sex offenders for participation pursuant to certain screening criteria. Under these criteria, individuals who denied committing a sex offense were deemed ineligible to participate in the program. Plaintiff has at all times maintained his innocence.

Plaintiff filed a complaint for mandamus and declaratory relief alleging that the MDOC's refusal to allow him to participate in the therapy program diminished his chance of parole once he became eligible in October 1999. He sought either the removal of the recommendation of sex offender therapy or participation in therapy despite his claim of innocence. Following a hearing, the trial court granted summary disposition for plaintiff, ruling that it was improper for the MDOC to require participation in a therapy program as a condition of being paroled and then deny him participation in such a program.

On appeal, the MDOC contends that mandamus was improper because plaintiff did not have a right to participate in any type of therapy or other programs offered by the MDOC. We agree.

The issuance of a writ of mandamus is proper where (1) the party seeking the writ has a clear legal right to performance of the specific duty sought, (2) the defendant has the clear legal duty to perform the act requested, (3) the act is ministerial and involves no exercise of discretion or judgment, and (4) no other remedy exists, legal or equitable, that might achieve the same result. [*Lickfeldt v Dep't of Corrections*, 247 Mich App 299, 302; 636 NW2d 272 (2001).]

This Court reviews a trial court's decision regarding a writ of mandamus for abuse of discretion. *Id.*

No statute, rule, or constitutional requirement provides a basis for plaintiff's claim to a clear legal right to sex offender therapy or to any other program that might improve his chances of being paroled.<sup>1</sup> A prisoner has no right or constitutionally protected right to parole, only a hope or expectation of it. *Hurst v Dep't of Corrections*, 119 Mich App 25, 28-29; 325 NW2d 615 (1982). Plaintiff also has no due process liberty interest that would require defendant to facilitate his participation in group therapy or other programs designed to enhance his parole chances. *Sweeton v Brown*, 27 F3d 1162, 1164-1165 (CA 6, 1994). In the absence of a clear right to participate in the sex offender therapy program or to be excused from the therapy requirement, plaintiff was not entitled to mandamus. *Lickfeldt, supra*. The trial court therefore abused its discretion in granting summary disposition for plaintiff.

We reverse.

/s/ Richard A. Bandstra

/s/ Peter D. O'Connell

I concur in result only.

/s/ Joel P. Hoekstra

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<sup>1</sup> Plaintiff's reliance on policy directive 04.01.105(O) is misplaced. That directive is not a "rule" with the force of law as it "does not affect the rights of, or procedures and practices available to the public." MCL 24.207(g). Further, no statute requires that such a policy directive regarding treatment programs be promulgated. MCL 24.207(k). Even if policy directive 04.01.105(O) had the force of law, it does not guarantee plaintiff the right to participate in the treatment program by his own rules, i.e., while maintaining his innocence. Finally, the record shows that this policy directive is no longer in effect.