

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

EDWARD MITCHELL GUERRERO,

Defendant-Appellant.

UNPUBLISHED

January 15, 2004

No. 242992

Saginaw Circuit Court

LC No. 71-020126-FH

Before: Zahra, P.J., and Cavanagh and Cooper, JJ.

PER CURIAM.

Defendant appeals by leave granted from a denial of his motion for relief from judgment. Defendant was sentenced in 1972 to three life terms and has served more than thirty years in prison. However, he was not sentenced under a misapprehension of law and, therefore, has no right to parole. We affirm.

Defendant argues that the parole board does not distinguish parolable life from life without parole; therefore, he is serving a sentence longer than the sentencing judge intended and was denied due process because he did not receive meaningful consideration for parole. We review this claim de novo. *People v Marcus Harris*, 224 Mich App 597, 599; 569 NW2d 525 (1997).

First, defendant argues that the parole board improperly treats parolable life sentences as life without parole. However, this Court has addressed similar arguments and held that a prisoner does not have a constitutional right to be released from prison before the expiration of a valid sentence. *Shields v Dep't of Corrections*, 128 Mich App 380, 385; 340 NW2d 95 (1983), citing *Greenholtz v Inmates of Nebraska Penal & Correctional Complex*, 442 US 1, 7; 99 S Ct 2100; 60 L Ed 2d 668 (1979). Moreover, there is no constitutional violation when parole is denied. *Shields, supra* at 385-386.

Here, the record clearly indicates that the trial court had the option of imposing a term of years or a life sentence. Because of the nature of defendant's crime, the trial court determined that parolable life was appropriate. At sentencing, the judge stated that defendant could be eligible for parole after serving ten years, but that the ultimate decision would be made by the Department of Corrections. More than fifteen years later, the same judge reiterated his position

that the parole board retained discretion to grant parole. Over the years, the parole board has considered defendant's case but has expressed "no interest" in granting parole.

Consideration for parole means that a convicted person becomes "subject to the jurisdiction of the Parole Board and could be paroled after the board completed the requisite procedures and exercised its discretion to grant parole." *People v Moore*, 468 Mich 573, 581-582; 664 NW2d 700 (2003). Here, defendant was eligible for parole after ten years, and he was considered eight times—in 1983, 1985, 1987, 1989, 1991, 1994, 1998, and 2003. The fact that he was not granted parole does not suggest that he did not receive consideration.

Next, defendant argues that the trial court abused its discretion when it denied his motion for relief from judgment because the sentencing judge—allegedly acting under misapprehension of law—erroneously believed defendant would be considered for meaningful parole after ten years. We review a request for relief from judgment for an abuse of discretion. *People v Ulman*, 244 Mich App 500, 508; 625 NW2d 429 (2001).

Again, the record clearly indicates that the sentencing judge did not act under a misapprehension of law or erroneous belief that defendant would be paroled after ten years. Rather, the sentencing judge was very clear about his intention that defendant may be considered for parole, and he encouraged defendant to earn consideration by furthering his education. Defendant was never guaranteed that he would be released from prison after ten years, and he was considered for parole as the sentencing judge anticipated. "However, the failure to accurately predict the actions of the Parole Board does not constitute a misapprehension of the law that could render the sentence invalid." *Moore, supra* at 580. Defendant has failed to show that he received anything less than expected; therefore, the trial judge did not abuse its discretion in denying defendant's motion for relief from judgment.

Affirmed.

/s/ Brian K. Zahra
/s/ Mark J. Cavanagh
/s/ Jessica R. Cooper