

STATE OF MICHIGAN
COURT OF APPEALS

MACOMB COUNTY PROSECUTING
ATTORNEY,

UNPUBLISHED
December 6, 2005

Plaintiff-Appellee,

v

ERIC THOMAS MASTERS,

No. 262716
Macomb Circuit Court
LC No. 05-000612-AP

Defendant-Appellant.

Before: Owens, P.J., and Fitzgerald and Schuette, JJ.

PER CURIAM.

Defendant appeals by leave granted from an order of the circuit court reversing the decision of the Michigan Parole Board to parole defendant. We dismiss this appeal as moot.

I. FACTS

On January 30, 1996 plaintiff pleaded guilty to solicitation to commit first-degree murder, MCL 750.157b. Defendant's conviction arises from the murder of David Bartmess in February of 1994. Defendant was not directly involved in the killing, but instead solicited a third party to murder Bartmess at the request of Bartmess' former business partner, Arthur Mann. Defendant was sentenced on January 28, 1998 to 9 to 20 years' imprisonment.

On October 18, 2004, the parole board granted defendant a two-year term of parole to begin on February 24, 2005. In its reasons in support of granting parole, the parole board noted that defendant's offense was not sexually motivated, defendant accepted responsibility for his crime and expressed remorse for his actions. In February 2005, the Macomb County Prosecutor filed a delayed application for leave to appeal the parole board's decision to parole defendant. The prosecutor argued that the Board abused its discretion since defendant would have served only 7 years of his 9-year minimum sentence, which was contrary to the expectations of the sentencing judge and contrary to the "truth in sentencing" legislation passed after defendant's sentencing. The Parole Board did not intervene in the appeal, but responded in a February 22, 2005 letter which explained that defendant had served his minimum 9-year sentence less his total 686 days of jail and disciplinary credits and so was eligible for parole under MCL 791.233(c).

In an order dated February 17, 2005, the trial court granted the prosecutor's application and ordered that "the decision of the Parole Board granting Masters parole is reversed.

Defendant shall remain incarcerated.” Defendant moved for reconsideration, arguing that plaintiff’s delayed application was untimely, that he was never given the opportunity to respond to plaintiff’s arguments, and that plaintiff failed to establish an abuse of discretion by the Board. The circuit court granted defendant’s motion for reconsideration in a March 24, 2005 opinion and order, finding that its determination on the merits had been premature. The circuit court vacated that portion of its February 17, 2004 order reversing the Parole Board’s decision and ordered the parties to submit briefs on appeal. The circuit court ordered that defendant remain incarcerated pending a decision on the merits of the appeal.

On May 4, 2005, the circuit court reversed the Parole Board’s decision to grant parole to defendant. The court noted the prosecutor’s argument that the Board abused its discretion by paroling defendant after he had served only 7 years of his 9-year sentence, “contrary to the expectations of the sentencing judge, society, and the victim’s family” but did not base its decision on that argument or address that argument further. Instead, the circuit court found “that the Parole Board abused its discretion in relying heavily on defendant’s remorse, which was considered approximately 3 times.” Based on this finding the circuit court reversed the Board’s decision to grant parole and remanded the matter to the Board for a new hearing.

On May 16, 2005, defendant applied for leave to appeal to this Court, arguing that the Parole Board did not abuse its discretion with regard to granting defendant parole. This Court granted leave to appeal but denied defendant a stay in the matter. At oral arguments, this Court learned that while the appeal was pending, the parole board, pursuant to the circuit court’s order, reconsidered its decision and denied defendant parole. This Court then directed the parties to brief the issues of whether the circuit court had authority to remand the case to the parole board and whether, because of the parole board’s subsequent decision, this appeal is now moot. We conclude that the circuit court did have authority to remand the case to the parole board and that the parole board’s subsequent decision make this appeal moot.

II. STANDARD OF REVIEW

This Court reviews a decision whether to grant or deny parole for a clear abuse of discretion. MCR 7.104(D)(5)(b); *In re Parole of Glover (After Remand)*, 241 Mich App 127, 129; 614 NW2d 714 (2000). An abuse of discretion exists when an unprejudiced person, considering the facts upon which the decisionmaker relied, would say that there is no justification or excuse for the decision. *Id.* A reviewing court may not substitute its judgment for that of the Parole Board. *Id.*; *Wayne Co Prosecutor v Parole Bd*, 210 Mich App 148, 154; 532 NW2d 899 (1995).

III. ANALYSIS

A prisoner has no constitutional or inherent right to parole, but only a hope or expectation of parole. *People v Mack*, 265 Mich App 122, 129; 695 NW2d 342 (2005); *Morales v Michigan Parole Board*, 260 Mich App 29, 48; 676 NW2d 221 (2003), citing *Jones v Dep’t of Corrections*, 468 Mich 646, 651; 664 NW2d 717 (2003). The circuit court reversed the parole board’s decision to grant parole and remanded the case to the parole board for reconsideration. This procedure was entirely proper under the court rules. MCR 7.104(7) and (8) state:

(7) *Motion to Remand.* On timely motion by a party, or on the court's own motion, the court may remand the matter to the parole board for an explanation of its decision. The parole board shall hear and decide the matter within 28 days of the date of the order, unless the board determines that an adjournment is necessary to obtain evidence or that there is other good cause for an adjournment. The time to file briefs on appeal under MCR 7.104(D)(4)(d) is tolled while the matter is pending on remand.

(8) *Parole Board Responsibility After Reversal or Remand.* If a decision of the parole board is reversed or remanded, the board shall review the matter and take action consistent with the circuit court's decision within 28 days. If the circuit court order requires the board to undertake further review of the file or to reevaluate its prior decision, the board shall provide the parties with an opportunity to be heard. An appeal to the Court of Appeals does not affect the board's jurisdiction to act under this subsection.

See also *Hopkins v Parole Bd*, 237 Mich App 629, 645-646; 604 NW2d 686 (1999). Therefore, the circuit court had the authority under the court rules to reverse and remand the case to the parole board and because the parole board has reconsidered its decision and determined that defendant is not eligible for parole, any review of the initial parole board's decision is now moot. *Detroit Edison v Public Service Comm*, 264 Mich App 462, 474; 691 NW2d 61 (2004). Therefore, the appeal is dismissed.

/s/ Donald S. Owens
/s/ E. Thomas Fitzgerald
/s/ Bill Schuette