

STATE OF MICHIGAN
COURT OF APPEALS

WILLIAM CARLESS,

Plaintiff-Appellant,

v

PAROLE BOARD,

Defendant-Appellee.

UNPUBLISHED

November 29, 2007

No. 270616

Ingham Circuit Court

LC No. 06-000085-AW

Before: Donofrio, P.J., and Hoekstra and Markey, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's denial of his request for a default judgment and summary dismissal of his complaint for superintending control alleging various violations by defendant in its denial of his request for parole. Because we conclude that the actions of which plaintiff complains are discretionary in nature and that his complaint therefore fails to state a claim on which relief can be granted, we affirm.

Plaintiff's complaint alleges that various actions taken by defendant in deciding to deny him parole violated various constitutional and statutory rights. After review de novo, and considering the legal sufficiency of and factual support for plaintiff's claims, we find that the trial court properly dismissed plaintiff's complaint. See *By Lo Oil Co v Dep't of Treasury*, 267 Mich App 19, 25-26; 703 NW2d 822 (2005).

Judicial review of the denial of parole is unavailable to prisoners in Michigan absent circumstances giving rise to a complaint for habeas corpus, or a writ of mandamus to compel compliance with a statutory duty. *Morales v Parole Bd*, 260 Mich App 29, 39-42, 52; 676 NW2d 221 (2003). Here, plaintiff filed a complaint for superintending control. "A superintending control order replaces . . . the writ of mandamus when directed to a lower court order." MCR 3.302(C). Thus, we evaluate this case as though plaintiff filed a writ of mandamus. Plaintiff bears the burden to prove his entitlement to the extraordinary remedy of a writ of mandamus. *Citizens for Protection of Marriage v Bd of State Canvassers*, 263 Mich App 487, 492; 688 NW2d 538 (2004). A writ of mandamus "will not lie to review or control the exercise of discretion vested in a public official or administrative body." *Morales, supra* at 41-42. The grant or denial of parole is discretionary and defendant possessed that discretion exclusively. *Hopkins v Parole Bd*, 237 Mich App 629, 637; 604 NW2d 686 (1999).

Plaintiff alleges that because he had a high probability of parole he could not, pursuant to MCL 791.233e(6), be denied parole absent substantial and compelling reasons stated in writing. We note, however, that in its written denial of parole defendant expressly cited plaintiff's inability "to demonstrate any kind of insight into his highly deviant behavior during his [interview]" and the need for such in order to reduce the risk of reoffending as substantial and compelling reasons for departing from the parole guidelines and denying plaintiff parole. Thus, defendant complied with its statutory duties under MCL 791.233e(6). *Morales, supra*.

Plaintiff further argues that the reasons cited do not constitute a substantial and compelling reason for parole denial. However, whether the reason provided is a sufficient and compelling reason is a question involving the manner in which defendant has exercised its discretion and, therefore, not the proper basis for seeking a grant of mandamus. See *Teasel v Dep't of Mental Health*, 419 Mich 390, 409-410; 355 NW2d 75 (1984).

Plaintiff's assertions that defendant improperly relied on his proclamations of innocence as a basis for denying him parole suffer from this same defect—namely that a claim for mandamus will not lie because the issues rely on the manner in which defendant has exercised its discretion. *Id.* Thus, the trial court properly dismissed plaintiff's complaint on those issues. Regardless, we note that defendant is permitted to consider any factor determined by the department of corrections to be "relevant" to the parole decision, "if not otherwise prohibited by law." MCL 791.233e(2)(e); see also MCL 791.233e(1). That the department finds a potential parolee's acknowledgment of responsibility for the circumstances of his incarceration relevant to the parole decision is not disputed, and the cases relied on by plaintiff to assail such considerations as improper simply do not hold that such considerations are unlawful in the context of parole. Plaintiff has thus failed to show that defendant improperly relied on his continued claim of innocence as a basis for denying him parole.

Plaintiff's remaining argument is that the trial court erred in not entering a default judgment against defendant because its response was untimely filed. Having determined that plaintiff's complaint for superintending control did not state a claim upon which relief could be granted, the denial of default judgment was appropriate because such a complaint cannot support a judgment. *Lindsley v Burke*, 189 Mich App 700, 702-703; 474 NW2d 158 (1991). Because we find that the trial court's denial of default judgment was proper based on plaintiff's failure to state a claim, we do not address plaintiff's claim that the trial court improperly applied MCL 600.5509(3).

Affirmed.

/s/ Pat M. Donofrio
/s/ Joel P. Hoekstra
/s/ Jane E. Markey