STATE OF MICHIGAN

COURT OF APPEALS

MUSKEGON COUNTY PROSECUTOR, Plaintiff-Appellant, v DEPARTMENT OF CORRECTIONS and WAYNE LEE STEVENS, Defendants-Appellees.	UNPUBLISHED November 29, 2007 No. 281321 Muskegon Circuit Court LC No. 07-045526-AW

Before: Beckering, P.J., and Murphy and Smolenski, JJ.

PER CURIAM.

Plaintiff, the Muskegon County Prosecutor, appeals as of right from an order granting summary disposition to defendants Michigan Department of Corrections (DOC) and Wayne Lee Stevens, dismissing plaintiff's complaint for mandamus, and dismissing a previously entered temporary restraining order that prevented the DOC from releasing defendant Stevens[1] from his imprisonment. We affirm.

I. Background

This appeal involves the proper calculation of defendant's release date from imprisonment. Defendant was charged with sexually assaulting and murdering Mary Ann Scharphorn on August 31, 1979. Pursuant to a plea agreement, he pleaded guilty but mentally ill to second-degree murder, MCL 750.317, and was sentenced on May 2, 1980, to 15 to 40 years' imprisonment. On October 14, 1985, defendant walked away from a DOC facility and was subsequently convicted of prison escape, for which he was sentenced on June 23, 1986, to 9 months to 5 years' imprisonment, to be served consecutive to his existing sentence for second-degree murder.

On October 24, 1990, defendant was released on parole. His parole was subsequently revoked and he returned to prison after he was convicted of operating a vehicle under the influence of liquor (OUIL) on May 12, 1991. Defendant was again released on parole on April

[1] As used in this opinion, the singular term "defendant" shall refer to defendant Stevens only.

14, 1992, but was thereafter convicted of assault and battery on October 25, 1992, and his parole was revoked the following month. The Parole Board did not order that any of defendant's good-time credits be forfeited as a result of his parole revocations. Defendant was denied parole at every subsequent parole hearing, the last being in May 2006.

For purposes of calculating the length of defendant's imprisonment, the DOC combined the 40-year maximum sentence for his murder conviction and the 5-year maximum sentence for his prison escape sentence, for a new combined maximum sentence of 45 years. The DOC then subtracted from this combined maximum sentence the amount of good-time credits earned by defendant, which amounted to 6,175 days, or approximately 17 years. This mathematic calculation produced a sentence discharge date of October 2, 2007. On September 21, 2007, the DOC issued a certificate of discharge for defendant, effective October 2, 2007. The DOC did not issue a certificate of termination for defendant's murder sentence and would not have done so until defendant had served the calendar maximum sentence, which, according to the DOC, would not occur until August 30, 2019.

On October 1, 2007, in an attempt to compel the DOC to continue defendant's incarceration, plaintiff filed this action for a writ of mandamus and requested a temporary restraining order (TRO) enjoining defendant's release. The trial court entered the TRO, prohibiting the DOC from releasing defendant pending a determination of plaintiff's mandamus request. Defendant was subsequently added as a party to the action. The parties thereafter filed several briefs, and a hearing was held on October 9, 2007. Plaintiff's argument was two-fold. First, it argued that defendant was not entitled to be released under MCL 791.234(3)[2] because of his status as a prison escapee, MCL 750.193(1), and a parole violator, MCL 791.238(2). It asserted that the two latter statutes were more specific and required defendant to serve, at a minimum, five additional years in prison because his murder sentence had not been "terminated" by the parole board. Second, plaintiff argued that the DOC's method of calculating good-time credits was contrary to law. It contended that, if correctly calculated, defendant was required to serve approximately five more years in prison. The DOC argued that under MCL 791.234(3), it did not have the authority to hold defendant because he had served his combined maximum sentences, less good-time credits allowed. It also argued that its calculation of good-time credits was accurate and valid.

On October 15, 2007, the trial court entered an opinion and order granting summary disposition in favor of defendants and dismissing plaintiff's mandamus action,[3] finding that defendant was entitled to the good-time credits awarded by the DOC and that a subtraction of these good-time credits from his combined maximum sentence meant that he had "maxed out," thereby entitling him to release. In reaching this decision, the trial court observed that plaintiff's proposed method for calculating good-time credits was rejected by this Court in *Michigan ex rel*

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[2] Subsection (3) was codified as subsection (2) at the time defendant committed the offense that led to his murder conviction. 1978 PA 81.

[3] The trial court determined that the case presented no factual questions and, therefore, defendants were entitled to summary disposition under MCR 2.116(I)(1).

Oakland Co Prosecutor v Dep't of Corrections, 199 Mich App 681; 503 NW2d 465 (1993), which instead upheld the DOC's method. The trial court also found that because defendant was seeking discharge, MCL 791.234(3) controlled.

However, the trial court stayed enforcement of its order until October 29, 2007, to allow the prosecutor time to file an appeal. After plaintiff filed this appeal on October 18, 2007, this Court issued an order on October 23, 2007, staying the trial court's order and expediting this appeal. On October 25, 2007, defendant filed an application for leave in the Supreme Court. The Supreme Court subsequently denied the application, but directed this Court to issue an opinion by November 30, 2007. *Muskegon Co Prosecutor v Dep't of Corrections*, __ Mich __; 740 NW2d 303 (2007).

II. Standard of Review, Mandamus, and Governing Principles of Statutory Construction

Plaintiff appeals the trial court's order granting summary disposition in favor of defendants and denying its request for a writ of mandamus. This Court reviews de novo a trial court's decision to grant summary disposition and questions of statutory interpretation. *Sobiecki v Dep't of Corrections*, 271 Mich App 139, 141; 721 NW2d 229 (2006).

In *Lickfeldt v Dep't of Corrections*, 247 Mich App 299, 302; 636 NW2d 272 (2001), this Court cogently set forth the principles governing the granting of mandamus in the context of criminal sentences:

> 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.

The following principles of statutory construction also guide our disposition of this case. The goal of statutory interpretation is to discern and give effect to the intent of the Legislature by examining the most reliable evidence of its intent, the words of the statute. *Neal v Wilkes*, 470 Mich 661, 665; 685 NW2d 648 (2004). If the language of a statute is unambiguous, a court presumes that the Legislature intended the plainly expressed meaning and further judicial construction is neither required nor permitted. *Sun Valley Foods Co v Ward*, 460 Mich 230, 236; 596 NW2d 119 (1999). But plain statutory language can be rendered ambiguous by its interaction with other statutes. *Ross v Modern Mirror & Glass Co*, 268 Mich App 558, 562; 710 NW2d 59 (2005). A statutory provision is ambiguous if it irreconcilably conflicts with another provision or it is equally susceptible to more than a single meaning. *Fluor Enterprises, Inc v Dep't of Treasury*, 477 Mich 170, 177 n 3; 730 NW2d 722 (2007).

Statutes that relate to the same subject or share a common purpose are in pari materia and must be read together as one law, even if they contain no reference to one another and were enacted on different dates. *People v Webb*, 458 Mich 265, 274; 580 NW2d 884 (1998). If two statutes lend themselves to a construction that avoids conflict, that construction should control. *Id*. The construction should give effect to each without overreaching, absurdity, or unreasonableness. *Ryan v Dep't of Corrections*, 259 Mich App 26, 30; 672 NW2d 535 (2003). When two statutes or provisions conflict, however, and one is specific to the subject matter while

the other is only generally applicable, the specific statute prevails. *People v Buehler*, 477 Mich 18, 26; 727 NW2d 127 (2007); *Gebhardt v O'Rourke*, 444 Mich 535, 542-543; 510 NW2d 900 (1994).

III. Good-Time Credits

We first address plaintiff's challenge to the front-loading method used by the DOC to calculate good-time credits a prisoner is entitled to have applied to his sentence, thereby reducing the time he must serve in prison. Plaintiff argues that the applicable statute, MCL 800.33(2), provides that a prisoner earns credits as he serves his time. In *Oakland Co Prosecutor*, *supra* at 689-692, this Court addressed the two approaches to calculating good-time credits that are at issue here, and the Court, ruling in favor of the DOC, found that the DOC's method did not violate MCL 800.33(2). The decision is binding and dispositive of the issue. MCR 7.215(J)(1). We decline the invitation to revisit *Oakland Co Prosecutor*.

IV. Statutory Sentence Calculation

Plaintiff does not dispute that using the DOC's method of calculation and applying MCL 791.234(3), defendant's release date of October 2, 2007, is accurate. However, plaintiff argues that MCL 791.234(3) does not apply to defendant. This statute provides:

> If a prisoner other than a prisoner subject to disciplinary time is sentenced for consecutive terms, whether received at the same time or at any time during the life of the original sentence, the parole board has jurisdiction over the prisoner for purposes of parole when the prisoner has served the total time of the added minimum terms, less the good time and disciplinary credits allowed by statute. The maximum terms of the sentences shall be added to compute the new maximum term under this subsection, and discharge shall be issued only after the total of the maximum sentences has been served less good time and disciplinary credits, unless the prisoner is paroled and discharged upon satisfactory completion of the parole.

We reject plaintiff's argument that this provision only involves parole and, therefore, does not apply to defendant because he is seeking to be released from the DOC's jurisdiction. Despite the chapter's title, "Bureau of Pardons and Paroles; Parole Board," its provisions also address releases from the DOC's jurisdiction. See MCL 791.237(2) (requiring the DOC to provide clothing, cash, and transportation to certain discharged prisoners) and MCL 791.242 (requiring the Parole Board to issue a certificate of discharge to a prisoner on successful completion of parole).

More importantly, the second sentence of MCL 791.234(3) provides for discharge "unless the prisoner is paroled." The phrase "for purposes of parole" is found only in the subsection's first sentence regarding total minimum terms, establishing at what point the parole board has jurisdiction over a prisoner. The phrase does not modify the second sentence, which establishes at what point a prisoner is eligible for discharge from prison. We find that the second sentence is applicable to this case.

We also reject plaintiff's contention that the statute simply establishes the minimum maximum sentence that a prisoner must serve before he may be eligible for discharge. In *In re Callahan*, 348 Mich 77, 81-83; 81 NW2d 669 (1957), our Supreme Court construed similar language in a predecessor statute and held that "when the total of plaintiff's maximum terms, less statutory good time and such special good time as may have been or hereafter may be allowed him, has been served he shall be entitled to release." Any factual distinctions between this case and *Callahan* are immaterial. We rely on *Callahan* for the narrow purpose of interpreting the second sentence of MCL 791.234(3), which is nearly identical to the predecessor version at issue in *Callahan*.

A. MCL 750.193 and MCL 791.234

Plaintiff next argues that MCL 791.234(3) does not govern this case because of defendant's status as a prison escapee. MCL 750.193(1) provides, in pertinent part:

> A person imprisoned in a prison of this state who breaks prison and escapes, breaks prison though an escape is not actually made, escapes, leaves the prison without being discharged by due process of law, attempts to break prison, or attempts to escape from prison, is guilty of a felony, punishable by further imprisonment for not more than 5 years. *The term of the further imprisonment shall be served after the termination, pursuant to law, of the sentence or sentences then being served*. [Emphasis added.][4]

The parties do not dispute that a sentence terminates "pursuant to law" after a prisoner has served his statutory calendar maximum sentence or on the parole board's exercise of its discretion under MCL 791.234(5).[5] Neither has occurred in this case. Plaintiff argues that because defendant's murder sentence has not been "terminated" pursuant to law, he has not begun to serve his prison escape sentence and, therefore, is not eligible to be released from prison. It contends that absent the parole board exercising its discretion to terminate the murder sentence under MCL 791.234(5), defendant cannot begin to serve his prison escape sentence until he serves the calendar maximum of his murder sentence. Plaintiff contends that because MCL 791.193(1) controls when a prisoner begins to serve his prison escape sentence, it is a more specific statute than MCL 791.234(3). Accordingly, it argues that defendant is not eligible to be discharged.

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[4] The version of the statute in effect at the time of defendant's prison escape conviction contained this same disputed language. 1978 PA 631.

[5] MCL 791.234(5) provides:

> If a prisoner other than a prisoner subject to disciplinary time has 1 or more consecutive terms remaining to serve in addition to the term he or she is serving, the parole board may terminate the sentence the prisoner is presently serving at any time after the minimum term of the sentence has been served.

In 1979, current subsection (5) was codified as subsection (3).

The arguments in this case focus on three opinions from this Court: *Lickfeldt, Ryan,* and *Sobiecki, supra.* At the outset, we find all of these cases distinguishable for the simple reason that they did not involve the situation presented here, in which defendant has fully served the total amount of days necessary, without overlap, to satisfy the full and maximum extent of both his sentence for second-degree murder and the sentence for prison escape, taking into consideration his good-time credits as properly calculated by the DOC. Plaintiff conceded this point at oral argument. While the abhorrent nature of the crimes committed by defendant is certainly deserving of more prison time, this Court must apply the law and is constrained by the length of the prison terms given defendant as shaped by the second-degree murder plea agreement and the Parole Board's decision not to forfeit accrued good-time credits when he escaped prison and twice violated parole. Nonetheless, we shall briefly examine *Lickfeldt, Ryan,* and *Sobiecki.*

In *Lickfeldt,* this Court ruled that a prisoner is entitled to have an underlying sentence "terminated" on the completion of the maximum prison term relative to that sentence before beginning to serve a consecutive sentence for escaping prison, which can only be served after the termination of the underlying sentence. The Court stated that the prison escape statute mandates that the original sentence be terminated before a prisoner can serve the sentence for prison escape. *Id.* at 306. The *Lickfeldt* panel then stated:

> The question remains whether the effective date of termination should be the statutory maximum or the individual's actual maximum with adjustments for credits. This issue was not raised by the parties and in this case is moot because the maximum possible term, fourteen years, has since passed. The trial court determined April 20, 1996, as the effective date because it found plaintiff submitted adequate and undisputed proof that her adjusted sentence would have ended on that date. We see no reason to find error in this determination. [*Id.* at 306-307.]

Lickfeldt did not directly answer the question posed here, which is whether a sentence terminates pursuant to law when the statutory maximum has been served minus good-time credits, although by finding no error with the trial court's determination, the panel effectively answered the question affirmatively. *Lickfeldt* simply involved an attempt by the prisoner to have the underlying sentence terminated so that her security level would be reduced and she would become eligible for certain facilities and programs while serving out the remainder of her consecutive sentences. *Id.* at 301. We do not read *Lickfeldt* as requiring defendant to have requested and obtained a termination certificate, if even feasible, before his escape sentence commenced. Moreover, discharge was not at issue in *Lickfeldt,* where here it is the entire focus of the litigation, and we shall not construe the termination language in MCL 750.193(1) as trumping or modifying the discharge language in MCL 791.234(3), such that a prisoner can be confined beyond the total of the maximum sentences less good time credits. The discharge statute must control.

In *Ryan, supra* at 27, this Court addressed whether the DOC had "statutory authority to forfeit disciplinary credits earned on a sentence that has been 'completed' by serving the maximum term less disciplinary credits on the basis of misconduct occurring while serving a sentence that was ordered to be served consecutively to the earlier sentence." The Court concluded that the DOC had the authority, relying chiefly on MCL 800.33(11), which provides

that *all* good time and disciplinary credits that have been earned on any of the consecutive sentences shall be subject to forfeiture. *Id.* at 35. However, the plaintiff argued that the "expiration" language of MCL 768.7a(2)[6] mandated a conclusion that his original sentence was completed the moment he served the maximum term less the credits, and thus those credits could not be later forfeited. *Id.* The Court responded, "[T]he statutes nowhere state that a sentence expires, terminates, or is completed when the total of the time served and the credits earned equals the maximum term." *Id.*

Ryan did not address the "termination" language of the escape statute and its interaction with MCL 791.234(3), and indeed it found that credits were tied to discharge under MCL 791.234(3). *Id.* *Ryan* must be confined to and viewed in the context of the issue presented and the fact that MCL 800.33(11) ultimately controlled the outcome, just as MCL 791.234(3) ultimately must govern our outcome. To construe *Ryan* as requiring us to find that defendant's murder sentence did not terminate for purposes of commencing the escape sentence and determining discharge would be to render MCL 791.234(3) nugatory. We find *Ryan* unavailing with respect to plaintiff's arguments.

Finally, there is *Sobiecki*, which addressed an argument that the Parole Board's act of paroling the plaintiff served as a termination of the underlying prison sentence, thereby commencing the consecutive prison escape sentence, resulting in the completion of the plaintiff's sentences and the need to discharge. The *Sobiecki* panel rejected the argument, concluding that the Parole Board was merely exercising its jurisdiction to parole the plaintiff, given the aggregated minimum sentence pursuant to MCL 791.234(3), and not exercising its discretion to "terminate" the original sentence. *Sobiecki, supra* at 143-144. The Court found that the "[p]laintiff's argument that termination must necessarily be implied fails because MCL 791.234(3) requires the minimum terms of consecutive sentences to be tacked for parole eligibility purposes, even if the prior consecutive sentence has not yet been completed." *Id.* at 144.

Sobiecki does not have any true bearing on our case because we are not implying termination relative to the Parole Board's mere exercise of jurisdiction under MCL 791.234(3) to parole a prisoner. Rather, we are implying termination under the escape statute for the purposes of the discharge provision in MCL 791.234(3), where defendant necessarily served his murder sentence and consecutively served his escape sentence when the total amount of days to reach the maximums of both sentences, minus good-time credits, has been served.

Interestingly, *Sobiecki* indicates, on the basis of MCL 791.234(3), that a prisoner can be paroled without the consecutive prison escape sentence having even been commenced regardless of the language in the escape statute. *Sobiecki, supra* at 143. In that same vein, even if

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[6] MCL 768.7a(2) addresses the commission of a felony by a prisoner while out on parole from a sentence for a previous offense, and the statute provides that "the term of imprisonment imposed for the later offense shall begin to run at the *expiration* of the remaining portion of the term of imprisonment imposed for the previous offense." (Emphasis added.)

technically there was no "termination" under the escape statute in the instant action, the escape statute would succumb, if only on constitutional due process grounds, to the controlling and subject-specific discharge requirements of MCL 791.234(3). We cannot read the plain language in the phrase, "termination pursuant to law," as used in the escape statute, to require the forfeiture of earned or potential good-time credits, such that termination can then only be accomplished by the Parole Board's exercise of discretion or the satisfaction of the statutory calendar maximum. This is because we would be adding nonexistent language to the escape statute and because MCL 791.238(4) expressly provides the Parole Board with the *discretion* to forfeit earned good-time credits on a parole violation, which is treated as a prison escape, MCL 791.238(2). The escape statute has not been diminished by our ruling, considering that its demand that a prisoner serve a consecutive sentence for escape has been honored here.

B. MCL 791.234 and MCL 791.238

Plaintiff also argues that MCL 791.234(3) does not apply to this case because of defendant's status as a parole violator. The version of MCL 791.238 in effect at time of defendant's parole violations provided, in pertinent part:

> (2) A prisoner violating the provisions of his or her parole and for whose return a warrant has been issued by the deputy director of the bureau of field services shall be treated as an escaped prisoner and shall be liable, when arrested, to serve out the unexpired portion of his or her maximum imprisonment.
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> * * *
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> (4) The parole board, in its discretion, may cause the forfeiture of all good time to the date of the declared violation. [1982 PA 382.]

Plaintiff contends that the parole violation statute is more specific and thus, pursuant to it, defendant is required to serve his statutory maximum murder sentence.

In *Wayne Co Prosecutor v Dep't of Corrections*, 451 Mich 569, 583 n 29; 548 NW2d 900 (1996), the Supreme Court stated that under MCL 791.238(2), the parole board has the discretion to require a parole violator to serve out any portion of his original sentence, up to the maximum.[7] In this case, the record does not expressly indicate what portion of defendant's original sentence the Parole Board would require him to serve after his second parole violation. It is clear, however, that it did not grant him parole again. Thus, the Parole Board ultimately exercised its discretion by making defendant serve the maximum time remaining on his murder sentence, but this included consideration of good-time credits, which does not support any conclusion that MCL 791.234(3) was made inoperable by the Parole Board's exercise of discretion under MCL 791.238(2).

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[7] The version of MCL 791.238(2) addressed in *Wayne Co Prosecutor, supra*, provided that a prisoner "is liable" rather than "shall be liable" to serve the unexpired portion of his maximum sentence. 1982 PA 382. We do not find this difference to be of significance in this case.

According to *Wayne Co Prosecutor*, MCL 791.238(2) gives the Parole Board the authority to require that a prisoner serve up to his maximum sentence. MCL 791.238(2) could be interpreted in various ways, including a construction that the statutory maximum sentence must be served after a parole violation, without contemplation of further parole or good-time credits. However, in light of *Wayne Co Prosecutor*, the express directive of MCL 791.234(3), the language of MCL 800.33 providing for credits to reduce a prisoner's maximum sentence, and the lack of plain and unambiguous language in MCL 791.238(2) clearly supporting such an interpretation, we decline to read MCL 791.238(2) as prohibiting a prisoner's discharge on serving his maximum sentence minus good-time credits. We hold that MCL 791.238(2) refers to a prisoner's maximum sentence less good-time credits.

V. Conclusion

In considering the issues presented in this appeal, we must follow the law irrespective of the reprehensible nature of defendant's criminal history. In doing so, we conclude that defendant is entitled to be immediately released from the DOC's jurisdiction, having served his combined maximum sentences minus good-time credits under MCL 791.234(3) as of October 2, 2007. Accordingly, the stay order previously entered by this Court on October 23, 2007, is vacated.

Affirmed.

/s/ Jane M. Beckering
/s/ William B. Murphy
/s/ Michael R. Smolenski