

STATE OF MICHIGAN
COURT OF APPEALS

In re Parole of TANIKA LONYEA LYNCH.

MACOMB COUNTY PROSECUTOR,

Appellee,

v

PAROLE BOARD,

Appellant.

UNPUBLISHED

August 7, 2012

No. 307541

Macomb Circuit Court

LC No. 2010-000674-AP

In re Parole of TANIKA LONYEA LYNCH.

MACOMB COUNTY PROSECUTOR,

Appellee,

v

TANIKA LONYEA LYNCH,

Appellant.

No. 307548

Macomb Circuit Court

LC No. 2010-000674-AP

Before: MURRAY, P.J., and FORT HOOD and BORRELLO, JJ.

PER CURIAM.

Appellants, the Michigan Parole Board (the Board) (Docket No. 307541) and Tanika Lonyea Lynch (Docket No. 307548), appeal by leave granted¹ an October 5, 2011 circuit court order wherein the court vacated its September 15, 2011 order denying the Macomb County Prosecutor's (the prosecutor) application for leave to appeal the Board's decision to parole Lynch, remanded the case to the Board, and ordered Lynch to undergo a psychological or psychiatric evaluation pursuant to Mich Admin Code, R 791.7715(5). For the reasons set forth in this opinion, we reverse the circuit court's October 5, 2011 order and remand for reinstatement of the court's September 15, 2011 order.

I. FACTS AND PROCEDURAL HISTORY

In May 1996, a jury found Lynch guilty of armed robbery and second-degree murder. At that time, she was not quite 18 years old. The court sentenced her as an adult to 16 years 8 months to 60 years in prison for each offense.

Lynch first became eligible for parole in 2009 and her parole eligibility guidelines score showed that she had an "average" probability of parole. On January 19, 2010, the Board granted Lynch a 24-month parole; however, the circuit court reversed the Board's decision.

In January 2011, the Board reevaluated Lynch for parole. At that time, a new COMPAS² Narrative Risk Assessment Summary was prepared for Lynch. The COMPAS report indicated that Lynch had a low risk for violence and recidivism. A Transition Accountability Plan (TAP) was prepared for Lynch and it included goals to modify criminal thinking, develop pro-social attitudes and develop more mature relationships with others. Lynch's parole eligibility guidelines score indicated that she had a "high" probability of parole, meaning that the Board was required to grant parole absent "substantial and compelling reasons" for denying parole. MCL 791.233e(6).

On May 11, 2011, the Board again granted Lynch parole with a projected parole date of June 9, 2011. The prosecutor filed an application for leave to appeal with the circuit court, and the circuit court granted the prosecutor's motion for a stay. In a September 15, 2011, opinion and order, the circuit court denied the prosecutor's application for leave to appeal and held that the prosecutor had failed to establish that the Board acted contrary to MCL 791.233e(6). However, on October 5, 2011, the circuit court vacated its September 15, 2011 opinion and order, remanded the case to the Board, and held that Lynch was required to undergo a psychological or psychiatric evaluation pursuant to R 791.7715(5) before she could be released on parole. The court reopened the case and held the prosecution's application for leave to appeal in abeyance, and on November 17, 2011, the court denied appellants' motions for reconsideration. These appeals ensued.

¹ *In re Parole of Tanika Lonyea Lynch*, unpublished order of the Michigan Court of Appeals, entered January 17, 2012 (Docket Nos. 307541; 307548). This order also consolidated both appeals. *Id.*

² Correctional Offender Management Profiling for Alternative Sanctions.

II. LAW AND ANALYSIS

On appeal, Lynch and the Parole Board argue that the trial court erred in determining that Lynch was required to undergo a psychological or psychiatric evaluation before she could be released on parole.

We review the Board's decision whether to grant or deny parole for an abuse of discretion. *In re Parole of Elias*, 294 Mich App 507, 538; 811 NW2d 541 (2011). "An abuse of discretion occurs when the trial court's decision falls outside the range of reasonable and principled outcomes." *Id.*, citing *People v Babcock*, 469 Mich 247, 269; 666 NW2d 231 (2003). "Importantly, a reviewing court may not substitute its judgment for that of the Board." *Elias*, 294 Mich App at 538-539.

"With limited exception, matters of parole lie solely within the broad discretion of the parole board." *Jones v Dep't of Corrections*, 468 Mich 646, 652; 664 NW2d 717 (2003) (citations omitted); MCL 791.234(11). The Board shall not release a prisoner unless it "has reasonable assurance, after consideration of all of the facts and circumstances, including the prisoner's mental and social attitude, that the prisoner will not become a menace to society or to the public safety." MCL 791.233(1)(a); *Elias*, 294 Mich App at 522. In challenging the Board's decision, the prosecutor has the burden to prove that the decision was "a clear abuse of discretion" or was "in violation of the Michigan Constitution, a statute, an administrative rule, or a written agency regulation. . . ." *Elias*, 294 Mich App at 538 (quotation omitted); MCR 7.118(H)(3).

The circuit court held that Lynch was required to undergo an evaluation in accord with Mich Admin Code, R 791.7715(5), which provides:

A prisoner being considered for parole shall receive psychological or psychiatric evaluation before the release decision is made if the prisoner has a history of any of the following:

- (a) Hospitalization for mental illness within the past 2 years.
- (b) Predatory or assaultive sexual offenses.
- (c) Serious or persistent assaultiveness within the institution.

In this case, Lynch does not have any history of mental illness or predatory or assaultive sexual offenses. While the circuit court noted that Lynch had a history of "aggressive/assaultive behavior," a review of the record does not support that Lynch's behavior rose to the level of "serious or persistent assaultiveness within the institution." Here, although Lynch was cited for multiple "major misconducts" during her more than 16 years in prison, she was only cited for three incidents involving assaultive conduct. Specifically, Lynch received a major misconduct for fighting on July 19, 1998, when she threw a cup of water on another prisoner; the prisoner grabbed her in response, and the two grappled with each other. Lynch received another major misconduct for committing assault and battery on November 7, 2000, when she grabbed another prisoner's coat as they were walking around the track outside. Finally, Lynch received a major

misconduct for fighting on July 19, 2001, when she and another prisoner were found in a cell in which Lynch was unauthorized to be and they both had injuries, one of which was an eye injury to the other prisoner. Other than these three incidents, Lynch was cited for non-assaultive misconduct such as being out of place and, among others, for unauthorized presence in a room.

We conclude that this record does not support a finding that Lynch's conduct amounted to "[s]erious or persistent assaultiveness in the institution." Nothing about the assaultive incidents suggests that they were "serious" with regard to the injuries inflicted. There is no indication that Lynch or the other inmates used any weapons in the altercations. With respect to persistency, the three separate incidents occurred over the course of three years. The last occurred in 2001, more than nine years before the Board's most recent parole consideration. This does not support a finding of "persistent assaultiveness." In sum, Lynch was not required to undergo a psychological evaluation pursuant to R 791.7715(5) before she could be released on parole and the circuit court erred in holding otherwise. Therefore, we reverse the circuit court's October 5, 2011 order and remand for reinstatement of the court's September 15, 2011 order denying the prosecutor's application for leave to appeal.³

Reversed and remanded. We do not retain jurisdiction.

/s/ Christopher M. Murray
/s/ Karen M. Fort Hood
/s/ Stephen L. Borrello

³ Given our resolution of this issue, we decline to address appellants' remaining argument that the circuit court did not have authority to sua sponte reopen the case and vacate its previous order.