

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE)
) CIVIL ACTION NUMBER
 v.)
) 08M-06-006-JOH
 CHARLES R. MCCAUGHEY)
) ID NO. 85002951DI
 Defendant)

Submitted: November 21, 2008

Decided: December 5, 2008

MEMORANDUM OPINION

Appearances:

Ophelia M. Waters, Esquire, Deputy Attorney General, Department of Justice,
Wilmington, Delaware, attorney for the State of Delaware

Charles R. McCaughey, *Pro Se*, #934948, A2102L, Tomoka Correctional Institution, 3950
Tiger Bay, Daytona Beach, Florida 32124

HERLIHY, Judge

Charles McCaughey has filed a petition for writ of habeas corpus.¹ McCaughey also has sought various records from the Board of Parole. The Department of Justice has replied to the petition and discovery request.

McCaughey is currently serving a lengthy sentence in Florida. There is a outstanding parole violation charge from the Delaware Parole Board which has been lodged against him. McCaughey alleges this violation is causing him injuries. He seeks to have the violation lifted and not have to return from Florida for a violation proceeding once he is released there in several years.

The Court's examination of the Parole Board's response and the documents attached to it manifest that the alleged parole violation is validly lodged. McCaughey does not make it clear that the existence of that allegation of violation of parole is prolonging his lengthy sentence in Florida. But he also argues that the maximum expiration date on his Delaware sentence has expired, since he was sentenced May 18, 1987 to a term of five years for burglary second degree. That would normally mean his maximum expiration date would have been May 17, 1992. The record before the Court, however, shows McCaughey violated several conditions of his parole before the maximum expiration date. By law, until discharged by the Board, McCaughey remains on parole and subject to the jurisdiction of the Board.² He has not been discharged.

¹ He has also filed an amendment to that petition and a "Request for Clarification" of an earlier order of this Court of September 16, 2008.

² 11 *Del. C.* § 4347(i); *McCoy v. State*, 277 A.2d 675 (Del. 1971).

The Court sees no reason to recite all the facts in this opinion. The Parole Board's response, attached as Exhibit A, minus attachments, was sent to McCaughey outlining the parole violation detainer is valid. It can be summarized as showing the validity of the outstanding allegation of parole violation and the detainer in Florida.

The Board's response to McCaughey's petition, in the Court's view, satisfies his discovery request.

Additionally, McCaughey seeks clarification of an order of this Court dated September 16, 2008. His request infers that this 2008 order discharged him from the burglary sentence for which he was on parole. His identification number for the burglary charge/sentence is 85002951DI. The number on the order and case for which he seeks clarification is 21700010DI.

In checking with the Prothonotary's Office it is unclear where and how that last number got assigned. The docket for this number, reveals this was a criminal case. The charge was assault in a detention facility. The charge was bound over to this Court after a preliminary hearing in March 1987. But McCaughey was not indicted on that charge. Instead it was *nol prossed* on June 1, 1987 as part of McCaughey's plea to the burglary charge now at issue.

McCaughey filed a writ of *coram nobis* concerning this other case. On September 16, 2008, Judge Mary M. Johnston of this Court discharged McCaughey from probation. It is unclear how this happened as there was never a conviction and a sentence. In any

event, the September 16, 2008, order of this Court has nothing to do with the burglary sentence and McCaughey's parole problems.

Conclusion

For the reasons stated herein, Charles R. McCaughey's petition is for writ of habeas corpus, and any supplements, etc., are **DENIED**. His motion for discovery is **DENIED**.

His motion for clarification is **GRANTED** and addressed.

IT IS SO ORDERED.

J.