STATE OF MICHIGAN

COURT OF APPEALS

PATRICIA LYNN LICKFELDT, Plaintiff-Appellee, v DEPARTMENT OF CORRECTIONS, SCOTT CORRECTIONAL FACILITY WARDEN, and SCOTT CORRECTIONAL FACILITY RECORDS OFFICE SUPERVISOR Defendants-Appellants.	FOR PUBLICATION August 31, 2001 9:10 a.m. No. 224139 Washtenaw Circuit Court LC No. 98-009388-AW Updated Copy November 9, 2001

Before: Neff, P.J., and O'Connell and R. J. Danhof*, JJ.

O'CONNELL, J., (*dissenting*).

I respectfully dissent. I cannot join the majority opinion because I disagree with its conclusion that MCL 750.193(1) requires the Michigan Department of Corrections (MDOC) to issue a certificate of termination once an individual has served the maximum term of a sentence. The majority's holding is contrary to the Legislature's intent in enacting § 193 of the Penal Code, MCL 750.1 *et seq*., and there is nothing in the plain language of the statute that supports the imposition of such a duty on defendants. Because defendants do not have a clear legal duty to perform the action sought by plaintiff, I would reverse the trial court's issuance of a writ of mandamus.[1]

I. Facts and Procedural History

Plaintiff filed the instant action seeking a writ of mandamus on February 3, 1998. In the complaint, plaintiff alleged that defendants were required by law to terminate[2] a sentence once she had served the maximum term. When she filed the instant action, plaintiff was incarcerated in the Scott Correctional Facility in Plymouth, Michigan.

[1] A trial court's determination regarding a writ of mandamus is reviewed by this Court for an abuse of discretion. *In re MCI Telecommunications Complaint*, 460 Mich 396, 443; 596 NW2d 164 (1999).

[2] The parties do not dispute that an inmate's sentence is terminated when it is closed out as an administrative matter while the inmate continues to serve remaining consecutive sentences.

A review of plaintiff's storied criminal record, consisting of numerous consecutive sentences, provides a useful backdrop for analyzing plaintiff's claim. According to the record, plaintiff was convicted of two counts of uttering and publishing, MCL 750.249, in 1986, and was sentenced to concurrent terms of 3-1/2 to 14 years' imprisonment. In 1987, plaintiff was convicted under Michigan's prison escape statute, MCL 750.193, and sentenced to an additional consecutive term of nine months to five years' imprisonment. In 1990, plaintiff was convicted of larceny of a rental vehicle, MCL 750.362a, and was sentenced to a term of eight months to two years' imprisonment. In 1990, plaintiff was also convicted of writing an insufficient funds check, MCL 750.131(3)(c), and was sentenced to eight months to two years' imprisonment. These sentences were to be served concurrently, but consecutively to the prison escape conviction. Additionally, in 1997, plaintiff was convicted of another count of writing an insufficient funds check, MCL 750.131(3)(a), and sentenced to a term of one to two years' imprisonment. Also, in 1997, plaintiff was convicted of making a false statement to procure a financial transaction device, MCL 750.157v, and sentenced to a term of two to four years' imprisonment.

Defendants moved for summary disposition pursuant to MCR 2.116(C)(10), arguing that plaintiff was not entitled to termination of her sentences. The trial court initially granted defendants' motion, concluding that plaintiff's claim was not ripe because she had not served the maximum sentences for the uttering and publishing convictions. After plaintiff moved for reconsideration, the trial court issued a writ of mandamus ordering defendants to terminate plaintiff's sentences for uttering and publishing, effective April 20, 1996.

II. Standard of Review and Principles of Statutory Construction

We review de novo a trial court's decision regarding a motion for summary disposition. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). Whether MCL 750.193(1) requires defendants to issue a certificate of termination once an individual has served the maximum term of a sentence presents an issue of statutory construction that is also subject to review de novo. *Haliw v Sterling Heights*, 464 Mich 297, 302; 627 NW2d 581 (2001); *Donajkowski v Alpena Power Co*, 460 Mich 243, 248; 596 NW2d 574 (1999). When construing the language of a statute, the following well-settled principles are of guidance.

> The rules of statutory construction are well established. The foremost rule, and our primary task in construing a statute, is to discern and give effect to the intent of the Legislature. *Murphy v Michigan Bell Telephone Co*, 447 Mich 93, 98; 523 NW2d 310 (1994). See also *Nation v W D E Electric Co*, 454 Mich 489, 494; 563 NW2d 233 (1997). This task begins by examining the language of the statute itself. The words of a statute provide "the most reliable evidence of its intent . . . ." *United States v Turkette*, 452 US 576, 593; 101 S Ct 2524; 69 L Ed 2d 246 (1981). If the language of the statute is unambiguous, the Legislature must have intended the meaning clearly expressed, and the statute must be enforced as written. No further judicial construction is required or permitted. *Tryc v Michigan Veterans' Facility*, 451 Mich 129, 135; 545 NW2d 642 (1996). Only where the statutory language is ambiguous may a court properly go beyond the words of the statute to ascertain legislative intent. *Luttrell v Dep't of Corrections*, 421 Mich 93; 365 NW2d 74 (1984). [*Sun Valley Foods Co v Ward*, 460 Mich 230, 236; 596 NW2d 119 (1999).]

This Court must interpret words in a statute according to their "plain and ordinary meaning." *Herald Co v Bay City*, 463 Mich 111, 118; 614 NW2d 873 (2000), citing MCL 8.3a and *Turner v Auto Club Ins Ass'n*, 448 Mich 22, 27; 528 NW2d 681 (1995); see also *Massey v Mandell*, 462 Mich 375, 380; 614 NW2d 70 (2000). Moreover, our Supreme Court has recently articulated the importance of construing a word or phrase in a statute in its proper context.

> "Contextual understanding of statutes is generally grounded in the doctrine of *noscitur a sociis*: '[i]t is known from its associates,' see Black's Law Dictionary (6th ed), p 1060. This doctrine stands for the principle that a word or phrase is given meaning by its context or setting." [*Brown v Genesee Co Bd of Comm'rs*, 464 Mich 430, 437; 628 NW2d 471 (2001) (opinion by Corrigan, C.J.), quoting *Tyler v Livonia Public Schools*, 459 Mich 382, 390-391; 590 NW2d 560 (1999).]

Further, this Court may not "read [anything] into the statute that is not within the manifest intent of the Legislature as gathered from the [statute] itself." *In re Juvenile Commitment Costs*, 240 Mich App 420, 427; 613 NW2d 348 (2000). MCL 750.193 is a criminal statute that is part of Michigan's Penal Code, MCL 750.1 *et seq*. Consequently, it is to be "construed according to the fair import of [its] terms . . . to effect the objects of the law." MCL 750.2; see also *People v Armstrong*, 212 Mich App 121, 127; 536 NW2d 789 (1995).

III. Analysis

The majority bases its conclusion that defendants are required to terminate plaintiff's sentences for uttering and publishing on its interpretation of the prison escape statute, MCL 750.193. At the time plaintiff filed the mandamus action in February 1998, MCL 750.193(1) provided in pertinent part:[3]

> 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 supplied.]

According to the majority, the language in § 193 stating that "[t]he term of further imprisonment [imposed pursuant to this section] shall be served *after the termination, pursuant to law*, of the sentences or sentences then being served" requires defendants to "terminate the original sentence before imposing the prison escape sentence." *Ante at* ___[4] (emphasis supplied). I disagree.

Because the word "termination" is not defined in the statute, this Court is required to give it its plain and ordinary meaning, "taking into account the context in which the word[] [was]

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[3] MCL 750.193 was subsequently amended by 1998 PA 510, effective January 8, 1999.

[4] The parties do not dispute that a sentence is terminated when defendants issue a certificate of termination.

used." *Jackson Co Hog Producers v Consumers Power Co*, 234 Mich App 72, 85; 592 NW2d 112 (1999) (citations omitted); see also *Massey*, *supra* at 380. In discerning the word's plain and ordinary meaning, it is appropriate to consult the dictionary definition. *Popma v Auto Club Ins Ass'n*, 446 Mich 460, 470; 521 NW2d 831 (1994). As relevant to this context, Random House Webster's College Dictionary (2d ed, 1997) defines termination as "the fact of being terminated" and "an end, close or conclusion."

The majority errs in holding that the plain language of § 193 requires defendants to issue a certificate of termination for an original sentence before an individual begins to serve a sentence for prison escape. In contrast, I believe the plain and unambiguous language of § 193 reflects the Legislature's intention that a sentence imposed for a conviction under § 193 be served consecutively to the sentence for which the individual was originally imprisoned. See *People v Connor*, 209 Mich App 419, 428; 531 NW2d 734 (1995) ("[T]he sentence for prison escape must be served consecutively to the sentence or sentences then being served."); see also *People v Mandell*, 166 Mich App 620, 622; 420 NW2d 834 (1987). In other words, the Legislature's use of the word "termination," viewed in its proper context, indicates that an ensuing sentence for prison escape should be served at the close of the original sentence. Notably, there is nothing in the text of § 193 suggesting that the Legislature intended that defendants be required to issue a certificate of termination once the maximum term of the original sentence is completed.[5] A review of the legislative history of § 193, together with case law interpreting the statute, supports my conclusion.

The Legislature's earliest codification[6] of the prison escape statute provided in pertinent part:

> If any person, being imprisoned in the state prison for any term less than for life, shall break prison and escape, or break prison, though no escape shall actually be made, or shall, by force and violence attempt to escape therefrom, he

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[5] Additionally, I disagree with the majority to the extent that it may conclude that the plain and ordinary meaning of the word termination in § 193 refers to the process by which defendants administratively close out an inmate's sentence.

[6] The Legislature first enacted the prison escape statute in 1840. See 1840 PA 39, § 4. As enacted in 1840, the prison escape statute provided:

> That if any person being imprisoned in the state prison for any crime not punishable with death, shall break prison and escape, or break prison though no escape shall actually be made, or shall, by force and violence attempt to escape therefrom, he or she so offending shall, on conviction, be punished by fine not exceeding five hundred dollars, or by further imprisonment in the state prison, not exceeding three years, or both, at the discretion of the court; *and when any prisoner shall actually break the prison and escape, or escape without breaking the prison, the court, in addition to the sentence for breaking the prison and escaping, shall sentence such offender to imprisonment for as long a time as may have remained unexpired, of his former sentence, at the time of such escape.* [Emphasis supplied.]

> shall be punished by further imprisonment in the state prison not more than three years, or by fine not exceeding five hundred dollars; *and every prisoner who shall actually escape as aforesaid, shall, after his return to such prison, be imprisoned for as long a time as remained unexpired of his former sentence, at the time of such escape, besides such further term of imprisonment as aforesaid*. [1846 RS, ch 156, § 24. (emphasis supplied).]

In my opinion, a plain reading of the language of 1846 RS, ch 156, § 24 unambiguously reflects the Legislature's intention that a sentence imposed for prison escape be served at the completion of the original sentence for which the inmate was already incarcerated. This statutory language remained substantially the same[7] until 1955 when the Legislature enacted 1955 PA 264, which amended the statute to read in pertinent part:

> Any person, being imprisoned in any prison of this state for any term, who shall break prison and escape, or break prison though no escape be actually made, or shall escape, or shall leave said prison without being discharged from said prison by due process of law, or shall attempt to break prison or escape therefrom, shall be guilty of a felony, *punishable by further imprisonment for not more than 3 years*. [Emphasis supplied.]

1955 PA 264 thus streamlined the language of § 193, providing only that an individual convicted under the statute be punished by "further imprisonment." However, one year later the Legislature enacted 1956 PA 6, which once again amended the language of the statute to provide as follows:

> Any person, being imprisoned in any prison of this state for any term, who shall break prison and escape, or break prison though no escape shall be actually made, or shall escape, or shall leave said prison without being discharged from said prison by due process of law, or shall attempt to break prison or escape therefrom, shall be guilty of a felony, punishable by imprisonment for not more than 3 years, *such further imprisonment to be served after the termination, pursuant to law, of any sentence or sentences then being served*. [Emphasis supplied.]

Consequently, 1956 PA 6 represented the first occasion the Legislature inserted the language directing that further imprisonment imposed pursuant to § 193 "be served after the termination . . . of any sentence . . . then being served." The Legislature's use of this language was not fortuitous. Indeed, a review of the relevant case law leads me to conclude that the Legislature amended the language of the statute in 1956 to manifest its intent that sentences imposed pursuant to § 193 be served after the completion of the original sentence.

For example, in *People v Shotwell*, 352 Mich 42, 44; 88 NW2d 313 (1958), the defendant argued that the trial court exceeded its authority in ordering that his sentence for prison escape be served consecutively to his original sentence for a fraud conviction. Our Supreme Court,

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[7] See 1857 CL 5843; 1871 CL 7676; 1915 CL 14995; 1929 CL 16586; 1948 CL 750.193.

construing the predecessor of § 193,[8] rejected this argument, and offered the following observations concerning the purpose of the prison escape statute.

> We think it is also evident from the applicable language of the escape statute itself that the legislature contemplated "further" imprisonment for escaping prison. It said so. We also think it fairly obvious that the legislature sought to provide some sort of deterrent to prison escapes. A contrary view would defeat this objective since may prisoners could thus escape with both impunity and immunity, since their original sentences might easily devour any interim concurrent escape sentence. In fact the view offered by defendant would tend to put a premium upon the act of escape: If a prisoner made it, all would be well; if he should be caught, no further time would be drawn. We do not think the legislature ever wanted to reach any such result. At least we hesitate to reach such a result by inference. [*Id.* at 46-47]

See also *In* re Evans, 352 Mich 185, 187-188; 89 NW2d 535 (1958).]

Other panels of this Court have construed the current language of § 193, concluding that it manifests the Legislature's intention that sentences imposed for an escape conviction run consecutively to the original sentence for which the defendant was incarcerated. In *People v Passalacqua*, 48 Mich App 634, 635; 211 NW2d 59 (1973), a panel of this Court opined:

> The punishment for the offense of prison escape is an exception to the concurrent sentence requirement. MCLA 750.193; MSA 28.390 provides in part that prison escape "shall be . . . *punishable by further imprisonment* . . . to *be served after the termination, pursuant* to law, of any *sentence* or sentences then being served. (Emphasis supplied.)
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> In our opinion this statute means exactly what it says. The defendant's sentence for prison escape is to start at the completion of the sentence he was serving at the time of his prison escape.

See also *People v Biniecki*, 35 Mich App 335, 336-337; 192 NW2d 638 (1971) (language of escape statute "clearly requires a consecutive sentence . . ."); *People v Bachman*; 50 Mich App

[8] The *Shotwell* Court considered the language of 1948 CL 750.193, which provided in pertinent part:

> Any person, being imprisoned in any prison of this State for any term, who shall break prison and escape, or break prison though no escape be actually made, or shall escape, or shall leave said prison without being discharged from said prison by due process of law, or shall attempt to break prison or escape therefrom, shall be guilty of a felony, punishable by further imprisonment for not more than 3 years, and every prisoner who shall actually break prison or escape or attempt to break prison, or attempt to escape as aforesaid, shall after his return to such prison, be imprisoned for as long a time as remained unexpired of his former sentence, at the time of such breaking, escape, or attempt to break or escape, besides such further term of imprisonment as aforesaid.

682, 686; 213 NW2d 800 (1973) (in MCL 750.193 "the Legislature unambiguously directed that [a] sentence for prison escape commence at the completion of any former sentences 'then being served'"); *People v Pruitt*, 23 Mich App 510, 516; 179 NW2d 22 (1970) (language of § 193 indicates that a sentence for conviction under this statute is "an exception to the concurrent sentence requirement . . ."); *People v Andrews No 2*, 52 Mich App 728, 729; 218 NW2d 383 (1974) (MCL 750.193 "provides that sentences imposed for the crime of prison escape are to be served after the termination of terms then being served by defendants").

Returning to the present case, I agree with the previous panels of this Court who have concluded that the language of § 193 reflects the Legislature's intention that a sentence imposed pursuant to that section be served consecutively to an inmate's original sentence. In my respectful opinion, the primary shortcoming of the majority opinion is its willingness to read into § 193 a meaning that was not intended by the Legislature. The text of the statute is clear and unambiguous. Nothing in the plain language of the statute mandates that defendants must terminate an individual's sentence once the maximum term has been served. Consequently, I disagree with the majority's statement that "[p]laintiff has a clear statutory right to . . . termination [of her sentences]." *Ante* at ___.

A review of the Legislature's use of the word "termination" in the context of § 193 further leads me to conclude that the Legislature did not intend that defendants be required to issue a certificate of termination. See *Brown, supra*. As I previously indicated, § 193 is part of Michigan's Penal Code, MCL 750.1 *et seq*. In my opinion, had the Legislature intended to require defendants to terminate a sentence once its maximum term was served, it would have stated so. Presumably, the appropriate place for such a mandate would have been in the Department of Corrections act, MCL 791.201 *et seq*., where the Legislature has enacted legislation concerning, among other things, the MDOC's jurisdiction, procedures governing parole, and the location of correctional facilities. Further, as defendants observe in their brief on appeal, the Legislature manifested its intention that defendants be required to issue a certificate of discharge once an individual has completed parole. See MCL 791.242. Conversely, there is no such manifest indication with respect to certificates of termination. Rather, as the majority concedes, MCL 791.234(5)[9] leaves to the discretion of the MDOC the decision whether to terminate a sentence presently being served by an inmate.

Recently, in *People v McIntire*, 461 Mich 147; 599 NW2d 102 (1999), our Supreme Court cautioned lower courts from reading into the text of a statute a meaning that was not clearly intended by the Legislature. I find the Court's comments to be especially pertinent in the instant case.

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[9] 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. [Emphasis supplied.]

> "[T]raditional principles of statutory construction . . . force courts to respect the constitutional role of the Legislature as a policy-making branch of government and constrain the judiciary from encroaching on this dedicated sphere of constitutional responsibility. Any other nontextual approach to statutory construction will necessarily invite judicial speculation regarding the probable, but unstated, intent of the Legislature with the likely consequence that a court will impermissibly substitute its own policy preferences. See *Cady v Detroit*, 289 Mich 499, 509; 286 NW 805 (1939) ('Courts cannot substitute their opinions for that of the legislative body on questions of policy')." [*McIntire, supra* at 153, adopting the dissenting opinion of now Justice Young in *People v McIntire*, 232 Mich App 71; 591 NW2d 231 (1998).]

Like the Court in *McIntire, supra*, I will not condone the majority's decision to read beyond the clear text of MCL 750.193 to find "an unexpressed legislative intent" that the MDOC is required to terminate a sentence once the maximum term has been served. *McIntire, supra*, 461 Mich 153.

Additionally, I wish to highlight my concern that the trial court, by ordering defendants to issue a certificate of termination for plaintiff 's sentences in the absence of any statutory authority requiring such action, violated the separation of powers doctrine. As I observed in my concurring and dissenting opinion in *Michigan State AFL-CIO v Secretary of State*, 230 Mich App 1, 31-32; 583 NW2d 701 (1998):

> [T]he principle of separation of powers . . . forms "the fundamental framework of our system of government." *O'Donnell v State Farm Mut Automobile Ins Co*, 404 Mich 524, 541-542; 273 NW2d 829 (1979). As a general rule, the principle recognizes the distinct provinces of the legislative, judicial, and executive branches of government, and mandates that no one branch attempt to "control, direct or restrain the action" of another. *Massachusetts v Mellon*, 262 US 447, 488; 43 S Ct 597; 67 L Ed 1078 (1923). This principle is expressly embedded into our state constitution: "No person exercising powers of one branch shall exercise powers properly belonging to another branch except as expressly provided in this constitution." Const 1963, art 3, § 2. As our Supreme Court has noted, a purpose of the separation of powers is "to make certain that the judiciary does not substitute its judgment for that of the Legislature as to what is best or what is wisest." *O'Donnell, supra* at 542. *This principle is likewise offended when the judiciary attempts to substitute its judgment for that of the executive branch.* [Emphasis supplied.]

The MDOC was created by chapter 12 of the Executive Organization Act, MCL 16.375, and is an administrative agency within the executive branch of Michigan's government. Const 1963, art 5, § 2; *In re Parole of Bivings*, 242 Mich App 363, 372; 619 NW2d 163 (2000); *Hopkins v Parole Bd*, 237 Mich App 629, 636; 604 NW2d 686 (1999). On appeal, defendants maintain that they retain the discretion to terminate an inmate's sentences by virtue of policy directive 03.01.135, the pertinent portion of which provides:

> If a prisoner is serving on consecutive sentences, none of the sentences which are part of the consecutive sentence string shall be terminated until all

> sentences in that consecutive string have been served. If a prisoner is serving two or more different consecutive sentence series, the non-controlling series of consecutive sentences shall be terminated on the appropriate maximum, as described above. However, if a sentence is consecutive to more than one series of sentences, that sentence shall remain active until the controlling consecutive series has been served, even though the other sentence(s) in the non-controlling series is terminated.

I agree with defendants' position. By enacting MCL 791.203, the Legislature provided the director of the MDOC the authority "to supervise and control the affairs of the department." See *Blank v Dep't of Corrections*, 462 Mich 103, 116; 611 NW2d 530 (2000) (opinion by Kelly, J.). The Legislature also delegated to the director the authority to create rules for the "control, management, and operation of the general affairs of the department." MCL 791.206(1)(a); see also *Blank, supra* at 116; *Boyd v Civil Service Comm*, 220 Mich App 226, 235; 559 NW2d 342 (1996). Further, MCL 791.204 provides that the MDOC has exclusive jurisdiction over "penal institutions," *Dearden v Detroit*, 403 Mich 257, 265; 269 NW2d 139 (1978), and all matters relating to parole. Additionally, in *Judicial Attorneys Ass'n v Michigan*, 459 Mich 291, 297; 586 NW2d 894 (1998), our Supreme Court recognized that "[t]he power of each branch of government within its separate sphere necessarily includes managerial administrative authority to carry out its operations."

In my opinion, the MDOC, as part of the executive branch, is entitled to implement policy directives regarding the termination of sentences, *Bivings, supra* at 373, because such action relates to the control, management, and operation of the department. MCL 791.206, 791.203. Consequently, by issuing a writ of mandamus directing defendants to terminate plaintiff 's sentences, I believe the trial court usurped the MDOC's exclusive power to supervise, manage, and control the affairs of the department. Because plaintiff has not demonstrated that she "has a clear legal right to the performance of the duty sought to be compelled," *White-Bey v Dep't of Corrections*, 239 Mich App 221, 223-224; 608 NW2d 833 (1999), I would reverse the trial court's issuance of a writ of mandamus.

/s/ Peter D. O'Connell