

STATE OF MICHIGAN
COURT OF APPEALS

DAVID LEIGH KING,

Petitioner-Appellant,

v

PAROLE BOARD,

Respondent-Appellee.

UNPUBLISHED

July 24, 1998

No. 201180

Lenawee Circuit Court

LC No. 96-007218 AW

Before: Doctoroff, P.J., and Fitzgerald and Talbot, JJ.

PER CURIAM.

Petitioner appeals as of right the trial court order granting respondent's motion for summary disposition pursuant to MCR 2.116(C)(8). We affirm.

While on parole, petitioner was arrested and pleaded nolo contendere to second-degree criminal sexual conduct, MCL 750.520c; MSA 28.788(3). He was sentenced to a one-year delayed sentence that was to be served concurrently with a thirty-three month federal sentence. As a result of the CSC charges, a parole detainer was filed against petitioner and he was served with notice of five parole violations. Petitioner was incarcerated in a federal correctional facility in Pennsylvania, and upon release was made available for return to MDOC for the purpose of pursuing his parole violations.

Petitioner first argues that respondent lost jurisdiction over him when it failed to hold a parole revocation hearing within forty-five days of when he was available for return to a state correctional facility pursuant to MCL 791.240a; MSA 28.2310(1). We need not determine when petitioner was available for return to a state correctional facility because plaintiff has had the parole violation hearing required by statute. In *In re Lane*, 2 Mich App 140; 138 NW2d 541 (1965),¹ this Court held that the parole board's failure to comply with the time requirement for a parole revocation hearing does not constitute a bar to continued proceedings. Rather, a petitioner has a remedy by way of mandamus to require the hearing. Thus, if the hearing is not timely held, a prisoner can force the hearing to be held and in the meantime is entitled to be released. See *Callison v Dep't of Corrections*, 56 Mich App

260, 265-266; 223 NW2d 738 (1974). Here, petitioner has had his hearing and violation of the statute is not a ground for release.

Petitioner also argues that the parole board's failure to provide him with a written statement of findings of fact and the reasons for revoking his parole within sixty days of his availability to return to a state correctional facility pursuant to MCL 791.240a(6); MSA 28.2310(1) entitles him to release from prison. After review of the record, we agree that petitioner's statutory right to receive a written report within 60 days was violated. However, the petitioner has received his hearing and has been provided a written statement of the findings of fact. Because a parole revocation proceeding can continue even if it is not timely, it follows that a late decision will not void the proceedings. Accordingly, the court did not err in granting respondent's motion for summary disposition pursuant to MCR 2.116(C)(8).

Affirmed.

/s/ Martin M. Doctoroff

/s/ E. Thomas Fitzgerald

/s/ Michael J. Talbot

¹ The Supreme Court apparently agrees with the underlying reasoning in *Lane*. The Supreme court first denied leave in *Lane* on December 20, 1965. 377 Mich 693. The Court then entered an order granting habeas corpus on January 11, 1966. 377 Mich 695. Finally, the Court entered another order denying leave on February 11, 1966. 377 Mich 700.