

STATE OF MICHIGAN  
COURT OF APPEALS

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OAKLAND COUNTY PROSECUTOR,

Plaintiff-Appellee,

v

DANIEL RAY THOMAS,

Defendant-Appellant.

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UNPUBLISHED

February 1, 2002

No. 227546

Oakland Circuit Court

LC No. 99-018755-AP

Before: Hood, P.J. and Murphy and Markey, JJ.

PER CURIAM.

Defendant appeals by leave granted an order granting the prosecutor's motion to vacate defendant's parole. We reverse.

Defendant claims on appeal that the circuit court improperly substituted its judgment for that of the Parole Board when it ordered that defendant's parole be vacated. We agree. The Parole Board's decision to grant parole to a prisoner is reviewed for an abuse of discretion. *Hopkins v Parole Bd*, 237 Mich App 629, 632; 604 NW2d 686 (1999). "[A]n abuse of discretion is found where an unprejudiced person, considering the facts on which the decisionmaker acted, would say there is no justification or excuse for the ruling" or decision made. *Id.* at 632-633.

The Legislature has entrusted the Parole Board with the decision whether to grant parole to prisoners. *Id.* at 632. The parole board may not grant a prisoner parole until it "has reasonable reassurances, after consideration of all 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." *Id.* at 633 (citing MCL 791.233(1)(a)). Furthermore, the Parole Board's discretion is limited by statutory guidelines, and whether the Parole Board abused its discretion must be determined in light of the record and these statutory guidelines. *Id.*

These statutory guidelines govern the exercise of the Parole Board's discretion as to the release of prisoners on parole, and include the offense for which the prisoner is incarcerated at the time of parole consideration, the prisoner's institutional program performance, the prisoner's institutional conduct, the prisoner's prior criminal record, the prisoner's statistical risk screening, the prisoner's age, and any other relevant factors as determined by the department, if not otherwise prohibited by law. MCL 791.233e(2)(a)-(e) and (3)(a)-(b). While the Parole Board's exercise of discretion under these guidelines is broad, it is still subject to judicial review. *In re Parole of Johnson*, 219 Mich App 595, 596-597; 556 NW2d 899 (1996). However, the

reviewing court may not substitute its judgment for that of the Parole Board when determining whether the Parole Board abused its discretion. *Hopkins, supra*, 237 Mich App 633.

After reviewing defendant's entire record in light of the foregoing guidelines, we conclude that the circuit court's order vacating defendant's grant of parole was improper. Defendant is currently incarcerated for a conviction for third-degree criminal sexual conduct. This conviction arose out of an incident which occurred on June 7, 1988. On that day, defendant approached the victim in the parking lot of a party store in Walled Lake, and while the victim insisted that she wanted to be alone, defendant led her to a secluded spot in the woods and insisted that she lay down. When the victim refused, defendant grabbed her, forced her to the ground, and raped her. The Parole Board acknowledged and calculated defendant's underlying offense in the parole guidelines scoresheet and found that defendant had accepted responsibility for his crime.

Defendant has been very active in institutional programs while in prison. He completed his high school GED, substance abuse programming, a correspondence bible course, and sex offender therapy. In regard to the sex offender therapy, defendant attended fifty-four out of a possible fifty-seven sessions, resulting in positive improvements in defendant's attitude and behavior. According to defendant's psychological report, while in therapy, defendant worked through the issues behind his manipulative and aggressive behavior. The Parole Board recognized that defendant completed his GED and that his involvement in work assignments was adequate. The Parole Board also found that defendant completed the necessary substance abuse programming and that defendant gained from his institutional program involvement.

In regard to defendant's institutional conduct, defendant accrued countless misconducts while in prison, including a conviction in 1994 for prisoner in possession of contraband, specifically a marijuana "joint." The Parole Board did not mention this factor in its reasons in support of Parole Board action, but did consider it when calculating defendant's conduct score on his guidelines scoresheet. Although the prosecution documents sixty-five instances of institutional misconduct by defendant during his incarceration, defendant's parole scoresheet indicates that he has had only two major misconducts in the last five years and none in the last year of his incarceration.

Defendant's prior criminal record includes a felony conviction for attempted larceny in a building and a juvenile adjudication for breaking and entering. Again, the Parole Board considered defendant's prior record when it scored defendant's parole guidelines scoresheet. The Parole Board also noted that defendant had accepted responsibility for these crimes.

Defendant's age at the time of review was thirty-two. While his statistical risk screening projected him to be a high assaultive and property risk, his parole guidelines final score evaluated him as having an average probability of parole. The Parole Board also found that defendant maintained family support, showed suitable arrangements for work, identified realistic plans for relapse prevention, and recognized his need for continued treatment, and ultimately granted defendant parole for a term of two years.

Although defendant's instant offense was certainly heinous, and considering defendant's poor behavior and numerous misconducts while in prison, not to mention that defendant was found to be a high assaultive risk, we cannot find that the Parole Board abused its discretion in

granting defendant parole in this case. The parole board properly considered all the factors outlined in the statutory guideline and determined, based on defendant's entire record, that there was a reasonable assurance that defendant would not become a menace to society or to the public safety. Thus, this Court cannot conclude that there was no justification or excuse for the Parole Board's decision. Rather, the record indicates that the circuit court simply disagreed with the Parole Board's decision and improperly substituted its judgment for that of the Parole Board when it determined that the Parole Board abused its discretion. *Hopkins, supra*, 237 Mich App 633. Accordingly, the trial court's order vacating defendant's parole is reversed.

Reversed.

/s/ Harold Hood

/s/ Jane E. Markey