

STATE OF MICHIGAN
COURT OF APPEALS

OAKLAND COUNTY PROSECUTOR,

Plaintiff-Appellee,

v

DANIEL RAY THOMAS,

Defendant-Appellant.

UNPUBLISHED

February 1, 2002

No. 227546

Oakland Circuit Court

LC No. 99-018755-AP

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

MURPHY, J. (*dissenting*).

I respectfully dissent from the majority's opinion that the Parole Board did not abuse its discretion in paroling defendant. MCL 791.233(1)(a) provides that "[a] prisoner shall not be given liberty on parole until the board 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." First and foremost, MCL 791.233(1)(a) controls the decision of the Parole Board. *Killebrew v Dep't of Corrections*, 237 Mich App 650, 653; 604 NW2d 696 (1999).

On December 1, 1998, the Parole Board denied parole to defendant because it lacked reasonable assurance that defendant would not become a menace to society or to the public safety. The Parole Board, noting the main reason for its decision, stated that "[t]he assaultive risk level is very high or high which is indicative of a high probability of committing a new violent offense on parole." The Parole Board also indicated that the criminal sexual conduct crime for which defendant was convicted involved the victimization of a vulnerable stranger.

Less than ten months later, the Parole Board once again rendered a parole decision concerning defendant, the decision at issue here, and the statistical risk screening still projected defendant to be a "high" assaultive and property risk; however, the Parole Board deemed that it now had reasonable assurance that defendant would not become a menace to society or to the public safety.¹ I find the Parole Board's decision at issue here to be contradictory to its previous decision with the more rational decision, considering the dictates of MCL 791.233(1)(a), being the one made in December 1998. If one has a high probability of committing assault and

¹ In both the 1998 and 1999 parole determinations, defendant was scored as having an average probability of parole under the guidelines.

property crimes following release on parole, it would seem highly questionable to conclude that there were reasonable assurances that the public would be safe upon defendant's release.

However, I understand that pursuant to MCL 791.233e, other criteria must also be examined in rendering a parole decision under MCL 791.233(1)(a). Upon review of those factors, I believe that they weigh heavily in favor of rejecting parole in the present case. The crime for which defendant was incarcerated, the forcible rape of a vulnerable stranger, clearly indicates that defendant has violent tendencies and is an assault risk. A July 1998 psychological report indicates that defendant is still attempting to justify his actions concerning the criminal sexual conduct, where he asserts that he apologized to the victim after the rape.

Moreover, defendant has three additional criminal convictions, and he accumulated sixty-three misconducts while in prison, including three for assault and battery and one for drug possession that lead to one of his convictions. I additionally note a July 1998 psychological report in which the psychologist stated that defendant noted that in his life, he was very manipulative of women and capable of putting on a very charming façade when he needed to do so.

Given the current statistical risk screening projection, the Parole Board's prior decision denying parole under similar circumstances, the violent nature of the crime, defendant's extensive record of misconduct in prison, and the other matters noted above, I believe that there was no justification or excuse for the Parole Board's decision to parole defendant; therefore, there was an abuse of discretion. *People v Jenkins*, 244 Mich App 1, 21; 624 NW2d 457. I would affirm the circuit court's decision to reverse the order of parole.

/s/ William B. Murphy