

STATE OF MICHIGAN
COURT OF APPEALS

MICHAEL JAMES RADER,

Plaintiff-Appellant,

v

PAROLE BOARD,

Defendant-Appellee.

UNPUBLISHED

December 23, 2003

No. 240657

Jackson Circuit Court

LC No. 02-000002-AW

Before: Gage, P.J., and White and Cooper, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's order granting summary disposition to defendant. We affirm.

In March 2001, plaintiff was paroled from a sentence imposed for an OUIL 3rd conviction. In September 2001, plaintiff left the state of Michigan, in contravention of his parole terms. Plaintiff was eventually arrested because of his absconder status on November 6, 2001, in Boulder, Colorado. On November 7, 2001, plaintiff signed an extradition waiver and eventually arrived in Michigan by transport service on December 2, 2001. Defendant served plaintiff with parole violation charges on December 7, 2001, and plaintiff immediately requested a hearing. Defendant conducted a preliminary hearing on December 10, 2001, and a formal hearing on January 15, 2002.

In the meantime, on January 2, 2002, plaintiff filed a complaint for a writ of mandamus. Plaintiff later filed an amended complaint seeking a writ of mandamus, or alternatively, a writ of habeas corpus, claiming that defendant failed to hold a hearing within forty-five days of the time defendant became available for return to Michigan as required by MCL 791.240a.¹ Plaintiff

¹ MCL 791.240a(1) provides, in pertinent part:

Within 45 days after a paroled prisoner has been returned or is available for return to a state correctional facility under accusation of a parole violation other than conviction for a felony or misdemeanor . . . the prisoner is entitled to a fact-finding hearing on the charges before 1 member of the parole board or an attorney hearing officer designated by the chairperson of the parole board. . . .

sought relief in the form of an order compelling defendant to reinstate plaintiff on his previous order of parole. Defendant, in turn, filed a motion for summary disposition, arguing that the statute required it to hold a hearing within forty-five days of the time plaintiff arrived in Michigan, not forty-five days from the time plaintiff signed the extradition waiver. On March 11, 2002, before the trial court rendered its decision on defendant's motion for summary disposition, defendant revoked plaintiff's parole and directed plaintiff to remain incarcerated until he discharged from his maximum sentence. On March 25, 2002, the trial court granted defendant's motion for summary disposition. We note that on May 23, 2003, plaintiff completed his maximum sentence and was discharged.²

Plaintiff argues on appeal that the trial court erred in granting defendant summary disposition. According to plaintiff, the forty-five-day time limit for conducting a formal hearing under MCL 791.240(a)(1) begins to run when the prisoner becomes "available" to the Michigan Department of Corrections and he became "available" on the date he signed the extradition waiver. Plaintiff also argues that defendant's failure to hold the hearing within the required time limit constituted a waiver of defendant's right to find a parole violation and revoke his parole.

We review de novo a trial court's decision to grant summary disposition. *Singerman v Municipal Service*, 455 Mich 135, 139; 565 NW2d 383 (1997). Whether plaintiff's parole revocation hearing was held within forty-five days after plaintiff became "available for return to a state correctional facility" pursuant to MCL 791.240a(1) is an issue of statutory interpretation, which this Court also reviews de novo. *In re MCI*, 460 Mich 396, 413; 596 NW2d 164 (1999).

Our Supreme Court's recent decision in *Jones v Dep't of Corrections*, 468 Mich 646; 664 NW2d 717 (2003), disposes of this case. In *Jones*, the Supreme Court held that "MCL 791.240a neither deprives the parole board of jurisdiction to revoke parole nor requires the discharge of a parolee where the required hearing has been delayed beyond the forty-five-day period prescribed." *Id.* at 653. The Court recognized that the statute failed to prescribe a penalty for tardily providing a hearing, but it refused to graft a judicial remedy onto the statute. *Id.* at 656.

The Court in *Jones* also explained that the parole board's jurisdiction over parolees prevented a trial court from granting habeas corpus relief when the board violated MCL 791.240a. *Id.* at 658. And while the Court opined that the appropriate remedy is for a plaintiff to seek mandamus relief, this action may be maintained only to compel compliance with the statutory duty of holding a hearing, not to force discharge. *Id.* The Court expressly held that defendant retained discretion to revoke parole even after it violated the time limits in MCL 791.240a. *Id.* at 652-653. Therefore, regardless whether the limitations period in this case began

² We recognize that plaintiff filed his current appeal before he completed his sentence and was granted discharge. In his appellate brief, plaintiff requests this Court remand this matter to the trial court for entry of an order directing defendant to reinstate plaintiff on his previous order of parole. Although it appears that plaintiff's discharge renders his appeal moot, for purposes of plaintiff's record, we nonetheless address his appellate issue to determine whether defendant properly revoked plaintiff's parole.

to run when plaintiff waived extradition or when he returned to the state, the parole board had jurisdiction to revoke plaintiff's parole at its discretion.

Affirmed.

/s/ Hilda R. Gage
/s/ Helene N. White
/s/ Jessica R. Cooper