

STATE OF MICHIGAN  
COURT OF APPEALS

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RAMIRO J. ORTIZ,

Plaintiff-Appellant,

v

DEPARTMENT OF CORRECTIONS,

Defendant-Appellee.

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UNPUBLISHED

October 11, 2005

No. 254151

Kent Circuit Court

LC No. 03-005159-AW

Before: Saad, P.J., and Jansen and Markey, JJ.

MEMORANDUM.

Plaintiff appeals by right the circuit court order dismissing his complaint for a writ of mandamus. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff challenges the Department of Corrections' calculation of the maximum term of his consecutive sentences for his two convictions of criminal sexual conduct, third degree, MCL 750.520d. Plaintiff was first sentenced in 1986 to five to fifteen years imprisonment, and sentenced again in 1992 to seven to fifteen years imprisonment. Plaintiff filed a complaint for a writ of mandamus in the Kent Circuit Court claiming that he was entitled to have his 1986 sentence terminated in 2001, and that his 1992 sentence would be fully served on July 20, 2003. The court dismissed the complaint, and plaintiff appeals that order.

Under MCL 768.7a(2), a parolee who commits a felony is subject to consecutive sentencing. MCL 791.234(3) addresses the calculation of consecutive sentences for prisoners who were not subject to disciplinary time and provides:

If a prisoner other than a prisoner subject to disciplinary time is sentenced for consecutive terms, whether received at the same time or at any time during the life of the original sentence, the parole board has jurisdiction over the prisoner for purposes of parole when the prisoner has served the total time of the added minimum terms, less the good time and disciplinary credits allowed by statute. *The maximum terms of the sentences shall be added to compute the new maximum term under this subsection*, and discharge shall be issued only after the total of the maximum sentences has been served less good time and disciplinary credits, unless the prisoner is paroled and discharged upon satisfactory completion of the parole. (Emphasis added.)

Because plaintiff committed his second offense while he was on parole, he was sentenced to consecutive prison terms, and the fifteen-year maximums of each sentence were added to compute his new thirty-year maximum sentence. Because plaintiff had already served the five-year minimum of his first sentence, he was only required to serve the minimum seven-year sentence for his second conviction before he became subject to the jurisdiction of the parole board. MCL 791.234(1); *Wayne County Prosecutor v Dep't of Corrections*, 451 Mich 569, 584; 548 NW2d 900 (1996).

Plaintiff argues that his seven-year minimum sentence for his second conviction began when he was sentenced in 1992. But, plaintiff has incorrectly concluded that his fifteen-year maximum sentence for his second conviction also began on that date. Rather, under the plain language of MCL 791.234(3), the maximum terms of plaintiff's sentences for his 1986 and 1992 convictions were added to establish a new thirty-year maximum sentence.

We conclude that the circuit court correctly determined that plaintiff's combined maximum term for his consecutive sentences was thirty years. Accordingly, we find that the court did not deny plaintiff any due process or the equal protection of the law and had no legal duty to issue plaintiff a certificate of termination.

We affirm.

/s/ Henry William Saad

/s/ Kathleen Jansen

/s/ Jane E. Markey