

STATE OF MICHIGAN
COURT OF APPEALS

SHAWN C. WEM,

Plaintiff-Appellant,

v

DEPARTMENT OF CORRECTIONS,

Defendant-Appellee.

UNPUBLISHED

July 7, 2011

No. 297618

Jackson Circuit Court

LC No. 09-002912-AP

Before: MURRAY, P.J., and HOEKSTRA and STEPHENS, JJ.

PER CURIAM.

Plaintiff appeals as of right the circuit court's order denying his motion for reconsideration of the order denying his petition for a writ of habeas corpus. We affirm.

I. FACTS AND PROCEDURAL HISTORY

This case arises from plaintiff's challenge to the extension and subsequent revocation of his parole. On September 13, 2000, plaintiff was sentenced to 1 to 15 years' imprisonment after pleading guilty to four counts of possession of a controlled substance. Plaintiff was subsequently granted a favorable parole decision for a term of 18 months with a parole release date of February 23, 2005, and expiration date of August 23, 2006. The parole order contained several release instructions and special conditions and required that plaintiff "pay the crime victim's assessment of \$120.00 as ordered by the sentencing court." The parole order, pursuant to the terms of the Interstate Commission for Adult Offender Supervision (ICAOS), also transferred plaintiff's parole supervision to Ohio.

As anticipated, on February 23, 2005, plaintiff was released on parole. He was immediately transferred to Ohio and assigned to Ohio State Parole Officer Dale Jennings for supervision. During his parole, plaintiff regularly reported to Officer Jennings and avoided parole violations. As plaintiff's parole expiration date approached, Officer Jennings sent defendant a report indicating that he would be closing his supervisory interest over plaintiff on August 22, 2006.

On September 11, 2006, after the scheduled parole expiration date, defendant issued an order to extend plaintiff's parole until June 6, 2014. Defendant extended plaintiff's parole

because he failed to pay the crime victim's fees as required by the court. This order was forwarded to Officer Jennings, as required by the Interstate Compact.

Following his scheduled parole expiration date, plaintiff continued to report to Officer Jennings. In fact, on February 21, 2007, plaintiff presented Officer Jennings a money order receipt that demonstrated he paid off his outstanding crime victims' assessment fees. Officer Jennings reported that, from early 2005 through February 2007, plaintiff reported as instructed, sporadically held employment, and had no encounter with law enforcement. However, in late February 2007, Officer Jennings learned that plaintiff was engaged in illegal activities resulting in several parole violations.

On February 22, 2007, plaintiff was arrested in Ohio for several drug related felony offenses. Subsequently, Officer Jennings prepared a parole violations report and recommended that plaintiff return to Michigan and face parole violation charges. Upon receipt of the report, defendant instructed Officer Jennings to continue to supervise plaintiff until a resolution was reached on his Ohio felony charges.

On March 22, 2007, following a violation hearing in Ohio, plaintiff was found to have committed several parole violations. Due to overcrowded jails, plaintiff was given an electronic monitoring device and placed on continued supervision. He was advised that he was "being released under supervision and if the state of Michigan decides to return for a violation hearing, [he would] be arrested and held for Michigan." In early August, while awaiting disposition of his Ohio charges, plaintiff was arrested again after he admitted to possessing a .22 caliber rifle. Following a second violation hearing in Ohio, plaintiff was again found guilty of violating his parole.

On November 8, 2007, a final resolution was reached on the drug related charges that resulted from plaintiff's arrest in late February 2007. Plaintiff pleaded guilty and was sentenced to 18 months in an Ohio prison. During sentencing, the Ohio court noted that "[plaintiff] was on parole supervision when he committed the offense." On April 8, 2008, Officer Jennings advised defendant that he was closing interest on plaintiff's supervision because plaintiff was incarcerated.

In January 2009, plaintiff was subsequently transferred from Ohio to Michigan and placed into defendant's custody. Following a formal parole violation hearing in Michigan, plaintiff was found guilty of various parole violations stemming from his convictions and arrests in Ohio. As a result of his parole violations, in March 2009, plaintiff was denied parole.

In July 2009, plaintiff filed a complaint for declaratory judgment. The trial court treated plaintiff's complaint as a petition for habeas relief and instructed the parties to respond accordingly.¹ On February 16, 2010, defendant filed a brief in opposition to plaintiff's petition

¹ Plaintiff's case was opened by the Clerk's office as a Parole Board Appeal; however, the trial court noted that prisoners cannot challenge the extension or revocation of a parole through a

as ordered by the trial court. Defendant argued that plaintiff failed to meet the conditions for a discharge when his term of parole was scheduled to expire because he failed to pay the crime assessment fees. It further contended that plaintiff was never issued nor received a formal discharge of parole. On February 17, 2010, the trial court issued an opinion and order denying plaintiff's petition for habeas corpus. The trial court held:

[Plaintiff] was never discharged on parole, and that he committed parole violations and that is why he is now in the custody of the Michigan Department of Corrections. Although the violations committed by [plaintiff] occurred after his projected parole supervision ending date, he was never discharged from parole, so there is a fundamental difference between this case and the factual situation in *People v Holder*, 483 Mich 168[; 767 NW2d 423] (2009).

Plaintiff filed a motion for reconsideration arguing that defendant violated MCL 791.236(3) and DOC operating procedures because he was not given notice extending his parole before his scheduled parole expiration date. He also argued that defendant failed to comply with various rules of the ICAOS. In support of his motion, plaintiff attached various documents including a voided parole board order for discharge. On February 25, 2010, the trial court issued an order instructing defendant to file an answer and address the issues raised in plaintiff's motion for reconsideration. The trial court was particularly interested in defendant's explanation for the voided parole board order for discharge attached to plaintiff's motion; defendant's position on their compliance with the Interstate Compact; and whether non-compliance would be authority for issuing a writ of habeas corpus.

On March 18, 2010, defendant filed a response to plaintiff's motion as ordered by the trial court. Defendant explained that the voided parole discharge order was not sent to plaintiff, explaining that parole discharge orders like the document plaintiff attached to his motion are automatically generated by the department of technology as a parolee's scheduled supervision expiration date approaches. The signature of the parole board supervisor that appears on the order is also automatically generated. This automatically generated parole discharge order is subsequently sent to the offender's supervising location, and in the case of an offender serving his parole out of state, like plaintiff, the order goes to the Interstate Compact Unit for review. The Interstate Compact Unit then reviews the offender's file to ensure that all fees, including crime victim assessment fees, are paid. In the event the offender has an outstanding balance or owes any restitution, the Interstate Compact Unit submits a parole extension to the Parole and Commutations Board.

According to Matson, the Parole and Commutations Board then reviews the file and determines whether to extend parole. Once the Interstate Compact Unit receives an extension request from the Parole Board, the Interstate Compact Unit forwards the extension to the supervision state. Upon an extension of supervision, the automatically generated parole discharge orders are invalidated. Defendant clarified that the automatically generated parole discharge order attached to plaintiff's motion was not given to plaintiff.

Parole Board Appeal. Accordingly, the trial court treated the matter as a petition for writ of habeas corpus and it issued a writ requiring defendant's answer.

On April 1, 2010, the trial court issued an opinion and order denying plaintiff's motion for reconsideration. The trial court held:

[T]he Discharge from Parole was an automatically generated document that was never forwarded by the DOC Interstate Compact Office. It was not forward[ed] because they realized there were outstanding financial obligations and instead of forwarding the discharge, they extended the parole. As such, I find that the existence of an undelivered Discharge from Parole does not in any way establish a radical defect of jurisdiction. This is not a situation similar in any way to *People v Holder*.

I also find there was no violation of the Interstate Compact. Even if there was a minor violation, such a violation would not establish a radical defect of jurisdiction.

This appeal followed.²

II. STANDARDS OF REVIEW

Although plaintiff appeals the trial court's order denying his motion for reconsideration, he neglects to put forth the standard of review as required by MCR 7.212(C)(7). However, it is well-settled that this Court reviews a trial court's decision whether to grant a motion for reconsideration for an abuse of discretion. *Churchman v Rickerson*, 240 Mich App 223, 233; 611 NW2d 333 (2000). "An abuse of discretion occurs when the decision results in an outcome falling outside the principled range of outcomes." *Woodard v Custer*, 476 Mich 545, 557; 719 NW2d 842 (2006). To obtain relief through a motion for reconsideration, the party must establish that the trial court made a palpable error and that a different disposition would result from correction of the error. MCR 2.119(F)(3).

Finally, to the extent that plaintiff's challenge to the extension and subsequent revocation of his parole involves a question of statutory interpretation, this Court reviews de novo questions of statutory interpretation. *Jones v Dep't of Corrections*, 468 Mich 646, 651; 664 NW2d 717 (2003). To the extent that the challenge involves the trial court's findings of fact, this Court

² In his brief on appeal plaintiff claims that this Court has jurisdiction by application for leave granted; however, plaintiff filed a claim of appeal. Defendant does not contest this Court's jurisdiction. As plaintiff was informed by a prior court, however, Michigan case law appears to hold that a plaintiff cannot file a claim of appeal challenging the trial court's denial of plaintiff's complaint for habeas corpus, but must instead file an original complaint of habeas corpus in this Court when challenging a trial court's denial of a plaintiff's complaint for habeas corpus. *Wem v Burt*, Case No. 5:09-CV-13754 (ED Mich) filed, March 3, 2011, citing *Triplett v Deputy Warden*, 142 Mich App 774, 779-780; 371 NW2d 862 (1985). In any event, we will treat the claim of appeal as an original complaint for habeas corpus and address the merits of plaintiff's complaint.

reviews the trial court's findings for clear error, and those findings may be set aside only if the reviewing court is left with a definite and firm conviction that a mistake has been made. *In re Conley*, 216 Mich App 41, 42; 549 NW2d 353 (1996).

III. ANALYSIS

A prisoner has a constitutional and statutory right to file a complaint for habeas corpus relief. *Moses v Dep't of Corrections*, 274 Mich App 481, 485; 736 NW2d 269 (2007); *Morales v Parole Bd*, 260 Mich App 29, 40; 676 NW2d 221 (2003). This Court set forth the standard for granting such relief as follows:

A complaint for habeas corpus is designed to test the legality of detaining an individual and restraining him of his liberty. If a legal basis for detention is lacking, a judge must order the release of the detainee from confinement. However, the writ of habeas corpus deals only with radical defects which render a judgment or proceeding absolutely void. A radical defect in jurisdiction contemplates . . . an act or omission by state authorities that clearly contravenes an express legal requirement in existence at the time of the act or omission. [*Morales*, 260 Mich App at 40, quoting *Hinton v Parole Bd*, 148 Mich App 235, 244-245; 383 NW2d 626 (1986) (internal citations omitted).]³

Although a prisoner may obtain habeas corpus relief under certain radical circumstances, it is within the court's discretion to deny habeas relief where full relief may be obtained in other more appropriate proceedings. See *Jones*, 468 Mich at 652 (holding that the proper remedy for the failure of the Department of Corrections to hold a timely fact finding hearing on a charge of parole violations as required by statute is a complaint for an order of mandamus).

Plaintiff first contends that his right to "due process" was violated because defendant violated MCL 791.236(3). MCL 791.236(3) provides:

A parole order may be amended at the discretion of the parole board for cause. An amendment to a parole order shall be in writing and is not effective until notice of the amendment is given to the parolee.

Under the statute, written notice of an amendment to a parole order must be given to a parolee. The record reveals that defendant generated a written order extending plaintiff's parole on or about September 12, 2006. In fact, plaintiff acknowledges, in his brief on appeal, that he received notice of that order extending his parole. Plaintiff's complaint that he did not receive notice of defendant's intention to extend his parole is not covered by the statute. Accordingly, we conclude that plaintiff's contention that the defendant violated MCL 791.236(3) is without merit.

³ We note that although plaintiff is seeking habeas corpus relief, he has not set forth the standard governing this extraordinary relief.

Plaintiff implicitly contends that defendant violated MCL 791.236(3) because the notice of extension of his parole was given after the scheduled parole expiration date of August 23, 2006. When interpreting a statute, this Court seeks to “ascertain and give effect to the intent of the Legislature.” *People v Davis*, 468 Mich 77, 79; 658 NW2d 800 (2003). This Court first examines the language of the statute itself, and “[i]f the language is clear and unambiguous, ‘no further construction is necessary or allowed to expand what the Legislature clearly intended to cover.’” *Id.*, quoting *People v Pasha*, 466 Mich 378, 382; 645 NW2d 275 (2002). MCL 791.236(3) sets out the procedures for amending a parole order. The statute requires that written notice of the amendment be given to the parolee for the amendment to be effective. MCL 791.236(3). However, the statute does not delineate a specific time frame of when notice must be given. Plaintiff urges this Court to read a time requirement into the statute; however, “[w]e cannot read into a statute language that was not placed there by the Legislature.” *Risk v Lincoln Charter Twp Bd of Trustees*, 279 Mich App 389, 399; 760 NW2d 510 (2008). Under the plain and unambiguous language of MCL 791.236(3), an amendment to a parole order becomes effective when the parolee is given written notice of the amendment. As discussed, plaintiff received written notice from defendant. Defendant did not violate MCL 791.236(3).

Second, plaintiff contends defendant violated its own Operating Procedure FOA 06.05.135(I) and that he is entitled to habeas relief on this basis. We initially note that this issue was not properly preserved for appeal because the trial court did not address it in its opinion and order denying plaintiff’s motion for reconsideration. See *Laurel Woods Apartments v Roumayah*, 274 Mich App 631, 640; 734 NW2d 217 (2007) (an issue is not properly preserved for appellate review when it has not been addressed by the trial court). This Court “may overlook preservation requirements if the failure to consider the issue would result in manifest injustice, if consideration is necessary for a proper determination of the case, or if the issue involves a question of law and the facts necessary for its resolution have been presented.” *Id.* at 640. We will consider the issue because plaintiff raised it below and the law and facts necessary for its resolution have been presented.

Operating Procedure FOA 06.05.135(I) states that, “a copy of the [parolee] extension shall be given to the parolee prior to the scheduled parole expiration date.” The scheduled parole expiration date was August 23, 2006, and plaintiff received notification on or about September 12, 2006. This was approximately 21 days after plaintiff’s scheduled parole expiration date and thus, a clear violation of Operating Procedure FOA 06.05.135(I). Nevertheless, this failure does not create a radical defect in jurisdiction entitling plaintiff to habeas relief. In *People v Price*, 23 Mich App 663, 669-670; 179 NW2d 177 (1970), the Court emphasized that “habeas corpus is open to a convicted person in one narrow instance, . . . and that is where the convicting court was without jurisdiction to try the defendant for the crime in question.” Thus, the pivotal question becomes whether the error asserted by defendant, i.e., that defendant violated its own Operating Procedure FOA 06.05.135(I), was such that for purposes of habeas review the parole board can be said to have been without jurisdiction to enter a parole order.

The Parole Board had jurisdiction to enter the parole order because plaintiff was never discharged from parole. A paroled prisoner is deemed to be serving the sentence imposed by the trial court and remains in the custody of the Department of Corrections until parole is successfully completed. *Harper v Dep’t of Corrections*, 215 Mich App 648, 650; 546 NW2d 718 (1996). MCL 791.242(1) further provides that a paroled prisoner is not deemed to have

served his full sentence until he has performed all the conditions and obligations of his parole. Specifically, MCL 791.242(1) provides:

If a paroled prisoner has faithfully performed all of the conditions and obligations of parole for the period of time fixed in the order of parole, and has obeyed all of the rules and regulations adopted by the parole board, the prisoner has served the full sentence required. The parole board shall enter a final order of discharge and issue the paroled prisoner a certificate of discharge.

Thus, the parole board is required to enter a final order of discharge and issue the prisoner a certificate of discharge if a prisoner has “faithfully performed” all the “conditions and obligations of parole.” Subsequently, a final order of discharge must be delivered and accepted by the paroled prisoner to be effective. See *Holder*, 483 Mich at 174.⁴

It is undisputed that plaintiff did not faithfully perform all the conditions and obligations of his parole because he failed to pay the crime victim’s fee before his scheduled parole expiration date. In fact, plaintiff never received notice that he was discharged because defendant never delivered a final order of discharge. Accordingly, there is nothing indicating a defect in the Parole Board’s jurisdiction, let alone a radical defect, that would render plaintiff’s parole violation hearing (or the extension of plaintiff’s parole) and subsequent parole denial absolutely void. Consequently, we hold that the Parole Board had jurisdiction, and the error by defendant to comply with its own operating procedures did not create a radical defect rendering the parole hearing absolutely void.

Third, plaintiff argues that he is entitled to habeas relief because defendant failed to comply with the Interstate Compact governing his parole supervision by violating two ICAOS Rules. Specifically, plaintiff takes issue with ICAOS Rule 3.107(a)(10) and ICAOS Rule 4.108. ICAOS Rule 3.107 sets out the information that must be provided to a receiving state, here Ohio, prior to the transfer of the offender. Specifically, ICAOS Rule 3.107(a)(10) provides that,

(a) A Transfer request for an offender shall be transmitted through the electronic information system authorized by the commission and shall contain—

* * *

(10) information relating to any court-ordered financial obligations, including but not limited to, fines, court costs, restitution, and family

⁴ The Court in *Holder* discussed the nature of parole discharge and noted:

The absolute discharge is something more than a release from parole. It is a remission of the remaining portion of his sentence. Like a pardon, it is a gift from the executive, and like any other gift it does not become effective until it is delivered and accepted. After delivery it cannot be recalled. [*Holder*, 483 Mich at 174, quoting *In re Eddinger*, 236 Mich 668, 670; 211 NW 54 (1926).]

support; the balance that is owed by the offender on each; and the address of the office to which payment must be made.

In the event the sending state, here Michigan, fails to provide all needed information as required by ICAOS Rule 3.107, the receiving state shall reject the request and provide specific reasons for the rejection. See ICAOS Rule 3.104(b).

We conclude that the trial court did not err in finding that there was no violation of ICAOS Rule 3.107, as the certified record reveals that defendant complied with ICAOS Rule 3.107. The application for transfer request included several attachments, including the Conditions of Supervision Form and Judgment and Commitment records. Pursuant to the Conditions of Supervision Form, plaintiff agreed to “comply with all financial obligations . . . as ordered by any court,” and the Judgment of Sentence contained the amount of fees imposed by the court. Accordingly, contrary to plaintiff’s assertions, defendant did not violate ICAOS Rule 3.107(a)(10) because it transmitted the documents containing the “information relating to any court-ordered financial obligations” owed by plaintiff as required by the rule.

Plaintiff also contends defendant violated ICAOS Rule 4.108. The rule states,

(a) A sending state is responsible for collecting all fines, family support, restitution, court costs, or other financial obligations imposed by the sending state on the offender.

(b) Upon notice by the sending state that the offender is not complying with family support and restitution obligations, and financial obligations as set forth in subsection (a), the receiving state shall notify the offender that the offender is in violation of the conditions of supervision and must comply. The receiving state shall inform the offender of the address to which payments are to be sent.

ICAOS Rule 4.108 relieves the receiving state of the obligation to collect fines, fees, costs or restitution. A sending state retains exclusive authority and the obligation to manage the financial portion of an offender’s sentence. The obligation imposed on the receiving state is to inform the offender of a default and that the offender is out of compliance with the terms and conditions of supervision upon notification from the sending state of the offender’s failure to maintain payments. See ICAOS Rule 4.108(b).

We conclude that the trial court did not clearly err in finding that defendant did not violate ICAOS Rule 4.108(b). The record reveals defendant did not violate the ICAOS Rule 4.108 because it sent notice to Ohio that plaintiff did not comply with his financial obligations. On September 12, 2006, defendant sent Ohio notice that plaintiff’s parole order was being extended because he had outstanding crime victim fees. The notice also contained the address where plaintiff should send payment of his fees. We note that, even if defendant violated ICAOS Rules 3.107(a)(10) and 4.108, such a violation does not create radical defect in jurisdiction that

entitles defendant to habeas relief. Accordingly, we hold that the trial court did not err in finding no violation of the Interstate Compact.⁵

In sum, we hold that plaintiff failed to establish a radical defect in the Parole Board's jurisdiction and failed to demonstrate that the trial court abused its discretion when it denied his motion for reconsideration.

Affirmed.

/s/ Christopher M. Murray
/s/ Joel P. Hoekstra
/s/ Cynthia Diane Stephens

⁵ We note that the record does not support plaintiff's general contention that he did not receive notice of his obligation to pay the crime assessment fees. Plaintiff first received notice of his obligation to pay fees when he was sentenced in September 2000, and the Judgment of Sentence indicated the amount of fees imposed by the court. He also received notice that he owed crime victim fees when he received and signed his order for parole, which stated, "pursuant to MCL 780.905 you must pay the crime victims assessment of \$120.00 as ordered by the sentencing court as indicated on the judgment of sentence. The crime victims assessment is payable when the parole order is entered, but may be paid in monthly installments to be determined by the field agent." Defendant also sent notice to the Ohio Adult Parole Authority that plaintiff had outstanding crime victim fees, and indicated the address where plaintiff should send payment of his fees.