

STATE OF MICHIGAN
COURT OF APPEALS

In re Parole of PHILIP JOSEPH PAQUETTE.

HURON COUNTY PROSECUTOR,

Appellee,

v

PHILIP J. PAQUETTE and PAROLE BOARD,

Appellants.

UNPUBLISHED

November 29, 2011

No. 301140

Huron Circuit Court

LC No. 92-003524-FC

Before: MURPHY, C.J., and BECKERING and RONAYNE KRAUSE, JJ.

PER CURIAM.

The Michigan Parole Board appeals as on leave granted¹ the circuit court's order reversing the board's decision to grant parole to Philip Paquette. We reverse.

On July 3, 1992, Paquette stabbed someone to death at a party; he was subsequently convicted by a jury of second-degree murder, MCL 750.317, and sentenced to 20 to 40 years' imprisonment. This Court affirmed his conviction and sentence.² Paquette contended, and apparently continues to maintain to some extent, that he acted in self-defense.³ Paquette was initially classified as a "middle" risk for assaultive behavior, with a clinical evaluation of paranoid personality disorder with a "severe tendency to externalize blame for one's problems, frustrations and failures." Paquette was found guilty of nineteen major misconducts and two minor misconducts, and his assaultive risk was reclassified as "high." He enrolled in an

¹ *In re Parole of Paquette*, 489 Mich 982; 799 NW2d 555 (2011).

² *People v Paquette*, 214 Mich App 336; 543 NW2d 342 (1995).

³ The evidence mostly indicated that Paquette had not been invited and, at least in part because he engaged in fighting with an actual guest, he had been asked to leave repeatedly before he initiated further physical combat that culminated in the stabbing. Paquette's version of events was that he "was trying to leave, but was unable due to the fact [he] was being kicked an [sic] beaten by a crowd of drunken teenagers," and he "did what [he] had to to protect [him]self."

assaultive therapy program in 2004, but he was removed because he stated that he was then appealing his conviction and continued to state that he acted in self-defense.⁴ Paquette's last misconduct in the record took place near the end of 2004.

With good time credit, Paquette became eligible for parole on March 28, 2010.⁵ His parole eligibility guidelines indicated a high probability of parole. On May 7, 2010, the parole board approved Paquette's parole, and he was given a projected parole date of June 19, 2010. The Huron County Prosecutor challenged the board's parole decision. The trial court found that there was no basis to support the Parole Board's conclusion that Paquette would not become a menace to society or the public safety. The trial court found that Paquette continued to deny responsibility for the wrongfulness of his conduct and that the board clearly abused its discretion in granting parole. This Court initially denied leave to appeal, but our Supreme Court remanded for us to consider the matter as on leave granted.

Before the parole board may grant parole to a prisoner, the board must have "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." MCL 791.233(1)(a). "The ultimate decision whether to grant parole is subject to the board's discretion." *Glover v Parole Bd*, 460 Mich 511, 526 n 22; 596 NW2d 598 (1999) (*Glover I*); MCL 791.234. This Court has recently explained the entire parole process in Michigan. *In re Parole of Elias*, ___ Mich App ___, ___-___; ___ NW2d ___ (Docket No 300113, released November 1, 2011, slip op at pp 1-10). While the Parole Board has extensive discretion, that discretion must be exercised within a framework of statutory guidelines, although the Legislature has also provided for the Parole Board to take into account the possibility that those guidelines are inadequate in particular cases. *Id.* at ___ (slip op at pp 9-10). The Parole Board is required to indicate what it relied on in reaching its decision, but contrary to the prosecutor's argument, when *granting* parole rather than denying it, the Board need not go into further explication. See MCL 791.235(12); *Glover I*, 460 Mich at 524-525.

Although the Board must exercise its discretion within the statutory limitations, its discretion is otherwise broad and may not be invaded by reviewing courts. *Killebrew v Dep't of Corrections*, 237 Mich App 650, 652-654; 604 NW2d 696 (1999). The courts may only review the board's decision for a violation of some legal requirement or for a clear abuse of discretion. MCR 7.104(D)(5). A clear abuse of discretion may not be found unless the party challenging the board's decision satisfies the burden of showing that an unprejudiced person, considering the

⁴ The prosecutor contends that Paquette withdrew, but it appears that he was deemed ineligible.

⁵ Defendant's twenty-year minimum sentence, minus his 206 days of jail credit, would seem not to run until July 3, 2012. However, a prisoner's "minimum sentence" for parole eligibility is computed on the basis of the minimum sentence minus good time or disciplinary credit. See MCL 791.234(1); MCL 800.33(5). While the prosecutor objects to defendant being released "early," his parole eligibility was decided by the Legislature and we may not alter its framework, irrespective of whether or not we deem it unwise. *People v Morris*, 450 Mich 316, 336; 537 NW2d 842 (1995).

facts the board relied on, would say there is no justification or excuse for the ruling. *In re Parole of Glover (After Remand)*, 241 Mich App 127, 129; 614 NW2d 714 (2000) (*Glover II*); *Wayne Co Prosecutor v Parole Bd*, 210 Mich App 148, 153-154; 532 NW2d 899 (1995). “Importantly, no reviewing court may substitute its judgment for that of the Board.” *Elias*, ___ Mich App at ___ (slip op at p 19).

The parole guidelines evaluate a number of different factors including: (1) the offense for which the prisoner is incarcerated and any mitigating or aggravating conditions, (2) the prisoner’s prior criminal record, (3) the prisoner’s institutional conduct, (4) the prisoner’s statistical risk placement on the assaultive and property risk screen scale, (5) the prisoner’s age at the time of parole eligibility, (6) the prisoner’s performance in institutional programs, and (7) the prisoner’s mental health. 1996 MR 1, R 791.7716(3). If the guidelines indicate that a prisoner has a high probability of parole, the board may deny parole only for substantial and compelling reasons. MCL 791.233e(6); *Killebrew*, 237 Mich App at 655. Paquette’s parole guidelines were scored at eight, which indicates a high probability of parole. The prosecutor has not argued that the guidelines were incorrectly scored, but rather that the Board nonetheless failed to provide an adequate justification for its decision.⁶ However, as discussed, the Board is required to extensively justify a denial of parole, not a grant of parole, so the correct issue is whether the board clearly abused its discretion by failing to find substantial and compelling reasons for denying parole.

The prosecutor argues, and the trial court found, that Paquette did not express any remorse or acceptance of responsibility for his crime. We find that in this case, their concerns are not entirely accurate and not entirely relevant. A prisoner’s continued protestation of innocence is not, standing alone, *necessarily* a basis for denying parole. A sentencing court may consider a defendant’s lack of remorse in imposing sentence, but may not rely on a defendant’s refusal to admit guilt in the face of pressure to do so; “an accused has the right to maintain his innocence after conviction” and may not be additionally penalized for doing so. *People v Grable*, 57 Mich App 184, 188-189; 225 NW2d 724 (1974); *People v Wesley*, 428 Mich 708, 713-714; 411 NW2d 159 (1987). Juries, after all, “are not infallible, they are only conclusive.” *People v Yennior*, 72 Mich App 35, 41; 248 NW2d 680 (1976), rev’d on other grounds 399 Mich 892 (1977). We believe these considerations are applicable to parole decisions in the same manner and for the same reasons as they do to sentencing decisions.

The record is not void of any expression of remorse. Paquette’s version of events in his presentence investigation report (PSIR) included his observation that “I am alive, the sad part is someone is dead. I think about this everyday and I hate it. But I am not a murderer.” In the *propria persona* brief Paquette filed below, he explicitly stated that he “does *not* deny that he is

⁶ The prosecutor also argues that there is some significance to the fact that Paquette had never previously been denied parole. While this is indeed a factual distinction between the situation in the case at bar and the situation in *Elias*, we are unaware of any requirement that a prisoner be denied parole before he or she may be granted parole, and we cannot conceive of any possible reason for deliberately injecting any such formalized waste of resources into the parole process.

responsible for the death of Michael Gravelle” (emphasis in original). Paquette’s expression of regret might be minimal, but not nonexistent. Furthermore, the Parole Board conducted its own direct interview of Paquette and, with full awareness of Paquette’s psychological profiles, concluded that Paquette had expressed remorse and empathy.⁷ We are not in a position to second-guess this finding.

The prosecutor makes much of the misconducts Paquette committed while incarcerated. This argument is somewhat naïve and, more importantly, ignores what can be discerned about Paquette from the misconducts in context. It is particularly noteworthy that Paquette was incarcerated for a crime with a great element of violence and impulsivity; his misconducts also seem to reflect violence and impulsivity. But significantly, his misconducts end in 2004. It would be disingenuous to suggest that Paquette has shown no potential for rehabilitation when, in fact, his seemingly dramatic change in behavior shows precisely the opposite. Furthermore, this is the kind of behavior change that has a direct bearing on Paquette’s likelihood of committing further violent and impulsive acts in the future. The mere fact of his misconducts cannot be properly considered out of context. Paquette is to be commended and encouraged for walking up the road to rehabilitation, no matter how long it took him to begin upon that path.

“Static factors such as the nature of the sentencing offense and [a prisoner]’s former prison misconduct” simply may not be used by the courts as substantial and compelling reasons to invade the board’s exercise of its discretion. *Elias*, ___ Mich App at ___ (slip op at p 22). On this record, there are no substantial and compelling reasons of the kind that would show that the Parole Board’s decision was outside the range of reasonable and principled outcomes, and the courts may not substitute their judgment for the Board’s judgment. *Elias*, ___ Mich App at ___, ___ n 25 (slip op at p 19). The Parole Board’s decision may not be overturned.⁸

Reversed.

/s/ William B. Murphy
/s/ Jane M. Beckering
/s/ Amy Ronayne Krause

⁷ There is no transcript of Paquette’s interview, and the prosecutor and trial court observed that in the documentation of this finding, the Parole Board included the inscrutable note, “(not used as reason).” Nowhere in the record was this explained. However, the trial court made a factual finding, even if it did not eventually use it; and again, the Parole Board would be required to provide an extensive justification for *not* granting parole, not for granting it. We are therefore not concerned with what the Parole Board meant by “not used as a reason.”

⁸ Although it is worth not losing sight of the fact that being paroled is not the same as being discharged. It is clear that Paquette will not simply be turned loose, but rather will be subject to stringent monitoring and other conditions.