

STATE OF MICHIGAN
COURT OF APPEALS

In re Parole of EARL YOUNG.

WAYNE COUNTY PROSECUTOR,

Appellee,

v

PAROLE BOARD,

Appellant,

and

EARL YOUNG,

Defendant.

UNPUBLISHED

October 30, 2012

No. 304837

Wayne Circuit Court

LC No. 09-025099-FH

Before: STEPHENS, P.J., AND WHITBECK AND BECKERING, JJ.

PER CURIAM.

Appellant, Parole Board (the parole board), appeals by leave granted¹ the circuit court's order reversing its decision to grant parole to defendant. We vacate and remand.

Defendant attacked Dr. Laurie Boore at Sinai Grace Hospital in June of 2009. He pleaded guilty to assault with intent to do great bodily harm, and was sentenced to 4 months to 10 years' imprisonment. After initially denying defendant parole in March of 2010, the parole board granted him parole in January of 2011. The prosecution then filed a post-conviction motion, in defendant's criminal matter, for leave to appeal the parole board's decision to the circuit court. The circuit court granted leave to appeal and reversed the parole board's decision as after determining that it constituted an abuse of discretion. The parole board brings this appeal.

¹ *In re Parole of Earl Young*, unpublished order of the Court of Appeals, entered September 23, 2011 (Docket No. 304837).

The parole board argues that the circuit court erred in finding that it abused its discretion in granting respondent parole. Because we conclude that the trial court failed to provide the requisite analysis for its decision, we vacate and remand for further proceedings.

The circuit court was statutorily required to review the parole board's grant of parole for a clear abuse of discretion. *In re Elias*, 294 Mich App 507, 538; 811 NW2d 541 (2011). An abuse of discretion occurs when the trial court's decision falls outside the range of reasonable and principled outcomes. *Id.* (quoting *People v Babcock*, 469 Mich 247, 269; 666 NW2d 231 (2003)). This Court reviews the circuit court's rulings on questions of statutory interpretation de novo. *Hoffman v Boonsiri*, 290 Mich App 34, 39; 801 NW2d 385 (2010).

The parole board has exclusive jurisdiction to decide whether to parole a prisoner. *Glover*, 241 Mich App at 129. However, before granting a prisoner parole, the parole 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." *Id.* (quoting MCL 791.233(1)(a)). When a prisoner has a high probability of parole, as determined by his transition accountability plan (TAP) report, there must be a substantial and compelling reason for denying the prisoner parole. *Elias*, 294 Mich App at 539. The party challenging the parole board's decision bears the burden of proving the parole board abused its discretion, and neither the circuit court nor this Court may "substitute its judgment for that of the Parole Board." *Glover*, 241 Mich App at 129.

In deciding whether to grant a prisoner parole, the parole board should consider the following factors: (1) the prisoner's criminal history, including the nature and seriousness of the offenses for which the prisoner is incarcerated and the potential for committing further assaultive crimes; (2) institutional adjustment, including findings of guilt on major misconduct charges; and (3) the prisoner's personal history and growth, including whether the prisoner has demonstrated willingness to accept responsibility for past behavior. 2011 AC, R 791.7715(2); see also *In re Parole of Haeger*, 294 Mich App 549; 813 NW2d 313 (2011).

Based on our review of the record we cannot determine the basis of the trial court's determination that the parole board did not have reasonable assurance that the prisoner will not be a menace to society. At the hearing where the circuit court found the parole board to have abused its discretion, the court opined that the board had failed to consider certain facts but did not articulate what those facts were. The circuit court did not find that the board failed to follow either its statutory mandates or its own rules, except for an intimated failure to contact the victim prior to the parole decision. The circuit court honed in on the TAP score but did not find that the board's calculation of the prisoners parole score was erroneous. The prisoner's parole score was one that made it necessary that the parole board have substantial and compelling reasons to deny parole. In its oral opinion, the circuit court spent considerable time discussing the prisoner's mental health issues. We concede that he has a troubled mental health history and that his offense arose in substantial part due to his medical noncompliance. The court found that the parole board based its decision on factors that are directly contradicted by the record, including its own reports. Second, the court determined that the parole board's decision is directly contradicted by the psychiatric information that it had before it. The court accepted the prosecutor's assertion that the parole board failed to fully investigate and establish whether defendant will receive adequate treatment and housing. While we cannot find support for the

assertion in the dissent that the planned housing was within 500 feet of the victim, we note that the court did find that defendant's proposed mental health provider, Gateway, was the victim's employer and that this would potentially violate the 500 feet no-contact order regarding the victim and defendant. Finally, the court appeared to determine that the parole board had failed to sufficiently consider defendant's mental and social attitudes, his criminal history, and his well-documented failure to comply with court orders.

In reaching its decisions, the parole board appears to have relied heavily on the parole guidelines, which indicate that defendant has a high probability of parole. The legislature expressly granted the board discretion to depart from the parole guidelines:

The parole board may depart from the parole guidelines by denying parole to a prisoner who has a high probability of parole as determined under the parole guidelines or by granting parole to a prisoner who has a low probability of parole as determined under the parole guidelines. A departure under this subsection shall be for substantial and compelling reasons stated in writing. [MCL 791.233e(6) (emphasis added).]

The Department of Corrections adopted an identical regulatory provision allowing for parole departures. 2011 AC, R 791.7716(5). Once the board has rendered its decision, it must issue in writing "a sufficient explanation for its decision" to allow "meaningful appellate review," *Glover v Parole Bd*, 460 Mich 511, 519; 596 NW2d 598 (1999), and to inform the prisoner of "specific recommendations for corrective action" if necessary "to facilitate release," MCL 791.235(12).

The record reflects that the parole board followed both its internal rules and its statutory mandates. The trial court noted some failure to consider certain facts in the record, but did not identify them. The court accepted the prosecutor's assertion that the board did not contact the prisoner's family regarding his placement. The record is silent on this issue. The court's determination that the prisoner's criminal history was not considered by the board is contradicted by the calculation of the parole guideline score, which includes the criminal history, TAP and Compass scores. The court was reasonably concerned that the prisoner, who had a long history of medical non-compliance, would again relapse. This is very similar to the concerns of the reviewing court in *In re Elias*. In that case, this Court reversed the circuit court finding:

Rather than affording any meaningful deference to the Board, the circuit court substituted its determination that substantial and compelling reasons mandated denial of Elias's parole. In reaching this result, the circuit court relied excessively on static factors such as the nature of the sentencing offense and Elias's former prison misconduct. [In re Elias, 294 Mich App at 543-44]

Here, the circuit court found that the decision of the parole board was an abuse of discretion because there was information in the record that contradicted the board's determination. By way of example the circuit court found that the parole board's determination that the prisoner took responsibility for his actions was contradicted by the record. Indeed the prisoner's interview records indicate that he had little memory of the attack on the physician victim. However, it also indicated that he admitted that he was not medically compliant when the attack occurred and that it was essential that he be medicated in order to refrain from aberrant behavior. We cannot find that the determination that the prisoner took responsibility for his actions is not supported by the record. The court's greatest concern appeared to be with medical

non-compliance. The court felt that the outpatient program to which the prisoner was directed was inadequate. Mental health issues are complex. The board chose an accredited outpatient facility to manage the prisoner's after-care. It did not outline the exact treatment regimen or the process for determining compliance. Instead, it left to mental health experts the responsibility to determine the appropriate medication, group or individual therapy. We are concerned that the 500 feet no-contact order is implicated in the use of the specifically named provider, which is the employer of the victim. However, the provider has multiple service provider locations and has the ability to fashion a treatment and monitoring regimen that will honor the no-contact order. We note that medical non-compliance can be monitored by periodic blood tests, just as abstinence from illegal drugs can be monitored by random testing. The board is not required to provide a detailed treatment regimen any more than it is required to provide a detailed explanation of why a prisoner who has a high probability of parole is granted that parole. However, the circuit court explicitly noted that the board failed to consider some facts. Consequently, we remand to allow the court to detail what those facts were and how they were not considered by the TAP and/or Compass score.

The parole board next argues that, because the prosecution did not pay the statutory filing fee required to file an appeal, the trial court lacked jurisdiction over the appeal. We disagree.

Issues regarding subject matter jurisdiction are questions of law that this Court reviews de novo. *Reed v Reed*, 265 Mich App 131, 157; 693 NW2d 825 (2005). This Court also reviews questions of statutory construction de novo, "with the fundamental goal of giving effect to the intent of the Legislature." *Weakland v Toledo Engineering Co, Inc*, 467 Mich 344, 347; 656 NW2d 175 (2003).

MCL 600.605 grants the trial courts general and original jurisdiction to hear and decide cases:

Circuit courts have original jurisdiction to hear and determine all civil claims and remedies, except where exclusive jurisdiction is given in the constitution or by statute to some other court or where the circuit courts are denied jurisdiction by the constitution or statutes of this state.

MCL 791.234(11) specifically grants the circuit court jurisdiction to hear appeals from the parole board:

The action of the parole board in granting a parole is appealable by the prosecutor of the county from which the prisoner was committed or the victim of the crime for which the prisoner was convicted. The appeal shall be to the circuit court in the county from which the prisoner was committed, by leave of the court.

MCL 600.2529(b) states:

Before the filing of a claim of appeal or motion for leave to appeal from the district court, probate court, a municipal court, or an administrative tribunal or agency, the appellant or moving party shall pay \$150.00. For each fee collected under this subdivision, the clerk shall transmit \$31.00 to the county treasurer and

the balance of the fee to the state treasurer for deposit in the civil filing fee fund created in section 171.

Here, it appears from the Register of Actions that the prosecution filed a motion in defendant's criminal case requesting leave to appeal the parole board's decision, rather than filing a separate appeal action with the trial court. The prosecution, therefore, did not pay the filing fee before filing the appeal.

The parole board cites a dated case to support its contention that paying a filing fee is a jurisdictional requirement. In *Thompson v McKay*, 154 Mich 228, 229; 117 NW 624 (1908), the Michigan Supreme Court considered a statute that stated:

The transcript certified by the trial judge as having been settled by the parties as provided for in either of the preceding sections shall be filed with the register of the trial court immediately upon such certification [. . .] and a fee of five dollars shall then be paid to said register.

The Court held that “[t]he payment of the fee to the register is mandatory and jurisdictional[.]” and, because defendant failed to pay the fee, the Supreme Court lacked jurisdiction over the appeal. *Id.*

However, we hold that the failure to pay the statutory filing fee in this case did not divest the trial court of jurisdiction over the parole appeal. As quoted above, MCL 600.605 provides that “Circuit courts have original jurisdiction to hear and determine all civil claims and remedies,” and MCL 791.234(11) specifically grants the circuit courts jurisdiction to hear parole board appeals. The only exception is where “the circuit courts are *denied* jurisdiction by the constitution or statutes of this state.” MCL 791.234(11) (emphasis added). In light of the broad jurisdiction conferred on the circuit courts, this Court “must presume that the circuit courts of our state have jurisdiction, unless there is some basis for concluding that the legislative intent was otherwise.” *Attorney Gen v Diamond Mortgage Co*, 414 Mich 603, 619; 327 NW2d 805 (1982). Because there is no indication in the statute that the legislature intended to divest the trial court of jurisdiction, we hold that the statutory language does not evidence a legislative intent to deny the trial court jurisdiction in the absence of a filing fee. See *Id.* The parole board, therefore, has not overcome the presumption that the trial court had jurisdiction in this case.

Finally, the parole board argues that the trial court failed to follow a local court rule requiring random allotment of cases, and therefore improperly presided over the parole appeal. The parole board, however, has failed to explain the affect that this error would have on the case. The parole board, additionally, did not cite to any authority regarding this issue. We therefore hold that the parole board abandoned this issue on appeal. See *Flint City Council v Michigan*, 253 Mich App 378, 393 n 2; 655 NW2d 604 (2002) (“this Court will not search for authority to support a party’s position, and the failure to cite authority in support of an issue results in its being deemed abandoned on appeal.”).

We vacate and remand for further proceeding consistent with this opinion. We do not retain jurisdiction.

/s/ Cynthia Diane Stephens

/s/ Jane M. Beckering