

STATE OF MICHIGAN
COURT OF APPEALS

ANGELO S. STORNELLO,

Plaintiff-Appellant,

v

DEPARTMENT OF CORRECTIONS and
DEPARTMENT OF
CORRECTIONS/DIRECTOR,

Defendants-Appellees.

UNPUBLISHED
February 19, 2013

No. 309636
Ingham Circuit Court
LC No. 12-000159-AW

Before: FITZGERALD, P.J., and METER and M. J. KELLY, JJ.

PER CURIAM.

Plaintiff Angelo S. Stornello—a prisoner assigned to defendant Michigan Department of Corrections’ jurisdiction—appeals by right the trial court’s order dismissing his complaint against the Department and its Director as frivolous under MCL 600.5509(2)(a). Because we conclude that there were no errors warranting relief, we affirm.

This Court reviews a trial court’s finding that an action is frivolous for clear error. *Kitchen v Kitchen*, 465 Mich 654, 661; 641 NW2d 245 (2002). “A decision is clearly erroneous where, although there is evidence to support it, the reviewing court is left with a definite and firm conviction that a mistake has been made.” *Id.* at 661-662.

Under the Michigan Prison Litigation Reform Act, MCL 600.5501 *et seq.*, a trial court must review a prisoner’s complaint seeking “redress from a governmental entity or officer or employee of a governmental entity” “as soon as practicable” to determine if it is frivolous. MCL 600.5509(1) and (2)(a). A lawsuit is frivolous if “[t]he party’s legal position was devoid of arguable legal merit.” MCL 600.2591(3)(a)(iii).

Here, Stornello sought a writ of mandamus to compel the Department to parole him; he averred that the Department's Operating Procedure 06.05.104B(C) and MCL 330.1708(3) required the Department to issue him a parole. He also asserted an action for "replevin" by which he again sought an order compelling the Department to parole him under a breach of contract theory.¹

Mandamus is a writ issued by a court of superior jurisdiction to compel a public officer to perform a clear legal duty. *Jones v Dep't of Corrections*, 468 Mich 646, 658; 664 NW2d 717 (2003). To obtain a writ of mandamus, a plaintiff must have a clear legal right to the performance of the specific duty sought to be compelled, the defendant must have a clear legal duty to perform it, the act must be ministerial, and the plaintiff must be without other adequate legal or equitable remedy. *Coalition for a Safer Detroit v Detroit City Clerk*, 295 Mich App 362, 366-367; 820 NW2d 208 (2012). Mandamus may issue to compel the exercise of discretion, but not to compel its exercise in a particular manner. *Teasel v Dep't of Mental Health*, 419 Mich 390, 410; 355 NW2d 75 (1984).

With limited exception, whether to parole a prisoner is committed to the parole board's discretion. MCL 791.234(11). Under the Department's operating procedure OP 06.05.104B(C), the parole board may defer its decision:

When considering a post-[earliest release date] sex offender for parole, the Board may defer the parole decision for prisoners in need of residential sex offender programming (RSOP). Such cases shall be referred to the Board for resolution of the deferral after acceptance of the prisoner into a community-based treatment program or, if treatment in a community-based treatment program is not available, after completion of RSOP at the Cooper Street Correctional Facility (JCS). If, instead of RSOP, the Board orders community-based outpatient treatment as a condition of parole, the prisoner shall be issued a P70 action and transferred to receive in-reach services at the appropriate in-reach facility.

It was indicated in a "Referral: Parole Action Ordered" form dated April 4, 2011, that Stornello's D52 status (deferred parole status) needed to be resolved to a P70 status (providing that the prisoner would parole 60 days after participating in all recommended programming at an In-reach center and after staying out of trouble) so a parole date could be determined. In the section of the form titled "Parole Board Action," the following action was check-marked: Resolve Deferral 52-Parole (P70) date: 6/14/11. Thereafter, Stornello was apparently accepted into a community-based (CPI) treatment program. However, he then received a letter stating that his "approved placement at CPI has been cancelled" and that he would be "staying here at JCS for RSOP programming". He subsequently received another letter stating that "[y]ou will not be receiving a date for CPI as the Parole Board has changed their minds and are making you complete the JCS Program."

¹ Traditionally, replevin was an action to recover possession of goods. Black's Law Dictionary (4th ed). There was, however, an action for "personal replevin" that has since been replaced by habeas corpus. See *In re Jackson*, 15 Mich 417, 423-424, 440 (Cooley, J., concurring) (1867).

Stornello argues that MCL 791.206(1)(c) allows the Director to promulgate rules relating to parole release decisions and that the Director did so with OP 06.05.104(B)(C). He further argues that this operating procedure effectively eliminated the parole board's authority to deny him parole. However, the operating procedure was *not* a promulgated rule or adopted under MCL 791.206(1)(c); the operating procedure was adopted under Policy Directives 03.02.101 and 06.05.104.² The authority for the policy directives, although statutory, did not arise under MCL 791.206(1)(c). In any event, the "policy directives and operating procedures" "need not be promulgated into rules, since they concern only the inmates of a state correctional facility and do not affect other members of the public. . . ." *Jordan v Jarvis*, 200 Mich App 445, 451; 505 NW2d 279 (1993), citing MCL 24.207(k). Moreover, according to Policy Directive 03.02.101(E), even if a prisoner is granted a parole contingent upon receipt of in-reach services, there is still discretion to determine that the prisoner cannot be appropriately placed at a facility. Similarly, the Director made it clear in the policy statement for Policy Directive 06.05.104 that there "is no right to parole." Thus, a prisoner still has no entitlement to community-based outpatient treatment even if ordered and, therefore, has no clear legal right to parole. Rather, as has been repeatedly noted, "matters of parole lie solely within the broad discretion of the [parole board]." *Jones*, 468 Mich at 652.

In this case, the Parole Board ultimately decided not to parole Stornello. Although he frames his request in terms of a writ of mandamus, there is no legal right to parole in Michigan. *Morales v Parole Bd*, 260 Mich App 29, 52; 676 NW2d 221 (2003). And, for that reason, he cannot establish the first requirement for a writ of mandamus. He also cannot establish that the Department—through the Parole Board—has a clear legal duty to parole him because the grant of parole is purely discretionary, not ministerial. See *Citizens Protection Michigan's Constitution*, 280 Mich App 273, 286; 761 NW2d 210 (2008).

The trial court did not clearly err when it determined that Stornello's complaint for mandamus was frivolous.

The trial court also did not clearly err when it found that Stornello's contract theory was also frivolous. Stornello failed to allege facts establishing the existence of a contract. Here, the alleged contract was a notice from the Parole Board:

ACTION DESCRIPTION: COMPLETE PROGRAM

REASONS FOR DEFERRAL:

THE PCB HAS DETERMINED THAT ADDITIONAL PRE-RELEASE PROGRAMMING IS REQUIRED BEFORE YOUR RELEASE. THE DATE WILL BE DETERMINED UPON NOTICE OF SATISFACTORY COMPLETION OF PROGRAMMING. PROGRAMS TO ALLOW PAROLE AT THE EARLIEST POSSIBLE DATE WILL BE AVAILABLE.

² PD 03.02.101 and 06.05.104 are available at http://www.michigan.gov/corrections/0,1607,7-119-1441_44369---,00.html.

The notice also provided that Stornello’s actual release was “subject to investigation and approval of the placement plan. Institutional misconduct could result in a loss of parole.”

A valid contract has five elements: “(1) parties competent to contract, (2) a proper subject matter, (3) a legal consideration, (4) mutuality of agreement, and (5) mutuality of obligation.” *Calhoun Co v Blue Cross & Blue Shield of Mich*, 297 Mich App 1, 13; ___ NW2d ___ (2012). “Before a contract can be completed, there must be an offer and acceptance.” *Kloian v Domino’s Pizza, LLC*, 273 Mich App 449, 452; 733 NW2d 766 (2006). “An offer is defined as ‘the manifestation of willingness to enter into a bargain, so made as to justify another person in understanding that his assent to that bargain is invited and will conclude it.’” *Eerdmans v Maki*, 226 Mich App 360, 364; 573 NW2d 329 (1997) (citations omitted). “Acceptance must be unambiguous and in strict conformance with the offer.” *Id.*

In this case, the notice did not constitute an offer because it contained no promise to release Stornello if he completed the “program.” Moreover, Stornello did not even complete the requirements stated in the notice; instead, the record shows that he voluntarily removed himself from the program out of concerns about confidentiality. Thus, even if there were a valid offer—and there was not—Stornello’s failure to complete the program was clearly not in strict conformance with it.

We decline to address Stornello’s remaining claims of error. Stornello failed to preserve his remaining claims before the trial court and failed to develop his claims by meaningful citation to the record and law. “It is not enough for an appellant in his brief simply to announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments, and then search for authority either to sustain or reject his position.” *Mitcham v Detroit*, 355 Mich 182, 203; 94 NW2d 388 (1959). Alternatively, the arguments would not change the outcome of the case and are therefore moot. *People v Richmond*, 486 Mich 29, 34-35; 782 NW2d 187 (2010).

There were no errors warranting relief.

Affirmed.

/s/ E. Thomas Fitzgerald
/s/ Patrick M. Meter
/s/ Michael J. Kelly