STATE OF MICHIGAN

COURT OF APPEALS

DUJUAN QUINN,

Plaintiff-Appellant,

v

STATE OF MICHIGAN and GOVERNOR,

Defendants-Appellees.

UNPUBLISHED
September 10, 2020

No. 350235
Court of Claims
LC No. 19-000048-MM

Before: LETICA, P.J., and FORT-HOOD and GLEICHER, JJ.

PER CURIAM.

Plaintiff appeals as of right the Court of Claims' opinion and order granting summary disposition in favor of defendants under MCR 2.116(C)(8) (failure to state a claim). Plaintiff filed a claim against defendants challenging the constitutionality of Michigan's parole eligibility statutes, MCL 791.233 and MCL 791.234. We affirm.

I. BACKGROUND

In 2008, plaintiff was convicted of several criminal offenses, including carjacking, MCL 750.529a, for which he was sentenced to 25 to 75 years' imprisonment.[1] In 2019, plaintiff filed a complaint seeking declaratory and injunctive relief, challenging the constitutionality of various

[1] We take judicial notice that plaintiff was also convicted of failure to stop at the scene of an accident resulting in serious impairment of a body function or death, MCL 257.617(2), uttering and publishing, MCL 750.249, second-degree fleeing a police officer, MCL 750.479a(4)(a), and resisting and obstructing a police officer, MCL 750.81d(1). MRE 201. The sentencing judge imposed concurrent terms of 25 to 75 years' imprisonment for leaving the scene of an accident involving serious impairment, 5 to 25 years' imprisonment for uttering and publishing, 5 to 20 years' imprisonment for fleeing a police officer, and 3 to 15 years' imprisonment for resisting and obstructing, all as a fourth-habitual offender. Because plaintiff was on parole when he committed these offenses, his 2008 sentences were consecutive to the remaining portion of the term of imprisonment imposed for his prior offense. MCL 768.7a(2).

parole eligibility statutes because prisoners serving indeterminate sentences are not eligible for parole consideration until they have served their minimum term in contrast to prisoners sentenced to life imprisonment with the possibility of parole, who are eligible for parole after serving 10 or 15 years, and, if not paroled, discharged, or deceased, every 5 years thereafter. Plaintiff alleged that these statutes violated his due-process and equal protection rights and inflicted cruel and unusual punishment in violation of the Michigan Constitution. The trial court granted defendants summary disposition under MCR 2.116(C)(8). Plaintiff filed for reconsideration, which the trial court denied.

Plaintiff now appeals.

II. STANDARD OF REVIEW

"We review de novo a circuit court's summary disposition decision." *Nyman v Thomson Reuters Holdings, Inc*, 329 Mich App 539, 543; 942 NW2d 696 (2019). " 'A court may grant summary disposition under MCR 2.116(C)(8) if the opposing party has failed to state a claim on which relief can be granted.' " *Id*., quoting *Dalley v Dykema Gossett PLLC*, 287 Mich App 296, 304; 788 NW2d 679 (2010) (quotation marks and brackets omitted). "All well-pleaded factual allegations are accepted as true and construed in a light most favorable to the nonmoving party." *Id*. at 543. " 'Summary disposition on the basis of subrule (C)(8) should be granted only when the claim is so clearly unenforceable as a matter of law that no factual development could possibly justify a right of recovery.' " *Id*., quoting *Dalley*, 287 Mich App at 305 (quotation marks and citation omitted).

The constitutionality of a statute also presents a question of law that is reviewed de novo. *GMAC LLC v Treasury Dep't*, 386 Mich App 365, 372; 781 NW2d 310 (2009).

III. ANALYSIS

A. SENTENCING AUTHORITY

"[T]he ultimate authority to provide for penalties for criminal offenses is constitutionally vested in the Legislature." *People v Hegwood*, 465 Mich 432, 436; 636 NW2d 127 (2001), citing Const 1963, art 4, § 45. However, "[t]he authority to impose sentences and to administer the sentencing statutes enacted by the Legislature lies with the judiciary." *Id*. at 436-436, citing MCL 769.1(1). Looking to the sentencing guidelines, the court's task is to impose an individualized sentence proportionate to the nature of the offense and the background of the offender. *People v Lockridge*, 498 Mich 358, 391; 870 NW2d 502 (2015); *People v Milbourn*, 435 Mich 630, 651; 461 NW2d 1 (1990).

The statutory penalty for a conviction of carjacking is "imprisonment for life or for any term of years." MCL 750.529a(1). And because plaintiff was convicted of three or more prior felonies, the sentencing court was authorized to impose a "sentence to imprisonment for life or for a lesser term." MCL 769.12(1)(b). The sentencing judge in plaintiff's underlying criminal case opted to impose an indeterminate sentence of 25 to 75 years' imprisonment rather than a sentence of imprisonment for life with the possibility of parole.

B. PAROLE ELIGIBILITY

"There is no entitlement to parole." MCL 791.235. Stated otherwise, "[a] prisoner enjoys no constitutional or inherent right to be conditionally released from a validly imposed sentence." *Jones v Dep't of Corrections*, 468 Mich 646, 651; 664 NW2d 771 (2003). Instead, "[p]arole eligibility is a function of statute . . . ." *People v Idziak*, 484 Mich 549, 581; 773 NW2d 616 (2009).

Because plaintiff committed his carjacking offense on or after December 15, 1998, he is "a 'prisoner subject to disciplinary time.' " *People v Grant*, 329 Mich App 626, 628-629; 944 NW2d 172 (2019), quoting MCL 791.233c and MCL 800.34(5)(a). Under MCL 769.12(4)(b), a fourth-felony offender like plaintiff "is not eligible for parole until expiration of . . . the minimum term fixed by the sentencing judge." The same holds true under the parole statutes. See MCL 791.233(1)(d) ("[A] parole must not be granted to a prisoner subject to disciplinary time until the prisoner has served the minimum term imposed by the court."); MCL 791.234(2) ("[A] prisoner subject to disciplinary time sentenced to an indeterminate sentence and confined in a state correctional facility with a minimum in terms of years is subject to the jurisdiction of the parole board when the prisoner has served a period of time equal to the minimum sentence imposed by the court for the crime of which he . . . was convicted.").[2]

The Legislature has provided a different timeframe for parole eligibility for a prisoner sentenced to imprisonment for life. MCL 791.234(7) provides:

> Except for a prisoner granted [a medical] parole under . . . [MCL 791.235(10)], a prisoner sentenced to imprisonment for life, other than a prisoner . . . [sentenced to life imprisonment without the possibility of parole under MCL 791.234(6)], is subject to the jurisdiction of the parole board and may be placed on parole . . . if he . . . meets any of the following criteria:
>
> (a) Except as provided in subdivision (b) or (c), the prisoner has served 10 calendar years of the sentence for a crime committed before October 1, 1992 or 15 calendar years of the sentence for a crime committed on or after October 1, 1992.
>
> (b) Except as provided in subsection (12), the prisoner has served 20 calendar years of a sentence for violating, or attempting or conspiring to violate [MCL 333.7401(2)(a)(*i*) (a controlled substance offense)], and has another conviction for a serious crime.

[2] See also MCL 791.234(4) ("[I]f 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. The maximum terms of the sentences must be added to compute the new maximum term under this subsection, and discharge must be issued only after the total of the maximum sentences has been served, unless the prisoner is paroled and discharged upon satisfactory completion of the parole.").

> (c) Except as provided in subsection (12), the prisoner has served 17-1/2 calendar years of the sentence for violating, or attempting or conspiring to violate [MCL 333.7401(2)(a)(*i*)], and does not have another conviction for a serious crime.

When a prisoner is sentenced to life imprisonment, the parole board is also required to review the prisoner's file at the end "of 15 calendar years and every 5 years thereafter until the prisoner is paroled, discharged, or deceased." MCL 791.234(8)(b). Notably, a sentencing judge may block the parole of an inmate sentenced to life imprisonment and the prisoner may only be paroled after a public hearing is held. MCL 791.234(8)(c). Thus, "[t]here is a great difference between a prisoner coming under the jurisdiction of the Parole Board, and a prisoner actually receiving parole." *People v Moore*, 432 Mich 311, 325; 439 NW2d 684 (1989).

Recognizing the potential parole eligibility disparity between a criminal defendant sentenced to an indeterminate rather than life, our Supreme Court rejected a criminal defendant's proportionality challenge to his 60- to 120-year indeterminate sentence for two counts of first-degree criminal sexual conduct, among other offenses. See *People v Merriweather*, 447 Mich 799, 801-808; 527 NW2d 460 (1994). The Supreme Court explained that "the fact that the defendant is not eligible for parole appears to be precisely what the Legislature intended," because under MCL 791.233b(w), "a defendant convicted of first-degree criminal sexual conduct 'shall not be eligible for parole until the person has served the minimum term imposed by the court less an allowance for disciplinary credits . . . ."[3] *Merriweather*, 447 Mich at 809. "The fact that it is paradoxical that the defendant might be better off with a sentence of life, which would make him eligible for parole [sooner], has nothing to do with a legislative intention that every prisoner should be eligible for parole." *Id*. at 809-810. Rather, "[t]he Legislature has not seen fit to interfere with the voters['] directive that a defendant should not be parole eligible until completion of the minimum term." *Id*. at 810. The Supreme Court further recognized that this "paradox" was the result of its' earlier "decision in *People v Johnson*, 421 Mich 494; 364 NW2d 654 (1984), which held that a sentence of life imprisonment for [second-degree] murder was not a minimum term" under Proposal B. *Merriweather*, 447 Mich at 810.

Moreover, this Court has specifically declined "to determine when, and under what circumstances, a sentence of parolable life is a greater penalty than a sentence of a lengthy term of years," given the variables involved. *People v Carson*, 220 Mich App 662, 676-677; 560 NW2d 657 (1996). We explained that "such speculation could never be fruitful because . . . attempting to compare a sentence of parolable life to a lengthy term of years is akin to the proverbial comparison of apples to oranges." *Id*. at 677.

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[3] In 1978, voters adopted Proposal B, an initiatory provision, that became MCL 791.233b. Proposal B mandated that a person convicted of certain crimes, including first-degree criminal sexual conduct, "not be eligible for parole until the person . . . served the minimum term imposed by the court which minimum term shall not be diminished by allowances for good time, special good time, or special parole." In 1994, when carjacking was added to the Penal Code, 1994 Public Act, 191, it was also added to the listed crimes, 1994 PA 199, where it remains today, MCL 791.233b(x).

C. DUE PROCESS

Plaintiff contends that the parole-eligibility statutes violate his due-process rights. We disagree.

The Due Process Clause of the Michigan Constitution commands that "[n]o person shall be . . . deprived of life, liberty or property, without due process of law." Const 1963, art 1, §17. This constitutional provision is nearly identical to the Due Process Clause of the United States Constitution, see US Const, Am XIV, § 1. Accordingly, "[t]he due process guarantee of the Michigan Constitution is coextensive with its federal counterpart." *Grimes v Van Hook-Williams*, 302 Mich App 521, 530; 839 NW2d 237 (2013).

"Due process contains both a procedural and a substantive component." *Id*. at 531. In this case, plaintiff's claim relies on the latter. "The substantive component of the due process guarantee 'provides heightened protection against government interference with certain fundamental rights and liberty interests.' " *Id*., quoting *Washington v Glucksberg*, 521 US 702, 720; 117 S Ct 2258; 138 L Ed 2d 772 (1997). However, as previously mentioned, " '[t]here is no constitutional . . . right of a convicted person to be conditionally released before the expiration of a valid sentence' " because " 'the conviction, with all its procedural safeguards, has extinguished that liberty right.' " *Hurst v Dep't of Corrections Parole Bd*, 119 Mich App 25, 27-28; 325 NW2d 615 (1982), citing *Greenholtz v Inmates of the Nebraska Penal & Correctional Complex*, 442 US 1, 7; 99 S Ct 2100; 60 L Ed 2d 668 (1979). See also *Jones*, 468 Mich at 651. Thus, " '[t]hat the state holds out the *possibility* of parole provides no more than a mere hope that the benefit will be obtained . . . a hope which is not protected by due process [under the Fourteenth Amendment of the federal Constitution].' " *Glover v Parole Bd*, 460 Mich 511, 520; 596 NW2d 598 (1999), quoting *Greenholtz*, 442 US at 11. Because plaintiff has no constitutionally protected liberty interest in being paroled before his valid sentence expires, the trial court properly granted summary disposition on plaintiff's due process claim.

D. EQUAL PROTECTION

Plaintiff also challenges the parole-eligibility statutes, claiming that they violate equal protection. We disagree.

The Equal Protection Clause of the Michigan Constitution commands that "[n]o person shall be denied the equal protection of the laws . . . ." Mich Const 1963, art 1, § 2. This constitutional provision is nearly identical to the Equal Protection Clause of the United States Constitution, see US Const, Am XIV, § 1. Thus, "[t]he scope of Michigan's Equal Protection Clause is coextensive with that of its federal counterpart . . . ." *People v James*, 326 Mich App 98, 105; 931 NW2d 50 (2018).

" 'The constitutional guarantee of equal protection requires that the government treat similarly situated persons alike.' " *People v Haynes*, 256 Mich App 341, 345; 664 NW2d 225 (2003), quoting *People v Conat*, 238 Mich App 134, 153; 605 NW2d 49 (1999). "Unless the alleged discrimination involves a suspect class or impinges on the exercise of a fundamental right, a [statute contested on equal protection grounds] is evaluated under the rational basis test." *Id*. at 345. "Because state prisoners do not constitute a suspect class for purposes of equal protection

analysis, and [plaintiff] has not shown that the classification impinges on the exercise of a fundamental right, the test under both US Const Am XIV, and Const 1963, art 1, [§ 2], is whether the classification is rationally related to a legitimate governmental purpose." *People v Groff*, 204 Mich App 727, 731; 516 NW2d 532 (1994). See also *Haynes*, 256 Mich App at 345 ("the disparate treatment of criminal offenders . . . is [not] generally viewed as affecting an individual's fundamental interests"). This Court has specifically recognized that "[l]egislative schemes distinguishing various categories of prisoners for parole eligibility purposes 'require only some rational basis to sustain them.' " *Hawkins v Dep't of Corrections*, 219 Mich App 523, 527; 557 NW2d 138 (1996), quoting *McGinnis v Royster*, 410 US 263, 270; 93 S Ct 1055; 35 L Ed 2d 282 (1973). Moreover, "[a] statute's constitutionality is presumed under the rational basis analysis," and "[t]he burden therefore rests with the party challenging the legislation to demonstrate that the classification is arbitrary and not rationally related to a legitimate government interest." *Haynes*, 256 Mich App at 346. "If a legislative classification is supported by any state of facts either known or which could reasonably be assumed, it must be upheld." *Id.* (citations and quotation marks omitted).

Assuming that criminal defendants sentenced to life imprisonment and those sentenced to a term of years are similarly-situated, we hold that "the Legislature could rationally conclude that it is appropriate to require a prisoner to serve the minimum term before being eligible for parole." See e.g., *Alvarez v Straub*, 64 F Supp 2d 686, 698 (ED Mich, 1999) (discussing mandatory-minimum sentences). "Similarly, as a simple administrative matter the legislature could, and indeed had to, choose some time at which persons serving life sentences bec[a]me eligible for parole." *Id.* "That this scheme may at times result in the anomalous result of a person being convicted of a more serious crime being eligible for parole sooner than someone convicted of a less serious crime does not render the scheme irrational."[4] *Id.* See also *Ughbanks v Armstrong*, 208 US 481; 28 S Ct 372; 52 L Ed 582 (1908) (rejecting a convicted habitual offender's equal protection challenge to Michigan's prior parole scheme which denied habitual offenders parole eligibility at the end of their minimum sentence); *People v Nowak*, 387 Ill 11; 55 NE2d 63 (1944) (rejecting the defendant's equal protection argument that a person sentenced to life imprisonment would be parole eligible after serving 20 years' imprisonment while the defendant, who was sentenced to a 100-year prison term, would not be eligible for parole until serving 33 1/3 years' imprisonment).

Moreover, in *Hawkins*, 219 Mich App at 528, this Court noted that "[t]he numerous crimes listed in MCL 791.233b include many of the most serious offenses under state law," and that "[i]t

[4] Plaintiff contends that lifers eligible for parole commit *more* serious crimes, citing to the first-degree murder statute; however, a prisoner convicted of first-degree murder is not eligible for parole, MCL 750.316(1); MCL 791.234(6)(a). Plaintiff also suggests that a conviction for second-degree murder is *more* serious. But the Legislature has provided that second-degree murder may be punished by a sentence of life with parole or any term of years, *id.*, just like carjacking, MCL 750.529a. Again, that the Legislature gave judges the authority for individualized sentencing that takes into consideration the circumstances surrounding the offense and the offender indicates that there is a rational basis for treating those sentenced to a term of years and those sentenced to life imprisonment with the possibility of parole differently.

is facially reasonable to regard those convicted of very serious crimes as generally posing a greater threat to society than other prisoners and, accordingly, to impose greater restrictions on their parole eligibility." MCL 791.233b(*x*) provides that carjacking is one of those crimes. As in *Hawkins*, 219 Mich App at 528, "[i]t is facially reasonable to regard those convicted of very serious crimes," such as plaintiff, who was convicted of carjacking, MCL 750.529a, "as generally posing a greater threat to society than other prisoners," and to consequently "impose greater restrictions on [his] parole eligibility."

Accordingly, the parole eligibility statutes "do not violate [plaintiff's] . . . equal protection rights," *Hawkins*, 219 Mich App at 528, and the trial court properly granted summary disposition on this claim.

E. CRUEL OR UNUSUAL PUNISHMENT

The Michigan Constitution prohibits "cruel or unusual punishment." Mich Const 1963, art 1, §16. "A sentence within the guidelines range is presumptively proportionate, and a proportionate sentence is not cruel or unusual." *People v Bowling*, 299 Mich App 552, 558; 830 NW2d 800 (2013).

In this case, plaintiff does not challenge the validity or proportionality of his sentence; instead, he takes issue with the minimum sentence he must serve before he is eligible for parole. As in *Bowling*, 299 Mich App at 558, plaintiff "incorrectly assumes that he is entitled to parole." Again, "[t]here is no constitutional or inherent right of a convicted person to be conditionally released before the expiration of a valid sentence." *Greenholtz*, 442 US at 7. Rather, "the early parole provision[s] of the Michigan parole statute[s] . . . only create[] an expectation or hope of an early parole," and the parole eligibility statutes do not "create a right to parole . . . ." *Hurst*, 119 Mich App at 28-29.

Because plaintiff has no right to parole, the fact that he must serve his 25-year minimum sentence before he becomes parole eligible is not cruel or unusual punishment. Therefore, the trial court properly granted summary disposition on this claim.

Affirmed.

/s/ Anica Letica
/s/ Karen M. Fort Hood
/s/ Elizabeth L. Gleicher