

STATE OF MICHIGAN
COURT OF APPEALS

MICHAEL JACKSON,

Petitioner-Appellant,

V

DEPARTMENT OF CORRECTIONS,
DIRECTOR OF THE DEPARTMENT OF
CORRECTIONS, and PAROLE BOARD,

Respondents-Appellees.

FOR PUBLICATION

September 7, 2001

9:05 a.m.

No. 220192

Ingham Circuit Court

LC No. 99-089868-AA

Before: Doctoroff, P.J., and Holbrook, Jr. and Hoekstra, JJ.

PER CURIAM.

Petitioner, who is serving a parolable life sentence for second-degree murder, MCL 750.317, appeals by leave granted the circuit court's denial of his petition for a writ of mandamus requesting the circuit court to enter an order directing the Parole Board to prepare, consider, and follow parole guidelines in his statutorily mandated interview, MCL 791.234(6)(a). We affirm.

Petitioner argues that he is entitled to a new "hearing"¹ because the parole guidelines of MCL 791.233e (§ 33e) are applicable to any prisoner, such as petitioner, who is eligible for parole consideration pursuant to MCL 791.234(6) (§ 34(6)). According to petitioner, § 33e imposes an absolute duty on the Parole Board to prepare and consider guidelines at the time of interviewing prisoners for parole, including prisoners under consideration pursuant to § 34(6).

Parole eligibility is governed by statute and the interpretation and application of statutes is reviewed de novo. *In re Parole of Johnson*, 235 Mich App 21, 22-23; 596 NW2d 202 (1999), citing MCL 791.234 and *People v Webb*, 458 Mich 265, 274; 580 NW2d 884 (1998). With regard to interpreting statutes, our Supreme Court has explained that "the primary goal of judicial interpretation of statutes is to ascertain and give effect to the intent of the Legislature." *Webb, supra* at 273-274. "As far as possible, effect should be given to every phrase, clause, and word in

¹ In his petition for a writ of mandamus, petitioner states that a member of the Parole Board interviewed him for parole eligibility in 1993 and 1998, but in each instance the Parole Board determined that it had "no interest" in initiating further proceedings.

the statute.” *Sun Valley Foods Co v Ward*, 460 Mich 230, 237; 596 NW2d 119 (1999). Judicial construction is not permitted where a statute is unambiguous. *Id.* at 236.

Here, in arguing that parole guidelines should have been prepared and considered during his statutorily mandated interview under § 34(6)(a), petitioner relies on the language of §§ 33e(1) and (5), which provide in relevant part:

(1) The department shall develop parole guidelines that are consistent with section 33(1)(a) [MCL 791.233(1)(a)] and that shall govern the exercise of the parole board’s discretion pursuant to sections 34 and 35 [MCL 791.234 and 791.235] as to the release of prisoners on parole under this act. The purpose of the parole guidelines shall be to assist the parole board in making release decisions that enhance the public safety.

* * *

(5) The department shall promulgate rules ..., which shall prescribe the parole guidelines.... Until the rules take effect, the director shall require that the parole guidelines be considered by the parole board in making release decisions. After the rules take effect, the director shall require that the parole board follow the parole guidelines.

Petitioner claims that because §§ 33e(1) and (5) direct that guidelines are to be considered and are to apply to prisoners under parole consideration pursuant to § 34, and because § 34(6) applies to him, parole guidelines should have been prepared for him for use during his interview.² To the contrary, respondents argue that the Parole Board is not required to prepare parole guidelines for petitioner because “the decision not to advance [petitioner] to a public hearing is not a ‘release decision.’” Further, respondents claim that the language of § 33e(1), using the conjunctive “and” when referring to “sections 34 and 35,” means that the prisoner’s parole consideration must be governed by both of these sections, but petitioner’s parole consideration is not because section 35 is in conflict with subsection 34(6).

We need not address the majority of the arguments made on appeal because a fundamental predicate has not been met in this case. In order for § 33e to apply, the Parole Board must be confronting a “release” decision. MCL 33e(1) and (5). Upon review of § 33e, it is apparent that parole guidelines are required when the Parole Board is exercising its discretion “as to the release of prisoners on parole” and are to be considered and used to assist the Parole Board “in making release decisions.” MCL 791.233e(1) and (5). Clearly, the Legislature limits the time when parole guidelines are to be prepared and utilized to “release” decisions. For prisoners serving parolable life sentences, “the ‘release decision’ occurs only after the inmate serving a parolable life sentence has proceeded through the initial interview, avoided judicial veto, and advanced through a public hearing to the ultimate decision of the Parole Board at which time the

² Without extensive analysis specific to the parole process for prisoners serving parolable life sentences, petitioner simply concludes that parole guidelines are required to be prepared and utilized at the initial interview.

Parole Board either grants or denies parole.” *Gilmore v Parole Board*, __ Mich App __, __; __ NW2d __ (2001). Moreover, “[u]ntil all the statutory conditions are met, the Parole Board lacks the discretion to parole a prisoner.” *Johnson, supra* at 26. Accordingly, petitioner was not entitled to have parole guidelines prepared and used during the initial statutorily mandated interview, where the Parole Board neither makes a release decision nor exercises its discretion to parole a prisoner.

On the basis of the clear statutory language, we hold that parole guidelines need not be prepared for prisoners serving parolable life sentences until the Parole Board is faced with the decision whether to release the prisoner on parole. Under the statutory scheme for prisoners serving parolable life sentences, that decision is not confronted until after the prisoner has been interviewed, has avoided judicial veto, and has advanced through a public hearing. Petitioner is entitled to no relief.³

Affirmed.

/s/ Martin M. Doctoroff
/s/ Donald E. Holbrook, Jr.
/s/ Joel P. Hoekstra

³ Because our holding does not recognize or confer any legal right to petitioner, it is unnecessary to discuss his remaining claims.