

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF GRAND TRAVERSE

JOHN THOMAS GEORGE #228671,

Petitioner,

v

Case No. 03- 22679-AH
HON. PHILIP E. RODGERS, JR.

RAY WOLFE (WARDEN),

Respondent.

John Thomas George #228671
Petitioner in Pro Per

Jason Julian (P39547)
Assistant Attorney General
Attorney for Respondent

ORDER DENYING PETITIONER'S MOTION FOR RECONSIDERATION

The Petitioner John Thomas George filed an application for writ of habeas corpus pursuant to MCR 3.303. The Court examined the application and issued an Order to Show Cause pursuant to MCR 3.303(D)(b). After the Respondent filed a response, the Court decided the matter on the briefs and, for a number of reasons, denied the relief requested.

On May 22, 2003, the Petitioner filed a Motion for Reconsideration. The Court has reviewed the motion and, regardless of any errors the Court may have made, for the reasons stated herein, finds that the Petitioner is not entitled to the relief requested.

The primary, if not the only, object of a writ of habeas corpus is to determine the legality of the restraint under which a person is held. 39 Am Jur 2d, Habeas Corpus, §1, p 179, citing *Carlson v Landon*, 342 US 524; 72 S Ct 525; 96 L Ed 547 (1952), reh den 343 US 988; 72 S Ct 1069; 96 L Ed 1375 (1952). Parole has been defined as a form of custody whereby the prisoner leaves his place of incarceration while remaining in the legal custody and control of the parole

board until the termination of his sentence. *Bricker v Michigan Parole Bd*, 405 F Supp 1340 (ED Mich1975). Its purpose is to keep a prisoner in legal custody while permitting him to live beyond the prison enclosure so that he may have an opportunity to show that he can refrain from committing crime. *Ex parte Dawsett*, 311 Mich 588; 19 NW2d 110 (1945), cert den 329 US 786; 67 S Ct 299; 91 L Ed 674 (1946). In this context, it is apparent that what Petitioner seeks is a determination of the form his continued custody should take--a matter for the parole board--and not whether his continued custody is legal. Therefore, habeas corpus relief is inappropriate.

This Court has previously held, however, that an inmate has a right to seek relief from a decision of the Michigan Parole Board, pursuant to MCL 600.631, and that the review is limited to whether the Parole Board's decision was authorized by law. See, *Morales v Michigan Parole Board*, Grand Traverse County Circuit Court File No. 01-21884-AP, decision dated February 13, 2002. To the extent that this Petition for Writ Habeas Corpus alleges that the Parole Board's decision to deny Petitioner parole was not authorized by law, the Court would note that the Petitioner has an adequate remedy by way of appeal, pursuant to MCL 600.631, to the circuit court of the county where he was a resident at the time of his incarceration or to the Circuit Court of Ingham County.¹ Therefore, the Petitioner's Motion for Reconsideration is denied.

IT IS SO ORDERED.

¹ MCL 600.631 provides:

An appeal shall lie from any order, decision, or opinion of any state board, commission, or agency, authorized under the laws of this state to promulgate rules from which an appeal or other judicial review has not otherwise been provided for by law, to the circuit court of the county of which the appellant is a resident or to the circuit court of Ingham county, which court shall have and exercise jurisdiction with respect thereto as in nonjury cases. Such appeals shall be made in accordance with the rules of the supreme court.

The Michigan Court of Appeals has held that a state prison inmate does not become a resident of the county in which the correctional facility of current placement is located. *Fowler v Fowler*, 191 Mich App 318; 477 NW2d 112 (1991); *Paprocki v Jackson County Clerk*, 142 Mich App 785; 371 NW2d 450 (1985); *Curry v Jackson Circuit Court*, 151 Mich App 754; 391 NW2d 476 (1986).

HONORABLE PHILIP E. RODGERS, JR.
Circuit Court Judge

Dated: _____