

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF GRAND TRAVERSE

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MICHAEL A. SNODGRASS,

Petitioner,

v

File No. 12-29521-AH  
HON. PHILIP E. RODGERS, JR.

WARDEN SHIRLEE A. HARRY and  
SONIA WARCHOCK,

Respondents.

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Petitioner Acting in Pro Per

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pc: Respondents

**DECISION AND ORDER DENYING PETITION FOR  
WRIT OF HABEAS CORPUS PURSUANT TO MICHIGAN COURT RULE 2.111**

A Wayne County jury convicted the Petitioner, Michael A. Snodgrass, of one count of second degree murder, pursuant to MCL § 750.317. Subsequently, the Petitioner was sentenced to serve 360 to 960 months with the Michigan Department of Corrections (MDOC), with a release date no earlier than May 1, 2009.<sup>1</sup>

The Petitioner has now submitted a Petition for Writ of Habeas Corpus challenging the legality of his incarceration at the Pugsley Correctional Facility in Grand Traverse County. The Petitioner claims that his due process rights were violated because there was insufficient evidence provided to support the claimed parole violations.

A prisoner's right to file a complaint for habeas corpus is guaranteed by the Michigan Constitution.<sup>2</sup> The object of a writ of habeas corpus is to determine the legality of the restraint under which a person is held.<sup>3</sup> Habeas corpus is the remedy when a sentence of imprisonment is

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<sup>1</sup> Pursuant to the Petition and exhibits submitted, it appears that Petitioner was granted parole in November of 2009. However, on March 28, 2012, the Michigan Parole Board revoked the Petitioner's parole for engaging in assaultive, abusive, threatening/intimidating behavior and failing to report to his parole office as instructed.

<sup>2</sup>*Hinton v Parole Bd*, 148 Mich App 235, 244; 383 NW2d 626 (1986).

<sup>3</sup>*Moses v Dep't of Corrections*, 274 Mich App 481; 736 NW2d 269 (2006).

wholly void for lack of authority to sentence to the institution in question.<sup>4</sup> If a legal basis for detention is lacking, a judge must order the release of the detainee from confinement.<sup>5</sup>

Pursuant to MCL § 600.4301 *et seq*:

[A]n action for habeas corpus to inquire into the cause of detention may be brought by or on the behalf of any person restrained of his liberty within this state under any pretense whatsoever, except...persons convicted, or in execution, upon legal process, civil or criminal [and] persons committed on original process in any civil action on which they were liable to be arrested and imprisoned, unless excessive and unreasonable bail is required.<sup>6</sup>

Thus, habeas corpus cannot serve as a substitute for an appeal or writ of error and cannot be used to review the merits of a criminal conviction.<sup>7</sup> MCL § 600.4310(3) prohibits a habeas action by or on behalf of “persons convicted, or in execution, upon legal process, civil or criminal,” and is not a means of testing the conditions of admittedly lawful custody.<sup>8</sup> Furthermore, under MCL § 600.4310, habeas relief is open to a convicted person only where the convicting court was without jurisdiction to try the defendant for the crime in question.<sup>9</sup> To qualify for habeas relief, the jurisdictional defect must be radical, rendering the conviction absolutely void.<sup>10</sup> A radical defect in jurisdiction contemplates an act or omission by state authorities that clearly contravenes an express legal requirement in existence at the time of the act or omission.<sup>11</sup> Habeas relief may be denied in the exercise of a court’s discretion where full relief may be obtained in other more appropriate proceedings.<sup>12</sup>

With regard to parole, a prisoner enjoys no constitutional or inherent right to be conditionally released from a validly imposed sentence.<sup>13</sup> With limited exception, matters of parole lie solely within the broad discretion of the Parole Board, and the freedom enjoyed by a

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<sup>4</sup>*Ex parte Allen*, 139 Mich 712; 103 NW 209 (1905).

<sup>5</sup>MCL § 600.4352.

<sup>6</sup>MCL § 600.4307; § 600.4310.

<sup>7</sup>*Cross v Dep’t of Corrections*, 103 Mich App 409; 303 NW2d 218 (1981).

<sup>8</sup>*Harris v Nelson*, 394 US 286; 89 S Ct 1082; 22 L Ed 2d 281 (1969); *Walker v Wainwright*, 390 US 335; 88 S Ct 962; 19 L Ed 2d 1215 (1968), rehearing denied, 390 US 1036; 88 S Ct 1420; 20 L Ed 2d 299.

<sup>9</sup>*People v Price*, 23 Mich App 663, 669-670; 179 NW2d 177 (1970). A radical defect in jurisdiction so as to permit review of conviction by habeas corpus contemplates an act or omission by state authorities that clearly contravenes an express legal requirement in existence at the time of the act or omission. *Id.*

<sup>10</sup>*Id.*

<sup>11</sup>*Id.* at 671.

<sup>12</sup>*Phillips v Warden, State Prison of Southern Mich*, 153 Mich App 557, 566; 396 NW2d 482 (1986).

<sup>13</sup>*Jones v Dep’t of Corrections*, 468 Mich 646; 664 NW2d 717 (2003).

paroled prisoner is a limited freedom.<sup>14</sup> After a prisoner is released on parole, the prisoner's parole order is subject to revocation at the discretion of the Parole Board for cause as provided in MCL § 791.240a(1).<sup>15</sup> The Parole Board may revoke parole if a preponderance of the evidence supports the allegation that a parole violation occurred.<sup>16</sup>

Parole decisions are not "contested cases," and therefore, decisions of the Parole Board are not appealable under the Administrative Procedures Act.<sup>17</sup> An action for habeas corpus is an original action, not an administrative appeal.<sup>18</sup> In the event that the Parole Board has denied a prisoner parole or revoked a prisoner's parole exclusively on the basis of race, religion, natural origin, then a complaint of habeas corpus would be proper.<sup>19</sup> Nonetheless, a reviewing court may not substitute its judgment for the Parole Board's decision.<sup>20</sup>

A court must engage in a review of the administrative record to determine whether a radical defect occurred when a prisoner/petitioner claims that his parole was revoked without due process because the alleged parole violation was not supported by sufficient evidence.<sup>21</sup> In reviewing whether there was sufficient evidence to support the revocation of parole, courts must consider whether any alleged insufficiency gives rise to a due process violation that constitutes a radical defect in jurisdiction rendering the Parole Board proceeding absolutely void.<sup>22</sup>

Michigan case law is not entirely clear regarding whether or when a claim of insufficient evidence may establish a radical defect in jurisdiction for purposes of habeas relief.<sup>23</sup> However, United States Supreme Court cases have helped clarify the requirements.<sup>24</sup> In *Superintendent, Mass Correctional Institution, Walpole v Hill*, the Court stated:

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<sup>14</sup> *Id.*

<sup>15</sup> MCL § 791.240a(1).

<sup>16</sup> MCL § 791.240a(10). However, there remain certain limited due process requirements, including notice and the opportunity to be heard, which apply to the loss of liberty occasioned by parole revocation. See, *Jones, supra*.

<sup>17</sup> *Morales v Mich Parole Bd*, 260 Mich App 29; 676 NW2d 221 (2003). Review of administrative decisions under the Revised Judicature Act is limited to the review provided for by the state constitution.

<sup>18</sup> MCR 3.301(A); MCR 3.302

<sup>19</sup> *Morales, supra*.

<sup>20</sup> *Id.*

<sup>21</sup> *Kenney v Booker*, unpublished opinion per curiam of the Court of Appeals, issued April 3, 2012 (Docket No. 304900).

<sup>22</sup> *Id.*

<sup>23</sup> *Id.* See, *In re Riggins*, 307 Mich 234, 239; 11 NW2d 871 (1943) [in a habeas proceeding the court does not pass upon the weight of the evidence, but examines the evidence to note whether the finding was supported by any credible evidence.]

<sup>24</sup> *Douglas v Buder*, 412 US 430, 431; 93 S Ct 2199; 37 L Ed 2d 52 (1973) [decisions resulting in the loss of an important liberty interest violates due process if the decisions if not supported by any evidence]; *Superintendent, Mass Correctional Institution, Walpole v Hill*, 472 US 445; 105 S Ct 2768; 86 L Ed 2d 356 (1985) [the requirements

The Federal Constitution does not require evidence that logically precludes any conclusion but the one reached by the [b]oard. Instead, due process in this context requires only that there be some evidence to support the findings made in the [h]earing. Although evidence in this case might be characterized as meager...the record is not so devoid of evidence that the findings of the board were without support or otherwise arbitrary. [And] the determination of the [b]oard was not so lacking in evidentiary support as to violate due process.<sup>25</sup>

After reviewing the administrative record, this Court finds there was sufficient evidence to support the findings made by the Parole Board. First, the Petitioner was directly identified by the victim as his attacker.<sup>26</sup> Second, law enforcement was unable to locate Petitioner at the scene of the assault, however, despite living approximately 12 miles away his vehicle was parked nearby the scene.<sup>27</sup> Third, Stacey Keatts, the only witness, did not provide law enforcement with accurate information regarding the incident.<sup>28</sup>

Furthermore, Petitioner's claim that "the time of the alleged assault was the only part of Osentoski's statement that he was sure of and never changed," is inaccurate. Osentoski testified that the incident occurred while it was dark and may have occurred at 6 p.m. or 7 p.m., however, he was unsure of the exact time. Additionally, there is no evidence that Sonia Warchock, altered witness testimony or improperly denied a third adjournment.<sup>29</sup>

Finally, Petitioner admitted during his testimony that he knowingly failed to report to his parole officer on November 2, 2011, November 9, 2011 and November 23, 2011. As a condition of Petitioner's parole, failure to report was a willful violation of parole.<sup>30</sup>

The Court finds that the Parole Board's determination to revoke Petitioner's parole was not arbitrary or so lacking in evidentiary support as to violate due process. Therefore, no radical

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of due process are satisfied if some evidence supports the decision...this standard is met if there is some evidence from which the conclusion of the administrative tribunal could be deduced...determining whether this standard is satisfied does not require examination of the entire record, independent assessment of the credibility of witnesses, or weighing of the evidence, but instead the relevant question is whether there is any evidence in the record that could support the conclusion reached by the board.]

<sup>25</sup> *Superintendent, Mass Correctional Institution, supra* at FN 24.

<sup>26</sup> Case Report, CR No 110028760, dated October 30, 2011; hearing testimony of Kevin Osentoski, the victim of the assault.

<sup>27</sup> *Id.*

<sup>28</sup> According to the Case Report, Keatts indicated to the officer the truck parked in her backyard belonged to her friend "Wayne," but after running the vehicle's plate it was shown to belong to the Petitioner.

<sup>29</sup> Sonia Warchock acted as the Hearing Examiner/Parole Board Member at the Petitioner's Revocation Hearing.

<sup>30</sup> *Kenny, supra.* [Court notes that petitioner pleaded guilty to violating a condition of his parole by failing to report, a condition which alone would have been sufficient to revoke petitioner's parole pursuant to MCL § 791.240a.]

defect of jurisdiction occurred and habeas relief is unwarranted. For the reasons stated herein, the Petition for Writ of Habeas Corpus Pursuant to Michigan Court Rule 2.111 is denied.

IT IS SO ORDERED.

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HONORABLE PHILIP E. RODGERS, JR.  
Circuit Court Judge