

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

TIMOTHY SELEPAK #253379,

Petitioner,

v

File No. 03-22609-AH
HON. PHILIP E. RODGERS, JR.

WARDEN RAY WOLFE,

Respondent.

Patrick J. McQueeney (P45797)
Attorney for Petitioner

H. Steven Langschwager (P52380)
Attorney for Respondent

DECISION AND ORDER
REGARDING PETITION FOR WRIT OF HABEAS CORPUS

Petitioner Timothy Selepak was convicted of unarmed bank robbery on December 2, 1996 and arson of a dwelling on February 11, 1997. He was sentenced to concurrent terms of 3 to 20 years incarceration in the Michigan Department of Corrections. He is currently confined at the Pugsley Correctional Facility in Grand Traverse County, Michigan.

Petitioner was released on parole on May 31, 2000 for a term of 36 months. On September 5, 2002, Petitioner was arrested on three parole violation charges: (1) association with a known felon; (2) association with a known felon; and (3) conspiracy to commit a felony. Petitioner was arraigned on the violations on October 9, 2002 and he plead guilty to the two counts of association with a known felon and not guilty to the count of conspiracy to commit a felony. He waived his right to a preliminary hearing and offered his mitigation at the arraignment. He was to be provided with a hearing on the count of conspiracy to commit a felony.

On November 4, 2002, Petitioner received a Notice of Action by the Parole Board revoking his parole and continuing his detention for a term of 12 months because he plead guilty to the two charges of association with a known felon. The third count of conspiracy to commit a felony was dismissed. No revocation hearing was held.

On February 3, 2003, Petitioner filed this Complaint for Writ of Habeas Corpus. On April 22, 2003, the Court issued its decision and order denying the relief requested. On April 16, 2003, the Petitioner attended a Parole Board interview and was again continued for 12 months. He filed a Request for Reconsideration of his Petition for Writ of Habeas Corpus. The Court issued a pre-hearing order giving the Respondent 21 days from the date of the order to file a response and giving the Petitioner 35 days from the date of the order to file a reply. These time limitations have now expired.

The Petitioner seeks reconsideration of his Petition for Writ of Habeas Corpus because he alleges that the Parole Board continues to use the dismissed charge of conspiracy to commit a felony in deciding whether to grant him parole even though he has never been provided a hearing on that charge. He was most recently interviewed on April 16, 2003 by a Parole Board member who he claims questioned him about that charge before recommending a 12-month continuance. The Court has reviewed the submissions of the parties and dispenses with oral argument, pursuant to MCR 2.119(E)(3).

The Petitioner correctly points out that this Court has previously held 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. However, the Petitioner did not file an appeal pursuant to MCL 600.631, but instead filed a Petition for Writ of Habeas Corpus which this Court denied by written decision and order dated April 22, 2003.

MCR 2.119(F), entitled Motions for Rehearing and Reconsideration, reads in pertinent part, as follows:

(3) Generally, and without restricting the discretion of the court, a motion for rehearing or reconsideration which merely presents the same issues ruled on by the court, either expressly or by reasonable implication, will not be granted. The moving party must demonstrate a palpable error by which the court and the parties have been misled

and show that a different disposition of the motion must result from correction of the error.

To the extent that the motion presents the same issues ruled on by the Court, either expressly or by reasonable implication, the Defendant's motion for reconsideration is denied.

To the extent that the motion presents new evidence that the Parole Board is continuing to deny the Petitioner parole because of a dismissed conspiracy to commit a felony charge upon which the Petitioner was never provided a hearing, the Court would agree that the Petitioner has a right to appeal that decision, 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

IT IS SO ORDERED.

HONORABLE PHILIP E. RODGERS, JR.
Circuit Court Judge

Dated: S/ 6/20/03

¹ MCL 6000.631 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).