

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

TOBY LEE OWEN #268546,

Petitioner,

v

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

WARDEN RAY WOLFE,

Respondent.

Toby Lee Owen # 268546
Petitioner In Pro Per

Michael Cox (P43039)
Michigan Attorney General

DECISION AND ORDER
REGARDING PETITION FOR WRIT OF HABEAS CORPUS

Petitioner Toby Lee Owen was convicted upon his plea of guilty of criminal sexual conduct in the 2nd degree and criminal sexual conduct in the 3rd degree in the Circuit Court for Ingham County. He was sentenced to two concurrent sentences of 5 to 15 years confinement 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 in July of 2002. While on parole, he was charged with two parole violations: possessing children's toys and possessing a photograph of the victim in his underlying case. Pursuant to a plea agreement, the Petitioner pled guilty to possessing children's toys and the charge of possessing a photograph of his victim was dismissed. Petitioner's parole was revoked and he was issued a 12-continuance. During the continuance, he was interviewed for parole and received another 12-continuance. The stated reason for the continuance was "the

prisoner's past parole failure within two months of parole which included a picture of the victim, fails to demonstrate insight into his deviant behavior or that risk reduce."

The Petitioner filed this Petition for Writ of Habeas Corpus complaining that the Parole Board's decision violated his right to due process and he is being illegally detained because the Parole Board considered a parole violation charge that had been dismissed pursuant to a plea agreement and upon which he had not been provided a hearing. The Court has reviewed the Petition and finds that the Petitioner is not entitled to the relief requested. MCR 3.303(D)(1).

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 plaintiff 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 because it was based on a dismissed probation violation charge upon which the Petitioner was not provided a hearing, 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 Petition for Writ of Habeas Corpus should be and hereby is denied.

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).