STATE OF MICHIGAN
IN THE 29th CIRCUIT COURT FOR THE COUNTY OF GRATIOT

RAND W. GOULD
Plaintiff,

Cir. Ct. No. _____
v. Hon. _____

MICHIGAN PAROLE BOARD, ET AL
Defendants.

RAND W. GOULD, C-187131
Plaintiff in Pro Per
Central Mich. C.F.
320 N Hubbard St.
St. Louis, MI 48880-1926

DANA NESSEL
Attorney for Defendants
Michigan Attorney General
P.O. Box 30212
Lansing, MI 48909

Petition for Writ of Mandamus

NOW COMES PLAINTIFF, Rand W. Gould in propria persona, who petitions this Honorable Court to issue a Writ of Mandamus against the defendants, Michigan Parole Board, and its members Anthony King, Brian J. Shipman, and Sandra Wilson, pursuant to MCR 3.305, to compel them to perform their public duty, and comply with MCL 791.233e and MCL 791.234, and grant him a parole for the reasons, facts, and law set forth below.

Plaintiff is a 67-year-old state prisoner serving his 22nd year of a 25-to-50 year sentence for kidnapping by secret confinement, MCL 750.349, as a third habitual offender, MCL 769.13, in the Michigan department of Corrections (MDOC) at the Central Michigan Correctional Facility in the county of Gratiot, Michigan. N.b., in 2006, the state legislature moved the act of "secret confinement" to unlawful imprisonment, MCL 750.349a, reducing the statutory maximum sentence from a parolable life to no more than 15 years in prison. See *People v. Rand W. Gould,* Oak CC 1998-161396-FH.

Plaintiff has been eligible for parole since his May 19, 2019 earliest release date (ERD), has a low COMPAS score, an excellent institutional record with no Class I Misconducts, and has

completed all required programming, except Phase II-Substance Abuse, added as a requirement on September 23, 2013, for no apparent reason as he had spent the previous 15 years substance-abuse free, which has not been made available to him, despite his repeated requests for the past seven years. See Parole Eligibility Report (PER), J. Thompson, 12/05/2018, and PER, Timothy R. Eichorn, 2/17/2020, marked Exhibit A and Exhibit B, respectively, attached hereto, and incorporated herein by reference.

Plaintiff's parole guidelines have been scored twice at "3", which calculates to a "HIGH Probability of Parole". See Parole Guidelines Scoresheets, 1/04/2019 and 4/06/2020, marked Exhibit C, attached hereto and incorporated herein by reference.

Despite this record, plaintiff has been unlawfully denied parole by defendants three times due to their failure to provide "substantial and compelling *objective* reasons stated in writing" (emphasis supplied) for their departure from plaintiff's parole guidelines score of a "HIGH Probability of Parole" as required by MCL 791.233e(b) and specifically listed in MCL 791.233e(7)(a-k). Instead, defendants' three decisions were made in flagrant disregard of said statues and were based solely on their subjective feelings, as indicated by their intentional omission of the word "objective" from all three decisions, when they were not shirking the performance of their public duty by denying their jurisdiction altogether. See Parole Board (P.Bd.) Notice of Decision, Anthony King & Brian J. Shipman, 1/18/2019, P. Bd., Notice of Decision, Brian J. Shipman & Sandra A. Wilson, 4/17/2020, and P.Bd. Notice of Decision, Brian J. Shipman & Sandra A. Wilson, 8/21/2020, marked Exhibit D, Exhibit E, and Exhibit F, respectively, attached hereto and incorporated herein by reference.

The elements that establish whether a writ of mandamus shall issue are: "(1) the party seeking the writ has a clear legal right to performance of the specific duty sought, (2) the defendant has clear legal duty to perform the act requested, (3) the act is ministerial and involves no exercise of discretion or judgement, and (4) no other remedy exists, legal or equitable, that may achieve the same result." *Morales v Mich. Parole* B.d., 260 Mich. 29, 41 (2003).

"MCL 791.234(1) provides that the Parole Board acquires jurisdiction over 'a prisoner sentenced to an indeterminate sentence and confined to a state correctional facility' when that 'prisoner has served a period of time equal to the minimum sentence imposed by the court for the crime of which he or she was convicted less good time or disciplinary credits if applicable.'" *Hayes v Parole B.d.*, 312 Mich App 724,779 (2015).

Although, the decision to grant or deny plaintiff a parole is within the discretion of the defendants, *Hopkins v Parole Bd,* 237 Mich App 629,637(1999), that discretion is governed by state law, *In re Parole of Elias,* 294 Mich App 507,539 (2011), as stated in MCL 791.233e:

> (1) The department shall develop parole guidelines that are consistent with section 33(1)(a) to govern the exercise of the parole board's discretion *under sections 34 and 35 as to the release of prisoners on parole under this act.* The purpose of the parole guidelines is to assist the parole board in making objective, evidence-based release decisions that enhance public safety.
>
> ***

> (6) The parole board *may depart* from the parole guidelines by denying parole to a prisoner who has a high probability of parole as determined under the parole guidelines… *A departure under this subsection must be for substantial and compelling objective reasons stated in writing…*
> (7) *Substantial and compelling objective reasons for a* departure from the parole guidelines for a prisoner with a high probability of *parole are limited to the following circumstances:*
> (a) [Through] (k)… [Emphasis supplied]

When construing a statute, this Court's "purpose is to discern and give effect to the Legislature's intent." *People v Morey,* 461 Mich. 325, 329-330 (1999). The foregoing text is a clear and unambiguous expression of Legislative intent "and the statute must be enforced as written." *Id.,* at 330.

None of the "circumstances" listed in MCL 791.233e(7)(a-k) apply to plaintiff. Consequently, defendants offered up a series of erroneous and/or subjective "reasons" of their own making for their departure from plaintiff is parole guidelines of "a high probability of parole" in violation of MCL 791.233e, as stated on 1/18/2019:

> MR. GOULD'S PBJ IS 07/19/2023. AT THIS TIME *THE PB DOES NOT FEEL MR. GOULD UNDERSTANDS, IN ANY MEANINGUL WAY, THE FACTORS THAT CONTRIBUTED TO HIS CRIMINAL BEHAVIOR, NOR HAS HE PRODUCED A PAROLE PLAN THAT MIGHT REDUCE HIS RISK FOR FUTURE CRIMINAL BEHAVIOR* [Emphasis supplied, Exhibit D].

On 4/17/2020, defendants simply stated:

> PB HAS NO JURISDICTION AT THIS TIME [Exhibit E]

And on 8/31/2020, defendants were forced to alter their previous decision and stated:

> THE PRISONER HAS NOT YET COMPLETED PROGRAMMING ORDERED BY THE DEPARTMENT TO REDUCE PRISONER'S RISK [Exhibit F].

As shown, aside from defendants' subjective "feel[ings]" and the falsehood that plaintiff did not "produce a parole plan", when he did, as shown below, both the 1/18/2019 and 4/17/2020 decision to deny plaintiff a parole on the incredible fiction that defendants did not have jurisdiction to make a decision and would not until 7/19/2023. This, despite the plain language of MCL 791.234(1) and the decision in *Hayes, supra.* Nevertheless, the defendants stubbornly maintained this fiction in the face of plaintiff's objections, going so far as to state, on July 22, 2020, that "the Parole Board has *no interest in contacting the court to seek jurisdiction to possibly parole you prior to your PBJ date."* (Emphasis supplied). See letter to Michigan Parole Board, July 22, 2020, marked Exhibit G, Exhibit H, and Exhibit I, respectively, attached here and incorporated herein by references.

Consequently, on 7/27/2020, plaintiff sent defendants a notice of pending legal action regarding heir failure and/or refusal to perform their public duty as required by applicable state law in concern of their 4/17/2020 decision to deny plaintiff a parole. Whereupon, in their third decision in a little over seventeen months, on 8/31/2020, defendants' abandoned their erroneous "no jurisdiction" reason to deny plaintiff a parole, substituting the just as erroneous reason that plaintiff "has not completed programming". See Notice of Pending Legal Action, 27 July 2020, marked Exhibit J, attached hereto and incorporated herein by reference.

Said reason is based entirely on defendants' failure to provide plaintiff with the requisite "programming," i.e., Phase II Substance Abuse, which defendants added to his programming requirements on September 23, 2013 (See Exhibits A & B), more than fifteen years into his sentence and, considering plaintiff was drug free the entire time, for no apparent reason other than to create a "Catch-22" situation to deny him a parole, as defendants well knew he would not be enrolled in said program. In fact, every time plaintiff requested to be enrolled he was told he was "on the list".

Fortunately for plaintiff, the parole statutes no longer allow defendants to deny parole for said reason, as well as any subjective reasons, and the two applicable paragraphs concerning programming, MCL 791.233e(7)(b)&(h), require plaintiff to have refused said programming to deny him a parole:

(b) *The prisoner refuses to participate in* programming ordered by the department to reduce prisoner's risk. *A prisoner may not be considered to have refused programming if unable to complete programming due to factors beyond his or her control.* [Emphasis supplied]

Or require that said programming is not available in the community:

(h) The prisoner has not yet completed programming ordered by the department to reduce the prisoner's risk, and *the programming is not available in the community* and the risk cannot be adequately managed in the community before completion. [Emphasis supplied]

As set forth above, plaintiff repeatedly requested to be enrolled in Phase II Substance Abuse, and it was the defendants who "refused" to provide "programming", not the other way around. Moreover, substance abuse programming is widely available in the community and, considering plaintiff has spent the past nearly twenty-two years clean and sober, there would be very little, if any, "risk" to the community if he was released to finish his programming there. Thus, the only risk is to plaintiff's sobriety by defendants keeping him in the MDOC's drug-plagued prisons, where underpaid staff smuggle in massive amounts of contraband, primarily drugs, to be sold at exorbitant prices to supplement their income, as he reported years ago. See Rand W. Gould, "New Mail Policy in Michigan Prisons", *San Francisco Bay View,* January 2018, 3 & 6, and "The Weaponization of Suboxone Strips", *San Francisco Bay View,* February 2020, 3& 8, both at www.freerandgould.com.

Prior to the Covid-19 pandemic, it was arguable that prisoners were responsible for some of their drug smuggling. Now, no such argument can be made as MDOC prisons have been on lock-down for the past year, with no contact visits and no personal correspondence allowed in

pursuant to DOM 2020-28, now 2021-28, which mandates said mail be photocopied, with originals, including envelope, destroyed, and photocopies delivered to prisoners. Nonetheless, Central Michigan Correctional Facility, where plaintiff is imprisoned, is flooded with Covid-19 and drugs, mainly suboxone strips, THC wax, and tobacco. On December 4, 2020, Corrections Officer Joseph Mareinko was found in possession of 246 suboxone strips and 13 packages of THC wax in his socks at said facility and arrested. Yet, there remains no shortage of drugs inside its fences, or any other MDOC facility's fences.

After being confronted with plaintiff's objections to their contrafactual and unlawful decision of 1/18/2019 (Exhibit D), defendants abandoned all their reasons to deny plaintiff a parole, with the exception of their erroneous lack of jurisdiction claim, on 4/17/2020 (Exhibit E). This included their abandonment of the false claim that plaintiff had not "PRODUCED A PAROLE PLAN", which he had produced on 11/01/2017 as part of his application for a commutation and discussed at length with Anthony King at his parole interview on 1/25/2019. See letter to Michigan Parole Board, 24 April 2019, and letter from Michigan Parole Board, May 3, 2019, marked Exhibit K and Exhibit L, respectively, attached hereto and incorporated herein by reference.

As further insurance against defendants' previously demonstrated duplicity plaintiff filled out and submitted in a parole form to Prisoner Counselor (PC) Timothy Eichorn and sent an exhaustive nine-page parole plan directly to the defendants, which they acknowledged on February 26, 2020. See Pre Parole Planning, to PC Eichorn, Letter to Michigan Parole Board, with enclosed Parole and Relapse Prevention Plan, 12 February 2020, and Letter from Michigan Parole Board, February 26, 2020, marked Exhibit M, Exhibit N, and Exhibit O, respectively, attached here and incorporated herein by reference.

As shown, defendants have refused to perform their public duty and comply with MCL 791.233e, MCL 791.234(1), and *Hayes, supra* by continuing to depart from parole guidelines score of a "HIGH Probability of Parole," in order to deny plaintiff a parole without providing the "substantial and compelling objective reasons" for doing so. Further, although not given as a reason in defendants' last decision on 8/31/2020 (Exhibit F), they continue to falsely maintain they have no jurisdiction. See Letter to Michigan Parole Board, 22 September 2020, and Letter from Michigan Parole Board, November 9, 2020, marked Exhibit P and Exhibit Q, respectively, attached hereto and incorporated herein by reference.

All the while, over the past two years, 67-year-old plaintiff's health has been steadily deteriorating due to a poor diet and living conditions combined with a near total lack of medical care, that, when rarely provided, does not comport with community standards required by policy and law. *Estelle v Gamble,* 429 US 97, 103 (1976). Prior to the onset of the Covid-19 pandemic, plaintiff suffered from a macular degeneration, along with an untreated inguinal hernia, since 2015, and an untreated broken left-hand, since 2019.

Plaintiff was told the numbness in his left hand's thumb, index, and middle fingers, that manifested in March 2020, was "carpal tunnel syndrome", which made no sense as he is right-handed, constantly hand-writing legal work, such as intant writ, grievances, letters, articles, and essays, and "carpal tunnel" is a repetitive-use injury, so it would affect his right-hand first. In March 2020, plaintiff had all the symptoms of Covid-19, as did nearly every prisoner in his unit,

but was told they had the flu and no testing was done. However, when tested in November 2020 and found to be positive for Covid-19, he manifested identical, though more severe symptoms, including loss of sense of taste, smell, and appetite, lethargy, a dry nagging cough, fever, backache, severe muscle-aches and cramps in his legs and numbness in both hands, feet, and lower left leg up to the knee, with a permanent cramp in his left hamstring that leaves him in constant pain and unable to walk for more than a couple of hundred yards. Prior to which, he walked a minimum of 5 miles a day.

Whether or not defendants are retaliating against him for filing a petition for writ of Habeas Corpus against them in this Court and a 42 USC§1983 complaint in the U.S.D.C. Eastern District of Michigan in 1994-95, or for his various news articles excoriating the MDOC for its flagrant disregard of policy and law, such as the recent "Gov. Whitmer Holds Covid-19 Super-Spreader Events in Michigan Prisons" in *San Francisco Bay View*, January 2021, 3 & 16, they still have a clear legal duty to comply with MCL 791.233e and MCL 791.234 and perform their acts as set forth therein by granting plaintiff a parole, accordingly. They should not be allowed to flaunt the law and apply their own construction to these statutes to get the results that suit them like Humpty Dumpty, who said "[I]t means just what I choose it to mean–neither more nor less" in Lewis Carroll's *Through the Looking Glass.* Especially while plaintiff, now rendered a cripple thanks to defendants, remains in prison waiting to contract Covid-19 for a third time, which may well kill him as it has done so many.

WHEREFORE, as the necessity for immediate action has been shown above, with plaintiff deprived of a parole that should have been granted for release to parole on May 19, 2019 and, consequently, suffering the vastly increased risk of getting Covid-19 for a third time, due to being housed in a polebarn filled with 320 men and unable to practice even minimal social distancing, i.e., in a viral incubator, plaintiff respectfully requests this Honorable Court to issue an order to show cause and/or issue the writ of mandamus pursuant to MCR 3.305, so that plaintiff will be paroled as soon as possible, providing the sentencing court agrees. *Hayes, supra.*

Respectfully submitted,

Rand W. Gould.

Dated: 29 January 2021

VERIFICATION

Pursuant to 28 USC § 1746, I verify under penalty of perjury the following is true and correct.

Signed,

Rand W. Gould

Executed on: 29 January 2021