STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF GRAND TRAVERSE

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CARLOS MADDEN,

Petitioner

v

File No. 05-24694-AH
HON. PHILIP E. RODGERS, JR.

MICHIGAN DEPARTMENT OF CORRECTIONS – PAROLE BOARD; and THOMAS G. PHILLIPS, Warden of the Pugsley Correctional Facility,

Respondents.

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Carlos Madden #229852
Petitioner in Pro Per

Michael A. Cox, Attorney General
Jason Julian (P39547)
Attorney for Michigan Department of Attorney General
Corrections Division

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pc: Charles M. Hebestreit #196481
Carson City Correctional Facility
P.O. Box 5000
Carson City, MI 48811-5000

DECISION AND ORDER
DENYING PETITION FOR WRIT OF HABEAS CORPUS

The Petitioner, Carlos Madden, is currently incarcerated in the Pugsley Correctional Facility under the jurisdiction of the Michigan Department of Corrections ("MDOC"), pursuant to 12 separate convictions. His maximum discharge date is November 13, 2021.

On April 7, 2003, the Petitioner had been granted parole. On August 10, 2003, he was arrested and detained on a parole violation warrant. On September 12, 2003 he was summoned before an administrative law examiner ("ALE") and arraigned on seven counts of violating the terms and conditions of his parole. The Petitioner entered a plea of guilty to three of the alleged violations. The ALE entered a disposition and proposed recommendation that the Petitioner's parole be revoked but that he be re-paroled effective December 12, 2003.

On October 9, 2003, the Parole Board adopted the ALE's findings of fact and conclusions of law and revoked Petitioner's parole continuing his incarceration, not for the 3 months recommended by the ALE, but for 12 months. When that continuance expired and the Petitioner was again eligible for parole, the Parole Board refused to grant him parole and gave him a 24-month extension.

The Petitioner filed a Petition for a Writ of Habeas Corpus. He claims that he was denied due process by the Parole Board when it revoked his parole on October 9, 2003 without complying with the provisions of the Administrative Procedures Act, specifically MCL § 24.281.

The Court issued a pre-hearing order giving the Department of Corrections time to respond to the Petition and giving the Petitioner time to reply. The time limits have now expired. The Court has reviewed the submissions, dispenses with oral argument, pursuant to MCR 2.119(E)(3), and issues this written decision and order. For the reasons stated herein, the Court finds that the Petitioner is not entitled to a writ.

The MDOC was created by chapter 12 of the Executive Organization Act, MCL § 16.375 and represents an administrative agency within the executive branch of Michigan's government. Const 1963, art. 5, § 2; *Hopkins v Parole Bd*, 237 Mich App 629, 636; 604 NW2d 686 (1999). The MDOC has exclusive jurisdiction over questions of parole. MCL 791.204; *Hopkins, supra* at 637. The Parole Board was established as an entity within the MDOC. MCL § 791.231a; *Hopkins, supra* at 637. "The release of a prisoner on parole shall be granted solely on the initiative of the parole board," MCL § 791.235(1), and specific determinations whether to release prisoners on parole rest with the Parole Board's discretion. MCL § 791.234(8); *Hopkins, supra* at 637. As an entity within the MDOC, the Parole Board is part of the executive branch of government. It is entirely within the power of the MDOC, which has exclusive jurisdiction over matters of parole, to implement policy directives setting specific intervals for reconsideration of parole decisions by the Parole Board. MCL 791.206.

In *Penn v Dep't of Corrections*, 100 Mich App 532; 298 NW2d 756 (1980), the Court held that the Administrative Procedures Act (APA), MCL § 24.201 et seq, vests the circuit courts with jurisdiction to review a parole revocation decision. Specifically, MCL § 24.302 allows for judicial review of a final decision or order in a contested case. The Court in *Penn, supra* at 536-537, noted that the Department of Corrections is an agency for purposes of the APA and that a parole revocation proceeding is a contested case that triggers application of the APA. Further, in

*Triplett v Deputy Warden Jackson Prison*, 142 Mich App 774, 779; 371 NW2d 862 (1985), the Court held that the APA is not the only avenue of judicial review available to a parolee and that review of a parole revocation decision is permissible upon a complaint for habeas corpus. See also *In re Casella*, 313 Mich 393; 21 NW2d 175 (1946). Thus, while the Petitioner did not appeal the revocation of his parole, he can nonetheless pursue this writ.

The Petitioner claims that the Parole Board violated his due process rights by failing to follow the Administrative Procedures Act, specifically MCL § 24.281, which provides:

> (1) When the official or a majority of the officials of the agency who are to make a final decision have not heard a contested case or read the record, the decision, **if adverse to a party to the proceeding other than the agency itself, shall not be made until a proposal for decision is served on the parties, and an opportunity is given to each party adversely affected to file exceptions and present written arguments to the officials who are to make the decision.** Oral argument may be permitted with consent of the agency.
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> (2) The proposal for decision shall contain a statement of the reasons therefore and of each issue of fact and law necessary to the proposed decision, prepared by a person who conducted the hearing or who has read the record.
>
> (3) The decision, without further proceedings, shall become the final decision of the agency in the absence of the filing of exceptions or review by action of the agency within the time provided by rule. On appeal from or review of a proposal of decision the agency, except as it may limit the issue upon notice or by rule, shall have all the powers which it would have if it had presided at the hearing.
>
> (4) The parties, by written stipulation or at the hearing, may waive compliance with this section. [Emphasis added].

It is undisputed that the Parole Board did not serve the parties with the ALE's recommendation or give the Petitioner "an opportunity to file exceptions and present written arguments to the Parole Board."

The Parole Board contends that MCL § 24.281 does not apply because it is a general statute and the more specific statute governing parole revocation does not provide for service of the ALE's recommendation and the filing of exceptions. The Corrections Code, specifically MCL § 791.240a, provides, in pertinent part, as follows:

* * *

(4) If the evidence presented is insufficient to support the allegation that a parole violation occurred, the parolee shall be reinstated to parole status.

(5) If the parole board member or hearings officer conducting the fact-finding hearing determines from a preponderance of the evidence that a parole violation has occurred, the member or hearings officer shall present the relevant facts to the parole board and make a recommendation as to the disposition of the charges.

(6) If a preponderance of the evidence supports the allegation that a parole violation occurred, the parole board may revoke parole, and the parolee shall be provided with a written statement of the findings of fact and the reasons for the determination within 60 days after the paroled prisoner has been returned or is available for return to a state correctional facility.

* * *

The Parole Board relies upon the fact that the Corrections Code is more specific than the general Administrative Procedures Act and the case law holds that, when two statutes conflict, the more specific is controlling. *People v Ford*, 417 Mich 66; 331 NW2d 78 (1982). The Parole Board also relies upon the *Doubley v MDOC* case that was decided in 2001 by the Circuit Court for the County of Kalamazoo. In that appeal from a parole revocation decision, the Circuit Court held that the MDOC was not required by the Administrative Procedures Act to issue petitioner a proposal for decision or allow him an opportunity to submit objections prior to the final decision being rendered against him because the specific statute dealing with parole revocation hearings, MCL § 791.240a, controls and does not provide for notice and an opportunity to file objections.

*Doubley* is not binding on this Court and, even if it was, the Court does not find it dispositive. *Doubley* was an appeal from the decision of the parole board revoking parole. In the instant case, the Petitioner is not complaining about the Parole Board's decision to revoke his parole. He did not appeal that decision when it was made in 2003. What the Petitioner is complaining about is the length of time before which the Parole Board determined he would again be eligible for parole.

This distinction is important because a prisoner on parole is still in the "legal custody and control" of the Department of Corrections. MCL § 791.238(1). If he violates the terms and conditions of his parole, the department issues a warrant for his return. MCL § 791.238(1). After a fact-finding hearing before a member of the Parole Board or a hearing officer, the

hearing officer prepares a report and recommendation for disposition by the Parole Board. MCL § 791.240a(5). The board then enters an order either rescinding parole or reinstating it. MCL § 791.41. If the Board orders the parole rescinded, the rescinding order will also set the length of time before the offender will again be eligible for parole. See *Wayne Co Prosecutor v Dep't of Corrections*, 451 Mich 569, 583, n 29; 548 NW2d 900 (1996). That period can range from one day to the maximum sentence imposed for the original offense. That period is set in the discretion of the parole board, *Id*; MCL 791.238(2), and does not violate the federal constitution, as infringing the rights of citizens or as being in conflict with due process of law. *Ginivalli v Frisbie*, 336 Mich 101; 57 NW2d 457 (1953).

The Petitioner has thus failed to establish a basis for issuing a writ of habeas corpus, and the Court will not disturb his parole revocation nor second guess the Parole Board's determination as to the length of time before which he will again be considered for parole.

The Petitioner's request for a writ of habeas corpus is denied.

IT IS SO ORDERED.

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HONORABLE PHILIP E. RODGERS, JR.
Circuit Court Judge

Dated: S/ 09/20/05