

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ODELL SINCLAIR, a/k/a JEFFERY
SINCLAIR,

Defendant-Appellant.

UNPUBLISHED

August 23, 1996

No. 182817

LC No. 93-324278 AA

Before: O'Connell, P.J., and Gribbs and T. P. Pickard,* JJ.

PER CURIAM.

Defendant appeals by leave granted the order of the circuit court reversing the parole board's grant of parole. He also challenges the prior order of the circuit court "remanding" the case to the Detroit Recorder's Court for resentencing. We reverse the order reversing the parole board's grant of parole, and vacate the order "remanding" this case to the Detroit Recorder's Court.

In January, 1993, defendant, while on parole, committed the offense of larceny in a building. MCL 750.360; MSA 28.592. He was sentenced to one to four years' imprisonment.

The judgment of sentence did not indicate that the one to four year sentence was to be served consecutively to the sentence for which he was on parole and which he would have to complete in light of his subsequent conviction (that presently before this Court). In June, 1993, defendant was granted parole with respect to his larceny conviction. Plaintiff applied for leave to appeal the parole board's decision to the circuit court, which application was granted. The circuit court remanded the case to the parole board for findings of fact. The court also "remanded" the case to Detroit Recorder's Court to address the consecutive sentencing issue.¹

The parole board complied with the order of the circuit court, issuing its findings in June, 1994. After reviewing the board's findings of fact, the circuit court reversed the grant of parole. As set forth in

* Circuit judge, sitting on the Court of Appeals by assignment.

MCL 791.223(1)(d); MSA 28.2303(1)(d), “[a] prisoner shall not be released on parole until the parole board has satisfactory evidence that arrangements have been made for such honorable and useful employment as the prisoner is capable of performing” The court reasoned that while defendant had presented evidence that he was employable, he had failed to present evidence of employment. Because defendant had not produced the evidence mandated by statute, the court determined that the parole board had improperly granted defendant parole.

We first address defendant’s appeal of the order of the circuit court reversing the grant of parole. This issue is controlled by *Wayne Co Prosecutor v Parole Bd*, 210 Mich App 148, 154; 532 NW2d 899 (1995). In *Wayne Co Prosecutor*, this Court was presented with nearly identical facts, and concluded as follows:

It is clear from [MCL 791.223(1)(d); MSA 28.2303(1)(d), *supra*] that the *granting* of parole is conditioned upon the inmate not being *released* until satisfactory evidence of useful employment is provided to the board. It would be unreasonable to require a prisoner to obtain employment before parole is granted. On the other hand, it is not unreasonable to withhold releasing a parolee until employment is obtained.

We are bound by this Court’s decision in *Wayne Co Prosecutor* pursuant to Supreme Court Administrative Order 1996-4, 451 Mich xxxii (1996). Therefore, for the reasons set forth in *Wayne Co Prosecutor*, we hold that the parole board committed no abuse of discretion in *granting* defendant parole, as opposed to *releasing* defendant on parole, where defendant failed to present evidence of employment. Accordingly, we reverse the order of the circuit court reversing the order of the parole board.

Defendant also raises an equal protection challenge to MCL 791.223(1)(d); MSA 28.2303(1)(d), contending that it “discriminates against the poor.” Because defendant has cast his argument in terms of socio-economic effect, we review his argument under the “rational basis” standard. See *People v Perlos*, 436 Mich 305, 331; 462 NW2d 310 (1990). We hold that requiring that a prisoner make arrangements for honorable, useful employment prior to being released on parole is rationally related to the purpose of the parole system, which is to keep a prisoner in constructive custody while permitting him to show that he can refrain from committing crimes. *Phillips v Warden, State Prison of Southern Michigan*, 153 Mich App 557, 565-566; 396 NW2d 482 (1986). Therefore, we find no equal protection violation.

With respect to the consecutive sentencing issue, defendant argues that because the circuit court and the Detroit Recorder’s Court are of equal jurisdiction in all criminal matters, the circuit court was without authority to order this case “remanded” to the Detroit Recorder’s Court for purposes of resentencing. Defendant is correct. The jurisdiction of the Detroit Recorder’s Court is coextensive with that of the circuit court. MCL 726.17; MSA 27.3567; *People v Cason*, 387 Mich 586, 592-593; 198 NW2d 292 (1972). Courts of equal jurisdiction cannot review each other’s decisions. *People v Paille*, 383 Mich 605, 607; 178 NW2d 469 (1970). As such, the actions of the Detroit Recorder’s

Court are not reviewable by the circuit court. See *Recorder's Court Judge v Wayne Circuit Judge*, 347 Mich 567, 572; 8 NW2d 481 (1925). Therefore, while it is manifestly obvious that defendant's present sentence should have been imposed to be served consecutively to the sentence for which he was on parole when the present offense was committed, see MCL 768.7a(2); MSA 28.1030(1)(2), the circuit court was without authority to "remand" the case to the Detroit Recorder's Court. Therefore, we vacate the order of the circuit court "remanding" this case to the Detroit Recorder's Court for purposes of resentencing.

The order reversing the parole board's grant of parole is reversed. The prior order "remanding" this case to the Detroit Recorder's Court is vacated.

/s/ Peter D. O'Connell

/s/ Roman S. Gibbs

/s/ Timothy P. Pickard

¹ This order has been stayed pending this appeal.