Court of Appeals, State of Michigan

ORDER

PEOPLE OF MI V KENNETH EARL NARD

Docket No. 369185

LC No. 1975-001325-FC

Michael F. Gadola
Presiding Judge

Christopher M. Murray

James Robert Redford
Judges

In our prior opinion we affirmed the trial court's order resentencing defendant to concurrent terms of 60 to 150 years' imprisonment for each of two counts of second-degree murder. *People v Nard*, ___ Mich App ___; ___ NW3d ___ (2025) (Docket No. 369185); slip op at 1. In considering defendant's subsequent application for leave to appeal, the Supreme Court determined that we failed to address an issue raised by defendant, and thus remanded the matter "for consideration of the issue . . . regarding whether the Lapeer Circuit Court erroneously issued a bench warrant for the defendant's arrest after the Michigan Department of Corrections discharged him." *People v Nard*, ___ Mich ___; ___ NW3d ___ (2026) (Docket No. 168836). We now address the issue.

The facts surrounding the issue are undisputed. Defendant participated in his December 4, 2023 resentencing hearing. The next day, the court entered the December 5, 2023 judgment of sentence that was challenged, and affirmed, on appeal. The day after the judgment was entered, December 6, 2023, the warden discharged defendant from prison. On December 7, 2023, the trial court signed a warrant to return defendant to prison, apparently on the basis that the MDOC had erred in granting special good time credit to defendant, making his release from prison invalid.

Before addressing the merits of defendant's argument, we recognize two points. First, because defendant *was* released from prison on July 17, 2024, any challenge to his temporary return to prison is moot. No order from this Court can provide a remedy to defendant for any additional time he was in prison as a result of the warrant (assuming it was invalid), as he was released more than a year ago. See *In Re Halley*, 327 Mich 222, 224; 41 NW2d 354 (1950) ("Having been granted his release from imprisonment, an order of the nature sought by him in his application for discharge on habeas corpus and certiorari would serve no useful purpose. A determination by this court as to his right to the order sought has become unnecessary.") and *People v Ovalle*, 222 Mich App 463, 469; 564 NW2d 147 (1997). Second, defendant's challenge to the circuit court's subsequent arrest warrant and defendant's return to prison have no impact on the validity of the judgment of sentence that was entered and final prior to the actions challenged by defendant on this issue. See, e.g., *State v Wright*, 143 Wis 2d 118, 123; 420 NW2d 395 (Wisc App, 1988).

Turning to the merits of defendant's argument, defendant cites caselaw addressing whether a court has jurisdiction to recall a parole discharge once it has been delivered and accepted. For example, defendant cites *In re Eddinger*, 236 Mich 668, 670; 211 NW 54 (1926), where the Court stated that a discharge from parole is "a remission of the remaining portion of his sentence" and, once delivered and accepted, "it cannot be recalled." In that case, the Governor had signed the defendant's discharge, but it

had not been delivered before he violated parole, so the Court upheld the cancellation of the discharge. *Id*. at 669, 671.[1] Similarly, in *People v Holder*, 483 Mich 168, 173; 767 NW2d 423 (2009), the Court, citing MCL 791.242(1), stated that the MDOC was without authority to " 'cancel' or revoke a parole discharge order once the final order of discharge has been entered and the certificate of discharge issued to the prisoner."

This case, however, does not involve the deliverance and acceptance of a parole discharge. Rather, the challenged action involved defendant's release from prison to serve parole, while remaining under the jurisdiction of the MDOC. The most analogous decision addressing that issue is *Michigan ex rel Oakland Co Prosecutor v Dep't of Corrections*, 199 Mich App 681, 684; 503 NW2d 465 (1993). There, as here, the defendant was resentenced and then discharged from prison based on the MDOC's calculation of his special good-time credits and his regular good-time credits. However, the prosecutor's office opposed the discharge, arguing that the MDOC erroneously calculated the credits. *Id*. As occurred here, the trial court rescinded the defendant's discharge and ordered his arrest. *Id*. The defendant appealed, arguing, as is the case here, that "the trial court did not have jurisdiction over him because he had been discharged from his sentence." *Id*. at 694. Rejecting that argument, this Court concluded that the trial court had jurisdiction to vacate the MDOC discharge on the basis of the incorrect calculation of good-time credits. *Id*.[2] See also *Thomas v McGinnis*, 239 Mich App 636, 648-649; 609 NW2d 222 (2000).

Based upon *Michigan ex rel Oakland Co Prosecutor*, we hold that the trial court had jurisdiction to (a) address the alleged error that the MDOC reported in calculating defendant's sentencing credits and (b) order his reincarceration to complete his sentence.

Presiding Judge

[1] In *People v Young*, 220 Mich App 420, 433; 559 NW2d 670 (1996), however, this Court held that "*Eddinger* does not absolutely bar the recall of a discharge from parole and that judicial review of an allegedly improper discharge from parole is permissible."

[2] Defendant argues that his case is distinct from *Michigan ex rel Oakland Co Prosecutor*, because that case involved the misapplication of a statute in calculating sentencing credits. But both this case and *Michigan ex rel Oakland Co Prosecutor* concerned the proper counting of sentence credits. It is of no consequence whether the error resulted from the misreading of a statute or poor arithmetic.

A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

January 15, 2026
Date

Chief Clerk