

Sixth Circuit rules that Michigan prisoners have no enforceable right to parole

20. September 2011 By Madelaine Lane

In *Crump v. Lafler*, No. 09-1073, the Sixth Circuit reiterated its conclusion from the 1994 case *Sweeton v. Brown*, and held that there is no constitutional or inherent right of inmates to be released on parole prior to expiration of their sentence. The court specifically rejected the Crump's argument that Michigan's parole system created an enforceable liberty interest under the Fourteenth Amendment. Judge Cole dissented from the majority's opinion and wrote that Michigan's parole system creates a liberty interest for inmates classified with a "high probability of parole".

In 2001, Lucius Crump, pled guilty to a charge of third-degree criminal sexual conduct and was sentenced to a term of imprisonment from 3 to 22.5 years. Following his arrest and while on bond for the criminal sexual conduct charge, he was arrested for possession with intent to deliver cocaine. He was convicted and sentenced to a term of 7 to 20 years imprisonment to run consecutively with his first sentence. In 2008, Crump became eligible for parole. The Michigan Parole Board assigned Crump a status of "high probability of parole," but despite this status, on July 15, 2008, the Board denied his application for parole for a period of 18 months.

Crump then filed a pro se "Motion to Show Cause" in the United States District Court for the Western District of Michigan, which the court interpreted as a petition for habeas corpus under 28 U.S.C. § 2254. Crump argued that the Board's decision to deny him parole was not supported by the record evidence and thus constituted a deprivation of liberty without due process. On the recommendation of the magistrate judge, the district judge concluded that because Crump lacked a cognizable liberty interest in parole, he failed to state a claim upon which relief could be granted. The court therefore dismissed Crump's habeas petition. Crump appealed to the Sixth Circuit Court of Appeals, and the court upheld the dismissal.

In affirming the dismissal, the Sixth Circuit Court stressed that "there is no constitutional or inherent right of a convicted person to be conditionally released before expiration of a valid sentence." The court reasoned that Michigan's statute does not presume release; it is not worded that a prisoner shall be released unless certain negative factors are present or that if certain positive factors are present, a prisoner will be released. Rather, in Michigan, the Parole Board maintains discretion in determining who is released on parole even for individuals with the status of "high probability of parole." With this discretion, the statute falls short of creating a vested liberty interest for a certain group of prisoners. Even though Crump received a status where his release on parole was probable, a "probability does not create a presumption." Accordingly, Crump had no enforceable liberty interest in parole.

Judge Cole authored a spirited dissent. Judge Cole argued that the Michigan parole statute creates a liberty interest for those prisoners classified as having a high probability of parole because it "creates a presumption that parole release will be granted." He argued the plain interpretation of the statutory language is that inmates with a high probability of parole are presumed to receive parole. If the Michigan Parole Board wants to deny these individuals parole, it has the discretion to do so, but only "for substantial and compelling reasons stated in writing." Accordingly, Judge Cole argued that Michigan's statute creates a presumption that parole

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release will be granted to inmates with a high probability of parole, so it creates an enforceable liberty interest in parole for these individuals.

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