

73

RECEIVED

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

APR - 5 2005
Clerk's Office
U.S. District Court
Ann Arbor, MI

Exhibits
1-7

05-71318

KENNETH FOSTER-BEY,
JOHN ALEXANDER,
WAYMON KINCAID,
WILLIAM SLEEPER,
ROBERT WEISENAUER,
ERIC MCCULLUM,
GERALD LEE HESSEL,
on behalf of themselves and all others
similarly situated,

Plaintiffs,

vs.

JOHN S. RUBITSCHUN, Chair,
JAMES ATTERBERRY,
MIGUEL BERRIOS,
CHARLES BRADDOCK,
STEPHEN DEBOER,
ENID LIVINGSTON,
JAMES QUINLAN,
MARIANNE SAMPER,
BARBARA SAMPSON,
ARTINA HARTMAN,
individually and in their official capacities
as members of the Michigan Parole Board,
and PATRICIA L. CARUSO, individually
and in her official capacity as director of
the Michigan Department of Corrections,

Defendants.

File No. _____

Hon. NANCY G. EDMUNDS

U.S Mag. Judge VIRGINIA MORGAN

FILED

APR - 5 2005

CLERK'S OFFICE
U.S. DISTRICT COURT
ANN ARBOR, MI

CLASS ACTION COMPLAINT

The plaintiffs, by their counsel, state the following for their complaint:

Introduction

1. This is an action for declaratory and injunctive relief under 42 U.S.C. § 1983.

The plaintiffs are prisoners in the custody of the Michigan Department of Corrections (MDOC)

who were convicted before October 1, 1992, and who were sentenced to parolable life.

2. The plaintiffs seek relief for the defendants' retroactive use of substantive parole standards that were not in effect when the plaintiffs were convicted, in violation of the *ex post facto* and due process clauses of the United States Constitution.

3. Specifically, after October 1, 1992, the Michigan parole board adopted a policy that "life means life." The new policy precludes meaningful parole review for parolable lifers and effectively converts their sentences to mandatory life terms.

4. The plaintiffs also seek relief for the defendants' retroactive use of parole laws and policies that were not in effect when the plaintiffs were convicted. The cumulative changes have created a different parole regime, in violation of the *ex post facto* and due process clauses of the United States Constitution.

5. The changed standards, laws, and policies have deprived the plaintiffs of effective parole consideration, have created a parole system for lifers in which the parole board no longer exercises discretion in individual cases, and have made a parolable life sentence the equivalent of a mandatory life sentence in Michigan.

6. The changed standards, laws, and policies all but guarantee that the plaintiffs will never be paroled, or will not be paroled until years later than they would have been paroled under the substantive parole standards and the laws and policies that were in effect when the plaintiffs were convicted.

7. The plaintiffs do not seek their release. Instead they seek parole consideration using the substantive standards and the law and policy protections that were in effect when the plaintiffs were convicted.

Conditions Precedent to this Action

8. The plaintiffs, by previously having filed this complaint in the form of administrative grievances, which were denied at Steps I, II, and III of the MDOC grievance process, have satisfied the pre-filing requirements of the Prison Litigation Reform Act, 42 U.S.C. § 1997e(a). *See Exhibits 1-8, attached.*

Jurisdiction and Venue

9. Jurisdiction is conferred on this Court by 28 U.S.C. § 1331, which authorizes federal courts to decide cases concerning federal questions, and by 28 U.S.C. § 1343(a), which authorizes federal courts to hear civil cases brought under 42 U.S.C. § 1983.

10. Pursuant to the recent case of *Wilkinson v. Dotson*, ___ U.S. ___, 2005 WL 516415 (3/7/05), challenges to parole procedures are permitted to be brought under § 1983.

11. Venue is proper in this Court because the defendants conduct their business across the state, including in the Eastern District. In addition, some of the named plaintiffs and many of the proposed class members are in custody in the Eastern District of Michigan. Thus their claims arise in the Eastern District as well.

Parties

The Plaintiffs

12. Plaintiff Kenneth Foster-Bey is an inmate (#142187) in the custody of the MDOC at the Ryan Correctional Facility in Detroit, Michigan.

13. Plaintiff John Alexander is an inmate (#163875) in the custody of the MDOC at the Gus Harrison Correctional Facility in Adrian, Michigan.

14. Plaintiff Waymon Kincaid is an inmate (#137927) in the custody of the MDOC at the Marquette Branch Prison in Marquette, Michigan.

15. Plaintiff William Sleeper is an inmate (#116539) in the custody of the MDOC at the Macomb Correctional Facility in New Haven, Michigan.

16. Plaintiff Robert Weisenauer is an inmate (#157085) in the custody of the MDOC at the Thumb Correctional Facility in Lapeer, Michigan.

17. Plaintiff Eric McCullum is an inmate (#120287) in the custody of the MDOC at the Mound Correctional Facility in Detroit, Michigan.

18. Plaintiff Gerald Lee Hessell is an inmate (#150163) in the custody of the MDOC at the Carson City Correctional Facility in Carson City, Michigan.

Class Allegations

19. The proposed class definition, as set forth in the accompanying motion, is:

All parolable lifers in the custody of the Michigan Department of Corrections who were convicted before October 1, 1992, and whose parole the "new" parole board has denied, passed over, expressed no interest in pursuing, or otherwise rejected or deferred.

20. The class is so numerous that joinder of all members is impracticable.

21. There are questions of law and fact common to the class.

22. The claims of the named plaintiffs are typical of the claims of the class members.

23. The named plaintiffs will fairly and adequately protect the interests of the class.

24. Class counsel have the time, resources, and expertise to represent the class.

25. If the Michigan parole board had applied the substantive parole standards and the parole laws and policies that were in effect when the plaintiffs were convicted, they would have been paroled long ago, and/or they would have a reasonable chance for parole within 12-20 years of incarceration.

26. Even if their parole remained uncertain, their parole is being decided under substantive parole standards and under parole laws and policies that were not in effect when they

were convicted, that deprive them of meaningful parole review, and that effectively guarantee the denial of their parole.

The Defendants

27. Defendant John S. Rubitschun is the chairman of the Michigan parole board.

28. Defendants James Atterberry, Miguel Berrios, Charles Braddock, Stephen De-Boer, Enid Livingston, James Quinlan, Marianne Samper, Barbara Sampson, and Artina Hartman are members of the Michigan parole board.

29. The Michigan parole board, under the authority of MCL 791.234, decides which Michigan prisoners to parole, and when to parole them.

30. Defendant Patricia L. Caruso is the director of the Michigan Department of Corrections. In that capacity she has authority over the Michigan parole board. MCL 791.231(a).

Factual Allegations of Named Plaintiff Kenneth Foster-Bey

31. Kenneth Foster-Bey was convicted in Detroit Recorder's Court of two counts of second-degree murder, MCL 750.317, in 1975. For these convictions, on July 16, 1975, Judge Robert J. Columbo sentenced Mr. Foster-Bey to two concurrent life sentences with the possibility of parole.

32. Under MCL 791.234, in 1975, a recipient of a parolable life sentence came within the jurisdiction of the parole board (and thus was eligible for parole) after ten years in prison.

33. In 1975, rehabilitated prisoners serving parolable life sentences were routinely paroled within 12-20 years.

34. At Mr. Foster-Bey's sentencing hearing, Judge Colombo told Mr. Foster-Bey:

This offense is parolable within ten years. If you become rehabilitated within that period of time, I state publicly here on the record that I have no objection to your parole. I state that because I may not be here in ten years, but any judge who is looking at this record will know what I had in mind at the time I sentenced you.

35. In 1975, in deciding whether or not to grant parole to a parolable lifer after ten years, the parole board used essentially the same substantive standards that it used for prisoners who had been sentenced to long indeterminate terms (like 25--40 years).

36. During the time of his confinement, Mr. Foster-Bey has compiled an exemplary record of achievement, including attainment of a G.E.D. in 1982, an associate's degree in 1985, a bachelor's degree in 1993, and nearly 50 certificates and awards recognizing various social and vocational aptitudes.

37. By the time of his first parole review, Mr. Foster-Bey had demonstrated enough rehabilitation and maturation that his warden (Gary Wells) requested special parole for him.

38. Mr. Foster-Bey has long had a job assured him upon his release from prison.

39. The Honorable Robert J. Columbo, Mr. Foster-Bey's sentencing judge, wrote a letter to Mr. Foster-Bey on July 24, 2001. In that letter, Judge Columbo stated:

At the time of sentencing not only I, but the vast majority of trial judges in the State of Michigan were aware that by imposing life sentences rather than determinative sentences of minimums and maximums, the Michigan Parole Board at that time was able to parole defendants who had made substantial progress toward rehabilitation upon completion of a term of ten years. It was with that in mind that I imposed a sentence of Life for Second Degree in the case of Mr. Foster.... The reason I did this was also to encourage Mr. Foster to take advantage of all the programs the Corrections Department had for self-improvement which apparently Mr. Foster has done with outstanding success. ... Mr. Foster is caught in the middle of it having served now over 27 years for a crime that I never would have intended him to serve that long. ... Moreover, I would never have sentenced Mr. Foster to a term of more than two concurrent terms of 25 to 30 years.... Mr. Kenneth Foster is serving a sentence of life which the Parole Board now treats as life, something this sentencing Judge never expected or intended to happen when he sentenced him in 1975.

40. Since 1994, the Michigan parole board has denied parole for Mr. Foster-Bey. At each review it has either (a) exercised no discretion at all, but simply passed on his case because of his status as a lifer, or (b) retroactively applied substantive standards and parole laws and poli-

cies that were not in effect when Mr. Foster-Bey was convicted, and that are far more stringent than the standards, laws, and policies that were in effect in 1975.

41. Mr. Foster-Bey has now served over 30 years in prison. Under current board policy he has no realistic chance for parole.

Factual Allegations of Named Plaintiff John Alexander

42. Plaintiff John Alexander was convicted of second-degree murder, MCL 750.317, and felony firearm possession, MCL 750.227b, in 1981. For these convictions, on March 25, 1981, Judge Michael F. Sapala sentenced Mr. Alexander to parolable life plus a two-year term for the weapons charge.

43. At Mr. Alexander's sentencing hearing, Judge Sapala told Mr. Alexander:

I'm going to leave the determination of release to the parole board by the sentence that I will fashion. If you show them the kind of progress some years down the line that indicates that you should be released, they will release you. But I will leave it up to their discretion.

44. During the time of his confinement, Mr. Alexander has compiled an excellent record of educational, social, emotional, and vocational growth.

45. In 2001, Mr. Alexander filed a motion for re-sentencing under MCR 6.500, the state *habeas* provision for collateral attacks on convictions.

46. On March 13, 2002, Judge Sapala, Mr. Alexander's original sentencing judge, granted the motion and agreed to re-sentence him to an indeterminate term of years, so that he would no longer be effectively precluded from parole eligibility because of his parolable lifer status.

47. Judge Sapala stated his reasons for granting relief as follows:

Obviously, in 1981, no judge, in imposing a life sentence, could see down the road, if I could put it this way, that the Parole Board would change to the extent that it wouldn't simply change policies, but, in fact, would ignore the law.... It was clearly my intent in

this case ... that I intended that should Mr. Alexander be in a position to show the Parole Board that he should be released, that he should be. That was my intention. ... [I]f I wanted to make sure he stayed in prison the rest of his life, I would have imposed those kinds of sentences ... like 80 to 150 years, but I did not do that. ...[W]e can say with confidence this man will not be released under the current policy of the Parole Board. That's contrary to this Judge's sentence.

48. Judge Sapala's decision to re-sentence Mr. Alexander was reversed on appeal by the Michigan Court of Appeals, based on *People v. Moore*, 468 Mich. 573 (2003), which held that, as a matter of *state* law, state trial courts lacked jurisdiction to re-sentence parolable lifers.

49. Since 1994, the parole board has denied parole for Mr. Alexander. Each time it has either (a) exercised no discretion at all, but simply passed on his case because of his status as a lifer, or (b) retroactively applied substantive standards and parole laws and policies that were not in effect when Mr. Alexander was convicted, and that are far more stringent than the standards, laws, and policies that were in effect in 1981.

50. Mr. Alexander has now served over 23 years in prison. Under current board policy he has no realistic chance for parole.

Factual Allegations of Named Plaintiff William Sleeper

51. Mr. Sleeper pled guilty to second-degree murder, MCL 750.317, in 1966, when he was 17 years old. Although he had no prior criminal record, he was sentenced to parolable life.

52. Mr. Sleeper's last disciplinary misconduct report in prison was written in August of 1967.

53. For much of the 1970s and early 1980s, Mr. Sleeper was assigned to trustee divisions of the state prison system.

54. For several years he served as the inmate fire chief for the Jackson facilities. In that capacity he had access to the prison fire trucks and regularly drove without supervision on

public roads.

55. He also worked as a chef at a restaurant in Brighton, as a scale operator at the Grass Lake weigh station on I-94, as a sidewalk paver for the Department of Natural Resources, and as a driver for the MDOC.

56. In every setting, his work reports were excellent and he was rewarded with more and more responsibility; in some of these jobs he drove unsupervised all across the state.

57. In 1984, lifers were barred from prison work-release programs.

58. Mr. Sleeper has completed nearly every prison educational and rehabilitation program that it is possible for an inmate to complete.

59. On July 11, 1974, after eight years in prison, Mr. Sleeper was told that he would be recommended for "positive action" by the parole board at the end of ten years.

60. In 1976, a board member told him that he would be paroled at 15 years.

61. On May 26, 1988, in executive session, the full parole board voted unanimously (5-0) that Mr. Sleeper's parole should go forward to public hearing.

62. For unexplained reasons – what was later described as a "clerical error" – the public hearing was never scheduled.

63. In 1992, Mr. Sleeper's warden personally contacted the parole board to try to get the public hearing process started.

64. In July 1992, the full board again voted (5-0) to proceed to public hearing, and told Mr. Sleeper that it would "begin active processing of your case in the next few months."

65. In the interim, the "new" parole board, created by the October 1, 1992, amendments to the parole law, came into being, and the parole process for parolable lifers was stalled.

66. The "new" board vetoed his parole and gave him a five-year flop.

67. In 1998, the board expressed "no interest" and gave him a five-year flop.

68. In 2003, the board expressed "no interest" and gave him a five-year flop. Mr. Sleeper is not scheduled for parole review again until February 2008.

69. Since 1994, the parole board has denied parole for Mr. Sleeper. Each time it has either (a) exercised no discretion at all, but simply passed on his case because of his status as a lifer, or (b) retroactively applied substantive standards and parole laws and policies that were not in effect when Mr. Sleeper was convicted, and that are far more stringent than the standards, laws, and policies that were in effect in 1966.

70. Mr. Sleeper has now served over 38 years in prison. Under current board policy he has no realistic chance for parole.

Factual Allegations on Behalf of the Other Named Plaintiffs

71. The four additional named plaintiffs all have facts similar to those of Mr. Foster-Bey, Mr. Kincaid, and Mr. Sleeper. (To avoid repetition, their specific facts will be reserved.)

72. Since 1994, the parole board has denied them parole. Each time the board has either (a) exercised no discretion at all, but simply passed on their cases because of their status as lifers, or (b) retroactively applied substantive standards and parole laws and policies that were not in effect when they were convicted, and that are far more stringent than the standards, laws, and policies that were in effect when they were convicted.

73. Cumulatively, Messrs. Kincaid, Weisenauer, McCullum, and Hessell have now served approximately 119 years in prison – 29 years apiece on average. Under current board policy they have no realistic chance for parole.

74. All of the named plaintiffs have superb institutional records. But for the board's refusal to exercise discretion, or but for the retroactive application of the post-1994 substantive

parole standards, and but for the retroactive application of the cumulative changes to Michigan's parole laws and policies, the named plaintiffs would have been paroled by 2005.

Factual Allegations on Behalf of the Proposed Class

Changes in Substantive Parole Standards

75. Under Michigan law, all members of the proposed class came within the jurisdiction of the parole board after ten years of incarceration.

76. At the same time, prisoners with long indeterminate sentences (like 25–40 years) were not eligible for parole under Michigan law until they had served their mandatory minimum (*e.g.*, 25 years) less good time.

77. As a result of this anomaly in the law, parolable lifers became subject to parole review, and could in fact be paroled, *sooner* than prisoners serving long indeterminate sentences.

78. Up until 1993-94, in deciding whether or not parolable lifers should go forward in the parole process (to be paroled), the board used essentially the same substantive standards for parolable lifers that it used in making the parole decisions for prisoners serving long indeterminate sentences who had completed their mandatory minimum, less “good time.”

79. Throughout the period when the proposed plaintiff class committed their crimes, the parole board routinely paroled *rehabilitated* parolable lifers within 12–20 years.

80. This was so precisely because parolable lifers got before the parole board sooner than long term-of-years prisoners, and because the parole board used essentially the same substantive standards with both groups of prisoners in deciding whom to parole.

81. Indeed, for a parolable lifer to serve 20–25 years would have been viewed as an unusually long sentence, reserved for someone who had adjusted poorly to prison, or who had other significant problems in his or her file, apart from the fact of the parolable life sentence.

82. Beginning in 1993-94, and continuing to the present day, the Michigan parole board radically altered the substantive standards it used to decide parolable lifer cases.

83. Beginning in 1993-94, and continuing to the present day, the parole board adopted an explicit policy that "life means life."

84. Under the "new" board's substantive standards, it almost never grants parole to parolable lifers, except for terminally ill prisoners, or as a reward for heroic acts like saving the life of a corrections officer.

85. From 1994 to the present, the parole board has essentially conflated the meaning of parolable life and mandatory life in Michigan.

86. As a result, the parole board has stopped exercising its discretion in parolable lifer cases, because the fact of the parolable life sentence alone dictates the result in nearly every case.

87. In some cases co-defendants were charged with the same crime. The more culpable person was sentenced to mandatory life or was given a very long term-of-years sentence (like 60-80 years), while the less culpable person was given a reduced sentence of parolable life.

88. Under the board's post-1994 substantive standards, the two are now treated the same, or in some cases the more culpable defendant may be released before the parolable lifer.

89. The radical change in the parole board's substantive standards was intended to increase retroactively the punishment for the crimes committed by the plaintiff class, without regard to the norms of practice in place – as understood by prosecutors, judges, probation departments, defense counsel, the public, and the defendants themselves – when the members of the plaintiff class were convicted.

90. The radical change in the parole board's substantive standards has retroactively increased the punishment for the crimes committed by the plaintiff class.

Changes in Parole Law and Policy

91. Before October 1, 1992, by law or policy, most of the proposed class members were entitled to parole review starting in the fourth or seventh year of incarceration – that is, even before the prisoner came within the formal jurisdiction of the board (after the tenth year).

92. The purpose of the pre-parole review was for the board to get to know the prisoner and for the prisoner to learn – even before coming within the parole board’s formal jurisdiction – what the board wanted the prisoner to do in order to maximize his or her chances for parole.

93. Due to a mushrooming prison population and an overworked parole board, many members of the proposed class never got the required lifer hearings that they were supposed to get during the first ten years of their incarceration.

94. Before October 1, 1992, by law or policy, the proposed class members were entitled to parole review after ten years of incarceration no less frequently than every other year.

95. Today, Michigan’s parole laws and policies have changed to reduce the frequency of review for parolable lifers to every five years instead of every two years.¹

96. Before October 1, 1992, by law or policy, the proposed class members were entitled to parole review that included an in-person hearing with a member of the parole board.

97. Today, Michigan’s parole laws and policies have changed so that the parole board need not *ever* meet personally with parolable lifers, but instead can conduct file or paper reviews.

98. Before October 1, 1992, by law or policy, all proposed class members were entitled to written reasons for the denial of parole if the board expressed “no interest” in moving the prisoner forward to a public hearing, or otherwise rejected the prisoner’s parole.

¹ This change – in and of itself – was held not to violate the *ex post facto* clause, on the proofs available as of 1997. *See Shabazz v. Gabry*, 123 F.3d 909 (6th Cir. 1997), *cert. denied*, 522 U.S. 1120 (1998).

99. Today, the parole board's expression of no interest, or a pass-over, does not require written reasons.

100. Before October 1, 1992, by law or policy, all proposed class members were entitled to parole review in which a statement of no interest or a pass-over was considered to be a formal decision of the board, namely a denial of parole.

101. Today, the parole board's expression of no interest or a pass-over is not viewed as a denial of parole; indeed, it is not even viewed as a decision of the board.

102. Before October 1, 1992, by law or policy, the proposed class members were entitled to parole review in which a statement of no interest or a pass-over was subject to judicial review in state circuit court, with further appeal available to the state appellate courts.

103. Today, the parole board's expression of no interest or a pass-over is not subject to judicial review of any kind in any state court, except that the prosecutor or the victim can appeal a parole decision in the prisoner's favor.

104. Before October 1, 1992, the parole board was established as an independent entity subject to state civil service rules, which insulated it from political influence.

105. Today, the parole board is under the direct authority of an executive department, subject to political influence.

106. All of the changes described above were applied retroactively to the plaintiffs.

107. All of the changes described above were intended (a) to lengthen the prison sentences of the plaintiff class, (b) to limit the discretion of the parole board, and (c) to take parole policy out of the hands of an autonomous body (insulated from political influence) and to place it instead in an executive department (subject to political influence).

108. All of the changes described above had the effect of (a) lengthening the prison

sentences of the plaintiff class, (b) limiting the discretion of the parole board, and (c) taking parole policy out of the hands of an autonomous body (insulated from political influence) and placing it directly in an executive department (subject to political influence).

109. The combined cumulative changes in the state's substantive parole standards and in the state's parole laws and policies have deprived the plaintiffs of the opportunities for meaningful parole review that they were promised when they committed their crimes and were sentenced.

110. The combined cumulative changes in the state's substantive parole standards and in the state's parole laws and policies have increased the sentences of the named plaintiffs by up to 12 years (and counting), and have made the plaintiff class effectively ineligible for parole.

Irreparable Harm

111. The named plaintiffs and the proposed plaintiff class have suffered irreparable harm, in that they are subject to substantive parole standards and parole laws and policies that are far more stringent than were in effect when they were convicted.

112. The retroactive changes in Michigan's substantive parole standards and in the state's parole laws and policies make it nearly impossible for these prisoners to be paroled, with the result that they have served, are serving, and will serve sentences far longer than what their sentencing judges intended or anticipated.

Related Cases

113. Plaintiffs Waymon Kincaid and John Alexander have *habeas corpus* petitions pending in this Court, raising substantially the same issues as are raised here. See *Kincaid v. Jones*, File No. 04-CV-71090-DT (Hon. Avern Cohn) and *Alexander v. Birkett*, File No. 04-CV-73953-DT (Hon. Robert Cleland).

Claims

Ex Post Facto Violations

114. The changes to Michigan's substantive parole standards and to the state's parole laws and policies, described above, effectively alter or extend the plaintiffs' prison terms, in violation of the *ex post facto* clause of the U.S. Constitution, Article 1, Section 10, Clause 1.

Due Process Violations

115. The changes to Michigan's substantive parole standards and to the state's parole laws and policies, described above, could not have been foreseen by the state court trial judges when they sentenced the plaintiffs.

116. Where state court trial judges sentenced the plaintiffs under one parole regime, and where a far different regime came into effect years later and was applied retroactively, and where the state supreme court has denied all state-law based relief, the plaintiffs rights have been violated under the due process clause of the U.S. Constitution, Amendment XIV.

117. The changes to Michigan's substantive parole standards and to the state's parole laws and policies, described above, have deprived the plaintiffs of meaningful parole review, and have resulted in a system in which the parole board no longer exercises discretion in lifer cases, in violation of the due process clause of the U.S. Constitution, Amendment XIV.

Relief Requested

Wherefore, the plaintiffs, on behalf of themselves and the plaintiff class, ask the Court to:

- (a) certify this action as a class action, pursuant to the accompanying motion;
- (b) enter declaratory relief finding that the defendants' retroactive use of the post-1992 substantive parole standards, combined with the defendants' retroactive use of the cumulative post-1992 changes to Michigan's parole laws and policies, violates the *ex post facto* and due process clauses of the U.S. Constitution;

- (c) enter injunctive relief barring the defendants from using the post-1992 substantive parole standards and the cumulative changes to the state's parole laws and policies, as applied to the named plaintiffs and the plaintiff class;
- (d) order the defendants to conduct new parole hearings for the named plaintiffs and the plaintiff class, using the pre-1992 substantive parole standards and the parole laws and policies that were in effect when the plaintiffs committed their crimes;
- (e) grant the plaintiffs their costs and reasonable attorneys' fees as permitted by federal law, including 42 U.S.C. § 1988; and
- (f) grant such further relief as the Court deems fair and just.

Respectfully submitted,

MICHIGAN CLINICAL LAW PROGRAM



By: Paul D. Reingold (P27594)

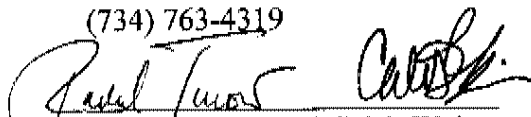
Attorney for Plaintiff

363 Legal Research Building

801 Monroe Street

Ann Arbor, MI 48109-1215

(734) 763-4319


Rachel Turow and Caleb Weiner
Student Attorneys

Dated: April 4, 2005

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

RECEIVED

APR - 5 2005
Clerk's Office
U.S. District Court
Ann Arbor, MI

KENNETH FOSTER-BEY,
JOHN ALEXANDER,
WAYMON KINCAID,
WILLIAM SLEEPER,
ROBERT WEISENAUER,
ERIC MCCULLUM,
GERALD LEE HESSEL,
on behalf of themselves and all others
similarly situated,

Plaintiffs,

vs.

JOHN S. RUBITSCHUN, Chair,
JAMES ATTERBERRY,
MIGUEL BERRIOS,
CHARLES BRADDOCK,
STEPHEN DEBOER,
ENID LIVINGSTON,
JAMES QUINLAN,
MARIANNE SAMPER,
BARBARA SAMPSON,
ARTINA HARTMAN,
individually and in their official capacities
as members of the Michigan Parole Board,
and PATRICIA L. CARUSO, individually
and in her official capacity as director of
the Michigan Department of Corrections,

Defendants.

File No.

05-71318

Hon.

NANCY G. EDMUNDS

U.S Mag. Judge **VIRGINIA MORGAN**

FILED

APR - 5 2005

CLERK'S OFFICE
U.S. DISTRICT COURT
ANN ARBOR, MI

EXHIBITS FOR CLASS ACTION COMPLAINT

Index of Exhibits

1. Kenneth Foster-Bey's grievance, Step I – Step III, with responses
2. John Alexander's grievance, Step I – Step III, with responses
3. Waymon Kincaid's grievance, Step I – Step III, with responses
4. William Sleeper's grievance, Step I – Step III, with responses
5. Robert Weisenauer's grievance, Step I – Step III, with responses
6. Eric McCullum's grievance, Step I – Step III, with responses
7. Gerald Lee Hessell's grievance, Step I – Step III, with responses

1

MICHIGAN DEPARTMENT OF CORRECTIONS
PRISONER/PAROLEE GRIEVANCE FORM4835-4247 10/94
CSJ-247ADate Received at Step I JUL 01 2004 Grievance Identifier: RRF04070066/276

Be brief and concise in describing your grievance issue. If you have any questions concerning the grievance procedure, refer to PD 03.02.130 and OP 03.02.130 available in the prison Law Library.

Name (print first, last)	Number	Institution	Lock Number	Date of Incident	Today's Date
KENNETH A. FOSTER BEY	142187	RRF	4B-06U	12/08/03	06/23/04

What attempt did you make to resolve this issue prior to writing this grievance? On what date? 01/08/2004 A.D.
If none, explain why.

Grievant filed a "Request For Reconsideration Of: December 8, 2003, 'No Interest' Decision", rendered by MDOC Parole Board.

State problem clearly. Use separate grievance form for each issue. Additional pages, using plain paper, may be used. Four copies of each page and supporting documents must be submitted with this form. The grievance must be submitted to the Grievance Coordinator in accordance with the time limits of OP 03.02.130.

This grievance is being filed against the following state agencies and officials, in concert with the State Agency MDOC as followed: MDOC Agency; former MDOC Director Mr. William S. Overton; MDOC Director Mrs. Patricia Caruso; Michigan Governor Mrs. Jennifer M. Granholm; Michigan Attorney General Mr. Mike Cox; and, MDOC Parole Board, and its members individually, i.e., Chairman Mr. John S. Rubitschun; Mr. Charles Braddock; Mr. William Slaughter; Ms. Marianne Samper; Mr. George Lellis; Mr. Miguel Berrios; Mr. James E. Atterbury; Mr. James J. Quinlan; and, Ms. Barbara S. Sampson.

Grievant files this grievance according to MDOC Policy Directives, namely PD-03.02.130(E), and PD-06.05.104(XX). The authority of this grievance is the violation of statutory law and MDOC policies, committed by the above named persons in their collective and individual "failure to follow the parole process as outlined in this [i.e., PD-06.05.104] and other policy directives may be grieved in accordance with PD-03.02.130 "Prisoner/Paralee Grievances".

(NOTE: SEE ATTACHED PAGES, HERETO).

Grievant's Signature

Kenneth A. Foster Bey

RESPONSE (Grievant Interviewed? ☐ Yes ☒ No If No, give explanation. If resolved, explain resolution.)
P.D. 03.02.130 calls for grievances that are non-grievable not to be processed. Your issue is the content of policy and therefore is non-grievable. Furthermore, decisions made by the Parole Board and recommendations made by its hearings officers to grant, deny, rescind, amend or revoke parole, or not to proceed with a lifer interview or public hearing are non-grievable, and therefore your grievance is being rejected. Please refer to P.D. 06:05.104 "Parole Process" for more information on the parole process.

Respondent's Signature
M. Myles, Grievance Coordinator

Date

7/2/04

Reviewer's Signature

W. P. Ray

Reviewer's Name (Print)

Date

8/20/04

Working Title

Respondent's Name (Print)

Working Title

Date Returned to
Grievant: *7/8/04*If resolved at Step I, Grievant sign here.
Resolution must be described above.

Grievant's Signature

Date

The challenge of this grievance, is that 'failure to follow the parole process as outlined in the various policy directives' (i.e., PD-06.05.100, PD-06.05.103, PD-06.05.104, and, PD-06.05.105), relating to the processing of a parole release in a "parolable" lifer case. In other words, the release on parole according to these policy directives.

The timing of this grievance does not violate policy, as there is no policy of statute limitation of time. Therefore, this grievance meets all of the statutory and policy requirements for filing this grievance.

By the "collective" and/or "individual" acts, omissions, customs and policies, the herein named persons have violated grievant's constitutional rights under both state and federal constitutions. Equally so, the herein named persons have applied parole laws, rules, regulations, policies, procedures and practices, erroneously and retroactively to grievant's case, in direct violation of the "due process" and "ex post facto" clauses. And in support of these claims, grievant states the following:

1) On July 2, 1975, grievant was convicted of a crime and sentenced to a "parolable" life sentence in prison.

2) At the time of grievant's conviction and sentencing, a different parole regime existed than exists today.

3) On July 16, 1975, grievant's sentencing judge sentenced grievant to a parolable life sentence, knowing that at the time, lifers: a) had the right to have a personal interview at frequent intervals; b) to be given reasons for a[n]y parole pass-over; c) to have a parole pass-over treated as a denial of parole for purposes of judicial review; and d) to appeal such an adverse decision to the court.

In addition to these, at that time, parolable lifers were reviewed by the parole board under the same, or nearly the same, standards for parole as other inmates with long indeterminate (i.e., term-of-years) sentences.

4) At the time, many Michigan judges viewed a parolable life sentence as more lenient than a long term-of-years sentence, simply because eligibility began after just ten years instead of later, but was otherwise the same in virtually all respects.

5) Since 1994, Michigan parole laws, policies, and procedures have changed radically for the worse for this grievant. According to the former parole board chairman, since 1994, "life means life." Grievant therefore, contends that since 1994, there has been almost no distinction between parolable life and mandatory life in Michigan.

Grievant further contends, that this concept of "life means life", is a direct violation of both parole board policy and Michigan statutory law.

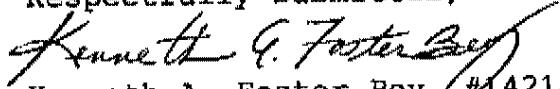
6) On December 8, 2003, the Michigan parole board decided to deny grievant a parole release, via a public hearing. The parole board cited an action of "NO INTEREST", which grievant contends is also a violation of parole board policy, as well as Michigan statutory law. There is no such action as "No Interest".

7) The above named persons, agencies, and officials have erroneously applied the new parole laws, policies, practices, and procedures retroactively, to this grievant's detriment, and in direct violation of the due process and ex post facto clauses of the state and federal constitutions.

Grievant therefore, requests that he be reviewed for a parole release under the parole regime and the parole standards that existed when grievant was convicted and sentenced to prison.

(NOTE: See Exhibit "A", attached hereto).

Respectfully Submitted,


Kenneth A. Foster Bey, #142187

Name: FOSTER KENNETH	Number: A142187	Location: RRF	Mailed: 12/11/2003
--------------------------------	---------------------------	-------------------------	------------------------------

4B-06u

The Michigan Parole Board, having conducted a review of the above prisoner's case, has determined the following:

☒ The majority of the Parole Board has no interest in taking action at this time. Your case will be reviewed as required by law.

DECISION DATE: 12/08/2003	ACTION: No Interest	Next Interview Scheduled: 10-8-2008
-------------------------------------	-------------------------------	---

92

"EXHIBIT" A

Michigan Department of Corrections
GRIEVANCE APPEAL RECEIPT - STEP II

DATE: 7/27/04

TO: FOSTER 142187

LOCATION: RRF 4B-6U

FROM: Grievance Coordinator: Rita Criffenden

SUBJECT: Receipt of the Grievance Appeal Form

I acknowledge receipt of your Step II grievance appeal, identifier RRF / 2004 / 07 / 0661 / 27B
which was received in this office on 7/27/04

Unless you are otherwise notified you should be provided a Step II response within 15 business days of the
date your appeal was received or no later than 8/17/04

If you have not received a response by this date or the approved extension, you may submit your Step III
Appeal to the Directors office.

TO: MDOC Director's Office
Grandview Plaza Building
P.O. Box 30003
Lansing, Michigan 48909

FR: Kenneth A. Foster Bey, #142187
Ryan Regional Corr. Facility
17600 Ryan Road
Detroit, Michigan 48212-1155

RE: Step III Grievance Appeal.

August 19, 2004 A.D.

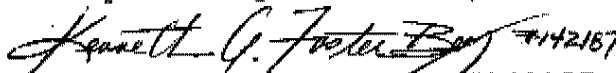
Dear Director's Office:

Enclosed, please find the following documents: Grievant's Step I and II Grievance (with original grievance page attached); Additional Pages #2-3 (two (2) copies); MDOC Parole Board Notice of Decision (dated 12/08/2003); Steps I and II Grievance Responses; and, Prisoner/Parolee Grievance Appeal Form (Steps II and III), all for filing within this office.

PLEASE NOTE: that on August 16, 2004 A.D., grievant received the Step II Response from Mr. Raymond D. Booker, Warden.

Thanking you for your time in this matter.

Respectfully Submitted,


Kenneth A. Foster Bey #142187

CC: file/kafb.

MICHIGAN DEPARTMENT OF CORRECTIONS
PRISONER/PAROLEE GRIEVANCE APPEAL FORM

4835-4248 12/97
CSI-247 B

Date Received by Grievance Coordinator
at Step II: MURIN HSSST JUL 27 2004

Grievance Identifier

RRF040700661276

INSTRUCTIONS: THIS FORM IS ONLY TO BE USED TO APPEAL A STEP I GRIEVANCE.

The white copy of the Prisoner/Parolee Grievance Form CSI-247A (or the goldenrod copy if you have not been provided with a Step I response in a timely manner) **MUST** be attached to the white copy of this form if you appeal it at both Step II and Step III.

If you should decide to appeal the Step I grievance response to Step II, your appeal should be directed to: Adm. Asst
Crittenden by 7/27/04. If it is not submitted by this date, it will be considered terminated.

RECEIVED
AUG 28 2004
MICHIGAN DEPT. OF CORRECTIONS
PRISONER AFFAIRS

If you should decide to appeal the response you receive at Step II, you should send your Step III Appeal to the Director's Office, P.O. Box 30003, Lansing, Michigan, 48909.

Name (first, last)	Number	Institution	Lock Number	Date of Incident	Today's Date
<u>Foster-Bey, K.</u>	<u>142187</u>	<u>RRF</u>	<u>4B-64</u>	<u>12/08/03</u>	<u>07/21/04</u>

STEP II--Reason for Appeal

Grievant is not satisfied with the response provided at the Step I level. Step I response is not correct. Once again, this grievant clearly states that he is filing this grievance against the parole board's **"FAILURE TO FOLLOW THE PAROLE PROCESS AS OUTLINED IN PD-06.05.104"**, as well as other policy directives.

Policy clearly indicates in this regard, a grievance **CAN BE** written and filed on the parole board. Grievant **IS NOT** grieving the parole board's decision or recommendation. The language of PD-06.05.104(X) is very clear. It is written in plain "English". The parole board can be grieved. Grievant seeks the Step II Respondent, to reply according to the policy. (SEE GRIEVANCE ENCLOSED).

STEP II--Response

After review of your grievance, I find the Step I response is upheld and there is no violation of Policy Directive 03.02.130, *Prisoner/Parolee Grievances*.

Paragraph F (2), reads in part, "... Grievances that raise the following non-grievable issues also shall be rejected by the Grievance Coordinator: (2) Decisions made by the Parole Board and recommendations made by its hearing officers to grant, deny, rescind, amend or revoke parole, or not to proceed with a lifer interview or a public hearing." Your grievance is as a result of a finding by the Parole Board. Grievance Rejected.

Date Received by
Step II Respondent:

7/27/04

R. BOOKER
Respondent's Name (Print)

R. Book
Respondent's Signature

8-5-04
Date

Date Returned to
Grievant:

8/6/04

STEP III--Reason for Appeal AGAIN, and for the third time, Grievant **IS NOT** "grieving" a parole board's decision. Quite the contrary! Grievant is grieving the parole board's **"FAILURE TO FOLLOW THE PAROLE PROCESS AS OUTLINED IN PD-06.05.104"**. See PD-06.05.104(X).

Grievant would like for his grievance to be adjudicated accordingly. The parole board "failed" in its procedural duties.

NOTE: Only a copy of this appeal and the response will be returned to you.

STEP III--Director's Response is attached as a separate sheet.

If you find the Step III Director's response unsatisfactory, you have the option of referring the grievance to the Office of Legislative Corrections Ombudsman, 4th Floor, Capitol Hall, 115 W. Allegan, Lansing, Michigan, 48913.

DISTRIBUTION: White--Central Office; Green - Canary --Step III; Pink--Step II; Goldenrod--Grievant

OVER →

4B *done*

THIRD STEP GRIEVANCE RESPONSE

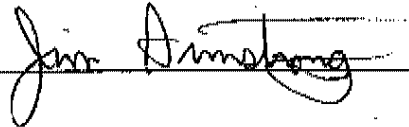
Kenneth Foster, #142187
RRF-04-07-00661-27b

The Grievant presents an issue which alleges on December 8, 2003, the Michigan parole board decided to deny him a parole release, via a public hearing. The parole board cited an action of "no interest" which the grievant states is a violation of the parole board policy. The issue was found not grievable at the local level according to the provisions of Policy Directive/Operating Procedure 03.02.130 (Prisoner/Parolee Grievances).

This investigator has reviewed the record presented with the appeal to Step Three. Upon further review of the documents presented, the record supports the Step One and Step Two responses to the grievance.

Additional information has not been presented to demonstrate an error in this determination. This decision is upheld at this level. Therefore, this grievance appeal is denied.

Approval Signature: _____

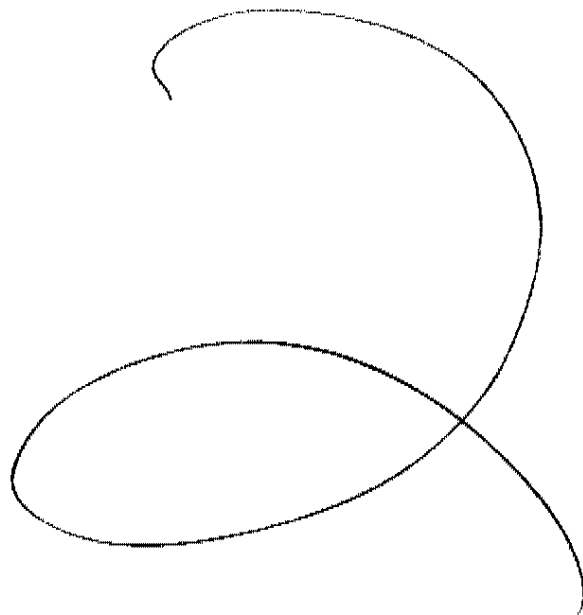


Date: _____

10/26/04

#8/10-25-04/27b

cc: Warden
Grievant

A handwritten signature in black ink, consisting of a large, stylized capital 'S' followed by a horizontal stroke that loops back to the left, ending in a small hook.

4835-4247 10/94
CSI-247A

Be brief and concise in describing your grievance issue. If you have any questions concerning the grievance procedure, refer to PD 03.02.130 and OP 03.02.130 available in the prison Law Library.

Name (print first, last)	Number	Institution	Lock Number	Date of Incident	Today's Date
Alexander, John	163875	SMF	3-219	4-12-04	4-19-04

If none, explain why.

I wrote the Warden of SMP concerning the matter, and received his response. "The warden's office is not involved in the parole process."

State problem clearly. Use separate grievance form for each issue. Additional pages, using plain paper, may be used.

Four copies of each page and supporting documents must be submitted with this form. The grievance must be submitted to the Grievance Coordinator in accordance with the time limits of OP 03.02.130. This grievance is intended to run against all employees, agents, and agencies of the State of MI, who have any influence on the composition, laws, policies, practices, and procedures of the Michigan Parole Board, including but not limited to the following individuals and entities: A. Governor Jennifer Granholm

1. Chairperson John S. Rubitschun
2. Charles Braddock
3. William Slaughter
4. Marjorie McNott
5. Marianne Samper
6. George Lellis
7. Miguel Serrios
8. James E. Atterbury
9. James J. Quinlan
10. Barbara S. Sampson

- A. Governor Jennifer Granholm
- B. Attorney General Mike Cox
- C. Patricia Carney, Director of M.D.O.C.
- D. The Michigan Dept. of Corr.
- E. The MICH Parole Board, and individually its members.

(See Attached Sheets) Con't.

Grievant's Signature

'Documents enclosed.'

RESPONSE (Grievant Interviewed? ☐ Yes ☒ No If No, give explanation. If resolved, explain resolution.)

Grievance code has been changed from 16c to 28a.

Grievance is rejected at Step I. It is a duplication of several grievances you have filed to the Parole Board on this same issue. Do not continue to file additional grievances on this issue which has been addressed, or it may result in your placement on Modified Access Status.

Respondent's Signature

Date

Reviewer's Signature

Date _____

De. Saiten
Respondent's Name (Print)

Graveson, Conrad
Working Title

B. Meagher /
Reviewer's Name (Print)

Deputy Garden
Working Title

Date Returned to Grievant:

If resolved at Step I, Grievant sign here.
Resolution must be described above.

Grievant's Signature

Date _____

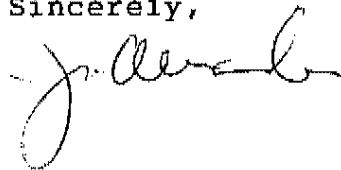
Con'ted. pg.2.

I, Johnny Alexander, #163875, complain that the above-named parties/agencies, by their collective or individual acts and omissions, or by their customs and policies, have violated my constitutional rights under the state and federal constitutions. Specifically, they have applied parole laws, rules, regulations, policies, procedures, and practices retroactively in violation of the due process and *ex post facto* clauses.

In support of my grievance, I state the following:

1. In 1981, I was convicted of a crime and sentenced to parolable life in prison with the expressed intent for the possibility of parole (Parolable Life).
2. At the time of my conviction and sentencing, a different parole regime existed than exists today.
3. At that time parole lifers had the right to have a personal parole interview at frequent intervals, to be given reasons for a parole pass-over, to have a parole pass-over treated as a denial of parole for purposes of judicial review, and to appeal such an adverse decision to court. In addition, at that time parolable lifers were reviewed by the board under the same, or near the same, standards for parole as any other inmates with long indeterminate (term-of-years) sentences.
4. At the time, many Michigan judges viewed a parolable life sentence as more lenient than a long term-of-years sentence, because parole eligibility began after just ten years instead of later, but was otherwise the same in virtually all aspects.
5. Since 1994, Michigan's parole laws, policies, practices, and procedures have changed radically for the worse for me. According to the former parole board chair, since 1994 "Life means Life". I believe that since 1994 there has been almost no distinction between parolable life and mandatory life in Michigan, in violation of legislative intent. And sentencing judge intent, (See attached Document 'Articles').
6. The above-named people/agencies have applied the new parole laws, policies, practices, and procedures retroactively, to me detriment, and in violation of the due process and *ex post facto* clauses of the state and federal constitutions. I therefore request that I be reviewed for parole/public hearing under the parole regime and the parole standards that exist when I was convicted and sentenced, and that the intent of my sentencing judge be met.

Sincerely,



Date: 4-19-04

MICHIGAN DEPARTMENT OF CORRECTIONS

PRISONER/PAROLEE GRIEVANCE APPEAL FORM

Date Received by Grievance Coordinator
at Step II: 5-18-04

Grievance Identifier

SMF-04-04-0794-28A

INSTRUCTIONS: THIS FORM IS ONLY TO BE USED TO APPEAL A STEP I GRIEVANCE.

The white copy of the Prisoner/Parolee Grievance Form CSJ-247A (on the goldenrod copy if you have not been provided with a Step I response in a timely manner) **MUST** be attached to the white copy of this form if you appeal it at both Step II and Step III.

If you should decide to appeal the Step I grievance response to Step II, your appeal should be directed to: G/D. Smith
by 5-20-04. If it is not submitted by this date, it will be considered terminated.

If you should decide to appeal the response you receive at Step II, you should send your Step III Appeal to the Director's Office, P.O. Box 30003, Lansing, Michigan, 48909.

Name (first, last)	Number	Institution	Lock Number	Date of Incident	Today's Date
<u>Alexander, John</u>	<u>163875</u>	<u>SME</u>	<u>3-218</u>	<u>4-12-04</u>	<u>5-13-04</u>

STEP II--Reason for Appeal Step one response does not address the issues. And the reasons given are wholly false, for I have not filed any grievances against the parole board on this matter. Therefore, I seek a reply to said issues stated in step one.

STEP II--Response

The response at Step I addresses your issue. The Parole Board states your issue has been addressed in previous grievances. Appeal denied.

Date Received by
Step II Respondent:5-18-04

B. Meagher for:
Warden (Birkett)

Respondent's Name (Print)

[Signature]
Respondent's Signature

Date

5-21-04Date Returned to
Grievant:5-24-04

STEP III--Reason for Appeal

I assert the same position as in step I & II. The issues have not been addressed, nor have they been grieved before.

NOTE: Only a copy of this appeal and the response will be returned to you.

STEP III--Director's Response is attached as a separate sheet.

If you find the Step III Director's response unsatisfactory, you have the option of referring the grievance to the Office of Legislative Corrections Ombudsman, 4th Floor, Capitol Hall, 115 W. Allegan, Lansing, Michigan, 48913.

DISTRIBUTION: White--Central Office; Green - Canary --Step III; Pink--Step II; Goldenrod--Grievant

→ over

THIRD STEP GRIEVANCE RESPONSE

John Alexander, #163875
SMF, 04-04-00794, 16C

3-218

The Grievant presents an issue which alleges that the grievance is against all State of Michigan employees, agents, and agencies. The grievance was not rejected at the local level according to the provisions of Policy Directive 03.02.130, titled "Prisoner/Parolee Grievances" and Operating Procedure, 03.02.130 titled "Prisoner/Parolee Grievances."

This investigator has reviewed the record presented with the appeal to step three. It is noted that the grievance issue does not present a grievable issue in a rational and responsible manner. Relief is not warranted or recommended. Upon further review of the documents presented, the record supports that additional information has not been presented on appeal to demonstrate an error in this determination. This decision is upheld at this level. This grievance appeal is denied.

Approval Signature: _____

Date: 6/26/04

#4/6-24-04/16C

C: Warden
Grievant

3

MICHIGAN DEPARTMENT OF CORRECTIONS
PRISONER/PAROLEE GRIEVANCE FORM4835-4247 10/94
CSI-247A

Date Received at Step I

5-17

Grievance Identifier:

MBP4ESK1171177A

Be brief and concise in describing your grievance issue. If you have any questions concerning the grievance procedure, refer to PD 03.02.130 and OP 03.02.130 available in the prison Law Library.

Name (print first, last)	Number	Institution	Lock Number	Date of Incident	Today's Date
Walter Lincoln	137127	MBP	D-3	11-19	5-16-04

What attempt did you make to resolve this issue prior to writing this grievance? On what date? The last 27 years.
If none, explain why.

State problem clearly. Use separate grievance form for each issue. Additional pages, using plain paper, may be used. Four copies of each page and supporting documents must be submitted with this form. The grievance must be submitted to the Grievance Coordinator in accordance with the time limits of OP 03.02.130.

SEE ATTACH TWO SHEET.

Grievant's Signature

RESPONSE (Grievant Interviewed? ☐ Yes ☒ No If No, give explanation. If resolved, explain resolution.)

Your grievance has been rejected as a non-grievable issue per PD-03.02.130. Decisions made by the Parole Board and recommendations made by its Hearings Officers to grant, deny, rescind, amend or revoke Parole, or not to proceed with a Lifer Interview or Public Hearing are non-grievable issues.

Respondent's Signature

Date

Reviewer's Signature

Date

Respondent's Name (Print)

Working Title

Reviewer's Name (Print)

Working Title

Date Returned to
Grievant:If resolved at Step I, Grievant sign here.
Resolution must be described above.

Grievant's Signature

Date

DISTRIBUTION: White, Green, Canary, Pink--Process to Step One; Goldenrod--Grievant

Grievance

This grievance is intended to run against all employees, agents, and agencies of the State of Michigan who have any influence on the composition, laws, policies, practices, and procedures of the Michigan Parole Board, including but not limited to the following individuals and entities:

- A. Governor Jennifer M. Granholm
- B. Attorney General Mike Cox
- C. Patricia Caruso, Director of the Michigan Department of Corrections
- D. The Michigan Department of Corrections
- E. The Michigan Parole Board, and individually its members:
 - 1. Chairperson John S. Rubitschun
 - 2. Charles Braddock
 - 3. William Slaughter
 - 4. Marjorie McNutt
 - 5. Marianne Samper
 - 6. George Lellis
 - 7. Miguel Berrios
 - 8. James E. Atterbury
 - 9. James J. Quinlan
 - 10. Barbara S. Sampson

I, Waymon Kincaid, # 137927, complain that the above-named parties/agencies, by their collective or individual acts and omissions, or by their customs and policies, have violated my constitutional rights under the state and federal constitutions. Specifically, they have applied parole laws, rules, regulations, policies, procedures, and practices retroactively in violation of the due process and *ex post facto* clauses.

In support of my grievance, I state the following:

- 1. In 1996 I was convicted of a crime and sentenced to life in prison with the possibility of parole (parolable life).
- 2. At the time of my conviction and sentencing, a different parole regime existed than exists today.
- 3. At that time parolable lifers had the right to have a personal parole interview at frequent intervals, to be given reasons for a parole pass-over, to have a parole pass-over treated as a denial of parole for purposes of judicial review, and to appeal such an adverse decision to court. In addition, at that time parolable lifers were reviewed by the board under the same, or nearly the same, standards for parole as other inmates with long indeterminate (term-of-years) sentences.

Grievance
Page Two

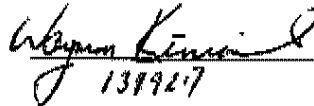
4. At the time, many Michigan judges viewed a parolable life sentence as more lenient than a long term-of-years sentence, because parole eligibility began after just ten years instead of later, but was otherwise the same in virtually all respects.

5. Since 1994, Michigan's parole laws, policies, practices, and procedures have changed radically for the worse for me. According to the former parole board chair, since 1994 "life means life." I believe that since 1994 there has been almost no distinction between parolable life and mandatory life in Michigan.

6. The above-named people/agencies have applied the new parole laws, policies, practices, and procedures retroactively, to my detriment, and in violation of the due process and *ex post facto* clauses of the state and federal constitutions.

I therefore request that I be reviewed for parole under the parole regime and the parole standards that existed when I was convicted and sentenced.

Sincerely,


131927

Date: 5-16-04, 2004

MICHIGAN DEPARTMENT OF CORRECTIONS
GRIEVANCE APPEAL RECEIPT - STEP II

4835-0978
CAJ-978 11/94

DATE: 6/14/04

TO: 137927 KINCAID

LOCATION: MBP

B=2
~~18~~

FROM: MBP Grievance Coordinator *Casey Tallio*
Casey Tallio

SUBJECT: Receipt of the Grievance Appeal Form

I acknowledge receipt of your Step II grievance appeal, Identifier MBP 04 05 1121 270D,

which was received in this office on 6/10/04.

Unless you are otherwise notified, you should be provided a Step II response within 15 business days of the date your appeal was received or no later than 7/1/04. If you have not received a response by this date or agreed to an extension, you may submit your Step III appeal to the Director's office.

MICHIGAN DEPARTMENT OF CORRECTIONS

JUN 2 8 2004

4835-4248 12/97

CSJ-247 B

PRISONER/PAROLEE GRIEVANCE APPEAL FORM

Date Received by Grievance Coordinator
at Step II: 6-10-04

Grievance Identifier

MBP 04 05 1121 270C

INSTRUCTIONS: THIS FORM IS ONLY TO BE USED TO APPEAL A STEP I GRIEVANCE.

The white copy of the Prisoner/Parolee Grievance Form CSJ-247A (or the goldenrod copy if you have not been provided with a Step I response in a timely manner) **MUST** be attached to the white copy of this form if you appeal it at both Step II and Step III.

If you should decide to appeal the Step I grievance response to Step II, your appeal should be directed to: Step II
MBP by 6/11/04. If it is not submitted by this date, it will be considered terminated.

If you should decide to appeal the response you receive at Step II, you should send your Step III Appeal to the Director's Office, P.O. Box 30003, Lansing, Michigan, 48909.

Name (first, last)	Number	Institution	Lock Number	Date of Incident	Today's Date
KINCAID	137927	MBP	D-3	1994	6-7-04

STEP II--Reason for Appeal

I am not satisfied with Step one Response

(SEE ATTACH #3 sheets)

STEP II--Response

It is noted your Step I grievance was rejected as a non grievable issue regarding decisions made by the Parole Board. After reviewing your Step I grievance and subsequent appeal, that rejection is supported.

Date Received by
Step II Respondent:6-10-04

Jerry Hofbauer, Warden

Respondent's Name (Print)

Respondent's Signature

Date

Date Returned to
Grievant:6-18-04

STEP III--Reason for Appeal

I am not satisfied with Step #1 or Step #2

6-24-2004

NOTE: Only a copy of this appeal and the response will be returned to you.

STEP III--Director's Response is attached as a separate sheet.

If you find the Step III Director's response unsatisfactory, you have the option of referring the grievance to the Office of Legislative Corrections Ombudsman, 4th Floor, Capitol Hall, 115 W. Allegan, Lansing, Michigan, 48913.

DISTRIBUTION: White--Central Office; Green - Canary --Step III; Pink--Step II; Goldenrod--Grievant

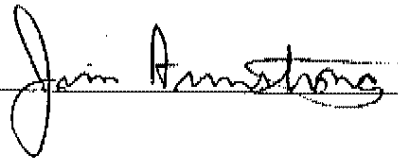
THIRD STEP GRIEVANCE RESPONSE

Waymon Kincaid, #137927
MBP-04-05-1121-27d

The Grievant presents an issue which is related to a Parole Board decision. The issue was found not grievable at the local level according to the provisions of Policy Directive/Operating Procedure 03.02.130 (Prisoner/Parolee Grievances).

This investigator has reviewed the record presented with the appeal to Step Three. Upon further review of the documents presented, the record supports the Step One and Step Two responses to the grievance. Additional information has not been presented to demonstrate an error in this determination. This decision is upheld at this level. Therefore, this grievance appeal is denied.

Approval Signature: _____

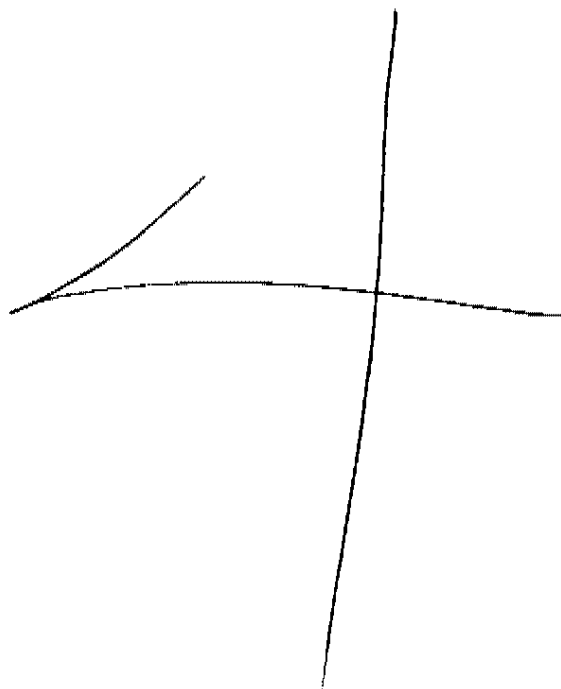


Date: _____

7/13/04

#6/7-9-04/27d

cc: Warden
Grievant



MICHIGAN DEPARTMENT OF CORRECTIONS
PRISONER/PAROLEE GRIEVANCE FORM4835-4247 10/94
CSI-247A

7-19-04

SRF 04-07 00778-27d

Date Received at Step I _____ Grievance Identifier: _____

Be brief and concise in describing your grievance issue. If you have any questions concerning the grievance procedure, refer to PD 03.02.130 and OP 03.02.130 available in the prison Law Library.

Name (print first, last)	Number	Institution	Lock Number	Date of Incident	Today's Date
WILLIAM SLEEPER	116539	SRF	800/053	7/12/04	7/15/04

What attempt did you make to resolve this issue prior to writing this grievance? On what date? 6/25/04
If none, explain why.

On June 25, 2004, I wrote the Chairman of the Michigan Parole Board and requested re-consideration of my parole. (See attached Exhibit 1) On this date, I received a letter from the Parole Board stating they would consider-State problem clearly. Use separate grievance form for each issue. Additional pages, using plain paper, may be used. Four copies of each page and supporting documents must be submitted with this form. The grievance must be submitted to the Grievance Coordinator in accordance with the time limits of OP 03.02.130.

My letter in Feb. 2000 during my next review....

PLEASE SEE ATTACHED GRIEVANCE INFORMATION
THAT EXPLAINS IN DETAIL WHO AND WHAT I AM GRIEVING.*William Sleeper*

Grievant's Signature

RESPONSE (Grievant Interviewed?) ☐ Yes ☐ No If No, give explanation. If resolved, explain resolution.)

Your grievance is being returned to you without being processed for reason that the issue(s) contained in the grievance are non-grievable per policy Per PD 03.02.130

Prisoner/Parolee Grievances decisions made by the Parole Board and
Respondent's Signature _____ Date _____ Reviewer's Signature _____ Date _____
recommendations made by its hearing officers to grant, rescind, amend or revokeRespondent's Name (Print) William Sleeper Working Title _____ Reviewer's Name (Print) Susan Roberts Working Title _____

Date Returned to

Grievant: 7-19-04

If resolved at Step I, Grievant sign here.

Resolution must be described above.

Grievant's Signature _____

Date _____

DISTRIBUTION: White, Green, Canary, Pink — Process to Step One; Goldenrod — Grievant

GRIEVANCE, STEP ONE:

Page 1 of 2

This grievance is intended to run against all employees, agents, and agencies of the State of Michigan who have any influence on the composition, laws, policies, practices, and procedures of the Michigan Parole Board, including but not limited to the following individuals and entities:

- A. Governor Jennifer M. Granholm
- B. Attorney General Mike Cox
- C. Patricia Caruso, Director, Michigan Dept. of Corrections.
- D. The Michigan Department of Corrections.
- E. The Michigan Parole Board, and individually its members:

- 1. Chairperson John S. Rubitschun
- 2. Charles Braddeock
- 3. William Slaughter
- 4. Marjorie McNutt
- 5. Marianne Samper
- 6. George Lellis
- 7. Miguel Berrios
- 8. James E. Atterbury
- 9. James J. Quinlan
- 10. Barbara S. Sampson

I, William Slaughter, # 116539, complain that the above-named parties/agencies, by their collective or individual acts and omissions, or by their customs and policies, have violated my constitutional rights under the state and federal constitutions. Specifically, they have applied parole laws, rules, regulations, policies, procedures, and practices retroactively in violation of the due process and ex post facto clauses.

In support of my grievance, I state the following:

- 1. In 1966 I was convicted of a crime and sentenced to life in prison with the possibility of parole, (paroleable life).
- 2. At the time of my conviction and sentencing, a different parole regime existed than exists today.
- 3. At that time paroleable lifers had the right to have a personal parole interview at frequent intervals, to be given reasons for a parole pass-over, to have a parole pass-over treated as a denial of parole for purposes of judicial review, and to appeal such an adverse decision to court. In addition, at that time paroleable lifers were reviewed by the board under the same, or nearly the same, standards for parole as other inmates with long indeterminate (term-of-years) sentences.

4. At the time, many Michigan judges viewed a parolable life sentence as more lenient than a long term-of-years sentence,
Page two: Step one Grievance:

because parole eligibility began after just ten years instead of later, but was otherwise the same in virtually all respects.

5. Since 1994, Michigan's parole laws, policies, practices, and procedures have changed radically for the worse for me. According to the former parole board chair, since 1994 "life means life." I believe that since 1994 there has been almost no distinction between parolable life and mandatory life in Michigan.

6. The above-named people/agencies have applied the new parole laws, policies, practices, and procedures retroactively, to my detriment, and in violation of the due process and ex post facto clauses of the state and federal constitutions.

I therefore request that I be reviewed for parole under the parole regime and the parole standards that existed when I was convicted and sentenced.

Sincerely,

William David Sleeper
William David Sleeper

Date: July 23, 2004

Date Received by Grievance Coordinator
 at Step II: 7/30/04

Grievance Identifier 910101117-00374.216

INSTRUCTIONS: THIS FORM IS ONLY TO BE USED TO APPEAL A STEP I GRIEVANCE.

The white copy of the Prisoner/Parolee Grievance Form CSJ-247A (or the goldenrod copy if you have not been provided with a Step I response in a timely manner) **MUST** be attached to the white copy of this form if you appeal it at both Step II and Step III.

If you should decide to appeal the Step I grievance response to Step II, your appeal should be directed to: _____ by _____. If it is not submitted by this date, it will be considered terminated.

Warden Lafler 7-30-04

If you should decide to appeal the response you receive at Step II, you should send your Step III Appeal to the Director's Office, P.O. Box 30003, Lansing, Michigan, 48909.

Name (first, last)	Number	Institution	Lock Number	Date of Incident	Today's Date
<u>Bill Sleeper</u>	<u>116539</u>	<u>SRR</u>	<u>8 052</u>	<u>07/17/04</u>	<u>07/23/04</u>

STEP II--Reason for Appeal

Step one response was that I am grieving the parole Board's Decision in my case. At no time have I said or indicated that I am grieving the parole boards "DECISION" in my case, I am however, grieving the parole board, and all parties involved with the "CURRENT PROCEDURE", in which they arrived at that decision, and I continue to go so to step two (?).

Bill Sleeper 116539 7-23-04

STEP II--Response

See attached response.

Date Received by
 Step II Respondent:

7/30/04

B. Lafler, Warden-SRR

Respondent's Name (Print)

Respondent's Signature

07/30/04

Date

Date Returned to
 Grievant:

07/30/04

STEP III--Reason for Appeal

A "PROCEDURE" can and should be able to be grieved when it so dramatically and negatively effects an individual and I feel the merits of this grievance is valid and stands on its own, and I continue to step 3.

William D. Sleeper

WILLIAM D. SLEEPER 116539 Aug. 2, 2004

NOTE: Only a copy of this appeal and the response will be returned to you.

STEP III--Director's Response is attached as a separate sheet.

If you find the Step III Director's response unsatisfactory, you have the option of referring the grievance to the Office of Legislative Corrections Ombudsman, 4th Floor, Capitol Hall, 115 W. Allegan, Lansing, Michigan, 48913.

DISTRIBUTION: White--Central Office; Green - Canary --Step III; Pink--Step II; Goldenrod--Grievant

Response - Step II Grievance Appeal
SRF-04-07-00778-27d
Sleeper #116539

Grievant claims that his constitutional rights have been violated by the State of Michigan and its Officers when they have applied parole laws, rules, regulations, policies, procedures and practices retroactively. Grievant is requesting that he be reviewed for parole under a parole regime and parole standards that existed when he was convicted and sentenced.

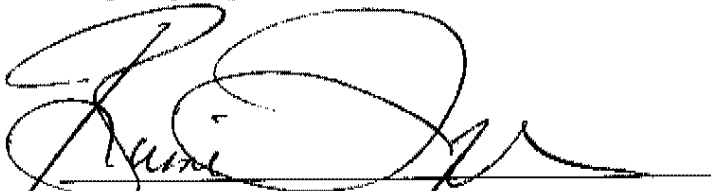
The Grievance Coordinator rejected the grievance for containing issues that are non-grievable, per PD 03.02.130. Decisions of the Parole Board and recommendations made by its hearings officers to grant, rescind, amend or revoke are specifically listed in policy as non-grievable.

Grievant claims on appeal to Step II that he is not grieving the decision, but is grieving the current procedure which was used to arrive at the decision.

The record has been reviewed on appeal.

The Grievance Coordinator acted appropriately in rejecting the grievance. Grievant cannot grieve a Parole Board decision and the grievance procedure has no jurisdiction over how the Parole Board arrives at decisions. Procedures cannot be grieved, per policy, and the changes made within the Parole Board have taken place under legislative enactments, which are also non-grievable as the facility has no control over legislative decrees. No further action is required at this step.

No policy or procedure violations have been shown. The grievance is denied at this step.



Blaine Lafler, Warden
Saginaw Correctional Facility
July 30, 2004

Cc: Grievance Coordinator - SRF
file

THIRD STEP GRIEVANCE RESPONSE

WILLIAM SLEEPER, #116539
SRF, 04-07-00778-27d

The Grievant presents an issue which alleges that his constitutional rights have been retroactively violated. He is seeking a review for parole under a parole regime and parole standards that existed when he was convicted and sentenced. This issue was non-grievable at the local level in accordance with the provisions of Policy Directive PD03.02.130, titled "Prisoner/Parolee Grievances". There was no documentation to support the Grievant's allegations of staff misconduct. Therefore, the step one and two response is upheld and relief is not warranted at this level.

This investigator has reviewed the record presented with the appeal to step three. The record supports that staff properly responded to this grievance at step two and it is not clear why the step one response was not attached. Additional information has not been presented to demonstrate an error in this determination. This decision is upheld at this level. This grievance appeal is denied.

Approval Signature: _____

Jim Amstrong

Date: 12/20/04

#J/12-20-04-1

cc: Warden
Grievant

5

MICHIGAN DEPARTMENT OF CORRECTIONS
PRISONER/PAROLEE GRIEVANCE FORM4835-4247 10/94
CSI-247ADate Received at Step I APR 14 2004 Grievance Identifier: TCF 10210409370020P

Be brief and concise in describing your grievance issue. If you have any questions concerning the grievance procedure, refer to PD 03.02.130 and OP 03.02.130 available in the prison Law Library.

Name (print first, last)	Number	Institution	Lock Number	Date of Incident	Today's Date
Robert Weisenauer	157085	TCF	CA-39	04/03/04	04/03/04

What attempt did you make to resolve this issue prior to writing this grievance? On what date? _____
 If none, explain why.

No resolution can be obtained at this level of the process. The issues involved are constitutional in nature, and prior to pursuing these claims in court, the issues must be presented in this grievance and administratively exhausted.

State problem clearly. Use separate grievance form for each issue. Additional pages, using plain paper, may be used. Four copies of each page and supporting documents must be submitted with this form. The grievance must be submitted to the Grievance Coordinator in accordance with the time limits of OP 03.02.130.

This grievance is against all employees, agents, and agencies of the State of Michigan who have any influence on the composition, laws, policies, practices, and procedures of the Michigan Parole Board, including but not limited to the following individuals and entities: Governor Jennifer Granholm; Attorney General Mike Cox; Director Patricia Caruso of the Michigan Department of Corrections, the Michigan Department of Corrections; Michigan Parole Board and individually its members (Chairperson John S. Rubitschun, Charles Braddock, William Slaughter, Marjorie McNutt, Marianne Samper, George Lellis, Miguel Berrios, James Atterbury, James J. Quinlan, and Barbara S. Sampson). I, Robert Weisenauer grieve/complain that the above named parties, by their collective or individual acts and omissions, or by their customs and policies, have violated my constitutional rights under the state and federal constitutions. Specifically, they have applied parole laws, rules, regulations, policies, procedures, and practices retroactively in violation of the due process and ex post facto clauses.

In support of this grievance, I state the following:

1. In 1979 I was convicted of a crime and sentenced to life in prison with the possibility of parole.
2. At the time of my conviction and sentencing a different parole regime existed than exists today.

(Continued on page two)

Robert Weisenauer
 Grievant's Signature

RESPONSE (Grievant Interviewed? ☐ Yes ☐ No If No, give explanation. If resolved, explain resolution.)

REJECTED
SEE ATTACHED STATEMENT

Respondent's Signature _____ Date _____ Reviewer's Signature _____ Date _____

Respondent's Name (Print) _____ Working Title _____ Reviewer's Name (Print) _____ Working Title _____

Date Returned to
 Grievant: 4-14-04

If resolved at Step I, Grievant sign here.
 Resolution must be described above.

Grievant's Signature _____

Date _____

DISTRIBUTION: White, Green, Canary, Pink--Process to Step One; Goldenrod--Grievant

Weisenauer Grievance - Page Two

Robert Weisenauer 157085 TCF CA-39 04/03/04 04/03/04

(Continued from page one)

3. At that time parolable lifers had the right to have a personal parole interview at frequent intervals; to be given reasons for a parole pass-over; to have a parole pass-over treated as a denial of parole for purposes of judicial review; and to appeal such an adverse decision to court. In addition, at that time parolable lifers were reviewed by the board under the same, or nearly the same, standards for parole as other inmates with long indeterminate (term-of-years) sentences.

4. At the time, many Michigan judge's viewed a parolable life sentence as more lenient than a long term-of-years sentence, because parole eligibility began after just ten years instead of later, but was otherwise the same in virtually all other respects.

5. Since 1994, Michigan's parole laws, policies, practices, and procedures have changed radically for the worse for me. According to the former parole board chair, since 1994, "life means life." I believe that since 1994 there has been almost no distinction between parolable life and mandatory life in Michigan.

6. The above named people/agencies have applied the new parole laws, policies, practices, and procedures retroactively, to my detriment, and in violation of the due process and ex post facto clauses of the state and federal constitutions.

I therefore request that I be reviewed for parole under the parole regime and the parole standards that existed when I was convicted and sentenced.

Robert Weisenauer #157085

ROBERT WEISENAUER #157085

DATE 4/5/04

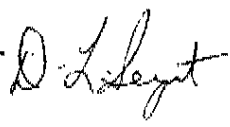
MICHIGAN DEPARTMENT OF CORRECTIONS

"Expecting Excellence Every Day"

MEMORANDUM

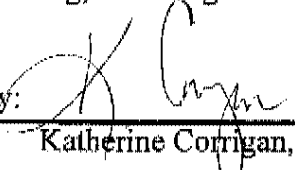
Date: April 16, 2004

To: #157085 Weisenauer (Lock: CA-39)

From: Dennis Sergent, Grievance Coordinator
Thumb Correctional Facility (TCF) 

Subject: Rejected Step I Grievance #TCF-04-04-00370-027D

The above referenced Step I grievance is returned to you, rejected in accordance PD 03.02.130 & OP 03.02.130. Decisions made by the Parole Board and recommendations made by its hearing officers to grant, deny, rescind, amend or revoke parole, or not to proceed with a lifer interview or a public hearing, are non-grievable.

Reviewed By: 

Date: April 16, 2004

Katherine Corrigan, ADW/Housing

cc: Parole Board
File

Step II Grievance Appeal Response

TCF 040400370027 D

Name: Weisenauer

Number: 157085

Lock: CA 39

Your Step I grievance, the response, and your reason for appeal have been reviewed.

Summary of Step I Complaint:

Grievance was rejected at Step I in accordance with PD 03.02.130 as decisions made by the Parole Board are non grievable.

Summary of Step I Response:

No response prepared.

Summary of Reason for Appeal:

Prisoner states there was no resolution at Step I.

Summary of Step II Investigation:

Grievance was rejected at Step I. PD 03.020130, pg 8 RR lists the following reasons issues are non grievable: #3. Decisions made by the Parole Board..."

Conclusion:

The Step I grievance was appropriately rejected as it does not meet the criteria outlined for processing grievances.

Based on the above, your grievance is considered denied at Step II.

Respondent's Name (Print)

Millicent Warren, Warden

Respondent's Signature

Millicent Warren

Date

4/28/07

Date Received by Grievance Coordinator
at Step II: APR 27 2004

Grievance Identifier

TCH0404003700270

INSTRUCTIONS: THIS FORM IS ONLY TO BE USED TO APPEAL A STEP I GRIEVANCE.

The white copy of the Prisoner/Parolee Grievance Form CSJ-247 B (or the printed copy if you have not been provided with a Step I response in a timely manner) **MUST** be attached to the white copy of this form if you appeal it at both Step II and Step III.

If you should decide to appeal the Step I grievance response to Step II, your appeal should be directed to: TCH
GRIEVANCE OFFICE by 5-4-04. If it is not submitted by this date, it will be considered terminated.

If you should decide to appeal the response you receive at Step II, you should send your Step III Appeal to the Director's Office, P.O. Box 30003, Lansing, Michigan, 48909.

Name (first, last)	Number	Institution	Lock Number	Date of Incident	Today's Date
<u>ROBERT WEISENAUER</u>	<u>157085</u>	<u>TCF</u>	<u>CA-39</u>	<u>04/08/04</u>	<u>04/20/04</u>

STEP II--Reason for Appeal

No resolution was reached at Step I. I am submitting for resolution and answer at Step II.

STEP II--Response

Date Received by
Step II Respondent:

4-27-04

See attached statement

Date Returned to
Grievant:

4-29-04

Respondent's Name (Print)

Respondent's Signature

Date

STEP III--Reason for Appeal

NO SOLUTION AT STEP II, SUBMITTING TO STEP III.

NOTE: Only a copy of this appeal and the response will be returned to you.

STEP III--Director's Response is attached as a separate sheet.

If you find the Step III Director's response unsatisfactory, you have the option of referring the grievance to the Office of Legislative Corrections Ombudsman, 4th Floor, Capitol Hall, 115 W. Allegan, Lansing, Michigan, 48913.

DISTRIBUTION: White--Central Office; Green - Canary --Step III; Pink--Step II; Goldenrod--Grievant

D

CAP

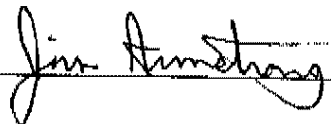
THIRD STEP GRIEVANCE RESPONSE

ROBERT WEISENAEUR, #157085
TCF, 04-04-00370-27d

The Grievant presents an issue which alleges that Parole Board members apply incorrect rules for interviews. He is seeking the correct application of the rules as relief. This issue was non-grievable, at the local level in accordance with the provisions of Policy Directive PD-03.02.130, titled "Prisoner/Parolee Grievances. The action of staff is in accordance with policy and procedure. A review at this level has not determined that any staff misconduct was demonstrated. Therefore, the step one and two response is upheld and relief is not warranted at this level.

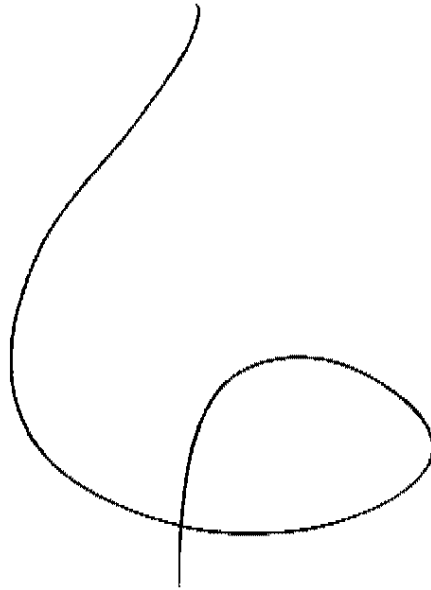
This investigator has reviewed the record presented with the appeal to step three. The record supports that staff properly responded to this grievance at step one and step two. Additional information has not been presented to demonstrate an error in this determination. This decision is upheld at this level. This grievance appeal is denied.

Approval Signature: _____

Date: 2/16/05

#J/02-10-05

cc: Warden
Grievant



MICHIGAN DEPARTMENT OF CORRECTIONS
PRISONER/PAROLEE GRIEVANCE FORM4835-4247 10/94
CSI-247A

Date Received at Step 1

APR 2004

Grievance Coordinator's Office

Grievance Identifier:

MIRACFFC9CIC443171 2881

Be brief and concise in describing your grievance issue. If you have any questions concerning the grievance procedure, refer to PD 03.02.130 and OP 03.02.130 available in the prison Law Library.

Name (print first, last)	Number	Institution	Lock Number	Date of Incident	Today's Date
ERIC McCORM	120287	ALRF	4C-18L	ON-going	4-4-2004

What attempt did you make to resolve this issue prior to writing this grievance? On what date? 2-10-2004
If none, explain why. I put in a PAROLE REMINDER FORM

State problem clearly. Use separate grievance form for each issue. Additional pages, using plain paper, may be used. Four copies of each page and supporting documents must be submitted with this form. The grievance must be submitted to the Grievance Coordinator in accordance with the time limits of OP 03.02.130.

SEE ATTACH


 Grievant's Signature
RESPONSE (Grievant Interviewed? ☐ Yes ☐ No If No, give explanation. If resolved, explain resolution.)

Respondent's Signature

Date

Reviewer's Signature

Date

Respondent's Name (Print)

Working Title

Reviewer's Name (Print)

Working Title

Date Returned to
Grievant:If resolved at Step I, Grievant sign here.
Resolution must be described above.

Grievant's Signature

Date

DISTRIBUTION: White, Green, Canary, Pink--Process to Step One; Goldenrod--Grievant

Grievance

This grievance is intended to run against all employees, agents, and agencies of the State of Michigan who have any influence on the composition, laws, policies, practices, and procedures of the Michigan Parole Board, including but not limited to the following individuals and entities:

- A. Governor Jennifer M. Granholm
- B. Attorney General Mike Cox
- C. Patricia Caruso, Director of the Michigan Department of Corrections
- D. The Michigan Department of Corrections
- E. The Michigan Parole Board, and individually its members:
 - 1. Chairperson John S. Rubitschun
 - 2. Charles Braddock
 - 3. William Slaughter
 - 4. Marjorie McNutt
 - 5. Marianne Samper
 - 6. George Lellis
 - 7. Miguel Berrios
 - 8. James E. Atterbury
 - 9. James J. Quinlan
 - 10. Barbara S. Sampson

I, McCormick, # 120287, complain that the above-named parties/agencies, by their collective or individual acts and omissions, or by their customs and policies, have violated my constitutional rights under the state and federal constitutions. Specifically, they have applied parole laws, rules, regulations, policies, procedures, and practices retroactively in violation of the due process and *ex post facto* clauses.

In support of my grievance, I state the following:

- 1. In 1977 I was convicted of a crime and sentenced to life in prison with the possibility of parole (parolable life).
- 2. At the time of my conviction and sentencing, a different parole regime existed than exists today.
- 3. At that time parolable lifers had the right to have a personal parole interview at frequent intervals, to be given reasons for a parole pass-over, to have a parole pass-over treated as a denial of parole for purposes of judicial review, and to appeal such an adverse decision to court. In addition, at that time parolable lifers were reviewed by the board under the same, or nearly the same, standards for parole as other inmates with long indeterminate (term-of-years) sentences.

Grievance
Page Two

4. At the time, many Michigan judges viewed a parolable life sentence as more lenient than a long term-of-years sentence, because parole eligibility began after just ten years instead of later, but was otherwise the same in virtually all respects.

5. Since 1994, Michigan's parole laws, policies, practices, and procedures have changed radically for the worse for me. According to the former parole board chair, since 1994 "life means life." I believe that since 1994 there has been almost no distinction between parolable life and mandatory life in Michigan.

6. The above-named people/agencies have applied the new parole laws, policies, practices, and procedures retroactively, to my detriment, and in violation of the due process and *ex post facto* clauses of the state and federal constitutions.

I therefore request that I be reviewed for parole under the parole regime and the parole standards that existed when I was convicted and sentenced.

Sincerely,

Eric McCullum

Date: 4, 4, 2004

MCJND CORRECTIONAL FACILITY
MEMORANDUM

DATE: APRIL 06, 2004
TO: 120287 McCULLUM 4C 18L
SUBJECT: REJECTED GRIEVANCE NRF 0404 0437 28C

Your grievance is being returned to you with a brief explanation as to why it will not be processed at this time. Re-submit your grievance if the problem can be remedied in a timely fashion. If you have further questions about the grievance policy and procedure, please consult PD 03.02.130 and OP 03.02.130, much of which is summarized below.

Your grievance failed to include sufficient information:

- () State problem in the space provided. Additional pages may be used. Four copies of each additional page must be submitted with your grievance form.
- () The statement provided is illegible:
- () Grievance lacks: time, date or amount of information relative to issue being grieved:
- () Grievance lacks: Grievant's signature, number, facility or housing unit:
- () Grievance lacks identity of the staff member addressed in this grievance:
- () Grievance is a property/money issue and does not include documentation to prove ownership, value, receipt or payment:
- () A clear concise statement:

Untimely/Incomplete Form

- () Grievance was not written and forwarded to the Grievance Coordinator within nine(9) business days of the incident being grieved:

Lack of Jurisdiction/Extraneous Information

- () You must forward the grievance to the institution being grieved:
- (X) N.R.F. has no jurisdiction over:
- () Grievance is based on outside information, there is no evidence to support you claim.

Frivolous/Multiple Issue/Other

- () The grievance includes issues which are frivolous, clearly without merit or based on extraneous information:
- () Multiple issues:
- () Prohibited language:
- () There was no attempt to resolve before filling grievance.

Duplicate

- (X) Grievance is a duplicate and/or repetitive to a grievance previously filed:
- () This issue has been previously addresses by the Grievance Coordinator. The grievance will not be processed further and will be filed for reference only.

Modified Access

- () You are on Modified Access Status and have obtained the attached grievance from a source other than the Grievance Coordinator.
- () Your Grievances will be monitored for the next thirty(30) days. Any continued failure to adhere policy 03.02.130 will result in Modified Access status.

Non-grievable

- () Due to the expertise of their profession, decisions made by Medical Personnel will not be questioned by this office.
- () Decisions made by Hearings Officers in major or minor misconduct hearings and issues directly related to misconducts or the hearings process.
- () Decisions made by Hearings Officers in hearings conducted pursuant to Administrative Rule 791.3315 regarding proposed security reclassification to segregation, visitor restrictions, special designations, and high or very high risk classification.
- () The contents of Administrative Rules, Department Policy Directives and Procedures or Director's Office Memoranda.
- () Two or more prisoners may not jointly file a single grievance regarding an issue of mutual impact or submit identical or duplicate individual grievances regarding a given issue or as an organized protest. You may not file a grievance on the behalf of others.
- () Decisions made by the Parole Board.
- () The grievance contains language that is profane, that represents a threat of physical harm or demeans the character, race ethnicity, physical appearance, sex, religion, national origin or offends any person will not be processed.

UNLESS THE NECESSARY CORRECTION(S) IS MADE YOUR GRIEVANCE WILL NOT BE PROCESSED

MICHIGAN DEPARTMENT OF CORRECTIONS

PRISONER/PAROLEE GRIEVANCE APPEAL FORM

Date Received by Grievance Coordinator

at Step II: 4-9-04

Grievance Identifier

NRIF040400437128C**INSTRUCTIONS:** THIS FORM IS ONLY TO BE USED TO APPEAL A STEP I GRIEVANCE.

The white copy of the Prisoner/Parolee Grievance Form CSJ-247A (or the goldenrod copy if you have not been provided with a Step I response in a timely manner) **MUST** be attached to the white copy of this form if you appeal it at both Step II and Step III.

If you should decide to appeal the Step I grievance response to Step II, your appeal should be directed to E. Kowick N.R.F. Admin. Asst. by 04/14/04. If it is not submitted by this date, it will be considered terminated.

If you should decide to appeal the response you receive at Step II, you should send your appeal to the Director's Office, P.O. Box 30003, Lansing, Michigan, 48909.

Name (first, last)	Number	Institution	Lock Number	Date of Incident	Today's Date
<u>Eric McCullum</u>	<u>120287</u>	<u>N.R.F.</u>	<u>4C-18L</u>		

STEP II--Reason for Appeal

I AM NOT SATISFIED WITH STEP I RESPONSE. PLEASE SEE ATTACH FOR GRIEVANCE.

STEP II--Response

SEE ATT. RESPONSE.

Date Received by
Step II Respondent:

4-9-04

Respondent's Name (Print)

Respondent's Signature

Date

Date Returned to
Grievant:

4-19-04

STEP III--Reason for Appeal

I AM NOT SATISFIED WITH STEP II RESPONSE. PLEASE SEE ATTACH FOR GRIEVANCE.

NOTE: Only a copy of this appeal and the response will be returned to you.

STEP III--Director's Response is attached as a separate sheet.

If you find the Step III Director's response unsatisfactory, you have the option of referring the grievance to the Office of Legislative Corrections Ombudsman, 4th Floor, Capitol Hall, 115 W. Allegan, Lansing, Michigan, 48913.

DISTRIBUTION: White--Central Office; Green - Canary --Step III; Pink--Step II; Goldenrod--Grievant

THIRD STEP GRIEVANCE RESPONSE

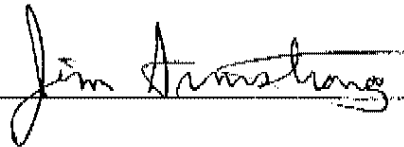
Eric McCullum, #120287
NRF, 04-04-00437, 28C

This investigator has reviewed the record presented with the appeal to step three. All relevant information was considered. Based on this review, this writer finds the grievance was untimely filed, violating the provisions of Policy Directive 03.02.130, titled "Prisoner/Parolee Grievances" and Operating Procedure 03.02.130, titled "Prisoner/Parolee Grievances."

The grievance record supports the date of incident is coded as **"Ongoing," which does not represent a specific date of an alleged incident.** The grievance was not received at step one until 4-5-04. The Grievant failed to present any evidence to support he was prevented from timely filing his grievance due to circumstances beyond his control. Furthermore, the responses provided at step one and two adequately address the merits of the main issue grieved. Based on this finding, we will not address the merits of the grievance further.

This grievance appeal is denied.

Approval Signature: _____

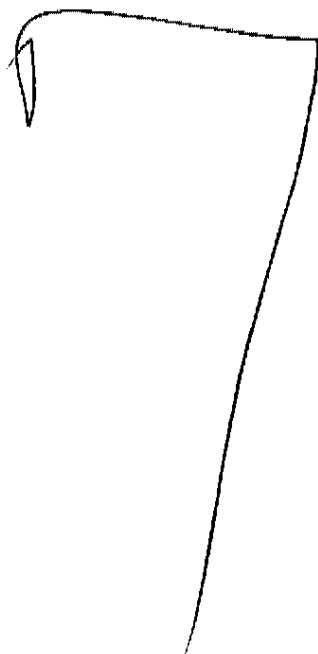


Date: _____

5/1/04

#4/5-26-04/28C

C: Warden
Grievant



**MICHIGAN DEPARTMENT OF CORRECTIONS
PRISONER/PAROLEE GRIEVANCE FORM**

4835-4247 10/94
CSJ-247A

Date Received at Step I

Grievance Identifier:

Be brief and concise in describing your grievance issue. If you have any questions concerning the grievance procedure, refer to PD 03.02.130 and OP 03.02.130 available in the prison Law Library.

Name (print first, last)	Number	Institution	Lock Number	Date of Incident	Today's Date
Gerard Nelson	A150163	DRF	957B	Ongoing	6-29-54

What attempt did you make to resolve this issue prior to writing this grievance? On what date?
If none, explain why.

State problem clearly. Use separate grievance form for each issue. Additional pages, using plain paper, may be used. Four copies of each page and supporting documents must be submitted with this form. The grievance must be submitted to the Grievance Coordinator in accordance with the time limits of OP 03.02.130.

" Please see attached

Shahid Hussain
Grievant's Signature

RESPONSE (Grievant Interviewed? ☐ Yes ☐ No If No, give explanation. If resolved, explain resolution.)

10/10/2018 10:10:10

Blanca Brucato
Respondent's Signature

7/13/04
Date

Reviewer's Signature

11/26/77
Date

Respondent's Name (Print)

Working Title

Reviewer's Name (Print)

Working Title

Date Returned to Grievant: 1/11/11

If resolved at Step I, Grievant sign here.
Resolution must be described above.

Grievant's Signature

Date _____

DISTRIBUTION: White, Green, Canary, Pink--Process to Step One; Goldenrod--Grievant

HESSELL, GERALD A150163 DRF 957B ONGOING 6/29/04

Step I Grievance, in accordance with PD 03.02.130; Prisoner Litigation Reform Act (PLRA) and my First Amendment Right.

This grievance is intended to run against all employees, agents and agencies of the State of Michigan who have any influence on the composition, laws, policies, practices, and procedures of the Michigan Parole Board, including but not limited to the following individuals and entities:

- A. Governor Jennifer M. Granholm
- B. Attorney General Mike Cox
- C. Patricia Caruso, Director of the Michigan Department of Corrections
- D. The Michigan Department of Corrections
- E. The Michigan Parole Board, and individually its members:
 - 1. Chairperson John S. Rubitschun
 - 2. Charles Braddock
 - 3. William Slaughter
 - 4. Marjorie McNutt
 - 5. Marianne Samper
 - 6. George Lellis
 - 7. Miguel Berrios
 - 8. James E. Atterbury
 - 9. James J. Quinlan
 - 10. Barbara S. Sampson

I, Jerry Lee Hessel #A150163, complain that the above-named parties/agencies, by their collective or individual acts and omissions, or by their customs and policies, have violated my constitutional rights under the state and federal constitutions. Specifically, they have applied parole laws, rules, regulations policies, procedures, and practices retroactively in violation of the due process and *ex post facto* clauses.

In support of my grievance, I state the following:

1. In 1976, I was arrested and subsequently convicted of a crime and sentenced, 1977, to life in prison with the possibility of parole (parolable life).
2. At the time of my conviction and sentencing, a different parole regime existed than exists today.
3. At the time, parolable lifers had the right to have a personal parole interview at frequent intervals, (under Parole Board Memo 8.02, the board interviewed parolable lifers at the conclusion of seven years and every three years thereafter, which created a "7+3+3..." mandatory hearing schedule. Between 1977 and 1982, during the periods of my conviction and sentence the parole statute did not govern the frequency of parole hearings. Instead, the MDOC devised its own rules to conduct parole hearings by, in 1977, promulgating Administrative rule 791.7710, which required the parole board to interview me after seven years, again after three years and every year thereafter, creating a mandatory interview schedule of "7+3+1+1...", to be given reasons for a parole pass-over, to have a parole pass-over treated as a denial of parole for purposes of judicial review, and to appeal such an adverse decision to court. In addition, at that time parolable lifers were reviewed by the board under the same, or nearly the same, standards for parole as other inmates with long indeterminate (term-

of-years) sentences.

4. At the time, many Michigan judges viewed a parolable life sentence as more lenient than a long term-of-years sentence, because parole eligibility began after just ten years instead of later, but was otherwise the same in virtually all respects.

5. Since 1994, Michigan's parole laws, policies, customs and procedures have changed radically for the worse for me in Governor Engler's response to an ex-convict being released and committing heinous crimes against society. According to the former parole board chair, since 1994 "life means life." I believe that since 1994 there has been almost no distinction between parolable life and mandatory life in Michigan.

6. The above-named people/agencies have applied the new parole laws, policies, practices, customs and procedures retroactively, to my detriment, and in violation of the due process and *ex post facto* clause of the state and federal constitutions.

I therefore request that I be reviewed for parole under the parole regime and parole standards that existed when I was convicted and sentenced.

Sincerely,


Gerald Lee Hessell A150163

Dated: June 6, 2004

4835-0976
CAJ-976 11/94

**Michigan Department of Correction
FIRST STEP GRIEVANCE RECEIPT**

DATE: 7/1/04

TO: HESSELL 150163

LOCATION: 9-57

FROM: Grievance Coordinator, R.DEVERS

SUBJECT: Receipt for Step 1 Grievance

Your Step 1 grievance regarding **PAROLE ISSUE OTHER** was received in this office on **7/1/04** and you should receive a response no later than **7/22/04**. If you have not received a response by this date, or agreed to an extension, you may submit a written request for an appeal form to this office. You will need to note on your request the grievance identifier that was assigned to your grievance. That identifier is:
DRF-04-07-0993-16.Z-

RESPONSE (Grievant Interviewed? ☐ Yes ☐ No If No, give explanation. If resolved, explain resolution.)

The grievant is a prisoner sentenced to life under MCL 750.83 Assault to Murder, MCL 750.529 Robbery Armed, and MCL 750.317 Murder 2nd Degree, by the Honorable Walter P. Cynar. The grievant was sentenced on June 10, 1977. With 423 days of jail time credit, his life sentence began on April 13, 1976. This offence was committed on April 12, 1976. According to Michigan Department of Corrections Policy Directive 06.05.104(1)(1) "Prisoners sentenced for an offense committed before October 1, 1992, are eligible for parole after serving ten calendar years of the life sentence." The grievant became parole eligible after serving 10 calendar years of his life sentence. He reached this threshold on April 13, 1986.

MCL 750.83, MCL 750.529, and MCL 750.314, all state that anyone found guilty of these felonies will be punished by imprisonment in the state prison for life or for any term of years. Judge Cynar sentenced the grievant to life, not a term of years.

The Parole Board has adhered to the law in the grievant's case according to MCL 791.234(6)(a) which states "at the conclusion of 10 calendar years of the prisoner's sentence and thereafter as determined by the parole board until the prisoner is paroled, discharged, or deceased, and in accordance with the procedures described in subsection (7), 1 member of the parole board shall interview the prisoner." In May of 1984, the Parole conducted the grievant's initial lifer interview. Thereafter, the grievant has received an interview in 1987, 1993, and 1999. The Parole Board recently reviewed the grievant's file in February of 2003 and by majority vote had no interest in taking action at this time. The grievant was sent a *Notice of Decision* dated March 13, 2003, with a decision date of February 20, 2003, stating this.

Parole is not guaranteed when a Lifer becomes parole eligible. When the Parole Board reviews a life sentence, a number of factors are taken into consideration. They include the nature and circumstances of the offense, any prior criminal history, the prisoner's risk factors for future assaultive behavior and property offenses, and the prisoner's institutional conduct and program involvement over the years.

The grievant cannot use the Michigan Department of Corrections *Prisoner/Parolee Grievance Form* to grieve the actions of the Honorable Jennifer Granholm, Governor, or Mike Cox, Attorney General. The writer can only speak for the Michigan Department of Corrections, Office of the Parole Board, and their actions. Through this investigation it is found the Michigan Parole Board has adhered to the Michigan Compiled Laws in the grievant's case. It is found this grievance has no merit.

Grievance denied.



Respondent's Signature

Patricia Bancroft

Respondent's Name (Print)

7/13/04

Date

Lifer/Commutation Coord

Working Title



Reviewer's Signature

Dave Kleinhardt, Manager

Reviewer's Name (Print)

Date Returned to
Grievant:

If resolved at Step I, Grievant sign here.
Resolution must be described above.

Grievant's Signature

Date

MICHIGAN DEPARTMENT OF CORRECTIONS
PRISONER/PAROLEE GRIEVANCE APPEAL FORMHessell 150163
DRF0407099316Z4835-4248 12/97
CSI-247 B

26

Date Received by Grievance Coordinator
at Step II: _____

Grievance Identifier

INSTRUCTIONS: THIS FORM IS ONLY TO BE USED TO APPEAL A STEP I GRIEVANCE.

The white copy of the Prisoner/Parolee Grievance Form CSI-247A (or the goldenrod copy if you have not been provided with a Step I response in a timely manner) **MUST** be attached to the white copy of this form if you appeal it at both Step II and Step III.

If you should decide to appeal the Step I grievance response to Step II, your appeal should be directed to the Parole Board Grandview Plaza _____ by 07/29/2004. If it is not submitted by this date, it will be considered terminated.

P.O. Box 30003 Lansing Michigan 48909

If you should decide to appeal the response you receive at Step II, you should send your Step III Appeal to the Director's Office, P.O. Box 30003, Lansing, Michigan, 48909.

Name (first, last)	Number	Institution	Lock Number	Date of Incident	Today's Date
Gerald Hessell	A150163	DRF	957B	Ongoing	7-20-04

STEP II--Reason for Appeal Respondent has evaded the issue. "Life means life" was not an issue in 1977 when grievant pled guilty. Grievant's attorney advise grievant would only serve 12 years. Victim was told grievant would serve between 10-15 years. Parole Board is much harsher today than 1977. Grievant would not have pled guilty if he knew he would have to serve 28+ years on a paroleable life term. The procedures, customs, practices, policies and rules used today are being applied in violation of Ex Post Facto clause, as these were not being used in 1977 when grievant was sentenced.

STEP II--Response

Date Received by
Step II Respondent:

See Attached

JOHN RUBITSCHEN

Respondent's Name (Print)

John Rubitschen 7/27/04

Respondent's Signature

Date

Date Returned to
Grievant:

07/30/2004

STEP III--Reason for Appeal The policy respondent refers to and the procedures and customs that are being utilized today were not the same as those being used in 1977 when grievant was initially sentence to paroleable life. The MDOC "Life means Life" was not the attitude of the MI Parole board in 1976-77. These changes are being applied in violation of the EX POST FACTO clause.

NOTE: Only a copy of this appeal and the response will be returned to you.

STEP III--Director's Response is attached as a separate sheet.

If you find the Step III Director's response unsatisfactory, you have the option of referring the grievance to the Office of Legislative Corrections Ombudsman, 4th Floor, Capitol Hall, 115 W. Allegan, Lansing, Michigan, 48913.

DISTRIBUTION: White--Central Office; Green - Canary --Step III; Pink--Step II; Goldenrod--Grievant

Step II Grievance Response

Hessell, Gerald #150163

Grievance ID# DRF-04-07-0993-16Z

RESPONSE (Grievant Interviewed? ☐ Yes ☐ No If No, give explanation. If resolved, explain resolution.)

You are disputing the response you received at Step I.

Your file has been reviewed at Step II.

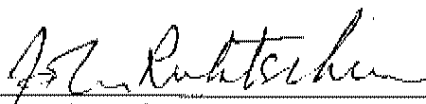
You are serving a life sentence for Assault to Murder, Robbery Armed and Murder 2nd. The response you received at step I was appropriate. Your case has been reviewed in accordance with MCL 791.234 (6) (a) and PD-06.05.104 (Parole Process)

Grievance denied.

Parole Board Chairperson,

John S. Rubitschun

Respondent's Name


Respondent's Signature

7/27/04
Date

THIRD STEP GRIEVANCE RESPONSE

HESSELL, GERALD #150163
DRF-04-07-00993-16z

The grievant alleges that he was sentenced in 1977 to a life sentence with the possibility of parole. Grievant alleges that at the time he was sentenced, a different parole regime existed than exists today. Grievant alleges that as of 1994 there has been no distinction between parolable life and mandatory life in Michigan. Grievant seeks as relief to be reviewed for parole under the parole regime and parole standards that existed when he was convicted and sentenced.

This investigator has reviewed the record presented with the appeal to Step Three. All relevant information was considered. Based on this review, this writer finds the responses provided at Steps One and Two adequately address the merits of the main issue grieved.

The record presented with the appeal does not suggest that further action is justified at this level. The record indicates that the grievant has been given parole consideration as required by PD 06.05.104 "Parole Process". There is no requirement in policy that a prisoner be issued a parole even though he may be eligible for parole.

The grievant has not shown a violation of policy. This grievance appeal is denied.

Approval Signature: _____

Date: 11/10/07

#7/11-02-04/16z

cc: Warden
Prisoner

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for use of the Clerk of Court for the purpose of initiating the civil docket sheet.

I. (a) PLAINTIFFS

Kenneth Foster-Bey, John Alexander, Waymon Kincaid,
William Sleeper, Robert Weisnauer, Eric McCullum,
Jerry Lee Hessel

(b) County of Residence of First Listed

Wayne

DEFENDANTS

See Attached

County of Residence of First Listed

Ingham

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
LAND INVOLVED.
Attorneys (If Known)

(C) Attorney's (Firm Name, Address, and Telephone Number)

See Attached

05-71318

RECEIVED

APR - 5 2005
Clerk's Office
U.S. District Court
Ann Arbor, MI

11. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
☒ 3 Federal Question (U.S. Government Not a Plaintiff)
☐ 2 U.S. Government Defendant
☐ 4 Diversity (Indicate Citizenship of Parties in Item 111)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- For Diversity Cases Only: PLA DEF
This State ☐ 1 ☐ 1 Incorporated or Principal Place of Business In This State ☐ 4 ☐ 4
Citizen of Another ☐ 2 ☐ 2 Incorporated and Principal of Business In Another State ☐ 5 ☐ 5
Citizen or Subject of a Foreign Country ☐ 3 ☐ 3 Foreign Nation ☐ 6 ☐ 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
☐ 110 Insurance ☐ 120 Marine ☐ 130 Miller Act ☐ 140 Negotiable Instrument ☐ 150 Recovery of Overpayment and Enforcement of Judgment ☐ 151 Medicare Act ☐ 152 Recovery of Defaulted Student Loans (Excl. Veterans) ☐ 153 Recovery of Overpayment of Veteran's Benefits ☐ 160 Stockholders' Suits ☐ 190 Other Contract ☐ 195 Contract Product Liability	PERSONAL INJURY ☐ 310 Airplane ☐ 315 Airplane Product Liability ☐ 320 Assault Libel And Slander ☐ 330 Federal Employers' Liability ☐ 340 Marine ☐ 345 Marine Product Liability ☐ 350 Motor Vehicle ☐ 355 Motor Vehicle Product Liability ☐ 360 Other Personal Injury PERSONAL INJURY ☐ 362 Personal Injury-Med. Malpractice ☐ 365 Personal Injury-Product Liability ☐ 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY ☐ 370 Other Fraud ☐ 371 Truth in Lending ☐ 380 Other Personal Property Damage ☐ 385 Property Damage Product Liability	☐ 610 Agriculture ☐ 620 Other Food & Drug ☐ 625 Drug Related Seizure of Property 21: 881 ☐ 630 Liquor Laws ☐ 640 R.R. & Truck ☐ 650 Airline Regs. ☐ 660 Occupational Safety/Health ☐ 690 Other LABOR ☐ 710 Fair Labor Standards Act ☐ 720 Labor/Mgmt. Relations ☐ 730 Labor/Mgmt. Reporting & Disclosure Act ☐ 740 Railway Labor Act ☐ 790 Other Labor Litigation ☐ 791 Empl. Ret. Inc. Security Act	☐ 422 Appeal 28 USC 158 ☐ 423 Withdrawal 28 USC 157 PROPERTY RIGHTS ☐ 820 Copyrights ☐ 830 Patent ☐ 840 Trademark SOCIAL SECURITY ☐ 861 HIA (1395f) ☐ 862 Black Lung (923) ☐ 863 DIWC/DIWW (405(g)) ☐ 864 SSID Title XVI ☐ 865 RSI (405(g)) FEDERAL TAX SUITS ☐ 870 Taxes (U.S. Plaintiff or Defendant) ☐ 871 IRS-Third Party 26 USC 7609	☐ 400 State Reapportionment ☐ 410 Antitrust ☐ 430 Banks and Banking ☐ 450 Commerce/ICC ☐ 460 Deportation ☐ 470 Racketeer Influenced & Corrupt Organizations ☐ 810 Selective Service ☐ 850 Securities/Commodities/Exchange ☐ 875 Customer Challenge 12 USC 3410 ☐ 891 Agricultural Acts ☐ 892 Economic Stabilization Act ☐ 893 Environmental Matters ☐ 894 Energy Allocation Act ☐ 895 Freedom of Information Act ☐ 900 Appeal of Fee Determination Under Equal Access to Justice ☐ 950 Constitutionality of State Statutes ☐ 890 Other Statutory Actions
REAL PROPERTY ☐ 210 Land Condemnation ☐ 220 Foreclosure ☐ 230 Rent Lease & Ejectment ☐ 240 Torts to Land ☐ 245 Tort Product Liability ☐ 290 All Other Real Property	CIVIL RIGHTS ☐ 441 Voting ☐ 442 Employment ☐ 443 Housing/Accommodations ☐ 444 Welfare ☐ 440 Other Civil Rights PRISONER PETITIONS ☐ 510 Motions to Vacate Sentence ☐ Habeas Corpus: ☐ 530 General ☐ 535 Death Penalty ☐ 540 Writs and Other ☒ 550 Civil Rights ☐ 555 Prison Condition			

V. ORIGIN

(PLACE AN "X" IN ONE BOX ONLY)

☒ 1 Original Proceeding

☐ 2 Remove State Court

☐ 3 Repleaded in U.S. District Court

☐ 4 Repleaded in U.S. District Court

☐ 5 Transferred from another district

☐ 6 Appeal to District

☐ 7 Judge from Magistrate

POSSIBLE COMPANION CASE

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

See Attached

VII. REQUESTED IN COMPLAINT:

☒ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

\$ DEMAND

CHECK YES only if demanded in Complaint:

JURY DEMAND:

☐ Yes ☒ No

VIII. RELATED CASE(S) instructions: IF ANY

JUDGE Hon. Avern Cohn

DOCKET NUMBER

04-CV-71090-DT

DATE

4-5-05

SIGNATURE OF ATTORNEY OF RECORD

Paul D. Enig

1. Is this a case that has been previously dismissed?

☐ Yes
☒ No

If yes, give the following information:

Court: _____

Case No.: _____

Judge: _____

2. Other than stated above, are there any pending or previously discontinued or dismissed companion cases in this or any other court, including state court? (Companion cases are matters in which it appears substantially similar evidence will be offered or the same or related parties are present and the cases arise out of the same transaction or occurrence.)

☒ Yes
☐ No

If yes, give the following information:

Court: Eastern District of Michigan

Case No.: 04-CV-73953-DT

Judge: Hon. Robert H. Cleland

Notes :

This is a 1983 class action; the previous cases were individual actions brought in habeas.

Attachment for Civil Cover Sheet

1(a) DEFENDANTS:

John S. Rubitschun, James Atterberry, Miguel Berrios, Charles Braddock, Stephen Deboer, Enid Livingston, James Quinlan, Marianne Samper, Barbara Sampson, Artina Hartman, Patricia L. Caruso

1(c) Attorney's Firm Name, Address and Telephone Number

Paul D. Reingold
Michigan Clinical Law Program
363 Legal Research Building
801 Monroe St.
Ann Arbor, MI 48109-1215

VI. CAUSE OF ACTION

This action is for declaratory and injunctive relief under 42 U.S.C. Section. 1983. The plaintiffs are prisoners in the custody of the Michigan Department of Corrections who were sentenced to parolable life terms before October 1, 1992. The plaintiffs challenge the defendants' retroactive use of parole standards and parole laws and policies that were not in effect when the plaintiffs were convicted. Such use violates the ex post facto and due process clauses of the United States Constitution.