

No. A06-2308

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STATE OF MINNESOTA

IN COURT OF APPEALS

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Lillian Virginia Simmons,

Appellant,

vs.

Joan Fabian, Commissioner of Corrections,  
in her Official and Individual Capacities,

Respondent.

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**RESPONDENT'S BRIEF AND APPENDIX**

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BRADFORD COLBERT  
Legal Assist. to Minn. Prisoners  
Atty. Reg. No. 0166790

MICHELLE MCLEAN  
Legal Assist. to Minn. Prisoners  
Certified Student Attorney

875 Summit Avenue, Room 254  
St. Paul, MN 55015  
(651) 290-6413

*Attorneys for Appellant*

LORI SWANSON  
Attorney General  
State of Minnesota

KELLY S. KEMP  
Assistant Attorney General  
Atty. Reg. No. 0220280

445 Minnesota Street, Suite 1100  
St. Paul, MN 55101  
(651) 215-1561

*Attorneys for Respondent*

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The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2).

**TABLE OF CONTENTS**

	<b>Page</b>
TABLE OF AUTHORITIES .....	ii
LEGAL ISSUES .....	1
STATEMENT OF THE CASE AND FACTS.....	2
SCOPE OF REVIEW.....	4
ARGUMENT .....	6
I.    APPELLANT CANNOT PROCEED WITH A 42 U.S.C. § 1983 CLAIM FOR DAMAGES BECAUSE THE COMMISSIONER IS IMMUNE REGARDING HER PAROLE DECISIONS.....	6
II.   APPELLANT MAY NOT OBTAIN INJUNCTIVE OR DECLARATORY RELIEF UNDER 42 U.S.C. § 1983.....	8
CONCLUSION.....	13
APPENDIX	

## TABLE OF AUTHORITIES

	Page
<b>FEDERAL CASES</b>	
<i>Figg v. Russell</i> , 433 F.3d 593 (8th Cir. 2006).....	1, 6
<i>Greenholtz v. Inmates of the Neb. Penal &amp; Corr. Complex</i> , 442 U.S. 1 (1979).....	1, 10
<i>Hafer v. Melo</i> , 502 U.S. 21 (1991).....	6
<i>Hulsey v. Owens</i> , 63 F.3d 354 (5th Cir. 1995).....	6
<i>Johnson v. Rhode Island Parole Bd.</i> , 815 F.2d 5 (1st Cir. 1987).....	7
<i>Knoll v. Webster</i> , 838 F.2d 450 (10th Cir. 1988).....	7
<i>Llano v. Berglund</i> , 282 F.3d 1031 (8th Cir. 1982).....	7
<i>Montero v. Travis</i> , 171 F.3d 757 (2d Cir. 1999).....	1, 6, 8
<i>Nelson v. Balazic</i> , 802 F.2d 1077 (8th Cir. 1986).....	7
<i>Patterson v. Von Riesen</i> , 999 F.2d 1235 (8th Cir. 1993).....	6, 7
<i>Pope v. Chew</i> , 521 F.2d 400 (4th Cir. 1975).....	7
<i>Pulliam v. Allen</i> , 466 U.S. 522 (1984).....	8

*Sellars v. Proconier*,  
641 F.2d 1295 (9th Cir. 1981)..... 7, 8

*Walrath v. United States*,  
35 F.3d 277 (7th Cir. 1994)..... 7

**STATE CASES**

*Barton v. Moore*,  
558 N.W.2d 746 (Minn. 1997)..... 4

*Dunn v. State*,  
486 N.W.2d 428 (Minn. 1992)..... 2

*Fratzke v. Pung*,  
378 N.W.2d 112 (Minn. Ct. App. 1985) ..... 10

*Kafka v. O'Malley*,  
221 Minn. 490, 22 N.W.2d 845 (1946)..... 9

*Kelsey v. State*,  
283 N.W.2d 892 (Minn. 1979)..... 8

*Kipp v. Saetre*,  
454 N.W.2d 639 (Minn. Ct. App. 1990)..... 7

*Martens v. Minnesota Mining & Mfg. Co.*,  
616 N.W.2d 732 (Minn. 2000)..... 4, 5

*Northern States Power Co. v. Minnesota Metropolitan Council*,  
684 N.W.2d 485 (Minn. 2004)..... 5, 12

*State ex rel. J.S.B. v. Hvass*,  
No. A05-1142, 2006 WL 1148090 (Minn. Ct. App. May 2, 2006)..... 10

*State ex. rel Swyston v. Hedman*,  
170 N.W.2d 282 (Minn. 1970)..... 9

*State ex. rel. Wieland v. Crist*,  
No. A05-2568, 2006 WL 2677828 (Minn. Ct. App. Sept. 19, 2006) ..... 9

*State v. Kalkbrenner*,  
263 Minn. 245, 116 N.W.2d 560 (1962)..... 9

*State v. Morse*,  
398 N.W.2d 673 (Minn. Ct. App. 1987) ..... 1, 9, 10

*Wayne v. Fabian*,  
No. A05-1789, 2006 WL 1738247 (Minn. Ct. App. June 27, 2006) ..... 10

**FEDERAL STATUTES**

42 U.S.C. § 1983 ..... passim

**STATE STATUTES**

Minn. Stat. § 243.05 (2006) ..... 6, 10

Minn. Stat. § 244.05 (2006) ..... 2, 9, 10

Minn. Stat. § 244.05 (1988) ..... 10

Minn. Stat. § 609.185(3) (1988)..... 2

Minn. Stat. § 609.19(1) (1988)..... 2

**STATE RULES**

Minn. R. 2940.1800 (2005)..... 10, 11

Minn. R Civ. P. 56..... 5

## LEGAL ISSUES

- I. Is the Minnesota Commissioner Of Corrections entitled to immunity from suit under 42 U.S.C. § 1983 regarding her parole decisions?

*The district court ruled in the affirmative.*

*Figg v. Russell*, 433 F.3d 593 (8th Cir. 2006)  
*Montero v. Travis*, 171 F.3d 757 (2d Cir. 1999)

- II. Does the Complaint otherwise state a claim upon which a district court could order injunctive or declaratory relief?

*The district court ruled in the negative with regard to injunctive relief and did not reach the issue with regard to declaratory relief.*

Minn. Stat. § 244.05 (2006)  
*Greenholtz v. Inmates of the Neb. Penal & Corr. Complex*, 442 U.S. 1 (1979)  
*State v. Morse*, 398 N.W.2d 673 (Minn. Ct. App. 1987)

## STATEMENT OF THE CASE AND FACTS

This is an appeal of an order dismissing a Complaint in an action brought by an inmate under 42 U.S.C. § 1983. It arises out of a decision by the Commissioner of Corrections (“Commissioner”) denying Appellant parole. The Honorable Steven D. Wheeler, Judge of Ramsey County District Court, granted the Commissioner’s motion to dismiss. *See* RA1.<sup>1</sup> Judgment was entered on October 11, 2006. From that judgment, Appellant has taken the instant appeal.

Appellant is an inmate with the Minnesota Department of Corrections (“DOC”) at its facility in Shakopee, Minnesota. Complaint ¶¶ 3, 9. A jury found Appellant guilty of first-degree felony murder in violation of Minn. Stat. § 609.185(3) (1988) and second-degree intentional murder in violation of Minn. Stat. § 609.19(1) (1988) in the death of Marlizza McIntyre in 1989. *See Dunn v. State*, 486 N.W.2d 428, 429-30 (Minn. 1992).<sup>2</sup> At the time of her conviction, inmates were eligible for parole after serving 17 years, and thus Appellant was eligible for parole on or about October 26, 2006. Complaint ¶ 9; Minn. Stat. § 244.05, subd. 4 (1988).

Appellant’s Complaint alleges that she made “impressive efforts to rehabilitate herself” and she has utilized the correctional facility’s educational and psychological resources “to the maximum possible extent.” Complaint ¶ 11. Appellant alleges that “her case file demonstrates that she has been rehabilitated and would not present a threat to society if released.” Complaint ¶ 12.

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<sup>1</sup> “RA” references are to pages of Respondent’s Appendix.

<sup>2</sup> Appellant’s name was Lillian Virginia Dunn at the time of her conviction.

Appellant alleges that the Commissioner and an advisory panel reviewed Appellant's case file on or about March 15, 2003 and that the Commissioner then continued Appellant's case for further review in 2010. Complaint ¶ 13. Appellant alleges that the Commissioner's decision was based upon a policy that criminals serving life sentences will not be released at their minimum parole-eligibility dates. Complaint ¶ 14.

Appellant brought this action under 42 U.S.C. § 1983, asserting the following claims: Claim I - violation of Due Process Clause of the Fourteenth Amendment and Claim II - violation of the Ex Post Facto clause of the United States Constitution. Complaint ¶¶ 16-17. Appellant did not allege a claim for money damages. Appellant did request an injunction ordering the Commissioner to conduct a new parole hearing and requested that the court order a judgment finding that the Commissioner violated Appellant's constitutional rights. Complaint at 5.

The Commissioner moved to dismiss the Complaint on the grounds that she is absolutely immune from suit under Section 1983 for her parole decisions and that her decision did not violate the Ex Post Facto Clause. Appellant's responsive memorandum included a copy of a letter from the Commissioner to Appellant, dated June 24, 2004. RA6, RA19-20. In the letter, which the Commissioner wrote after her decision denying parole, the Commissioner explained that no inmate who received a life sentence was entitled to release upon their minimum release date. RA19. The Commissioner then stated, "As you may know, no life-sentenced inmate now gets out at their minimum parole eligibility date, since the purposeful taking-of-a-life requires more than minimum

accountability time.” RA19. The Commissioner further noted that Appellant’s prison discipline record was not perfectly clean, and “continued to build until 2002, which is fairly recent in relation to your overall imprisonment time.” RA19-20. Finally, the Commissioner concluded, “this discipline impacts your status by requiring that we watch you very closely for a reasonable period of time in order to assess whether or not the positive adjustment and achievements you have demonstrated over the short-term truly represent life-style changes that you have internalized thereby carrying-over to society when and if you are released at some future date.” RA20.

The district court dismissed the Complaint. RA1. The court held that the Commissioner enjoyed absolute immunity because her role was similar in function to that of the judiciary. RA4. The court also held that Appellant’s Complaint did not state a claim under the Ex Post Facto Clause.<sup>3</sup> RA5. The court concluded by holding that the facts in the Complaint were insufficient to support a claim for injunctive relief. RA5. This appeal followed.

### SCOPE OF REVIEW

Upon appeal from an order granting dismissal of an action, the question before this Court is whether the complaint stated a claim upon which relief could be granted. *Martens v. Minnesota Mining & Mfg. Co.*, 616 N.W.2d 732, 739 (Minn. 2000). The legal sufficiency of the claim is reviewed *de novo*. *Barton v. Moore*, 558 N.W.2d 746, 749 (Minn. 1997). Documents referenced in the complaint may be construed by the Court

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<sup>3</sup> Appellant’s Brief did not include any argument in support of its Ex Post Facto Clause claim. Thus the claim is waived.

without converting a motion to dismiss to one for summary judgment. *Martens*, 616 N.W.2d at 740 n.7.

In this case, Appellant submitted a letter from the Commissioner to Appellant dated June 24, 2004 with Appellant's Memorandum in Opposition to Defendant's Motion to Dismiss. RA6, RA19-20. The district court cited the Commissioner's letter in its order dismissing the case. RA2. Because this letter that was considered by the district court was not part of the original Complaint, Appellant arguably converted the motion to one for summary judgment. *Northern States Power Co. v. Minnesota Metropolitan Council*, 684 N.W.2d 485, 490-91 (Minn. 2004). Under Minn. R. Civ. P. 56, this Court would review the evidence in the light most favorable to the nonmoving party, but dismissal cannot be averted with "unverified and conclusory allegations." *Northern States Power*, 684 N.W.2d at 491 (quoting *Funchess v. Cecil Newman Corp.*, 632 N.W.2d 666, 672 (Minn. 2001)).

Because the Commissioner did not submit the extraneous evidence, this Court should still consider whether the Complaint stated a claim that would allow it to survive the Commissioner's motion to dismiss. But if this Court considers the letter and reviews the case under the summary judgment standard, this Court should still affirm the district court's judgment dismissing the case.

## ARGUMENT

### I. APPELLANT CANNOT PROCEED WITH A 42 U.S.C. § 1983 CLAIM FOR DAMAGES BECAUSE THE COMMISSIONER IS IMMUNE REGARDING HER PAROLE DECISIONS.

The Complaint does not allege a claim for money, other than attorneys fees, and thus Appellant cannot proceed with such a claim for money damages. Despite the fact that no such claim was pled in the Complaint, Appellant infers that it was pled. See Appellant's Brief at 13 (stating that "[a]long with monetary damages, Simmons sought declaratory and injunctive relief in her complaint").

Even if a claim for money damages had been pled or if the Complaint could somehow be construed to include such a claim, a claim for money damages may not be brought against the Commissioner on the basis of her parole decision. The Commissioner has authority to make parole decisions in cases involving a life sentence. Minn. Stat. § 243.05 (2006). A claim for money damages under Section 1983 cannot be brought against the Commissioner in her official capacity because she is not a "person" within the meaning of Section 1983. *Hafer v. Melo*, 502 U.S. 21, 25-27 (1991). And a claim for money damages cannot be brought against her in her individual capacity because she enjoys absolute immunity.

It is well established that parole board officials, like judges, are entitled to immunity from Section 1983 claims for damages. See, e.g., *Figg v. Russell*, 433 F.3d 593, 597-98 (8th Cir. 2006); *Montero v. Travis*, 171 F.3d 757, 761 (2d Cir. 1999) (noting that rationales for affording judges absolute immunity apply with equal force to parole board officials); *Hulsey v. Owens*, 63 F.3d 354, 356-57 (5th Cir. 1995); *Patterson v. Von*

*Riesen*, 999 F.2d 1235, 1239 (8th Cir. 1993) (holding that there was no set of facts upon which an inmate could sue for damages regarding a parole denial); *Knoll v. Webster*, 838 F.2d 450, 451 (10th Cir. 1988); *Johnson v. Rhode Island Parole Bd.*, 815 F.2d 5, 8 (1st Cir. 1987); *Sellars v. Proconier*, 641 F.2d 1295, 1303 (9th Cir. 1981) (holding that parole board officials should receive the same degree of protection as judges so that the decision-making process may remain free from fear of lawsuits, having to defend lawsuits, and spending time in depositions); *Pope v. Chew*, 521 F.2d 400, 405-06 (4th Cir. 1975).<sup>4</sup>

The well-established body of law giving parole board members absolute immunity was based upon an extension of common law judicial immunity. The courts that extended this quasi-judicial absolute immunity to parole board members reasoned that parole board members perform similar tasks to judges in making parole decisions and thus are called upon to adjudicate controversies. *See Nelson v. Balazic*, 802 F.2d 1077, 1078 (8th Cir. 1986). They have to render impartial decisions in cases that can excite strong feelings. *See Sellars*, 641 F.2d at 1303. Absolute immunity protects them from constant litigation. *See Walrath v. United States*, 35 F.3d 277, 284 (7th Cir. 1994). Immunity serves the broader public interest of keeping the process pristine. *See Sellars*, 641 F.2d at 1303.

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<sup>4</sup> It is appropriate for this Court to consider and apply this line of federal case law interpreting Section 1983. *See de Llano v. Berglund*, 282 F.3d 1031, 1035 (8th Cir. 1982) (holding that federal law determines what constitutes procedural due process). The same rationale was used by this Court in extending quasi-judicial immunity to probation officers. *See Kipp v. Saetre*, 454 N.W.2d 639, 645 (Minn. Ct. App. 1990).

Appellant contends that a Section 1983 claim is the only adequate procedural safeguard for inmates. Appellant's Brief at 9. But habeas corpus relief is an appropriate and constitutionally-sufficient mechanism to review a parole decision. *See Sellars*, 641 F.2d at 1304; *Kelsey v. State*, 283 N.W.2d 892, 894 (Minn. 1979).

This Court should not construe the Complaint to include a claim for money damages, but if the Court does so, the claim is barred by the terms of Section 1983 and by the doctrine of absolute immunity.

**II. APPELLANT MAY NOT OBTAIN INJUNCTIVE OR DECLARATORY RELIEF UNDER 42 U.S.C. § 1983.**

Appellant argues that the Commissioner is not entitled to absolute immunity from a Section 1983 suit for injunctive or declaratory relief. Appellant relies upon *Pulliam v. Allen*, 466 U.S. 522 (1984). In *Pulliam*, the Supreme Court held that judicial immunity does not bar injunctive relief in a Section 1983 action. *Id.* at 541-42.

In 1996, after the *Pulliam* decision, Congress amended Section 1983, so that it now provides:

[I]n any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable.

42 U.S.C. § 1983. Even if a parole official may not be strictly considered a "judicial officer," the reasons for protecting the parole official from lawsuits remain the same. Thus parole officials have been held to be absolutely immune from Section 1983 claims for injunctive relief after the 1996 amendment to Section 1983. *See Montero*, 171 F.3d at 761.

There is no reason, however, to reach this issue. Appellant's failure to state a Section 1983 due process claim presents an alternative basis upon which to affirm the district court's decision.<sup>5</sup> This precludes both injunctive and declaratory relief.

In the instant case, Appellant seeks an order from the district court declaring that the Commissioner violated Appellant's due process rights and ordering the Commissioner to conduct a new parole hearing. Complaint at 5. The district court held that the facts in the Complaint were insufficient to support a claim for injunctive relief. RA5. Even if the Commissioner is not immune from this lawsuit, the Complaint was properly dismissed because the facts stated in the Complaint cannot establish that Appellant's due process rights were violated.

The Commissioner has considerable discretion over parole decisions. *See State ex. rel. Swyston v. Hedman*, 170 N.W.2d 282, 531-32 (Minn. 1970); *State v. Kalkbrenner*, 263 Minn. 245, 248, 116 N.W.2d 560, 562 (1962). She has discretion to decide whether inmates with life sentences are released from prison once they are eligible. *See* Minn. Stat. § 244.05, subds. 4-5 (2006); *see also State ex. rel. Wieland v. Crist*, No. A05-2568, 2006 WL 2677828 (Minn. Ct. App. Sept. 19, 2006) (unpublished).<sup>6</sup> An inmate is not entitled, as a matter of law, to be released from prison when she becomes eligible for supervised release. Minn. Stat. § 244.05, subd. 5. An inmate serving a life sentence does not have a liberty interest in her supervised release date. *State v. Morse*, 398

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<sup>5</sup> This Court may affirm on any ground supported by the record as a matter of law. *See Kafka v. O'Malley*, 221 Minn. 490, 499, 22 N.W.2d 845, 849 (1946).

<sup>6</sup> *State ex. rel. Wieland v. Crist*, No. A05-2568, 2006 WL 2677828 (Minn. Ct. App. Sept. 19, 2006) (unpublished) is attached at RA24.

N.W.2d 673, 677-79 (Minn. Ct. App. 1987); *see also Greenholtz v. Inmates of the Nebraska Penal & Correctional Complex*, 442 U.S. 1, 7 (1979). Thus, no liberty interest was violated when the Commissioner refused to release Appellant after she served 17 years of her sentence. *See Fratzke v. Pung*, 378 N.W.2d 112, 114 (Minn. Ct. App. 1985); *State ex rel. J.S.B. v. Hvass*, No. A05-1142, 2006 WL 1148090 (Minn. Ct. App. May 2), *rev. denied*, (Minn. July 19, 2006) (unpublished).<sup>7</sup>

The Minnesota Rules that govern the Commissioner's parole procedures comport with due process. *Wayne v. Fabian*, No. A05-1789, 2006 WL 1738247 (Minn. Ct. App. June 27), *rev. denied* (Minn. Sept. 19, 2006) (unpublished) (upholding Commissioner's decision to deny parole because inmate refused to take responsibility for very brutal murder of young mother).<sup>8</sup>

After serving 17 years of her life sentence, Appellant is merely eligible for supervised release. Minn. Stat. § 244.05, subd. 4 (1988). The Legislature gave the Commissioner discretion to decide whether inmates with life sentences are released from prison once they are eligible. *Id.*; *see also* Minn. Stat. § 243.05. Three years before an inmate is first eligible for parole, the Commissioner is to convene an advisory panel for the purpose of establishing a projected release date or a future review date. Minn. R. 2940.1800, subp. 2 (2005). The panel is to assist the Commissioner in considering the inmate's case history, including facts and circumstances of the offense, past criminal

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<sup>7</sup> *State ex rel. J.S.B. v. Hvass*, No. A05-1142, 2006 WL 1148090 (Minn. Ct. App. May 2), *rev. denied*, (Minn. July 19, 2006) (unpublished) is attached at RA27.

<sup>8</sup> *Wayne v. Fabian*, No. A05-1789, 2006 WL 1738247 (Minn. Ct. App. June 27), *rev. denied* (Minn. Sept. 19, 2006) (unpublished) is attached at RA31.

history, adjustment to the institution, reports, and results of community investigations. *Id.* The inmate is allowed to submit written documentation and may be present at the review hearing. *Id.* at subp. 3. The Commissioner is to establish either a projected release date or a date for future review, and the inmate is to receive the decision in writing as prescribed by Rule. *Id.* at subp. 5.

Appellant's Complaint establishes that the procedure was followed in the instant case. The Commissioner was the decision maker. The Commissioner and an advisory panel reviewed Appellant's case file three years before Appellant would first be eligible for parole. Complaint ¶ 13. The Commissioner made a decision that established a date for further review. Complaint ¶ 13. Appellant did not allege or even imply that the Commissioner failed to follow the procedural requirements of either the applicable statute or rule. Rather, Appellant alleges that the Commissioner has a policy that precludes inmates serving life sentences from being released the first time they become eligible. Complaint ¶ 14. Even if it is true that the Commissioner has such a policy and that she considered that policy in making her decision in this case, Appellant has cited no support for the proposition that such a policy violates due process. Given the considerable discretion accorded to the Commissioner in making parole decisions, and the inmates' lack of liberty interest in a particular parole date, it would be inappropriate for a court to find a due process violation based upon such a policy.

Appellant's inability to demonstrate a due process violation is even more evident upon review of the evidence Appellant submitted to the district court. In this case, Appellant submitted a letter from the Commissioner to Appellant dated June 24, 2004

with Appellant's Memorandum in Opposition to Defendant's Motion to Dismiss. RA6, RA19-20. The district court cited the Commissioner's letter in its order dismissing the case. RA2. Because this letter that was considered by the district court was not part of the original Complaint, Appellant arguably converted the motion to one for summary judgment by submitting the letter. *Northern States Power Co. v. Minnesota Metropolitan Council*, 684 N.W.2d 485, 490-91 (Minn. 2004).

Viewing the evidence submitted by Appellant in the light most favorable to Appellant, it is even more clear that the Commissioner's conduct in denying Appellant parole complied with due process. The letter submitted by Appellant is not rebutted by any other record evidence. The letter indicates that the Commissioner does not believe that it is appropriate for an inmate who took a life to be released from prison on the date of first eligibility. RA19. But the letter also establishes that Appellant had some sort of discipline record in prison and that the discipline record continued to build until 2002. RA19-20. Because Appellant had been in prison since 1989, the Commissioner found that the two years in which Appellant ceased to build a discipline record was short in relation to her overall time in prison. RA20. The Commissioner opined that Appellant's discipline record required that she be watched very closely for a reasonable period of time to assess whether Appellant would remain discipline free. RA20. The Commissioner's consideration of an inmate's disciplinary record is within her discretion and comports with the statute and rule governing the parole process. The letter does not establish a due process violation.

Finally, it should be noted that Appellant's Complaint requests that the district court not only review Appellant's parole eligibility again, but also that the court direct the Commissioner on *how* to exercise her discretion. The courts do not have authority to establish procedures by which an executive official or agency exercises statutorily-granted discretion. Thus, if this Court finds that the Complaint should not have been dismissed, the district court could, at most, order the Commissioner to make another parole decision in accordance with the applicable statutes and rules. That is unnecessary, given Appellant's failure to plead or present facts that establish a due process violation.

### CONCLUSION

For the above reasons, the Commissioner respectfully requests that this Court affirm the decision of the district court.

Dated: February 26, 2010

LORI SWANSON  
Attorney General  
State of Minnesota



KELLY S. KEMP  
Assistant Attorney General  
Atty. Reg. No. 0220280

445 Minnesota Street, Suite 1100  
St. Paul, Minnesota 55101  
(651) 215-1561 (Voice)  
(651) 282-2525 (TTY)

~  
ATTORNEYS FOR RESPONDENT