

STATE OF MICHIGAN  
CIRCUIT COURT FOR THE 32<sup>ND</sup> JUDICIAL CIRCUIT  
ONTONAGON COUNTY

IN RE PAROLE OF PAUL HERBERT  
GAUTHIER, # 706380

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THE PEOPLE OF THE STATE OF  
MICHIGAN,

Plaintiff-Appellant,

v

PAUL HERBERT GAUTHIER, # 706380

Defendant-Appellee.

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Paul Herbert Gauthier, # 706380  
Defendant-Appellee  
In propria persona  
Saginaw Correctional Facility  
9625 Pierce Road  
Freeland, MI 48623

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No.

HON. MICHAEL POPE

**PLAINTIFF-APPELLANT'S DELAYED EMERGENCY**  
**APPLICATION FOR LEAVE TO APPEAL**

Plaintiff-Appellant the People of the State of Michigan, by and through its attorneys, Michigan Attorney General Dana Nessel and Assistant Attorney General John S. Pallas, files this Delayed Emergency Application for Leave to Appeal pursuant to MCR 7.118, and states as follows:

1. The Michigan Parole Board granted parole to MDOC prisoner Paul Herbert Gauthier, # 706380 (hereinafter “Gauthier”) in a Parole Board Notice of Decision that was mailed on April 13, 2023. (Parole Board Notice of Decision 3/31/23, Appendix A.)

2. Per the Notice of Parole Board Decision, Gauthier is scheduled to be released on parole on Wednesday, July 12, 2023. (*Id.*)

3. The People are filing this Delayed Emergency Application for Leave to Appeal the Parole Board’s decision to parole Gauthier pursuant to MCR 7.118(D) and (E), which references MCR 7.105(G).

### **Venue & Jurisdiction**

4. Following a jury trial in this Court (the 32<sup>nd</sup> Circuit Court for the County of Ontonagon) in 2009, Gauthier was found guilty of one count of assault with intent to murder, contrary to MCL 750.83. This Court sentenced Gauthier to fifteen (15) to thirty (30) years’ incarceration. As such, the 32<sup>nd</sup> Circuit Court for the County of Ontonagon has jurisdiction over this matter and is the proper venue for this proceeding, pursuant to MCR 7.118(D)(4) and MCL 791.234(11).

### Statement of Facts Explaining Delay

5. The Michigan Parole Board mailed its Notice of Decision on April 13, 2023. (Appendix A.) The filing deadline for a *timely* Application for Leave to Appeal in this matter was thus May 4, 2023. *See* MCR 7.118(D)(2).

6. While this matter would normally have been handled by the prosecutor in the county where the crime occurred, the current Ontonagon County Prosecutor represented Gauthier as a defense attorney in the criminal case underlying this appeal. Given this obvious conflict of interest, the Prosecutor petitioned the Michigan Attorney General to appoint a Special Prosecuting Attorney (SPA) to review this matter and determine if an appeal of the Parole Board's decision was warranted. Ultimately, the Michigan Attorney General granted the petition and appointed herself as the SPA. After obtaining and carefully reviewing Gauthier's DOC Central Office File and other related documents, the Department determined that it would appeal the Michigan Parole Board's decision to parole Gauthier.

7. The Department has thereafter proceeded as expeditiously as possible in obtaining and preparing the necessary documents to effectuate this appeal, specifically in reviewing Gauthier's DOC Central Office File and related documents (including the Case Summary Report) and researching the relevant law. In addition, undersigned counsel not only handles a heavy docket of substantive casework in both federal and state courts, but is also mid-level supervisor for the Department, which takes up an enormous amount of his time and which caused further delays in this matter.

8. As such, this appeal by the People is not timely under MCR 7.118(D)(2). However, that untimeliness should not be the basis for denying the application on the facts for the above-cited reasons. *See* MCR 7.118(E), citing MCR 7.105(G).

### **Standard of Review**

9. “Judicial review of the Board’s decision to grant parole is limited to the to the abuse-of-discretion standard.” *In re Parole of Elias*, 294 Mich App 507, 538 (2011). *See also* MCR 7.118(H)(3). Further:

[T]he challenging party has the burden to show either that the Board’s decision was “a clear abuse of discretion” or was “in violation of the Michigan Constitution, a statute, an administrative rule, or a written agency regulation.” An abuse of discretion occurs when the ... court’s decision falls outside the range of reasonable and principled outcomes. Importantly, a reviewing court may not substitute its judgment for that of the Board. [*Id.* at 538–539 (citations and footnote omitted).]

“A prisoner must not be given liberty on parole until the board has reasonable assurance, *after consideration of all of the facts and circumstances*, including the prisoner's mental and social attitude, that the prisoner will not become a menace to society or to the public safety.” MCL 791.233(1)(a) (emphasis added.) *See also In re Parole of Spears*, 325 Mich App 54, 60 (2018).

### **Summary of Relief Sought**

10. For all the reasons noted below, the decision of the Parole Board in this case granting Gauthier parole is a clear abuse of the Board’s discretion and this

Court should grant the People's delayed application for leave to appeal and reverse the Parole Board's decision.

### **Pre-Incarceration Facts**

11. Gauthier's violent behavior began well before he committed the crime at issue here. He was married at least twice prior to his relationship with the victim in this case.<sup>1</sup> Irrespective of whether he was married twice or more than twice, Gauthier engaged in a pattern of violence with respect to women long before the conviction in this case landed him in MDOC custody:

The Defendant's sister ... contacted this Agent on 10/17/08. She indicated that her brother has done this to every wife he has had and he has had six prior wives. She said that he put a gun in his fifth wife's mouth and broke her ribs, She said he is a dangerous guy in relationships. She said that all of his prior spouses were afraid of him. She said he is a charmer. She said she's scared of him as well as he has screwed up her head for life. She knows he doesn't have anywhere to go and is worried as she considers him a stalker.... She said he also threatened his first wife with a gun.<sup>[2]</sup>

(PSIR, Family, Appendix B, p 6.)

12. The PSIR further indicates Gauthier has had a number of personal protection orders (PPOs) filed against him, including possibly one involving the victim in this case. The PSIR states:

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<sup>1</sup> Gauthier's sister told the drafter of the presentence investigation report that Gauthier had "six prior wives." (PSIR, Family, Appendix B, p 6.)

<sup>2</sup> Gauthier's sister's statements are backed up by testimony by one of Gauthier's prior wives, who testified at the trial in this case. As noted in the PSIR, she testified at trial to "verbal, emotional and physical abuse she suffered because of him." (PSIR, Evaluation and Plan, Appendix B, p 1.) In other words, Gauthier's violent assault on the victim in this case was hardly his first such assault.

Defendant has had prior Personal Protection Orders out against him protecting [one of his ex-wives] in 2003 in the state of North Carolina and in 2000 protecting [another ex-wife], in the state of Alabama.<sup>[3]</sup> Circumstances in those Protection Orders were similar to much of the circumstances involved in the instant offense except that those stopped at stalking and threatening harm but there was no indication of assault occurring.

(PSIR, Criminal Justice, Appendix B, p 5.)

13. The Presentence Investigation Report (PSIR) details the egregious facts underlying Gauthier's conviction and sentence as follows:

On 7/13/08, Paul Gauthier assaulted his significant other, [the victim], at their residence ... [in] Ontonagon, Michigan. Victim [] said they had been out drinking at the bars in town and got home. During the trial in this case [the victim] testified to the Defendant dragging her upstairs in a forceful manner. He assaulted her multiple times in the bedroom. The offense lasted as long as 30 minutes. He repeatedly put his hand over her mouth and pinched her nose so she couldn't breath [sic]. He called her a slut and a whore and was telling her she was going to die. He made comments about her ex-husband. He told her he was going to kill her. At one point he put a pillow over her face and held her down. She busted out a window in an attempt to get away. He continued the attack and choked her with one hand while having the other hand over her mouth. She told investigating officers that she got very light-headed on a couple of occasions and thought she was going to pass out. The assault stopped when her mother got through the bedroom door. At that time he was on her back holding her hair. Hair was found on the floor. Her mother had been notified of the assault taking place and had come over to the residence in an attempt to stop it. A doctor testified at trial about the strangulation and fight response the Defendant went through.

Paul Gauthier told investigators shortly after the offense that he and [the victim] were drinking at the local bars. He said when they got home he went upstairs and laid down on the floor in a closet. [The victim] came into the room and was talking to someone on the phone.

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<sup>3</sup> In order to protect their privacy, the names of Gauthier's prior wives as well as the name of the victim in this case will not be used in this pleading, and any references to their names in quoted material will be redacted and an appropriate general reference (e.g., "the victim") will be used instead.

He said when she realized he was in there she started to accuse him of listening in on her conversation. She started pulling him around by the shirt and then hit him with the phone. He said at that time he grabbed her and tried to hold her down on the bed and they started to wrestle on the bed. He said she started screaming, kicking, and yelling. When [the victim's] mother got there, he said he was sitting on top of her and reached up and opened the door for her mother. He denied hitting her and he said that all her did was hold her down. When asked how she became injured he said that she had fallen three different times that night after they had gotten home. He said he had been assaulted by [the victim] a couple weeks prior and had a black eye.

[The victim's] injuries included the complaint of strangulation which included neck pain, sore throat, raspy voice, difficulty swallowing, scratch marks, and red linear marks and bruising. She suffered bruising to her neck, arms, back and a 4mm bleed on her eye, as well as cuts on her fingers, abrasions, and cuts to other parts of her body. She complained of pain in her neck, shoulders, and back. She had facial discomfort and abdominal discomfort. She required stitches to her finger. She received treatment at the emergency room at the hospital in Ontonagon and follow-up treatment at Portage Hospital in Hancock, Michigan, the next day. The injury was indicative of strangulation.

About a month after the Defendant was arrested for this offense, he was trying to contact [the victim] by telephone from the Ontonagon County Jail which was a violation of the bond condition. He had apparently been trying to call for sometime and [the victim] accepted the call on 8/14/08....

(PSIR, Investigator's Version of the Offense, Appendix B, p 2.)

### **Reasons Why the Parole Board's Decision is a Clear Abuse of its Discretion**

14. Gauthier began serving his sentence in 2009. Gauthier came under the jurisdiction of the Michigan Parole Board in 2023. His earliest release date is July 12, 2023. That in fact is the date that the Parole Board has designated as

Gauthier's projected parole date. If he is indeed paroled on July 12, 2023, he will have served not one day longer than the minimum sentence imposed.

15. The decision to parole Gauthier on the very day he reaches his minimum sentence is puzzling, dangerous, and constitutes a clear abuse of the Parole Board's discretion for a number of reasons.

16. First, and foremost, Gauthier continues to minimize his role in the vicious (and nearly fatal) attack on the victim in this case. As recently as May of 2023, Gauthier minimized his responsibility in the attack on the victim. The Case Summary Report, prepared in March of 2023 states it clearly: "Prisoner minimizes their responsibility." (Case Summary Report, Appendix C, p 4.) In fact, contrary to prior statements he has made, Gauthier now says that he simply can't remember most of what led to him being convicted of the assault on the victim, merely indicating that "if they said I did something or acted a certain [way] I must have did it." (*Id.*) This is hardly acceptance of responsibility for what he did to the victim in this case, a critical fact apparently conceded by MDOC but one that obviously did not factor into the Parole Board's decision to release Gauthier as evidenced by the lack of any mention of this fact in its Notice of Decision. In fact, one of the reasons that the Parole Board cites for its decision to parole Gauthier, is that he "accepts" his criminal history. (Parole Board Notice of Decision 3/31/23, Appendix A, p 2.) That is clearly not so.

This minimization and tendency to blame the victim has been Gauthier's modus operandi since the time of the offense. As already noted, at the time of his



arrest, Gauthier blamed the victim for the incident and he vehemently denied the facts of the crime as described in vivid detail by the victim. See *supra*. This continued following his conviction when interviewed for the presentence investigation report:

Defendant says he's not a felon. He said he took care of [the victim]. When asked what he thinks made him do this, the Defendant said he was stupid. He said he wants to apologize to them. He said that [the victim] is an alcoholic and drug abuser and she has this blank area on the night of this offense. He says all she remembers is him attacking her. He said she has blackouts. He said she hit him with the phone and grabbed him and was pulling him around. He said that prior to that they were like the Cleavers....

The Defendant was asked later in the interview what he thinks he did. He said she hit him with the phone and he held her down to restrain her. She started screaming. She had fallen earlier in the night and hurt herself after she got out of the case when they got home from the bar and fell on the chairs on the front porch. He said she had given him a black eye a few months before. He said he was lying in in the closet in the upstairs bedroom and it was like 2:30 AM. She walked upstairs and turned the lights on and said "You mother fucker" and accused him of listening to her conversation on the phone. She started screaming. He said he put his hand over her mouth to quiet her so she wouldn't wake up the kids. She was kicking and screaming and trashed the bedroom. He said he was on top of her when her mother came up there. She had broken the window in the closet. He said he held her down and let her go when mother came in. When asked if there was anything with a pillow, he denied using a pillow to try to suffocate her.

Defendant was asked if there was anything else he wants the Court to know and he said he was stupid. He said the offense involved two people. He said he did not attack her. He said he can't go to prison.... He said she snapped and he snapped and she got the shitty end of it.... He said it wasn't a premeditated act.

(PSIR, Defendant's Description of the Offense, Appendix B, pp 3-4.)

Gauthier initially did not have any problems remembering what occurred – he told the police and the author of the presentence investigation essentially the same story – the struggle was the victim’s fault and he did not choke or try to smother her. Now he says he can’t remember what happened. Both versions of events can’t be true. So Gauthier is clearly a liar. His claims of ignorance by memory are simply not credible. Neither is the Parole Board’s claim in its Notice of Decision that Gauthier “accepts” his criminal history, which includes the present conviction.<sup>4</sup>

17. Also reflective of a clear abuse of discretion is the MDOC’s failure to require Gauthier to attend what was previously called “Assaultive Offender Therapy” (AOT). The Case Summary Report explains that Gauthier was not required to engage in such therapy because “it was determined that [he] did not meet [the] criteria for AOT in 2013.” (Case Summary Report, Appendix C, p 10.) Whatever the criteria for determining eligibility for AOT, they are clearly flawed as they allowed someone like Gauthier, with a history of domestic violence, to be being passed over for a program that addresses the very problem that led Gauthier to MDOC custody in the first instance.

Despite his apparent ineligibility for AOT while incarcerated, the Parole Board has mandated that, *while on parole*, Gauthier “must complete mental health, domestic violence/batterer intervention, or other recommended treatment by a

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<sup>4</sup> It is thus puzzling that there has been a finding that Gauthier “has empathy for [the victim] and regret for his actions ....” (Case Summary Report, Appendix C, p 7.)

qualified community-based service provider.” (Parole Board Notice of Decision 3/31/23, Appendix A, p 1.) The People question whether the best time for Gauthier to receive “domestic violence intervention” *for the first time* is when he is on parole. At least if, while incarcerated, nothing comes of such services, Gauthier will not be in a situation where such domestic violence could repeat itself. If such services on parole were to fail and Gauthier is – as expected – in another domestic relationship, the results could be tragic in a number of ways, particularly for an unsuspecting partner who falls to what Gauthier’s own sister has called his “charms.”

18. The decision not to require that Gauthier attend assaultive offender therapy while in prison is even more mystifying given the violent nature of some of the major misconducts tickets that Gauthier received while in prison. While in MDOC custody, Gauthier was found guilty of two incidents of assaultive conduct – one in 2009, and the second in 2014. (Major Misconduct Hearing Reports, 6/29/09 and 9/23/14, Appendix D.)

19. Further, one of the conditions of parole is that Gauthier have no contact of any kind with the victim in this case. (Parole Board Notice of Decision 3/31/23, Appendix A, p 1.) This sounds on the surface like it will protect the victim. Sadly, given Gauthier’s history, it provides minimal, if any, protection for the victim. This is because Gauthier has a history of repeatedly violating such no-contact orders.

First, he has a prior misdemeanor conviction for violating just such an order (a personal protection order or “PPO”) with respect to one of his prior wives. The PSIR indicates the following about that offense:

The offense involved the Defendant contacting his ex-wife ... in violation of a PPO. She told police that he contacted her at work and called her a stupid bitch and that he was going to break into her residence. He told her he should have killed her when he had the chance. She told police officers in the past he had put a pistol in her mouth. Defendant was apparently arrested on 10/12/2000 and 12/18/2000 on the same offense.

(PSIR, Criminal Justice – Adult History, Appendix B, p 4.) While Gauthier did not deny that he made a phone call to his wife and acknowledged that there was a no contact order in place at the time, he said he contacted her because he “wrecked his truck.” (*Id.*) And there was at least one other PPO brought against Gauthier by another one of his wives. (*Id.* at 5.)

Second, before his conviction in this case, Gauthier contacted the victim in this case despite there being an order prohibiting him from doing so. The PSIR indicates:

About a month after the Defendant was arrested for this offense, he was trying to contact [the victim] by telephone from the Ontonagon County Jail which was a violation of the bond condition. He had apparently been trying to call for sometime and [the] victim accepted the call on 8/14/08.

(PSIR, Agent’s Description of the Offense, Appendix B, p 2.)

For these reasons, a condition of parole that Gauthier refrain from contacting the victim in this case means very little. The People believe that it is inevitable that he will try to contact her (or worse) given his past history of ignoring such

orders and – especially given the lack of assaultive offender therapy – any contact might be more ominous than simply making a phone call.

20. Next, to the extent that the Parole Board relied on the “Correctional Offender Management Profiling for Alternative Sanctions” (COMPAS) support tool<sup>5</sup> for granting him parole, that reliance is misplaced. This is because the COMPAS is based on flawed and/or incorrect assumptions, or actually provides information that supports *not* paroling Gauthier:

- The COMPAS indicates that Gauthier poses a “low” risk of violence. (COMPAS, Assessment Risk Probability and Summary, Appendix E, p 1.) This is a strange finding given the repeated instances of violence (particularly against his significant others) prior to his incarceration and the fact that – during his incarceration – he was found guilty of two separate assault and battery misconduct tickets.
- The COMPAS further indicates that Gauthier poses a “low” of risk of recidivism. (COMPAS, Assessment Risk Probability and Summary, Appendix E, p 1.) Again, this is a strange finding given the information that Gauthier repeatedly committed violence (some of which involved a gun) against at least two of his prior wives as well as the victim in this case.
- The COMPAS further indicates that substance abuse treatment is likely going to be necessary. The People do not quibble with this finding. But the People question the possible efficacy of such treatment where Gauthier himself states that, although he was using alcohol at the time of the offense in this case, “his current and past legal problems are not due to his drug or alcohol use” and – even worse – that he “does not believe he would benefit from substance abuse treatment.” (COMPAS, Substance Abuse, Appendix E, p 3.) Gauthier said the same thing at the time that the PSIR was prepared: “Defendant has never been to substance abuse treatment and does not feel there

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<sup>5</sup> The COMPAS is a software program, assessment tool and database used to record and analyze information in order to identify risk factors for violence and recidivism which is routinely used by the Parole Board in making its release decisions.

is a need.” (PSIR, Substance Abuse and Treatment, Appendix B, p 7.)

- The COMPAS finds that Gauthier “likely has a stable lifestyle ....” (COMPAS, Residential Instability, Appendix E, p 4.) The People vehemently disagree with this finding. How is engaging in domestic violence with three separate significant others and repeatedly violating no contact orders/PPOs in any sense reflective of a “stable lifestyle?”
- The COMPAS finds Gauthier is not likely to blame others, “make excuses or minimize[e] the seriousness of their offenses.” (COMPAS, Cognitive Behavior, Appendix E, p 4.) These findings are blatantly contradicted by statements made by Gauthier in the PSIR and – more importantly – his recent statements in March of 2023 in the Case Summary Report (see discussion, *supra*). Similarly incredible is the statement in the COMPAS that Gauthier is “unlikely to lead a high risk lifestyle.” (*Id.*)

21. Also of concern is whether the Parole Board considered Gauthier’s “[d]evelopment of a suitable and realistic parole plan,” which usually manifests itself in a “Transition Accountability Plan” (TAP), as required by Mich Admin Code, R 791.7715(2)(c)(iii). Gauthier’s transition accountability plan (TAP), if one exists, does not appear to be in the Central Office File. In any event, a review of Gauthier’s Central Office File in its entirety, demonstrates that very little thought has been put into how Gauthier is going to transition to life outside of prison. This is especially true when Gauthier will be without the constraints that have protected the victim and the community at large from any further harm.

22. One final point merits discussion – Gauthier’s parole guideline score, something that is anticipated Gauthier will rely upon to support the Parole Board’s decision to release him. Gauthier’s parole guideline score in this case was +14

indicating a high probability of parole. (Parole Guideline Scoresheet, 6/24/2022, Appendix F, p 3.) “Prisoners are categorized under the guidelines as having either high, average, or low probability of parole.” *In re Parole of Johnson*, 219 Mich App 595, 599 (1996). “A prisoner with a score of +3 or greater merits placement in the high-probability category, a score of -13 or less warrants assignment to the low-probability category, and a score between those figures falls within the average-probability category.” *Elias*, 294 Mich App at 518.

23. However, a parole guideline score in the high probability category does not mandate without exception that the Parole Board release a prisoner on parole. Rather, if there are “substantial and compelling reasons” not to grant parole, the Parole Board can deny parole to a prisoner with a guideline score in the high probability category. *See* MCL 791.233e(6); Mich Admin Code 791.7716(5). “Substantial and compelling” reasons to “depart” from the parole guidelines are those that “keenly or irresistibly grabs” the Board’s attention and are of “considerable worth in deciding whether it should deny parole to a prisoner who otherwise assessed as having a high probability chance of parole.” *Elias*, 294 Mich App at 542.

24. Here, the Parole Board should have found substantial and compelling reasons to depart from the parole guidelines rather than determine that parole was appropriate, given all of the reasons already cited, but most particularly his refusal to accept responsibility for his crime in in this case. The Parole Board’s decision not to do so is not only perplexing, but dangerous.

25. In sum, the Parole Board clearly abused its discretion when it decided to parole Gauthier. The facts underlying Gauthier’s conviction and which led to his incarceration are horrendous and nightmarish. The harm suffered by the victim will never fade. She is forever changed by Gauthier’s brutal and merciless conduct.<sup>6</sup> However, what has *not* changed is Gauthier himself. Gauthier continues to minimize his conduct and is essentially the same person who entered prison in 2009. Most disturbing is that the decision to parole Gauthier places the victim in this case – and the community at large (particularly its female population) – at great risk of harm, both emotionally and physically. It bears repeating that a “prisoner *must not* be given liberty on parole until the board has reasonable assurance, after consideration of all of the facts and circumstances, including the prisoner's mental and social attitude, that the prisoner will not become a menace to society or to the public safety.” MCL 791.233(1)(a) (emphasis added.) The Parole Board simply did not have this “reasonable assurance” on the facts of this case.

This Court should not allow the decision of the Parole Board to stand and reverse it.

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<sup>6</sup> One need only read her Victim Impact Statement (see PSIR, Appendix B), written at the time of Gauthier’s sentencing, to understand what a huge impact Gauthier’s crime has had on her and her family.



**CONCLUSION AND RELIEF REQUESTED**

Plaintiff-Appellant, by and through counsel, respectfully requests that this Honorable Court grant this delayed emergency application for leave to appeal.

Respectfully submitted,

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