

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

August 19, 1999

Marilyn L. Graves  
Clerk, Court of Appeals  
of Wisconsin

**NOTICE**

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

**No. 99-0492**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT IV**

---

**STATE OF WISCONSIN EX REL. ROBERTO M. HINOJOSA,**

**PETITIONER-APPELLANT,**

**v.**

**JOHN HUSZ, CHAIRMAN, PAROLE COMMISSION,**

**RESPONDENT-RESPONDENT.**

---

APPEAL from an order of the circuit court for Jefferson County:  
WILLIAM F. HUE, Judge. *Affirmed.*

Before Dykman, P.J., Vergeront and Roggensack, JJ.

PER CURIAM. Roberto Hinojosa appeals from an order affirming a parole board decision. He appeared before the parole board in 1998 and claimed a statutory and constitutional right to immediate release. The parole board denied release, however, and deferred parole consideration for another twenty-four

months. Hinojosa petitioned for certiorari review, and takes this appeal from the trial court's order affirming his parole deferral. We, in turn, affirm the trial court.

Hinojosa committed a first-degree murder in 1983, and he was convicted in 1985 and sentenced to life imprisonment. At the time he committed the crime, § 53.11(7)(a), STATS., 1981-82, provided that an inmate having served his or her sentence, less good time, shall be released on parole. It is under the mandatory directive of that section that Hinojosa claimed his statutory right to release, as § 57.06(1), STATS., 1981-82, provided that parole eligibility for a life sentence occurred after twenty years, less good time. However, § 57.06(1) also provided that the department “may parole” a prisoner sentenced to life in prison who has reached parole eligibility, whereas § 53.11(7)(a) provided for mandatory release. We have previously addressed this apparent conflict in the statute as follows: “Those statutes [§§ 53.11(7)(a) and 57.06(1)] pertain to related but different subjects: mandatory and discretionary parole.... Lifers are not eligible for mandatory parole .... Discretionary parole is ... the only kind of parole available to lifers.” *Parker v. Percy*, 105 Wis.2d 486, 491-92, 314 N.W.2d 166, 169 (Ct. App. 1981) (citations omitted). *Parker* resolves the issue of Hinojosa's statutory right to release.

Hinojosa also claims a right to mandatory release on due process grounds. That argument fails because, as explained above, the board's power to release him is discretionary. “There is no constitutional or inherent right of a convicted person to be conditionally released before the expiration of a valid sentence.” *Greenholtz v. Nebraska Penal Inmates*, 442 U.S. 1, 7 (1979).

Finally, Hinojosa contends that the board also violated due process because it applied administrative rules not in existence when he committed his

crime. That is not accurate. The rules the board used to evaluate Hinojosa's parole eligibility were in existence in 1983. *See* WIS. ADM. CODE § DHSS 30.05(7) (1982). Those rules have since been renumbered, but without substantive change. *See* WIS. ADM. CODE § PAC 1.06(7).

*By the Court.*—Order affirmed.

This opinion will not be published. RULE 809.23(1)(b)5, STATS.

