

MAINE STATE LEGISLATURE

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January 24, 1962

John J. Shea, Director

Division of Probation and Parole

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Assistant Attorney General

COMMUTATION OF SENTENCE, POWER OF GOVERNOR AND COUNCIL

QUESTION PRESENTED: May the Governor, with the advice and consent of the Council grant commutations, affixing thereto, conditions which are in conflict with existing law?

The sentence of subject, Percy Paul, was commuted by the Governor, with the advice and consent of the Council, by order dated December 4, 1957, from life imprisonment, to thirty-one years, three months to life imprisonment, with the further provision that upon release on parole by the State Probation-Parole Board, the period under parole supervision shall run for six years. Section 11, of Chapter 387, P. L. 1957, was in effect at the date of commutation, which section provided that no person could be kept on parole for longer than four years.

With reference to the power of the Governor in matters of commutation of sentence, the Constitution of Maine reads in part as follows:

Section 11, Part I, Article V, "He shall have power, with the advice and consent of the council, to remit, after conviction, all forfeitures and penalties, and to grant reprieves, commutations and pardons, except in cases of impeachment, upon such conditions, and with such restrictions and limitations as may be deemed proper, subject to such regulations as may be provided by law, relative to the manner of applying for pardons."

The above language from the constitution is clear and unequivocal as to the power of the Governor and Council to exercise discretion in granting commutations and provides a great deal of latitude as to the conditions and restrictions which may be attached thereto. The constitutional provision provides for the exercise of legislative authority only as to the manner of applying for pardons,

(emphasis supplied).

In the case of Baston v. Robbins 153 Me. 128, 1957, at 129, 130, the court addresses itself to a consideration of the above quoted passage from the Constitution of Maine, and more in particular, to the resolution of a conflict between such constitutional provision and the provision of a statute.

"It is readily seen from a reading of this part of Article V, that the power to act is one granted to the Governor and Council by the Constitution and legislative action is limited to the adoption of regulations 'Relative to the manner of applying for pardons'. Other than this, the Legislature is without authority to control in any way, regulate or interfere with the powers of the Governor and Council, under this constitutional provision.the authority of the Governor and Council is derived from the Constitution and it may commute the sentence with such restrictions as may be deemed proper. If the restrictions and limitations imposed are in conflict with the provisions of any statute, then such statute does not control and it may be ignored.... provided such restrictions or limitations are not illegal, immoral, or impossible to perform."

The basic problem involved in the case of Percy Paul is paralleled in the Baston case, supra. One, Edwin Baston, was sentenced to the Maine State Prison after being convicted of rape, to serve a period of eight years. His sentence was later commuted by the Governor and Council to "not less than four, nor more than eight years", being an indeterminate sentence. Such sentence, under the law, could not have been imposed by the court, thus the conflict between constitution and statute.

It is my opinion that the Baston case, supra, is controlling authority in the disposition of the parole status of Percy Paul. The restrictions attached to the commutation order of the sentence of Percy Paul were neither illegal, immoral, nor impossible to perform. The order was contrary to an existing statute; however, since the authority arose from the Constitution, it controls, and negates the authority, granted by statute, to the Probation-Parole Board to discharge parolees after four years on parole.

It is my opinion that Percy Paul is properly under the supervision and control of the Probation-Parole Board under the order of the Governor and Council, until December 17, 1963. Any parole violation between the present date and December 17, 1963 shall be handled in the same manner as in other cases of parole violation.

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CDP/ems

cc: Office of the Attorney General

