

MAINE STATE LEGISLATURE

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John J. Shea, Director

Division of Probation and Parole

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Mental Health and Corrections

Duration of Parole--Paul Dwyer

Paul Dwyer was found guilty of murder upon trial in the Oxford County Superior Court and was on December 2, 1937, sentenced by said Court to life imprisonment. On October 8, 1939, said sentence was commuted by the Governor with the advice and consent of the Council to 28 years, 3 months to life. On October 26, 1959, said Paul Dwyer was paroled from the Maine State Prison by the State Probation-Parole Board.

R.S. 1954, c. 27-A, §11, Enact. P.L. 1957, c. 387, §1, as repealed and replaced by P.L. 1959, c. 312, §5, reads in part as follows:

"Parole of person by board. The board may grant a parole from any state penal or correctional institution when a prisoner or inmate becomes eligible for a hearing by the State Probation and Parole Board. It may revoke a parole when a condition of the parole is violated.

I. When the board grants a parole, upon release, the parolee shall serve the unexpired portion of his sentence, less deductions for good behavior, unless discharged therefrom by the board but no period of parole shall exceed 4 years except in the case of those persons serving a sentence of life imprisonment."

R.S. 1954, c. 27-A, §12 as amended by P.L. 1959, c. 312, §6 reads in part as follows:

"Persons eligible for a hearing by the board at the State Prison. A prisoner becomes eligible for a hearing by the board as follows:

I. After the expiration of his minimum term of imprisonment less the deduction for good behavior, when the law provides for a minimum-maximum sentence.

.....

III. After the expiration of a 30-year term of imprisonment, less deduction for good behavior, when he has been convicted of an offense punishable only by life imprisonment, provided he has never been convicted of another offense punishable only by life imprisonment."

R.S. 1954, c. 27-A, section 17-A as added by P.L. 1959, c. 312, §13, reads as follows:

"Certification of discharge. Whenever it appears to the board that a person on parole is no longer in need of supervision, it may order the superintendent or warden of the institution from which he was released to issue him a certificate of discharge, except that in the case of persons serving a life sentence who may not be discharged from parole in less than 10 years after release on parole."

The effective date of the above replacement, amendment and addition was September 12, 1959.

QUESTION:

Was Paul Dwyer entitled to a certificate of absolute discharge from the Maine State Prison on October 25, 1963, i.e., 4 years from the date of release on parole.

ANSWER:

Yes.

OPINION:

The Governor with the advice and consent of the Council changed the punishment to which Dwyer was subjected by commuting his sentence from life imprisonment to 28 years, 5 months (minimum) to life imprisonment (maximum); thus, reducing a determinate sentence to an indeterminate sentence, such action being entirely within the powers of commutation, conferred upon the Governor and Council by the Constitution of Maine, Article V, §11, Part I. The commutation order gave rise to Dwyer's eligibility for a hearing before the Probation-Parole Board, at the end of his then minimum sentence, less good time as provided in R.S. c. 27-A, §12, supra.

Since, as a result of the commutation order, Dwyer, was not at the time of parole, serving a life sentence, the period required by law that he serve on parole could not be in excess of 4 years. R.S. c. 27-A, §11, sub-section I, supra. The 4 years maximum was eliminated from the statute by P.L. 1961, c. 292, §1; thus, subjecting prisoners to the possibility of parole to the extent of their maximum sentence. This provision is not, however, applicable to Dwyer's case since to even possibly increase the burden to which Dwyer was subject at the time of parole by a law not in effect at such time would be an ex post facto application of such law and unconstitutional.

Prisoners paroled after September 15, 1961 are subject to the burden of parole extending until the expiration of sentence, unless sooner discharged by the Probation-Parole Board.

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