

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT
OF THE
ATTORNEY GENERAL

For the Years
1967 through 1972

REASONS:

The first sentence of section 4559 states that three-fourths of any unclaimed funds received by the Commissioner must be paid *forthwith* into the State Treasury. This appears to be a clear, unqualified, peremptory mandate. The second sentence of section 4559 directs the Commissioner to administer the remaining one-fourth as a special trust fund; nothing therein limits the preceding requirement to deliver three-fourths to the State Treasury. The third sentence of section 4559 provides for payment into the State Treasury of those unclaimed funds that have remained in the special trust fund for seven years; however, here we find a qualification upon the requirement to turn funds into the State Treasury, providing that "the special trust fund shall never be so reduced to less than \$1,000." Nevertheless, this provision has no relationship to the initial requirement to pay into the State Treasury three-fourths of the unclaimed funds forthwith. While section 4555, subsection 5, does provide that "expenses of publication shall be charged against the special trust fund," such a provision does not purport to limit the requirement in section 4559 to pay three-fourths into the Treasury forthwith, but merely authorizes payment of outstanding publication costs from the special trust fund. Section 4557 declares that the State shall assume custody of those funds for the benefit of persons entitled to receive the same, and section 4558 recognizes that the special trust fund may, on occasion, be insufficient for payments to such persons, in which event the Commissioner is authorized to make such payments out of the General Fund of the State. Accordingly, it is clear that there is no implied authority to pay into the State Treasury forthwith less than three-fourths of unclaimed funds received by the Commissioner.

CHARLES R. LAROUCHE
Assistant Attorney General

March 12, 1971
Maine State Prison

Allan L. Robbins, Warden

Authority of State Probation and Parole Board to Terminate Life Sentence, Permitting Execution of Sentence for Escape.

SYLLABUS:

In accordance with authority vested in the State Probation and Parole Board by Title 34, § 710 the life sentence being served by an inmate at the Maine State Prison may be terminated by the State Probation and Parole Board, such termination power being in addition to parole authority vested in the Board by Subchapter V. of Chapter 121 of Title 34 and such inmate, following termination of the life sentence, shall begin execution of the sentence for escape. In such case the 10 year parole supervision provision of Title 34, § 1678 would be inoperative, since the inmate at the time of parole would not be serving a life sentence.

FACTS:

An inmate at the Maine State Prison currently in execution of a life sentence imposed upon him December 4, 1959, escaped from the Minimum Security Unit of the Maine

State Prison on October 25, 1970, and was convicted of such offense on February 18, 1971, and sentenced to the Maine State Prison for a term of 1-2 years, but for the new sentence for escape this inmate would have been eligible for parole consideration on or about March 31, 1972.

QUESTION:

May the State Probation and Parole Board dispose of the case of an inmate serving a life sentence, permitting execution of a sentence for escape and if so, is duration of parole affected?

ANSWER:

Yes, as to both parts.

REASON:

Statutes pertinent to the opinion of this office relative to the question here presented are as follows:

Title 34, M.R.S.A. 1964, § 710

“If a convict sentenced to the State Prison for life or for a limited term of years or transferred thereto from the Men’s Correctional Center under section 808-A or committed thereto for safekeeping under Title 15, section 453, assaults any officer or other person employed in the government thereof, or breaks or escapes therefrom, or forcibly attempts to do so, he may be punished by confinement to hard labor for any term of years, to commence after the completion of his former sentence or upon termination of such sentence by the State Probation and Parole Board; said termination shall not take place sooner than the expiration of the parole eligibility hearing date applicable to his former sentence. The warden shall certify the fact of a violation of this section to the county attorney for the County of Knox, who shall prosecute such convict therefor.”

Title 34, M.R.S.A. 1964, § 1678

“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 Legislature in Title 34, § 710 has made specific reference to persons serving life sentences, as well as to other categories of inmates, and has provided that a sentence for escape shall be served upon completion of the sentence being served at the time of escape or termination thereof by the State Probation and Parole Board and has fixed the time at which such termination may take place.

Parole authority is vested in the State Probation and Parole Board in Subchapter V of Chapter 121 of Title 34. We find in section 710 of Title 34 an additional power vested in the State Probation and Parole Board, viz., the power to terminate a sentence being served by an inmate following parole hearing eligibility in order to permit execution of another sentence, i.e., for escape. Termination of a sentence as provided for in section 710 is not parole, such disposition being release from the institution. A person is not

paroled to another sentence but the sentence being served is terminated and the inmate begins execution of another sentence.

In consideration of the question presented here the import of 34 M.R.S.A., 1964, §1678 is intelligible from its language, such section providing that a person serving a life sentence shall be on parole for not less than 10 years. We dispose of this question by stating that a person serving a life sentence who escapes from the Maine State Prison and whose life sentence is terminated pursuant to authority vested in the State Probation and Parole Board by Title 34, § 710, and who is commenced in execution of a sentence for escape will never be paroled in connection with the life sentence. Parole in such instance, if it is ordered, will be in connection with the sentence for escape. The appropriate disposition of the case of an inmate serving a life sentence who faces execution of a sentence for escape is a matter discretionary with the State Probation and Parole Board, the Board bearing in mind that the 10 year parole supervision provision of Title 34, §1678 will never be operative as to the inmate after the Board exercises its authority and terminates the life sentence.

In reaching the conclusion reached here we find that protection of the public, in the instance of parole of an inmate serving a life sentence by mandatory 10 year parole supervision is diminished in the case of the inmate serving a life sentence who commits an offense covered by Title 34, §710, when the State Probation and Parole Board exercises its authority by termination of a life sentence, permitting execution of the sentence imposed for the offense covered by the latter section. When finally paroled the inmate will be subject to parole supervision only for the duration of the sentence for such offense – in the case of the inmate in question such supervision may approximate one year. We are constrained, however, to conclude that the language of Title 34, § 710 clearly and specifically relates to persons serving life sentences and is remedial in that it provides a means by which an inmate serving a life sentence who commits an offense covered by Title 34, § 710, may be returned to the community. The burden rests with the State Probation and Parole Board to determine the propriety of termination of the life sentence, permitting execution of the sentence imposed under Title 34, § 710, and ultimate release absent the 10 year mandatory parole supervision which would otherwise obtain.

In summary we are of the opinion that in accordance with authority vested in the State Probation and Parole Board by Title 34, §710, the life sentence being served by an inmate at the Maine State Prison may be terminated by the State Probation and Parole Board, such termination power being in addition to parole authority vested in the Board by Subchapter V of Chapter 121 of Title 34 and such inmate following termination of the life sentence, shall begin execution of the sentence for escape. In such case the 10 year parole supervision provision of Title 34, § 1678 would be inoperative, since the inmate at the time of parole would not be serving a life sentence.

COURTLAND D. PERRY
Assistant Attorney General

April 5, 1971
Bureau of Corrections

Ward Murphy, Director

Use of Portion of Boys Training Center Diagnostic Unit General Fund Bond Issue Proceeds for Alterations to Security and Infirmary Building.