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STATE OF MAINE

10. 11. 1975

Inter-Departmental Memorandum Date Nov. 17, 1975

To Joseph S. DeFilipp, Adm. Assistant

Dept. State Parole Board

From Courtland D. Perry, Asst. Att'y General

Dept. Attorney General

Subject Authority of State Parole Board as to Person Serving Life Sentence
Convicted of New Offense While on Parole

SYLLABUS:

An inmate of the Maine State Prison who, as a life sentence parolee commits a new offense resulting in a new sentence to the Maine State Prison, may not again be paroled in connection with the life sentence in view of the mandatory consecutive sentence provisions of 34 M.R.S.A. § 1676. The State Parole Board, however, has the power to terminate such life sentence to permit the inmate to begin execution of the sentence for the crime committed while a life sentence parolee, such specific power being vested in the State Parole Board by 34 M.R.S.A. § 1676.

FACTS:

The State Parole Board is faced with two cases in which it is unsure as to what courses of action are open to it. In one, the Maine State Prison inmate was convicted of murder on September 27, 1955. He was paroled on August 12, 1971. On February 25, 1972, he was again sentenced to the Maine State Prison upon conviction of two offenses committed while on parole, such sentences being concurrent with each other, one for 2 1/2 to 5 years and one for 2 1/2 to 8 years. In the other case, the Maine State Prison inmate was convicted of murder on June 29, 1951. He was paroled from the Maine State Prison on October 10, 1969. On February 13, 1975, he was returned to the Maine State Prison as a parole violator having been convicted of a new offense committed while on parole and having received a new sentence of 2 1/2 to five years.

QUESTION 1:

Can the State Parole Board again parole these two life sentence inmates and others similarly situated in connection with their life sentences?

ANSWER: No.

QUESTION 2:

Is there any other alternative available to the State Parole Board as a vehicle by which to again return such life sentence inmate to the community?

ANSWER: Yes. See Reason.

REASON:

The statutes with which we are concerned in answering your request are:

"Any parolee who commits an offense while on parole who is sentenced to the State Prison shall serve the 2nd sentence beginning on the date of termination of the first sentence, unless the first sentence is otherwise terminated by the board."
34 M.R.S.A. § 1676

"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." 34 M.R.S.A. § 1678.

Title 34, § 1676, mandates the execution of a sentence for an offense committed while on parole consecutively to the sentence being served at the time of commission of the new offense by the parolee. See Cresse v. State, 161 Me. 295, 211 A.2d 572 (Me. 1965); Hartley v. State, 249 A.2d 38, (Me. 1969); Kuhn v. State, 254 A.2d 591 (Me. 1969); Higgins v. Robbins, 270 A.2d 81 (Me. 1970).

It is the opinion of this office that the legislature, in requiring consecutive sentences under Title 34 § 1676, has foreclosed the possibility of release into the community on parole while in execution of the sentence being served at the time of commission of the new offense. Any other construction would be absurd and would render meaningless the legislative mandate of consecutive sentences. We perceive the primary objective of the legislature in its design of Title 34 § 1676 to be the protection of the public from an erstwhile parolee who has manifested his inability to function in the community by the commission of a new criminal offense while on parole.

" . . . A person who is convicted of a felony committed while on parole and is required, under the statutes, to serve the remaining portion of the maximum term to which he was first sentenced is ineligible for further parole on the first sentence; and where, in such case, he is required by the statutes to serve his first term before beginning to serve his second term, the time at which he may become eligible for parole under the second sentence is correspondingly postponed." 67 C.J.S. Pardons, § 20a. See Opinion of this office dated October 17, 1968 (copy attached for convenient reference).

We find, however, in Title 34 § 1676 a mitigative provision made operative as a separate and distinct power of the State Parole Board in addition to the powers of parole vested in it by subchapter V of Chapter 121 of Title 34; i.e., the power to terminate the first of the sentences made consecutive by section 1676. The language with which we are particularly concerned is, "shall serve

the second sentence beginning on the date of termination of the first sentence unless the first sentence is otherwise terminated by the board." (Emphasis supplied) 34 M.R.S.A. § 1676.

The legislature in 1957 enacted a major revision of the laws relating to parole and the then State Probation and Parole Board. See Chapter 387 of the Public Laws of 1957. This act enacted the predecessor provision to the present 34 M.R.S.A. § 1676; i.e., R.S. 1954, Chapter 27-A, § 16, which read as enacted:

"A parolee who commits an offense while on parole and is sentenced to a state penal or correctional institution shall serve the second sentence beginning on the date of termination of the first sentence whether it is served or commuted." (Emphasis supplied)

We see in this initial enactment the same legislative intent and mandate respecting the service of a sentence for a crime committed while on parole consecutively to the sentence being served at the time of commission of such offense. However, we see in such section no power in the State Probation and Parole Board with respect to the sentence being served at the time of such commission of a new offense. It is clear that under such initial provision the sentence for the crime committed while on parole could only begin after full service of the first sentence or service of the sentence as commuted by the governor.

By section 11 of Chapter 312 of the Public Laws of 1959, the legislature amended section 16 of Chapter 27-A of the Revised Statutes of 1954 to read identically to the present section 1676 of Title 34, giving the then State Probation and Parole Board the power to terminate the sentence being served at the time of commission of the offense while on parole. We view this change enacted by the legislature as demonstration of a legislative intent to vest in the State Parole Board the power to terminate a sentence, thus enabling an inmate to begin execution of the sentence for the crime committed while on parole.

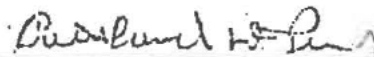
This office has addressed a similar question respecting the inmate serving a life sentence who escapes while in execution of such sentence and who is sentenced after conviction on the escape charge by our opinion dated March 12, 1971, (copy attached for convenient reference). We interpreted 34 M.R.S.A. § 710 to vest in the State Parole Board a termination power similar to that which we view is vested in the State Parole Board under 34 M.R.S.A. § 1676. We apply the same reasoning here, the only difference being that in Title 34, § 710, it could be seen that the termination power of the State Parole Board specifically related to life sentences as well as to other sentences. Such specificity made easier the arrival at the conclusions reached in that opinion. We also note that § 710 provided that ". . . said termination shall not take place sooner than the expiration of the parole eligibility hearing date applicable to his former sentence." No similar provision is necessary in § 1676 since obviously the affected inmate has already been paroled, has committed a new offense as a parolee and has come within the purview of § 1676. We reach our conclusion, here, however, in view of the inclusive language of 34 M.R.S.A. § 1676, "Any parolee who commits an

offense while on parole . . ." (Emphasis supplied) Were we to reach a contrary conclusion in connection with a person serving a life sentence, conviction for an offense committed while on parole would result in incarceration for the inmate's natural life sans intervention by the governor by way of commutation or pardon. Such was the operative effect of § 16 of Chapter 27-A of the Revised Statutes of 1954 as originally enacted. We see a substantial mitigation of the operative effect of such section by the amendment in section 11 of Chapter 312 of the Public Laws of 1959 carried forward and appearing in 34 M.R.S.A. § 1676.

We view this termination power of the State Parole Board to be consistent with the broad legislative grant of authority to the board.

"The Legislature has seen fit to create the parole system as part of its program for rehabilitation of persons convicted of crime. Responsibility for making the parole program work has been delegated by the Legislature to the Parole Board. From the date of parole eligibility, it is for the Parole Board to determine the extent to which the remainder of the Court-imposed sentence shall be executed inside an institution or without its walls. It alone can dictate the terms of release from the institution on parole. It has the power to remove a prisoner and place him in the community while he is still under service of his sentence. The circumstances dictating such action are for the Parole Board to determine." Stubbs v. State, 281 A.2d 134 at 136 (Me. 1971)

As discussed in the March 12, 1971, opinion previously referred to, the 10-year parole supervision provision of 34 M.R.S.A. § 1678 made operative as to life sentences, will never operate in the case of the person whose life sentence is terminated under 34 M.R.S.A. § 1676 to permit the inmate to begin execution of the sentence for the crime committed while on parole. When parole finally is granted, it will be in connection with the last mentioned sentence and not in connection with the life sentence. A substantial burden is placed on the State Parole Board and a substantial trust vested in it by the legislature by its grant of the termination power of Title 34 § 1676. Nevertheless, such power exists and may be exercised by the board.



Courtland D. Perry
Assistant Attorney General

CDP/a
attachments

STATE OF MAINE

Inter-Departmental Memorandum Date 12 March 1971

o Allan L. Robbins, Warden

Dept. Maine State Prison

from Courtland D. Perry, Assistant Atty. Gen'l.

Dept. Mental Health and Corrections

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

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 provis 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

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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

To G. Raymond Nichols, Assistant Dir. Dept. Mental Health & Corrections
Probation and Parole

From John W. Senoit, Jr., Assistant Dept. Attorney General

Subject Robert H. Mottram - MSP 10369; status of parole re-1960 larceny conviction.

SYLLABUS:

A parolee who commits an offense while on parole and who receives a sentence which, by operation of law, commences at the expiration of the first sentence, is not eligible for parole on said first sentence.

FACTS:

On October 7, 1960, Robert H. Mottram was convicted of larceny in the Cumberland County Superior Court and was sentenced to serve not less than ten nor more than thirty years in the Maine State Prison. In 1963, the Governor and the Executive Council commuted said sentence so that at the present time, Mottram is serving a sentence of four years and two months to twenty years for the reference offense.

On November 15, 1963, Mr. Mottram was released on parole concerning the instant sentence. Later, a parole violator's arrest warrant issued against him based upon alleged violations of parole. The date of the issuance of the warrant was January 21, 1965. Service of the warrant was resisted by Mr. Mottram due to his having absconded. He was finally apprehended and returned to the Maine State Prison on February 15, 1965.

On July 7, 1965, Mottram was taken to the Lincoln County Superior Court where he was sentenced to a term of not less than three and one-half years and not more than seven years for commission of the offense of breaking, entering, and larceny in the nighttime; an offense committed by him while on parole. The 1965 conviction is captioned: State of Maine v. Robert Mottram, Criminal Docket No. 1395. The Superior Court docket entries concerning this latter criminal proceeding are extensive. Without repeating the plural docket entries in detail, they recite that Mottram was convicted after trial of the crime of breaking, entering, and larceny in the nighttime. He was then duly recommitted to the Maine State Prison to continue service of the sentence imposed in 1960. (NOTE: By law, the sentence imposed in 1965 is to be served after completion of the 1960 sentence.) Ever since July 7, 1965, the date when Mottram was sentenced for the 1965 offense, he has filed numerous documents in the Lincoln County Superior Court challenging the 1965 conviction; but it is clear that the 1965 conviction has not been declared invalid by either the Maine Supreme Judicial Court or by any Superior Court in any collateral post-conviction proceeding.

The State Probation and Parole Board, on October 18, 1968, is scheduled to review Mr. Mottram's 1965 larceny conviction re Mr. Mottram's status for parole regarding that offense.

QUESTIONS:

1. Whether or not the State Probation and Parole Board may legally parole Mr. Mottram regarding the 1960 conviction?
2. If the State Probation and Parole Board may legally parole Mr. Mottram concerning the 1960 conviction, what are the legal ramifications which may ensue from such a parole re the 1965 conviction for breaking, entering, and larceny in the night-time?

ANSWERS:

1. No.
2. The answer given to Question 1 makes the second question moot.

REASONS:

It is clear that Mottram is to commence service of the 1965 sentence (breaking, entering, and larceny in the night-time) at the termination of the sentence imposed in 1960 (larceny).

"Any parolee who commits an offense while on parole who is sentenced to the State Prison shall serve the 2nd sentence beginning on the date of termination of the first sentence, unless the first sentence is otherwise terminated by the Board." 34 M.R.S.A. § 1676.

The Maine case of Cressey v. State, 161 Me. 295, 211 A. 2d 572 makes it abundantly clear that a sentence imposed upon a parolee for an offense committed by him while on parole must be served following the completion of service of the sentence from which the parole was initially granted.

The provisions of 34 M.R.S.A. § 1678 authorize the Parole Board to determine whether a person on parole is in need of further supervision, and if the Board determines that the parolee is no longer in need of supervision, it may order the Warden of the Maine State Prison or the Superintendent of the institution from which the parolee was released, to issue a certificate of discharge to that parolee. (The statutory reference in section 1678 to persons serving a life sentence is not applicable here.) The companion provisions in 34 M.R.S.A. § 1677 authorize the Warden of the Prison or Superintendent of the applicable institution to issue a certificate of discharge to any parolee who faithfully performs all the conditions of parole and thereby completes his sentence. In this case, release of Mr. Mottram to parole relative to the 1960 larceny conviction would mean that even though he were to faithfully perform all the conditions of parole and to thereby complete the balance of the larceny sentence and receive a certificate of discharge, he would nevertheless be required to return to the Maine State Prison.

Problems may arise when one considers the possibilities of Mottram's parole on the 1960 conviction and his later incarceration concerning the 1965 sentence. In view of the fact that Mr. Mottram has prosecuted plural post-conviction petitions

concerning his 1963 conviction for larceny, and in view of the record fact that Mr. Mottram is presently filing a multitude of pleadings, etc. in the Lincoln County Superior Court concerning the 1965 conviction, it is fair to indicate that any efforts made by prison officials or representatives of the Parole Board to apprehend Mr. Mottram after completion of his parole will likely be met with extensive long-term collateral attacks.

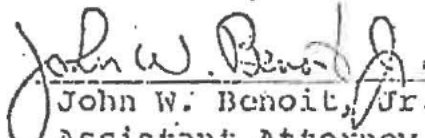
Witness the record of the 1965 case in this regard.

We now direct your attention to applicable cases that have entertained the question presented in your memorandum. First, note the following material language taken from 67 C.J.S. Pardons, § 20,

" * * * A person who is convicted of a felony committed while on parole and is required, under the statutes, to serve the remaining portion of the maximum term to which he was first sentenced is ineligible for further parole on the first sentence; and where, in such case, he is required by the statutes to serve his first term before beginning to serve his second term, the time at which he may become eligible for parole under the second sentence is correspondingly postponed."

Cases standing in support of the text material cited above are: Riccadi v. Wilson, 254 App. Div. 603, 2 N.Y.S.2d 816; Toliver v. State Board of Parole, 157 Pa. Super. 218, 42 A.2d 285; and Tsoukalas v. Hancock, 102 N.H. 417, 158 A.2d 296,

JWBJr./eh


John W. Benoit, Jr.
Assistant Attorney General