

MAINE STATE LEGISLATURE

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79-25A

STATE OF MAINE

Inter-Departmental Memorandum Date 21 February 1979

To Nancy Downs, Admr. Asst., P&P

Dept. Mental Health and Corrections

From William H. Laubenstein, III, Asst.

Dept. Attorney General

Subject Discharge of Persons Serving a Life Sentence

Synopsis

This is in response to your request for advice on the authority of the Parole Board to grant a discharge to a person on parole who is serving a life sentence. Section 1678 of Title 34 of the Maine Revised Statutes Annotated grants authority to the Parole Board to discharge a person on parole who is no longer in need of supervision:

. . . 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

Question:

Does 34 M.R.S.A. §1678 require a person serving a life sentence to complete 10 consecutive years on parole before being eligible for discharge?

Answer:

A person serving a life sentence must be on parole for 10 consecutive years before being eligible for discharge.

Discussion:

The purpose of parole is to offer prisoners the opportunity to reintegrate into society under the supervision and guidance of a parole officer. See Mottram v. State, 232 A.2d 809, 813 (Me. 1967); Morrissey v. Brewer, 408 U.S. 471, 478 (1972). The authority to grant, terminate, revoke, or discharge from parole is vested in the Parole Board, subject to whatever procedural restrictions the Legislature may have imposed. Mottram v. State, supra, at 814; Hartley v. State, 249 A.2d 38, 42 (Me. 1969). Similarly, a parolee "has only such rights as are given to him by the legislative body." Hartley v. State, supra at 42.

It is the opinion of this office that 34 M.R.S.A. §1678 requires a person serving a life sentence be on parole for 10 consecutive years before being eligible for discharge. This reading of 34 M.R.S.A. §1678 is based on

Nancy Downs, Admr. Asst., P&P

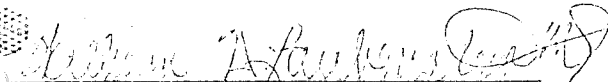
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the plain meaning of the language of the statute, Joint Tribal Council of the Passamaquoddy Tribe v. Morton, 388 F.Supp. 649, 655-656, (D.Me. 1975), aff'd., 528 F.2d 370 (1st Cir. 1975), and on the intent of the Legislature in adopting the parole system, Mottram v. State, supra.

The proviso in 34 M.R.S.A. §1678 expresses the judgment of the Legislature that persons who have been sentenced to life imprisonment should and must be supervised on parole for a longer period than other prisoners before discharge. Discharge is granted in recognition that a person on parole "is no longer in need of supervision." 34 M.R.S.A. §1678. A person on parole serving a life sentence who is returned to prison prior to expiration of 10 years after release on parole has failed to demonstrate he no longer needs supervision.

Support for this interpretation of Section 1678 also is found in the wording of the section. The ten year parole period is to be served "after release on parole." A person on parole who is returned to prison following revocation must appear before the parole board prior to being released again. State of Maine Parole Board Manual, pp. 6-7, 24. Thus, each release on parole begins a new parole period. This is consistent with 34 M.R.S.A. §1675.1 whereby a prisoner forfeits "any deductions for good behavior earned while on parole" upon revocation of parole.


William H. Laubenstein, III
Assistant Attorney General

WHL/vv

STATE OF MAINE

Inter-Departmental Memorandum Date February 5, 1979

William Laubenstein

Dept. Attorney General's Office

From Nancy Downs, Administrative Assistant

Dept. Maine Parole Board

Subject Final Discharge of persons serving a life sentence.

As a result of the last Parole Board Meeting, the question has arisen regarding M.R.S.A. title 34 § 1678. This section states that the Board may order a discharge, "except that in the case of persons serving a life sentence who may not be discharged from parole in less than ten years after release on parole."

The question is, does the ten years successful parole have to be ten consecutive years without parole violation or does it mean parole periods that equal ten years?

The inmate in question was originally paroled on a Murder sentence in March 1970. He violated his parole in February 77, at that time was denied six months and reparaled, in December 77 a warrant was issued, he was apprehended and in May 78 he was again denied time and reparaled. Once again he violated and this month he was denied a year. His total periods on parole equal almost seven years, the Board is not certain if the seven years parole can be credited toward the ten year requirement in § 1678.

Thank you for your consideration in this matter.

cc: RKC
File

CP 1110 NOV. 17, 1975

MAR 12, 1977

AUG 1, 1969