

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX

JOHNNY MARTINEZ,

Petitioner,

v.

GOVERNMENT OF THE VIRGIN
ISLANDS, et al.,

Respondents.

CASE NO. SX-13-CV-394

Petition for Writ of Habeas Corpus

MEMORANDUM OPINION & ORDER

THIS MATTER comes before the Court following entry on October 12, 2016 of Proposed Findings of Fact and Recommendation for Disposition of this Matter (Recommendation) of Magistrate Judge Jessica Gallivan. Petitioner Johnny Martinez's Petition for: Emergency Writ of Habeas Corpus or in the Alternative Petition for Mandamus, filed November 26, 2013, and First Amended Petition for: Emergency Writ of Habeas Corpus, filed November 26, 2014, both argue that his continued imprisonment has become unlawful because he has not been considered for parole despite having served 15 years of his 45 year sentence. Though the Court concurs with the Magistrate Judge's findings of fact, because the Court herein adopts a contrary interpretation of the relevant statutory provisions, the Court declines to adopt the Magistrate Judge's Recommendation. Rather, the Court concludes that: 1) Petitioner will become eligible for standard parole after serving 20 years of his sentence; and 2) the Virgin Islands Board of Parole (Board) permissibly exercised its discretion in denying Petitioner's application for early parole.

Background¹

In 1997, Johnny Martinez was sentenced to 35 years imprisonment for murder in the second degree and to 10 years imprisonment for the unauthorized possession of a firearm during the commission of a crime of violence, to be served consecutively. Martinez was afforded credit of 210 days for the time he spent in pretrial detention and began serving his sentence on December 19, 1997. On or about May, 29, 2013, the Board reviewed and denied Petitioner's application for early parole,² finding that the recommendation for early parole of the Director of the Bureau of

¹ For a more detailed explanation of the factual and legal background of this matter, refer to the Magistrate Judge's Recommendation entered October 12, 2016.

² Though 5 V.I.C. § 4601 does not distinguish between "early parole" and "standard parole" as such, the Court uses these terms to distinguish between the two different species of parole, available at different times pursuant to different standards, permitted by the statute.

Corrections “does not state any unusual or extenuating circumstances, which warrants this Board approval of said application.”³ In their Informative Motion, filed August 8, 2016, Respondents submitted their calculation that Petitioner will not be eligible for standard parole until November 2019, after serving 22½ years of his 45 year sentence.

Discussion

Title 5 Virgin Islands Code § 4601 provides:

Except for a prisoner sentenced to a term of life imprisonment without parole, every prisoner confined in any penitentiary, jail or prison for a violation of the Virgin Islands law for a definite term or terms of over 180 days or for the term of his natural life, whose record of conduct shows that he has observed the rules of the institution in which he is confined, upon recommendation of the Director of the Bureau of Corrections supported by the recommendation of a psychiatrist and/or psychologist, may be released on parole after serving one-half of such term or terms or after serving 15 years of a life sentence or of a sentence of 30 years or more or after serving the minimum sentence required by law, whichever is greater; Provided, however, That the Board of Parole, in its discretion by at least a two-thirds affirmative vote of all its members, upon recommendation by the Directors of the Bureau of Corrections, supported by the recommendation of a psychiatrist and/or psychologist, is authorized to fix an earlier eligibility date for the release of a prisoner on parole after serving one-third of his term or terms or after serving 10 years of a life sentence or of a sentence of 30 years or more.

Standard Parole

In his Petition, Martinez chiefly argues that he is entitled to habeas relief as his detention has become unlawful as a result of the Board’s determination that he is ineligible for parole based upon, according to Petitioner, an improper construction of 5 V.I.C. § 4601.⁴ Martinez argues that he became eligible for parole after serving 15 years of his 45 year sentence, based upon the statutory language stating that a prisoner is eligible for parole “after serving 15 years of a life sentence or of a sentence of 30 years or more.” *See* 5 V.I.C. § 4601.

The position adopted by the Board and recommended by the Magistrate Judge focuses on the statutory language “whichever is greater.” The Board holds that such language requires a comparison of the three different methods of calculating eligibility for parole and directs that a prisoner will only be eligible for parole based upon the method resulting in the greatest amount of

³ *See* Exhibit 2 to Respondents’ Response to Court Order, filed July 18, 2016.

⁴ Although Petitioner also invokes notions of 14th Amendment rights to due process and equal protection, we need not reach these issues as the Court concludes, purely as a matter of statutory interpretation, that the Board is incorrect in its calculation of Petitioner’s date of eligibility for parole pursuant to 5 V.I.C. § 4601.

time to be served prior to eligibility. The Magistrate Judge summarizes her coinciding interpretation of the statute as follows:

While the language in Title 5 V.I.C. Section 4601 could have been less cumbersome by the inclusion of colons and/or semicolons, the language is clear. The section defines three different ways in which a prisoner whose record of conduct shows he has observed the rules of the Bureau of Corrections (B.O.C.), and who has received a recommendation from the B.O.C. director and a psychiatrist or psychologist, may be released on parole after serving the greater of the following: 1) one-half of his term or terms; 2) 15 years of a life sentence or of a sentence of 30 years or more; or 3) any minimum sentence required by law.

Recommendation, at 7. However, for the reasons that follow, the Court declines to adopt the Magistrate Judge's recommended interpretation, and instead concludes that canons of statutory construction necessitate a different interpretation.

The Supreme Court of the Virgin Islands has directed: "The first step when interpreting a statute is to determine whether the language at issue has a plain and unambiguous meaning. If the statutory language is unambiguous and the statutory scheme is coherent and consistent, no further inquiry is needed." *In re L.O.F.*, 62 V.I. 655, 661 (V.I. 2015) (quoting *In re Reynolds*, 60 V.I. 330, 334 (V.I. 2013)). Further, the Court "must avoid construing a statute in a way that renders any of its language meaningless." *Jackson-Flavius v. People*, 57 V.I. 716, 730 (V.I. 2012) (citing *Brown v. People*, 54 V.I. 496, 514 (V.I. 2010)); see also *In re L.O.F.*, 62 V.I. at 661 ("In analyzing a statutory scheme, we must give effect to every provision, making sure to avoid interpreting any provision in a manner that would render it—or another provision—'wholly superfluous and without an independent meaning or function of its own.'"). Finally, "no statute should be read literally if such a reading is contrary to its objective [and] this Court must consider whether applying the statute's literal language leads to ... absurd consequences or is otherwise inconsistent with the Legislature's intent." *In re L.O.F.*, 62 V.I. at 661 (quoting *Gilbert v. People*, 52 V.I. 350, 356 (V.I. 2009)).

The Magistrate Judge correctly observed that the task of interpreting 5 V.I.C. § 4601 could have been made "less cumbersome by the inclusion of colons and/or semicolons." The entire section is written as a single sentence and the language of specific relevance to this issue is largely devoid of punctuation save a single comma.⁵ The placement of this sole punctuation mark may appear to suggest that the Legislature intended the statute to mandate a three-way comparison.

⁵ A prisoner "...may be released on parole after serving one-half of such term or terms or after serving 15 years of a life sentence or of a sentence of 30 years or more or after serving the minimum sentence required by law, whichever is greater." 5 V.I.C. § 4601.

However, upon closer inspection in the light of established canons of statutory interpretation, it becomes clear that such a construction is impermissible as it both renders certain language within the statute utterly meaningless, and leads to absurd consequences that are plainly inconsistent with legislative intent.

The Court finds that the statute in question is not plain and unambiguous, but is rather subject to at least two different interpretations. The Magistrate Judge concurred with the Board's construction that the dependent clause "whichever is greater" requires a comparison of each of the three methods of computation listed, as described above. Yet, the Court finds that, even on the face of statute, without regard to other relevant canons of statutory construction, it is at least equally plausible to read the language "whichever is greater," as requiring comparison between only the two methods of computation immediately preceding the dependent clause. Such a construction, punctuated for clarity might look something like the following: "A prisoner...may be released on parole after serving one-half of such term or terms; or after serving 15 years of a life sentence or of a sentence of 30 years or more, or after serving the minimum sentence required by law, whichever is greater."

This interpretation is most convincing when viewed in light of the maxim of statutory interpretation that the Court "must avoid construing a statute in a way that renders any of its language meaningless." *Jackson-Flavius*, 57 V.I. at 730. Were the Court to adopt the interpretation of 5 V.I.C. § 4601 advocated by the Board and approved by the Magistrate Judge, the phrase "or of a sentence of 30 years or more," would be rendered meaningless and effectively written out of the statute. If the statute is interpreted to require comparison between computing eligibility based upon "serving one-half of [a prisoner's] term or terms" and "serving 15 years of a life sentence or of a sentence of 30 years or more," then any prisoner serving more than 30 years will always be subject to computation of eligibility for parole based upon "serving one-half of [his or her] term or terms."

Stated as simply as possible, where a prisoner is sentenced to more than 30 years, one-half of that prisoner's term or terms will always, as a matter of mathematical certainty, be greater than 15 years; meaning that under the Board's interpretation of the statute, there would exist no possible scenario in which a prisoner could become eligible for parole based upon "serving 15 years ... of a sentence of 30 years or more," thereby rendering the phrase "or of a sentence of 30 years or more" meaningless. Such judicial abrogation of statutory language is impermissible. *See, e.g., Gilbert*, 52 V.I. at 357 (rejecting the People's interpretation of statutory language because "[a]dopting the

People's position, and by extension holding that every rape in the second degree is an aggravated rape, would not only render section 1702(a) meaningless, but essentially write the word 'aggravated' out of section § 1700a(a)").

Finally, were the Court to adopt the position advocated by the Board, it would be compelled to endorse the absurd conclusion that the Legislature intended to allow those prisoners convicted of crimes grave enough to merit a life sentence to become eligible for parole after 15 years, while those prisoners convicted of lesser crimes meriting sentences greater than 30 years but less than life, would not become eligible for parole until serving one-half of their term; which as discussed above will necessarily always exceed 15 years. The Court can conceive of no rational basis for such a legislative determination; which would effectively grant a form of clemency to those criminals sentenced to life in prison—a sentence of penultimate severity in the Virgin Islands⁶—while denying the same to those convicted of crimes meriting lesser punishment.

Therefore, because the Court concludes that 5 V.I.C. § 4601 is not plain and unambiguous in its meaning, and because the interpretation advanced by the Board would both render certain language within the statute utterly meaningless, and lead to absurd consequences, plainly inconsistent with legislative intent, the Court declines to adopt the Magistrate Judge's Recommendation in this regard. Instead, the Court adopts the interpretation of § 4601 detailed above, whereby a prisoner sentenced to a term of more than 30 years imprisonment will become eligible for parole after serving 15 years unless the crime of which he or she is convicted carries a greater minimum penalty.⁷

Having determined the proper interpretation of 5 V.I.C § 4601, the Court must next consider how this interpretation applies to the Petition presently before the Court. Martinez contends that because he was sentenced to a term of 45 years—a sentence obviously in excess of 30 years—he became eligible for parole after serving 15 years of his sentence. However, Martinez was not simply sentenced to a flat term of 45 years. More precisely, Martinez was sentenced to 35 years

⁶ As there exists no penalty of death in this jurisdiction, life imprisonment without possibility of parole stands as the sentence of ultimate severity in courts of the Virgin Islands.

⁷ Although the Court rejects the argument that the phrase "whichever is greater" as presented in 5 V.I.C. § 4601 requires a comparison between computation of eligibility based upon "one-half of [a prisoner's] term or terms" or computation based upon "15 years...of a sentence of 30 years or more," there remains an open question as to whether the phrase "whichever is greater," necessitates computation based on the greater of either "one-half of [a prisoner's] term or terms" or "the minimum sentence required by law." However, as this question is immaterial to the resolution of the instant matter, the Court need not address it herein.

imprisonment for murder in the second degree and to 10 years imprisonment for the unauthorized possession of a firearm during the commission of a crime of violence, *to be served consecutively*. In accordance with the trial court's determination at sentencing that the terms of incarceration Martinez would serve for the two separate felony offenses of which he was convicted were to be served consecutively, the Court finds that the portions of such terms that Martinez must serve before becoming eligible for parole must also be served consecutively. *See Smith v. Emps. of the Bureau of Corr.*, 64 V.I. 383, 397 (V.I. 2016) (Swan, J., concurring in part, dissenting in part) (finding that where prisoner was sentenced to serve multiple terms consecutively, eligibility for parole must also be computed consecutively).⁸

Thus, had Martinez only been sentenced to 35 years imprisonment for murder in the second degree, he would have been required to serve 15 years in prison before becoming eligible for parole. However, for his sentence of 10 years imprisonment for the unauthorized possession of a firearm during the commission of a crime of violence, Martinez must serve *an additional* term of 5 years ("one half of such term"), for a total of 20 years, before he is eligible for parole pursuant to 5 V.I.C. § 4601. Therefore, the Court will grant, in part, Martinez's prayer for relief, and Order Respondents to re-compute his eligibility for parole in accordance with the interpretation of 5 V.I.C. § 4601 expressed herein, whereby Martinez, assuming no other reason for his disqualification exists,⁹ will become eligible for parole after serving 20 years of his sentence, with credit of 210 days for time served prior to trial.

Early Parole

In her Recommendation, the Magistrate Judge concluded that the Board impermissibly denied Petitioner's application for *early* parole "because the then B.O.C. Director's recommendation did not 'state any unusual or extenuating circumstances.'" Recommendation, at 7. The Recommendation suggests that imposing such a requirement constitutes a "misapplication or misreading of [the Board's] own rules and regulations," and that by the very language of the

⁸ "Undeniably, the sentencing court certainly knew the difference between a consecutive sentence and a concurrent sentence. It is noteworthy that the sentencing court imposed concurrent sentences on the four first degree assault charges. Consequently, when the trial court imposed consecutive sentences for each first degree murder conviction, the court intended for each first degree murder conviction to have its own separate and distinct 10 years of minimum service for parole purposes, making eligibility for parole a combined period of a minimum of 80 years for all murder convictions, and not 10 or 15 years as Smith avers. Accordingly, Smith is not eligible for parole."

⁹ This would include a failure to comply with the other substantive requirements for parole eligibility found in 5 V.I.C. § 4601, such as a failure to obtain the recommendation of the Director of B.O.C., or a psychiatrist or psychologist.

controlling regulation, "a prisoner seeking early parole is only required to show unusual or extenuating circumstances whenever he cannot obtain the recommendation of a psychiatrist or psychologist and/or the recommendation of the B.O.C. Director." *Id.* at 9. The Court disagrees.

The Code of U.S. Virgin Islands Rules and Regulations, Title 5, Section 4503(d)-1(i) provides:

Unless prohibited by law, and unless he fails to receive the recommendations specified in subparagraph (j) below, any such prisoner may be considered by the Parole Board for release on parole earlier than set forth in subparagraph (h) above after serving one-third of his term or terms or after serving 10 years of a life sentence or of a sentence of 30 years or more whenever unusual or extenuating circumstances appear to justify such action. In such cases a description of the unusual or extenuating circumstances shall be submitted in writing to the Parole Board on a form provided by the Director of the Bureau of Corrections.

Thus, the plain language of the regulation establishes that a prisoner, after serving one-third of his term or terms or after serving 10 years of a life sentence or of a sentence of 30 years or more, may be considered for early parole if three conditions are met: 1) such parole must not be prohibited by law; 2) the prisoner must receive the required recommendations; and 3) unusual or extenuating circumstances must appear to justify such action.

The Recommendation expresses reservations that "the Rules and Regulations appear to add a substantive requirement not found in the applicable legislation." Recommendation, at 9. However, the statute itself expressly grants the Board discretion in its granting of early parole: "the Board of Parole, *in its discretion* by at least a two-thirds affirmative vote of all its members...is authorized to fix an earlier eligibility date..." 5 V.I.C. § 4601. Accordingly, the Court finds that the additional requirement that an applicant for early parole demonstrate some unusual or extenuating circumstance represents a legitimate exercise of the Board's discretion under the statutory scheme.

Conclusion

Because the Court concludes that the meaning of 5 V.I.C. § 4601 is not plain and unambiguous by its terms, and because the interpretation advanced by the Board would both render certain language within the statute utterly meaningless, and lead to absurd consequences that are plainly inconsistent with legislative intent, the Court declines to adopt the Magistrate Judge's Recommendation with regard to Petitioner's eligibility for regular parole. Instead, the Court adopts the interpretation of § 4601 detailed above, whereby a prisoner sentenced to a term of more than 30 years imprisonment will become eligible for parole after serving 15 years unless the crime of which

he or she is convicted carries a greater minimum penalty. Here, Petitioner shall become eligible for standard parole upon serving a total of 20 years: 15 years of his 35 year sentence on his conviction for second degree murder, in addition to 5 years of his 10 year sentence on his firearm conviction, to be served consecutively.

Further, the Court concludes that in order to be considered for early parole pursuant to 5 V.I.C. § 4601 and V.I. Rules and Regulations § 4503(d)-1(i), an applicant such as Petitioner must demonstrate that: 1) such parole is not prohibited by law; 2) both the Director of B.O.C., and either a psychiatrist or psychologist recommend early parole; and 3) unusual or extenuating circumstances appear to justify the Board granting early parole.

In light of the foregoing, it is hereby

ORDERED that Petitioner Johnny Martinez's prayer for relief as presented in his First Amended Petition for: Emergency Writ of Habeas Corpus is GRANTED, in part, and DENIED, in part. It is further

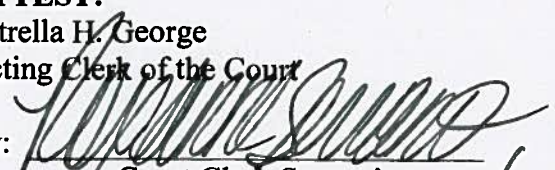
ORDERED that the Virgin Islands Board of Parole shall recalculate Petitioner Johnny Martinez's date of eligibility for parole pursuant to 5 V.I.C. § 4601 in accordance with this Opinion, such that Martinez shall become eligible for parole after serving 20 years of his total sentence, with credit of 210 days for time served prior to trial.

December 12, 2016.


DOUGLAS A. BRADY
Judge of the Superior Court

ATTEST:

Estrella H. George
Acting Clerk of the Court

By: 
Court Clerk Supervisor

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Hon. Mag. Judge Jessica Gallivan

CERTIFIED TO BE A TRUE COPY
This 14 day of Dec 2016

ESTRELLA H. GEORGE
CLERK OF THE COURT

By:  Court Clerk 