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Supreme Court rules on sex offender eligibility for parole review hearings

SANTA FE – The state Supreme Court ruled today that time sex offenders serve while on "in-house" parole in prison counts toward eligibility for a hearing to determine whether their parole will continue.

The hearing before the state Parole Board does not guarantee that an offender will be released from parole. The board makes the final decision.

In a split decision, the state's highest court affirmed a San Juan County district court's ruling that Ryan James Alan Thompson was entitled to a hearing before the Parole Board because of the combined time he had served on parole in the community and in the penitentiary.

Parole begins after offenders complete their basic prison sentences. New Mexico law imposes an indeterminate requirement for supervised parole of sex offenders – five to 20 years of parole for some sex offenses and five years to life for more serious sex offenses.

To qualify for a "duration-review hearing" before the state parole board, a sex offender must initially serve five years of supervised parole. Such hearings occur every 2½ years thereafter if parole continues.

Thompson completed his basic sentence in July 2013. He filed a petition for habeas corpus in 2018, after the parole board director informed him he was not eligible for a duration-review hearing until successfully serving parole in the community for at least five years

The district court determined in 2020 that Thompson was entitled to a duration-review hearing because he had served a combined six years, eight months and 24 days of parole in prison and in the community. Thompson was sent back to prison several times after violating conditions of his parole in the community.

In its appeal, the state contended that time on parole while in prison did not count toward the five-year period. It pointed to a statute – Section 31-21-5(B) – that defines parole as "the release

to the community" of a prison inmate by the Parole Board or in accordance with the law subject to conditions imposed by the board.

In today's majority opinion, Justice Michael E. Vigil wrote that the meaning of other statutes and prior court rulings "demonstrate that parole cannot be categorically defined by the plain meaning of the words in Section 31-21-5(B)."

Under one state law, inmates eligible for release to the community must remain in prison if they lack an approved parole plan or refuse to sign-off on the conditions of parole. That time in prison is known as "in-house" parole and the majority pointed out it counts as time served under parole. A previous Supreme Court decision held that an inmate serves parole time following the basic sentence for one conviction while remaining in prison to complete the basic sentence of another conviction, if the sentences run consecutively.

"In reality, then, parole is sometimes served in institutions, including prison, and not exclusively in the community," the Court's majority wrote.

The majority found that the "strict application of the statutory definition of parole leads to an unreasonable result, thereby undermining a literal reading of the statutory definition." The Court analyzed the history of laws enacted concerning parole and the majority concluded "it is unmistakable that the Legislature intended that the duration-review hearing be conducted after the sex offender has served the initial minimum five years of mandatory parole."

The Court's majority wrote: "We give effect to the Legislature's clear intent by recognizing" that the required initial five years of supervised parole for sex offenders "includes all time served during the parole sentence" – whether in prison, in a rehabilitative institution or in the community. The majority found that the "rule of lenity also supports our conclusion." That rule is applied to resolve ambiguity in sentencing.

"Because the tension between the statutory provisions addressing the scope of parole service may obscure the intent of the Legislature or render it ambiguous, the rule of lenity applies to resolve any doubt in favor of Thompson and, accordingly, the definition of parole adopted by the district court should be affirmed," the majority held. It ordered the state to provide Thompson with a duration-review hearing "without delay."

Justices Julie J. Vargas and Briana H. Zamora joined Justice Vigil in the majority.

In a dissenting opinion, Justice David K. Thomson wrote: "Respectfully, I conclude that the statutory language requiring a sex offender to successfully serve parole in the community for five years before that person is entitled to a parole review hearing is clear. The majority's efforts to find ambiguity where none exists usurp the authority of the Legislature to decide matters of policy. For that reason, I respectfully dissent."

Chief Justice C. Shannon Bacon concurred in the dissenting opinion.

The majority's analysis "confuses the policy differences between the calculation of time that counts toward the term of parole and time that counts toward a review hearing," the dissent stated.

"Even though time served *in-house* for violating conditions of release decreases the amount of time a parolee must serve under a sentence of parole, whether such time served in-house advances a sex offender's opportunity for a parole review hearing is a different matter," the dissenting opinion stated.

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To read the decision in *State v. Thompson*, No. S-1-SC-38376, please visit the New Mexico Compilation Commission's website using the following link:

https://nmonesource.com/nmos/nmsc/en/item/521383/index.do