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Supreme Court rules sex offender was improperly discharged from parole

SANTA FE – The state Supreme Court ruled today that New Mexico law requires an indeterminate period of parole for people convicted of certain sex crimes regardless if they do not serve time in prison.

In a unanimous opinion, the Court concluded that an Otero County sex offender was improperly released from a five- to twenty-year term of parole. The justices rejected Hezekiah Eaker’s arguments that a state law’s provision for the lengthy parole of sex offenders did not apply to him because he served no time in a state prison for his conviction of criminal sexual penetration.

“Indeterminate sex offender parole is in fact imposed at *sentencing* because the Legislature has stated in Section 31-21-10.1(A) that the district court must include it in the judgment and sentence for certain enumerated sex crimes,” the Court stated in an opinion written by Chief Justice Julie J. Vargas.

“Thus, parole is *imposed* and *attaches* at sentencing along with the basic sentence; parole simply does not *commence* until the completion of the initial basic sentence,” the Court explained.

The Court reached its conclusion based on the “plain and unambiguous” language in the state statute governing the terms and conditions of parole for sex offenders. Eaker argued that the sex offender parole law should be interpreted in conjunction with New Mexico’s broader framework for parole, which provides for the conditional release of offenders after serving a portion of their sentence in prison.

Eaker’s proposed interpretation of the law, the Court noted, “would lead to arbitrary disparate treatment of sex offenders with regard to sex offender parole and would incentivize pretrial delay on the part of defendants. The result would be deeply contrary to the intent of the Legislature.”

Under Eaker’s view of the law, the Court explained, an individual “could avoid sex offender parole entirely if preconviction or presentence delay results in the defendant serving out the sentence in jail.”

Eaker pleaded no contest in 2012 to criminal sexual penetration and incest. He received a conditional discharge, which was the preference of the victim and unopposed by prosecutors. The district court cautioned Eaker that if he was incarcerated in the case in the future it would

result in a five- to twenty-year term of sex offender parole. Under a conditional discharge, no conviction is formally entered into the case if the defendant successfully completes probation.

Eaker was placed on five years of supervised probation, but his probation was later revoked for use of drugs and alcohol and other violations. The district court also revoked Eaker's conditional discharge, sentencing him to three years in prison for each of his two convictions, a five- to twenty-year sex offender parole term for criminal sexual penetration, and two years of parole for incest.

Eaker filed a habeas corpus petition in 2022, challenging his sentence as illegal. The district court in Otero County discharged Eaker from his sex offender parole term, agreeing with him that he could not be sentenced to the five- to twenty-year parole term because he did not serve any of the criminal sexual penetration sentence in prison. Prosecutors appealed. In today's opinion, the justices reversed the district court.

Eaker contended that his sentence for criminal sexual penetration had expired before he was transferred to prison following the revocation of his probation and conditional discharge. Eaker had received a presentence credit of more than three years for time he was held in the county jail in the case.

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To read the decision in *State v. Eaker*, No. S-1-SC-40604, please visit the New Mexico Compilation Commission's website using the following link:

<https://nmonesource.com/nmos/nmsc/en/item/538342/index.do>