

Opinion No. 68-30

March 1, 1968

BY: OPINION OF BOSTON E. WITT, Attorney General

TO: Alexander Sceresse District Attorney County Court House Albuquerque, New Mexico

QUESTIONS

When is a prisoner with a sentence of not less than 10 years nor more than 50 years eligible to appear before the Parole Board for the first time?

CONCLUSION

After serving 3 years and 4 months of his sentence.

OPINION

{*54} ANALYSIS

Section 41-17-24, N.M.S.A., 1953 Compilation sets forth when prisoners are eligible for parole as follows:

"1. Prisoners may become eligible for parole hearing after they have completed one-third of their minimum sentence; however, they must have a clear conduct record for at least six months prior to their appearance before the parole board.

2. Prisoners having minimum sentences of ten years or more shall be required to serve one-third of ten years plus one month additional for every year beyond a ten-year sentence before becoming eligible to appear before the parole board.

3. Prisoners sentenced for thirty years or more shall become eligible to appear before the parole board after they have served seven years of their minimum sentence.

4. Prisoners sentenced to life imprisonment shall become eligible to appear before the parole board after they have served ten years." (Emphasis added).

The chief aim of statutory construction is to determine legislative intent. **Montoya v. McManus**, 68 N.M. 381, 362 P.2d 771 (1961). Particular provisions of a statute must be construed with reference to the purpose derived from the whole statute and each part should be construed in connection with every other part so as to produce a harmonious whole. **Allen v. McClellan**, 75 N.M. 400, 405 P.2d 405 (1965).

Following the above rules of statutory construction, it is the opinion of this office that under Section 41-17-24 (2) a prisoner sentenced to serve not less than 10 years nor more than 50 years must serve at least one-third of his minimum sentence, or 3 years and 4 months. If the prisoner's sentence is 25 years to 100 years, the sentence prescribed for the second conviction of a second degree felony, he must serve one-third of ten years plus one month for every year of the minimum sentence over 10 years, or a total of 4 years and 7 months, before he is eligible for parole. If we were to construe Section 41-17-24 (2), supra, as requiring the penitentiary to add one month for each year of the maximum sentence, one sentenced to serve a sentence of not less than 10 years nor more than 50 years would have to serve a sentence of 6 years and 8 months before he would be eligible for parole, while a prisoner sentenced to a minimum sentence of 50 years would only have to serve 7 years in the penitentiary before he would be eligible for parole. See Section 41-17-24(3) supra. We do not believe that the legislature intended to treat the two prisoners as equals when determining their eligibility for parole.

By: Gary O'Dowd

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