

## **Opinion No. 86-01**

April 23, 1986

**OPINION OF:** Paul Bardacke, Attorney General

**BY:** G.T.S. KHALSA, Assistant Attorney General

**TO:** Mr. Thomas A. Rutledge District Attorney 101 West Mermod Street P.O. Box 1448  
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### **FACTS**

Defendants who are sentenced to life imprisonment pursuant to Judgments finding them guilty of having committed capital offenses are seeking good time credits which would reduce their parole eligibility dates.

### **QUESTIONS**

Section 31-21-10 (A) NMSA 1978 states that a defendant sentenced to life imprisonment as a result of the commission of a capital felony does not become eligible for parole until he has served 30 years of his sentence. Can this minimum eligibility date be reduced by good time awards?

### **CONCLUSIONS**

No.

### **ANALYSIS**

The question involves the interpretation of two statutes. Section 33-2-34 NMSA 1978 passed in 1978 provides that

Any inmate confined in the penitentiary of New Mexico . . . may be awarded . . . good time. . . .

### **OPINION**

Section 31-21-10A passed in 1980 states that

An inmate of an institution who has been sentenced to life imprisonment as a result of the commission of a capital felony becomes eligible for parole after he has served thirty years of his sentence. . . .

For the reasons set forth below, the good time statute does not apply to capital offenders sentenced pursuant to Section 31-21-10A.

First, Section 30-21-10A was passed after Section 33-2-34. The legislature is presumed to have enacted law with existing law in mind. See **State v. Trivitt**, 89 N.M. 162, 548 P.2d 442 (1976), **New Mexico Board of Pharmacy v. New Mexico Board of Osteopathic**, 95 N.M. 780, 626 P.2d 854 (App. 1981). Second, when there is a conflict between a general statute and a specific statute, statutory construction requires that the specific statute be considered an exception to the general statute. See **Martinez v. Cox**, 75 N.M. 417, 405 P.2d 659 (1965), **City of Albuquerque v. Reelding**, 93 N.M. 757, 605 P.2d 1156 (1980), **New Mexico Bureau of Revenue v. Western Elect. Co.**, 89 N.M. 468, 553 P.2d 1275 (1976), **State v. Thompson**, 79 N.M. 748, 449 P.2d 656 (1969), **Lopez v. Baneras**, 77 N.M. 52, 419 P.2d 251 (1966). Finally, a similar problem was presented in **Martinez v. Cox, supra**. In that case the court interpreted the provisions of Section 54-7-15 (1953 Comp.) which stated that pursuant to a certain drug offense" . . . the imposition of execution of a sentence shall not be suspended or probation or parole shall not be granted until the minimum imprisonment provided for the offense shall have been served." The court concluded that when the legislature specifically states that a defendant is not eligible for parole until a specific amount of time has been served, good time only applies in that case as a deduction from the maximum sentence imposed by law and **not** from the minimum sentence. See also **Coutts v. Cox**, 75 N.M. 761, 411 P.2d 347 (1966).

For the foregoing reasons, it is the opinion of this office that a defendant sentenced to life imprisonment for the commission of a capital felony does not become eligible for parole until he has served thirty years of his sentence.

If you have any further questions concerning this matter, please feel free to contact me.

#### **ATTORNEY GENERAL**

Paul Bardacke, Attorney General

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