Case Number: SU-2023-0167-MP
Filed in Supreme Court
Submitted: 2/16/2024 9:40 AM
Envelope: 4489076
Reviewer: Zoila Corporan

STATE OF RHODE ISLAND
SUPREME COURT

JOAO NEVES v. STATE OF RHODE ISLAND	SU-2022-0092-MP (PM-2022-0259 below)
KEITH NUNES v. STATE OF RHODE ISLAND	SU-2022-0093-MP (PM-2022-0901 below)
PABLO ORTEGA v. STATE OF RHODE ISLAND	SU-2022-0094-MP (PM-2022-0260 below)
MARIO MONTEIRO v. STATE OF RHODE ISLAND	SU-2023-0167-MP (PM-2023-00921 below)

Consolidated Review on Certiorari from the Grant of Post-Conviction Relief Entered in the Superior Court, Providence County

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BRIEF OF RESPONDENTS

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

OTHER AUTHORITIES

CONSTITUTIONAL PROVISIONS

Introduction

Respondents Nunes, Neves, Ortega, and Monteiro each committed terrible crimes, including murder, when they were teenagers, and each was sentenced to and is serving a life sentence for that murder as well as a consecutive sentence. Each has served at least twenty years behind bars. In that time, each demonstrated to a Parole Board, known for its demanding and rigorous review, that they had matured, taken responsibility for their actions and made remarkable progress through the programs at the ACI to prepare for successful transition and reentry to the community.

After years of considering the enaction of legislation providing an earlier chance for parole to individuals who committed their crimes while they were juveniles or emerging adults, the General Assembly added a new provision, effective July 6, 2021, to the existing statute R.I.G.L. §13-8-13 governing the time when a parole permit may be issued for "life prisoners and prisoners with lengthy sentences" as follows:

> (e) Any person sentenced for any offense committed prior to his or her twenty-second birthday, other than a person serving life without parole, shall be eligible for parole review and a parole permit may be issued after the person has served no fewer than twenty (20) years' imprisonment unless the person is entitled to earlier parole eligibility pursuant to any other provisions of law. This subsection shall be given prospective and retroactive effect for all offenses occurring on or after January 1, 1991.

After the passage of R.I.G.L. §13-8-13(e) ("hereinafter Subsection (e)"), each Respondent filed a Petition for Post-Conviction Relief in the Superior Court. In each

matter, the facts are undisputed. Each was decided on cross-motions for summary disposition in favor of the Respondent. In each matter, Respondent successfully asserted that he was then entitled to, but denied, consideration for release to the community on parole as a result of the enactment of Subsection (e), as a person convicted of crimes committed while he was under the age of 22 years and serving a sentence other than life without parole. In the discussion which follows, we refer to Respondents collectively as the "youthful offenders" and individually by their last name.

Prior Proceedings and Decision of the Superior Court

Neves, Nunes and Ortega. The Superior Court, in a lengthy bench decision, concluded that Subsection (e) applies to the three youthful offenders. The Superior Court found that there were no material facts in dispute, and that each matter was appropriate for summary disposition under R.I.G.L. §10-9.1-6(c). (RA46-47)[1]. The Court found (and it is undisputed) that each youthful offender "is serving a sentence of life plus a consecutive term for offenses that he committed when he was under the age of 22. Each one of them has now been incarcerated for at least 20 years at the ACI. Each one of them has been seen by the Parole Board and has satisfied the Parole Board that they should be paroled on such terms and conditions as the Parole

[1] "RA" is used for Respondents' Appendix.

Board saw fit to impose." (RA34). "Each one of them has been issued a parole permit, and we know in a murder case or murder charge the vote of the Parole Board to issue a parole permit must be unanimous and is only done after hearing and notice to law enforcement and to the victims." (RA35).

The parties agreed that the matters should be heard together. (RA44). The sole issue "is whether petitioners are entitled to judgment as a matter of law regarding their respective parole eligibility and release to the community, which is a matter of statutory interpretation." (RA48).

The Superior Court concluded that Subsection (e) applies to shorten the minimum amount of time to 20 years that the three youthful offenders must serve before they could be considered for parole to the community by the Parole Board. Because each of the three youthful offenders had been seen by the Parole Board and the Board had unanimously concluded that each met the standards for parole, the Court granted immediate relief in the form of release to the community on parole pursuant to the conditions previously (as to Neves and Ortega) or thereafter (as to Nunes) imposed by the Parole Board. (RA66-68). Judgment entered in each matter on March 31, 2022. (RA70-72). The Superior Court's Order detailing the relief was entered April 6, 2022. (RA74-77). In its Order, the Superior Court found that each youthful offender had "received the unanimous vote of the Parole Board that he

meets the conditions for parole and is therefore entitled to be at liberty on parole during the remainder of his sentence."

Monteiro. The Superior Court, in a written decision, found that there were no material facts in dispute, and that the matter was appropriate for summary disposition under R.I.G.L. §10-9.1-6(c). (RA86) ; also reported as *Monteiro v. State*, No. PM-2023-00921, 2023 WL 3641496, at *1 (R.I.Super. May 17, 2023). After careful review of the parties' respective legal arguments, the Superior Court concluded that Subsection (e) as properly construed applies to Monteiro's sentences and that the doctrine of "separation of powers" does not alter that analysis. (RA92-96). After the Superior Court determined that Monteiro met the standards of parole to the community under Subsection (e), it ordered him brought before the Parole Board to confirm the terms and conditions of his release from incarceration to be at liberty on parole and thereafter be released on liberty in accordance with such terms and conditions. This Court granted a stay. Monteiro remains in prison.

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Statement of Fact

Joao Neves. On February 4, 2000, after pleading guilty to murder in the first degree and five charges of robbery and assault with intent to commit robbery, Petitioner Neves was sentenced to serve life in prison on the murder conviction and five separate sentences of ten years each to be served consecutive to the life sentence and concurrent with each other. (RA100-01¶¶1-5). All of the crimes for which Neves was convicted and sentenced were committed in January 1999, when Neves was 16 ½ years old. (RA100-01 ¶¶4, 8).

When Neves began serving his sentence, it was the longstanding practice of the Department of Corrections ("RIDOC") and the Parole Board to determine an initial parole eligibility date for those serving consecutive sentences, including life and consecutive term sentences, by aggregating the statutory minimum term on a life sentence (twenty years as to Neves) with the statutory minimum of one-third of any consecutive sentences they might have.

The "aggregation" calculation remained in place until approximately 2018, when, without notice to Neves or anyone else, RIDOC changed how it calculated parole eligibility. This is acknowledged in several RIDOC documents which were made part of the record below, establishing that RIDOC calculated parole eligibility for life plus consecutive sentences in 2015 by aggregation, but was "no longer"

aggregating consecutive sentences with life sentences in 2018.[2] Instead, RIDOC started determining parole eligibility on the life sentence alone. If granted, parole would be on paper only, with the prisoner then commencing service of the consecutive term sentence.

Neves was brought before the Parole Board for the first time on August 21, 2019, on the basis that, having served 20 years on his life sentence, he was eligible for parole to begin serving his consecutive 10-year sentence. At that time, the Parole Board unanimously approved Neves for parole from his life sentence—with Neves to begin serving his consecutive 10-year sentence two years later, commencing in August 2021.[3] (RA101, 118-19). In follow-up, the Parole Board met on August 23, 2021. The Board confirmed again that Neves met all of the criteria for parole. (RA111, 118-19). In fact, even though the Board stated that it was "paroling" Neves

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[2] For example, the Parole Coordinator explained to Ortega's counsel in 2018 that RIDOC is "no longer" aggregating consecutive sentences with life sentences. "The Board can grant parole to the [consecutive sentence] and eligibility on that sentence will be calculated at that time." (RA142). Before that, RIDOC calculated eligibility by combining the minimum term on the life sentence plus one-third of the consecutive sentence to calculate the parole eligibility date, as explained by the same Parole Coordinator to another inmate in 2015. (RA120, 169).

[3] "[Neves] presents well at hearing, reflecting a level of maturity appropriate to the twenty years that he has now served and his current age. In the face of the grave loss of life in this case, we believe that he has established that he is not beyond rehabilitation or redemption. Notwithstanding his length of sentence he has been meaningfully active in programs and discipline free for the past four years." (RA118).

to commence his consecutive ten-year sentences, it identified the "special conditions" of parole for release to the community, including six months at the 9 Yards transition program, with GPS monitoring and other community release requirements. (RA119). At the August meeting, the Parole Board did not acknowledge or consider the impact of the July 2021 passage of Subsection (e).

After the Superior Court determined that Neves met the standards of parole to the community under Subsection (e), Neves was issued a parole permit on the basis of the conditions which the Parole Board had previously set at its meeting in August 2021.

Pablo Ortega. On March 2, 2002, after pleading guilty to murder in the first degree and conspiracy to commit a felony, Ortega was sentenced to serve life in prison on the murder conviction with a five-year consecutive sentence to follow on the conspiracy charge. (RA125 ¶¶4-5, 137). All of the crimes for which Ortega was convicted and sentenced were committed in November 2001, when Ortega was 19 ½ years old. (RA125 ¶¶4, 8).

When Ortega began serving his sentence, it was the longstanding practice of RIDOC and the Parole Board to determine an initial parole eligibility date for those serving consecutive sentences, including life and consecutive term sentences, by aggregating the statutory minimum term on a life sentence (then twenty years as to Ortega) with the statutory minimum of one-third of any consecutive sentences they

might have. This is acknowledged in several RIDOC documents which were made part of the record below. (RA141-42).

RIDOC did not notify any prisoners in advance of its decision to change parole eligibility calculations. In 2018, Ortega's counsel was advised that RIDOC was "no longer" aggregating consecutive sentences with life sentences. (RA142). Instead, RIDOC started determining parole eligibility on the life sentence alone. If granted, parole would be on paper only, with the prisoner then commencing service of the consecutive term sentence. (RA142).

Ortega was brought before the Parole Board on November 8, 2021, having served twenty years. By that time, Subsection (e) had taken effect. The Parole Board acknowledged the passage of Subsection (e) and unanimously approved Ortega for parole, expressly stating that Ortega met all conditions for parole *to the community*. "For our part, the Board votes unanimously [to] parole Mr. Ortega from his Life sentence to the community or to his next sentence, *the same to be determined by the Department of Corrections*."[4] (RA138-39) (emphasis added).[5] The Parole Board

[4] The Parole Board acknowledged that the passage of Subsection (e) raised the question whether Ortega was eligible for parole from all sentences to the community or whether Ortega could only be paroled from his life sentence to begin serving his consecutive 5-year sentence but claimed that resolution of that issue was one to be determined by RIDOC or the courts. (RA129 ¶¶21-23, 138-39).

[5] "Mr. Ortega admits and takes full responsibility for his crime, use of a firearm, taking an innocent life and also offers further insight into his actions and thought process at the time of the crimes. Per his attorney, he has the support of correctional

set forth all conditions for parole to the community in its determination. *Id.* However, the Parole Board acceded to RIDOC's contrary interpretation, and Ortega was "[p]aroled from Life Sentence to Consecutive 5 Year Sentence" on December 10, 2021. *Id.*

After the Superior Court determined that Ortega met the standards of parole to the community under Subsection (e), Ortega was issued a parole permit on the basis of the conditions which the Parole Board had previously set.[6]

Keith Nunes. On June 29, 2000, Nunes was sentenced to life imprisonment upon his conviction after trial for murder in the first degree, followed by ten-year consecutive sentences (concurrent with each other) on four other counts. (RA145 ¶4, 159-162). Nunes' conviction was affirmed on appeal. *State v. Nunes*, 788 A.2d 460 (R.I. 2002). All of the crimes for which Nunes was convicted and sentenced were

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staff and described as 'a model inmate', participating in the mentoring program and serving as a positive role model to mentees under twenty-five years old, volunteering in the NEADS and SCORE programs, as well. He has amassed numerous certificates of completion of programming over the past twenty years including core programs such as victim impact, anger management, criminal thinking, violence reduction and has earned his Bachelor's Degree from College Unbound and has a job waiting for him with College Unbound upon release. … Mr. Ortega presents exceptionally well to this Board, and his answers to questions at hearing reflect a depth of maturity and insight that we find reflects his genuine remorse and rehabilitation and at a level not typically observed by members of this Board." (RA138-39).

[6] As a result of "an immigration detainer on [Ortega's] record," (RA139), Ortega was taken into federal custody and ultimately deported.

committed in June 1999, when Nunes was 18 years and 2 months old. (RA145 ¶¶4, 8).

When Nunes began serving his sentence, it was the longstanding practice of RIDOC and the Parole Board to determine an initial parole eligibility date for those serving consecutive sentences, including life and consecutive term sentences, by aggregating the statutory minimum term on a life sentence (then twenty years as to Nunes) with the statutory minimum of one-third of any consecutive sentences they might have. This is acknowledged in several RIDOC documents which were made part of the record below. (RA141-42).

That changed without notice to Nunes or anyone else. Instead, RIDOC started determining parole eligibility on the life sentence alone. If granted, parole would be on paper only, with the prisoner then commencing service of the consecutive term sentence.

Nunes was brought before the Parole Board on June 17, 2019, having served twenty years. The Parole Board unanimously approved Nunes for parole from his life sentence to begin serving his consecutive 10-year sentence effective July 17, 2019, making November 1, 2022 the earliest date for consideration of parole from the consecutive sentence to the community. (RA149 ¶¶30-31,168).[7]

[7] "At hearing Mr. Nunes takes full responsibility for his crime and expresses appropriate remorse for his actions and thinking in 1999 when he was eighteen years old and killed his victim. We find that he has taken intentional steps towards his

After the passage of Subsection (e), Nunes, through his counsel, specifically requested that the Parole Board reconvene and approve his parole to the community on the basis of his eligibility under Subsection (e), but the Parole Board declined to act on the basis of RIDOC's interpretation of the provision as applying only to the first sentence. (RA152-53 ¶¶38-44, 169-171) .

Nunes was returned to the Parole Board by order of the Superior Court granting Nunes' application for post-conviction relief under Subsection (e). After consideration, the Parole Board voted unanimously to parole Nunes to the community and set conditions for his release.

Mario Monteiro. On July 18, 2002, Monteiro was sentenced to life imprisonment upon his conviction after trial for murder in the first degree, as well as five ten-year sentences to be served concurrently, and a statutorily mandated consecutive life sentence for discharge of a firearm during the commission of a crime of violence resulting in death. (RA174 ¶4, 193-94). Monteiro's conviction was affirmed on appeal. *State v. Monteiro,* 924 A.2d 784 (R.I. 2007). All of the crimes

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rehabilitation and has succeeded in this. Considering all the circumstances of the crime, severity including loss of life, Mr. Nunes' age, background at the time of the offense, time served to date, positive institutional record, we find that he meets parole release criteria and the Board votes to parole him from this Life Sentence to his next Consecutive Sentence of ten years. We will see him when he is next eligible on that sentence. Between now and then we refer him to the pre-release program and other programs to aid him in his eventual transition to the community." (RA168).

for which Monteiro was convicted and sentenced were committed in July 2001, when Monteiro was 17 ½ years old. (RA174 ¶¶4, 9).

When Monteiro began serving his sentence, it was the longstanding practice of RIDOC and the Parole Board to determine an initial parole eligibility date for those serving consecutive sentences, including consecutive life sentences, by aggregating the statutory minimum term for consecutive life sentences (then fifteen years as to Monteiro on each consecutive life sentence for a total of thirty years). This is acknowledged in several RIDOC documents which were made part of the record below. (RA176-77 ¶¶20-24, 195). *See also* (RA141-42).

Thus, in a RIDOC record dated November 20, 2017, Monteiro's parole eligibility date is November 1, 2031, that is, thirty years after commitment. (RA177,195). Thereafter, without notice to Monteiro or anyone else, RIDOC changed its calculation of Monteiro's parole eligibility date to November 1, 2021, as reflected in a RIDOC record dated August 16, 2018, (RA179, 196), now calculated on the first life sentence alone. If granted, parole would be on paper only, with the prisoner then commencing service of the consecutive life sentence. (RA179-80 ¶¶32-33, 200-01).

Monteiro was brought before the Parole Board in December 2021, having served twenty years.[8] By that time, Subsection (e) had taken effect. The Parole Board acknowledged that Monteiro "became eligible to see the Parole Board this year due to new legislation in Article 13 [of the Budget Act adding Subsection (e)] impacting youthful offenders." (RA199).

The Parole Board unanimously approved Monteiro for parole,[9] providing alternative dispositions—immediate parole on paper to the consecutive life sentence, or deferred parole to the community after December 2022—based upon the "existing

[8] Monteiro was brought before the Parole Board on November 20, 2017, having served almost 16 years, "solely for a review in consideration of the treatment or programming recommendations." (RA195).

[9] "Overall, Mr. Monteiro has a positive institutional record. He completed his GED and has a significant number of college credits. Notwithstanding his lengthy sentence, he completed programming in a number of areas including Victim Impact, Grief & Loss, Anger Management. He is enrolled in the Mentoring Program and successfully completed the Secure Risk Group 'stepdown' program to address his gang involvement. As a result of his positive adjustment and programming, the Department of Corrections has removed his SRG status. At hearing he is future oriented and presents well, expressing appropriate responsibility and remorse for his crime, upbringing, gang involvement and perspective on mentoring others and leading a more positive life. He has letters of support submitted on his behalf and seeks parole to a transitional residential program or to a family plan out of state. Concerning his parole risk assessment, he scores as moderate risk below guidelines unless the Board considers mitigating factors and the absence of aggravating factors. After full consideration, the Board finds as mitigating factors that Mr. Monteiro has successfully completed a number of benchmark programs, has worked to remove his SRG status and disavowed gang affiliation, and has a stable plan for transition." (RA200-01).

legal debate" as to whether Subsection (e) meant that Monteiro was eligible for parole to the community.

> For our part, the Board votes unanimously to parole Mr. Monteiro from his first life sentence. If it is determined that he must serve another consecutive life term, then the effective parole release date shall be the date of this decision (December 15, 2021). If it is determined that he is eligible for immediate release to the community, then the effective parole release date shall be no sooner than December 2022. The reason for the staggered release (if to the community) is the Board believes there should be some time for Mr. Monteiro to transition to a lower security and preparation for eventual release.

(RA200-01).

The Parole Board set forth all conditions for parole to the community in its determination. *Id.* However, the Parole Board acceded to RIDOC's contrary interpretation, and Monteiro was paroled to his consecutive life sentence. *Id.*

After the Superior Court determined that Monteiro met the standards of parole to the community under Subsection (e), it ordered him brought before the Parole Board to confirm the terms and conditions of his release from incarceration to be at liberty on parole and thereafter be released on liberty in accordance with such terms and conditions. This Court granted a stay. Monteiro remains in prison.

Questions Presented and Standard of Review

1. The Superior Court correctly construed and applied Subsection (e) as authorizing the Parole Board to consider each youthful offender for parole to the community after serving at least 20 years imprisonment.

As to questions of statutory construction, the Court's review is *de novo*. *See, e.g., State v. LeFebvre,* 198 A.3d 521, 524 (R.I. 2019).

2. The construction and application of Subsection (e) to permit parole consideration to individuals who committed their crimes and/or were sentenced before its effective date does not contravene the doctrine of separation of powers.

As to the State's constitutional challenge, "legislative action, whether state or municipal, 'is presumed constitutional and will not be invalidated by this Court unless the party challenging the [legislation] proves *beyond a reasonable doubt* that the legislative enactment is unconstitutional.'" *Andrews v. Lombardi*, 233 A.3d 1027, 1037 n. 7 (R.I. 2020) (emphasis in original; citations omitted).

3. The Superior Court did not substitute its judgment for the Parole Board in declaring that each youthful offender was entitled to release on parole to the community upon conditions set by the Parole Board in its sole and unanimous determination.

Argument

I. The system of parole is a creation of the legislature and executed by the Parole Board. It does not create, modify or interfere with the sentence imposed by the courts.

A. Parole decisions are vested in the Parole Board by the legislature and determinations of the eligibility for parole consideration are the province of the legislature to enact and the Parole Board to exercise. They do not alter the sentence imposed by the court.

While sentencing judges fix the maximum term that a sentenced individual must serve, the General Assembly created the system of parole and vested parole-release decision-making in the Parole Board. Parole decisions are vested in the

Parole Board by the legislature and determinations of the eligibility for parole consideration are the province of the legislature to enact and the Parole Board to exercise. They do not alter the sentence imposed by the court.

> A person imprisoned by a court is turned over to an administrative agency for the execution of the sentence. *The imprisonment can, if so authorized by the legislature, be ameliorated by allowing it to be served beyond the confines of the penal institution on parole*. *Anderson v. Corall*, 263 U.S. 193, 44 S.Ct. 43, 68 L.Ed. 247. This is not a right of a prisoner, but accrues to him through legislative grace and can be withheld or withdrawn by the legislature at will. As part of the act of grace it is within the legislative power to attach conditions to the grant of parole and to provide for the administration thereof. See *Rondoni v. Langlois*, 89 R.I. 373, 377, 153 A.2d 163. Courts have no power to determine the penological system; this is within the exclusive jurisdiction of the legislature. *Commonwealth ex rel. Banks v. Cain*, 345 Pa. 581, 28 A.2d 897, 143 A.L.R. 1473. As part of its power the legislature can grant to the parole board the exclusive right to determine *if* a parole permit shall be revoked and any such revocation by the parole board made within the limits of the legislative authority given to it cannot be attacked. *Zerbst v. Kidwell*, 304 U.S. 359, 58 S.Ct. 872, 82 L.Ed. 1399.

State v. Fazzano, 96 R.I. 472, 478, 194 A. 2d 680, 684 (R.I. 1963) (emphasis added).

In *Commonwealth ex rel. Banks v. Cain*, 345 Pa. 581, 585, 28 A.2d 897, 899 n.2 (Pa. 1942), cited with approval by the Court in *Fazzano,* the Pennsylvania Supreme Court reviewed the history of the introduction of the system of parole in the states, starting in the late 1800s. Rhode Island adopted the parole system in 1915. *State v. Upham,* 415 A.2d 1029, 1033 (R.I. 1980). The Pennsylvania Supreme Court rejected a challenge that the parole system could not "constitutionally be applied to cases where sentences were imposed before its effective date." 345 Pa. at 588, 28

A.2d at 901. Parole, according to the structure and cited authority, does not modify the sentence; it provides an alternative location as to where the sentence shall be served.

> The legislature has exclusive power to determine the penological system of the Commonwealth. It alone can prescribe the punishments to be meted out for crime. It can provide for fixed penalties or grant to the courts such measure of discretion in the imposition of sentences as it may see fit. It may enact that prison confinement shall be the punishment for crime or may abolish prisons altogether and adopt some other method of enforcing the criminal law. It may therefore establish a parole system by which prisoners shall, under certain conditions, be allowed to re-enter society through a gradual amelioration of their restraint and a substitution of controlled freedom for continued incarceration.

Id., 345 Pa. at 586-7, 28 A.2d at 900-01 (footnotes omitted; collecting cases).

In its early years, as the cases cited by the Court in *Fazzano* and treatises observed, the parole system was often attacked as a usurpation of the sentencing decisions of the court. These challenges were uniformly rejected on the basis that the grant of parole does not alter or shorten the sentence imposed by the court. Among the cases cited with approval by the Court in *Fazzano* are the following observations about the nature of parole:

> The parole authorized by the statute does not suspend service or operate to shorten the term. While on parole the convict is bound to remain in the legal custody and under the control of the warden until the expiration of the term, less allowance, if any, for good conduct. While this is an amelioration of punishment, it is in legal effect imprisonment.

Anderson v. Corall, 263 U.S. 193, 196 (1923).

> A parole, on the other hand, does not obliterate the crime or forgive the offender. It is not an act of clemency, but a penological measure for the disciplinary treatment of prisoners who seem capable of rehabilitation outside of prison walls. It does not set aside or affect the sentence; the convict remains in the legal custody of the state and under the control of its agents, subject at any time, for breach of condition, to be returned to the penal institution. Neither is a parole a commutation of sentence within the meaning of that term in the constitutional provision.
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> It is urged that the granting of a parole is a judicial function and therefore the power to parole cannot be entrusted to an executive or administrative body. This contention also has been uniformly rejected in other jurisdictions, where the constitutionality of statutes has been sustained vesting the power of parole in state boards (which now exist in some form or other in at least half the states of the Union) or in boards of prison commissioners or managers of reformatories

Commonwealth ex rel. Banks v. Cain, *supra,* 345 Pa. 581, 585-87, 28 A.2d, 897, 899-900 (Pa. 1942) (footnote omitted; collecting cases at 28 A. 2d at 900 n.1).[10]

The case law continues to so understand and assess the meaning of parole. *See, e.g., Samson v. California*, 547 U.S. 843, 850 (2006) ("parole is an established variation on imprisonment of convicted criminals… The essence of parole is release from prison, before the completion of sentence, on the condition that the prisoner abide by certain rules during the balance of the sentence." (internal quotation,

[10] Parole is a continuation of custody rather than a termination of imprisonment, and one cannot be simultaneously on parole and imprisoned at the same time. *Law of Probation & Parole* § 1:13 Theoretical bases for parole. (footnotes omitted).

citation omitted)); *Artez v. Mulcrone*, 673 F.2d 1169, 1170 (10th Cir. 1982) ("In granting or denying parole, the Parole Commission does not modify a trial court's sentence, but merely determines whether the individual will serve the sentence inside or outside the prison walls." Citations omitted); *Mottram v. State*, 232 A.2d 809, 814 (Me. 1967) ("We agree with the great weight of judicial authority that the grant, revocation and reinstatement of parole are within the exclusive jurisdiction of the Parole Board subject to such procedural restrictions within which our Legislature circumscribed the Board's powers…[and] is not one of constitutional requirement but of statutory interpretation."); *State v. Vera*, 334 P.3d 754, 759 (Ariz. Ct. App. 2014), *review denied*, Arizona Supreme Court (March 17, 2015), *cert. denied*, 577 U.S. 854 (2015) (statute beneficially modifying parole eligibility to prisoners sentenced before its effective date "does not alter [the prisoner's] penalty, create an additional penalty, or change the sentence imposed.")

B. Parole decisions are vested in the Parole Board and the standards contemplate release "to the community" upon conditions set by the Parole Board.

Parole eligibility is prescribed by statute. Rhode Island's statutory scheme for parole is set forth in R.I.G.L. chapter 13-8. As specified in that chapter, the decision of the Parole Board to release a prisoner on parole entitles the prisoner "to be *at liberty* during the remainder of his or her term of sentence upon any terms and conditions that the board may prescribe." R.I.G.L. §13-8-9(a) (emphasis added).

Parole is an essential part of the Rhode Island criminal justice system. It offers an incentive to inmates to rehabilitate themselves with a goal of becoming contributing and productive members of society. "Whenever a person convicted of any offense shall be sentenced to be imprisoned in the adult correctional institutions for a period of more than six (6) months, his or her sentence shall be subject to the control of the parole board as provided for in this chapter." R.I.G.L. §13-8-8.

Among the criteria which the Parole Board is statutorily charged to find as a condition for granting a parole permit is "[t]hat there is a reasonable probability that the prisoner, if released, would live and remain at *liberty* without violating the law" and "[t]hat the prisoner can properly assume a role in the city or town in which he or she is to reside." R.I.G.L. §13-8-14 (a)(3), (4) (emphasis added). The parole release criteria set forth in R.I.G.L. §13-8-14 all focus on considerations for release from physical custody. The Board assesses whether the person can properly assume a role in the city or town in which they will reside by considering the prospective parolee's type of employment, place of employment and residence, and need for specialized services. R.I.G.L. §13-8-14 (a)(4). Section §13-8-16 (terms of parole) only speaks to being *at liberty* on parole, while §13-8-17 addresses reports prepared by field services regarding the adjustment of a parolee to living outside the prison

walls. *See* R.I.G.L. §§13-8-16, 13-8-17. Sections 13-8-6.1 and 13-8-9.1 address notice to law enforcement and victims when a parolee is released.[11]

Section 13-8-23, entitled "Parties required to provide reports to parole board," identifies "information concerning applicants for parole" and who is required to provide it. The Director of RIDOC is required to "submit a list of all prisoners under his or her control who will be eligible for parole in a given month, not later than the tenth day of the second month preceding. That list shall identify the prisoner by name, offense, and date of commitment". §13-8-23(1). RIDOC and the Department of Attorney General are required to provide their recommendations concerning parole. §13-8-23(2), (6). Before providing this recommendation, the Department of Attorney General is required to consult with the trial judge. §13-8-23(2).

[11] Section 13-8-18, addressing revocation of parole, authorizes the arrest and detention of a person "*at liberty under a permit*" to be held at the ACI until the Board can conduct the revocation proceedings. "If the board shall determine that the permit shall not be revoked, then the board shall immediately order the prisoner to be set *at liberty* under the terms and conditions of his or her original permit." (Emphasis added.) Section 13-8-9(a) also addresses the determination of the parole board to "issue to that prisoner a permit to be at liberty upon parole…[which] *permit shall entitle the prisoner to whom it is issued to be at liberty during the remainder of his or her term of sentence upon any terms and conditions that the board may prescribe."* (Emphasis added).

Case Number: SU-2023-0167-MP
Filed in Supreme Court
Submitted: 2/16/2024 9:40 AM
Envelope: 4489076
Reviewer: Zoila Corporan

C. The Legislature, through R.I.G.L. chapter 13-8, has established the minimum amount of time a prisoner must serve before they may first be considered for parole and has provided for the aggregation of sentences to determine a parole eligibility date.

The General Assembly has established and from time to time modified the calculation of the minimum amount of time a prisoner must serve before they may first be considered for parole.[12]

A review of the pertinent provisions discloses that the General Assembly has provided clear instructions that unless otherwise specifically stated, all sentences being served at the same time are to be aggregated, or considered together, to determine a total minimum amount of time a prisoner must serve before they can first be brought before the Parole Board.

First, under R.I.G.L. §13-8-10, the General Assembly provided that the minimum amount of time for persons serving multiple term sentences is determined by considering all of the term sentences together and taking one-third of the longest sentence, if they are concurrent, and one-third of the total if they are consecutive sentences.[13] But R.I.G.L §13-8-13(a)(1) qualifies the one-third total by providing

[12] In each of these matters, and pursuant to the Court's Order, our focus is what happens when a prisoner is serving multiple sentences. The complete text of the sections pertinent to those issues is reproduced in the Appendix. (RA 2-12).

[13] Section 13-8-9 includes a different calculation, also specific, for persons serving a term (not life) sentence for first or second degree murder committed after July 1, 2015, and for habitual criminals under §12-19-21.

that where the one-third calculation produces a number greater than ten years, the minimum amount of time before parole consideration is reduced to an aggregate total of 10 years.

Section 13-8-13 also addresses the calculation of the minimum amount of time before parole consideration for persons serving life sentences. Since "life" is not a fixed or finite amount, one cannot simply multiply the number by one-third. Instead, the legislature provided the calculation by specifying an amount of years' imprisonment. For a single life sentence, these minimums are set forth in §13-8-13(a) and (a)(2)-(5), progressively increasing over the years based upon when the crimes were committed. For consecutive life sentences, these minimums are set forth in §13-8-13(d), also progressively increasing over the years based upon when the crimes were committed. Under controlling decisions of this Court,[14] as the State

[14] *See, e.g., DeCiantis v. State,* 666 A.2d 410, 413 (R.I. 1995) (referring to a time when the minimum term before parole eligibility on a life sentence was 10 years, "a prisoner who is serving only one life sentence consecutively to another life sentence must serve twenty years before even seeking parole"); *Lerner v. Gill,* 463 A.2d 1352, 1365 (R.I. 1983) ("There is nothing in the language of § 13–8–13 which would justify the conclusion that an individual such as Lerner who has been found guilty of committing two murders should receive the benefit of the same parole-eligibility provisions as are indicated for one who is serving a life sentence for having committed one murder. Thus, Lerner was not and is not entitled to be considered for parole until he has served at least twenty years at the ACI."). *See also Brown v. State,* 32 A.3d 901, 911 (R.I. 2011) ("In *DeCiantis,* the applicant, then serving two concurrent life sentences and a consecutive life sentence, asked this Court to require his parole on the two concurrent life sentences after only ten years, even though a prisoner serving just one life sentence consecutively to another life sentence must wait twenty years before seeking parole. *DeCiantis,* 666 A.2d at 411.").

admitted below, "the determination of the minimum service for determining parole eligibility on consecutive life sentences is made by adding or aggregating the minimum time for each such sentence." (RA176-77 ¶22) (admitted).

While the legislature did not specifically set forth the calculation when a person is serving a life sentence plus a consecutive term sentence(s),[15] there is only one common sense construction that fulfills the legislature's directive: that is to add together (aggregate) the minimum amount of time that the legislature specified must be served on the life sentence with the one-third total of any consecutive term sentences.[16] If consecutive life sentences must be aggregated, and consecutive terms of years must be aggregated, it follows that a life sentence followed by a consecutive term of years should also be aggregated. It is absurd to reach any other conclusion, especially when there is no law to the contrary.

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[15] The Court made this clear in its Orders granting certiorari in these cases, directing the parties to address "the fact that chapter 8 of title 13 of the General Laws, entitled 'Parole', is silent with respect to the calculation of parole eligibility for a life prisoner who is also confined upon one or more consecutive sentences." Neves Order of 11/29/22; Monteiro Order of 9/12/23.

[16] For reasons set forth above and at n. [11], *supra,* the youthful offenders respectfully submit that the legislature was not silent with respect to the calculation of parole eligibility for a life prisoner who is also confined upon one or more consecutive life sentences. To the contrary, §13-8-13(d) makes clear and this Court has held that the consecutive life sentences are to be aggregated. For Monteiro, but for Subsection (e), that would mean a minimum of thirty years before he could first be eligible for review on parole by the Parole Board. The State agreed to this understanding of the statute.

There is nothing in the parole statutes that expressly refutes that calculation, but there is much that makes this calculation the only reasonable and indeed necessary interpretation, to avoid irrational and absurd results. Numerous sections of the parole chapter cited above demonstrate that aggregation of consecutive sentences, including life sentences, is both intended by the legislature and necessary for purposes of parole, leading to a single parole eligibility date and release from physical custody once parole is granted. *See Harvard Pilgrim Health Care of New Eng., Inc. v. Gelati*, 865 A2d 1028, 1037 (R.I. 2004) (noting that when the language of a statute is clear and unambiguous, the statute must be enforced as written giving the words their plain and ordinary meaning, but any ambiguity should be resolved by looking at the statute as a whole; however, the statute should not be construed to reach an absurd or unintended result).

Sections 13-8-6.1 and 13-8-9.1 address notice to law enforcement and victims when a parolee is released. If a parolee were only moving to a consecutive sentence, notice to the public would be unnecessary because the person would still be behind bars. Release clearly means to the community. Further, the parole release criteria outlined in §13-8-14 refer to release from physical custody. The Board, by statute, is charged to consider whether release would depreciate the seriousness of the crime, and whether there is a reasonable probability that the person would live and remain at liberty without violating the law. *See* R.I.G.L. §13-8-14 (a)(2) and (3). The Board

further considers whether the person can properly assume a role in the city or town in which they will reside, by considering type of employment, place of employment and residence, and the need for specialized services. R.I.G.L. §13-8-14 (a)(4). What is notably absent from the parole release criteria are factors for the Board to consider when paroling someone to a consecutive sentence. Surely if the legislature envisioned parole to a consecutive sentence, for terms of life and a consecutive term of years, but for no other sentence combination, including multiple life sentences, that scenario would be accounted for in this provision and more appropriate factors would be codified. Moreover, §13-8-16 (terms of parole) speaks to being at liberty on parole, while §13-8-17 addresses reports prepared by field services regarding the adjustment of a parolee outside the prison walls. *See* R.I.G.L. § 13-8-16, 13-8-17.

The parole violation statutes, §§13-8-18 through 13-8-20, also use terms (such as a parolee being at liberty, re-committing a parolee to the ACI, and detention) that equate the term parolee with someone living outside the walls of the prison, not serving a consecutive sentence. *Morrissey v. Brewer*, 408 U.S. 471 (1972), which outlines the process that is constitutionally required for parole revocations, is also notable. *Morrissey* makes clear that the motivation behind the requirement of a prompt preliminary revocation hearing, is because the filing of a revocation takes a parolee out of the community. Often this community is one that the parolee has been living and working in for quite some time. Once paroled, the parolee is able to do a

wide range of things available to those who have never been convicted of a crime. *Id*. at 482. This includes working, spending time with family and friends, and forming "the other enduring attachments of normal life." *Id*. These would not be concerns for someone serving a consecutive sentence "on parole."

Indeed, that is precisely how RIDOC understood and calculated parole eligibility for decades before changing its mind, without announcement or notice, and started "disaggregating" life plus consecutive life and term sentences for parole calculation sometime around 2018.[17]

The Supreme Judicial Court of Massachusetts addressed a very similar issue in *Dinkins v. Massachusetts Parole Board*, 160 N.E.3d 613, 622 (Mass. 2021). There, the Parole Board, by formal regulation issued in 1988, had excluded life sentences from aggregation with consecutive sentences. The SJC concluded that the regulation contravened Massachusetts law. The Massachusetts Parole Board had relied upon language in one statutory section describing how the "minimum term" for life sentences should be calculated as excepting those sentences from aggregation, notwithstanding other statutory language which provided that "[w]here

[17] In its Order assigning these matters to the regular calendar, the Court requested RIDOC to file an amicus brief that addresses "when and why the former method of aggregation of a prisoner's sentences for purposes of parole eligibility was abandoned and whether these prisoners were provided with notice and an opportunity to be heard." Order of 11/28/23. No brief has been filed as of this writing.

an inmate is serving two or more consecutive or concurrent state prison sentences, a single parole eligibility shall be established for all such sentences." ALM GL ch. 127, §133. Similarly, R.I.G.L. §13-8-10 expresses the legislature's intent that prisoners "confined upon more than one sentence" shall have their sentences aggregated so that a single date for parole eligibility can be calculated.

The SJC's rejection of the Parole Board's interpretation and that court's reasoning are fully applicable here.[18] Single parole eligibility avoids a drain on limited parole resources with unnecessary hearings. Under RIDOC's current position, a minimum of two hearings are required before someone serving life plus a consecutive term can be physically released from the ACI. Multiple hearings also create heavy burdens on parole applicants preparing to see the Board on lengthy sentences. In Rhode Island, this preparation requires compiling a parole release plan, including letters of residence and employment, letters of support, program certificates, writing a personal letter to the Board, and preparing for a hearing which usually involves questioning by multiple Board members.

[18] The Massachusetts Supreme Judicial Court revisited the aggregation issue in *Commonwealth v. Sharma*, 171 N.E.3d 1076 (Mass. 2021), again concluding that a parole board regulation providing for parole to a consecutive sentence was invalid under *Dinkins* and directing the prisoner's immediate return to a parole hearing. "Provided nothing has changed since the defendant's last parole hearing, he should be parole eligible immediately." *Id.* at 1081.

Multiple hearings also add burdens on the State. It must continuously consider whether its needs to weigh in on hearings, requiring review of casefiles and drafting written objections. Multiple hearings and multiple release considerations also burden victims and their families. They must decide whether to testify, or submit something in writing, and re-live the trauma.

A single eligibility date through aggregation also furthers finality. All the parties involved know when the parole applicant will actually be considered for parole to the community, in contrast to commencement of a consecutive sentence that might result in release on parole to the community at some point. Finality provides closure for the victims, the State, and the prisoner. It helps people heal and facilitates rehabilitation. Parole to a consecutive sentence requires a duplication of resources, involving both the custodial and parole arms of RIDOC—unless RIDOC considers the mandates of R.I.G.L. §13-8-16, 13-8-17 to conduct field reviews and reports non-binding.

Only one reading of Rhode Island's statutory system for parole fulfills and is consistent with the legislative intent, and that is to aggregate consecutive sentences, including life and consecutive term sentences, to determine and apply a single date for parole eligibility.

II. The Legislature, in 1999 and 2021, in recognition of special circumstances presented by certain classes of prisoners, authorized the Parole Board to consider an earlier date parole to the community for certain classes of prisoners.

In 1999 and again in 2021, the General Assembly enacted modifications to the parole system in recognition of special circumstances presented by certain classes of prisoners as warranting earlier consideration for parole than is otherwise available under the statutory scheme.

In 1999, the legislature adopted R.I.G.L. chapter 13-8.1, which created a new path for prisoners suffering chronic and incurable illness to be considered for parole "at any time after they begin serving their sentences…regardless of the crime committed or the sentence imposed." R.I.G.L. §13-8.1-2. The new provision of medical parole extended to "all prisoners, except those serving life without parole," *id.*, "for humanitarian reasons and to alleviate exorbitant medical expenses associated with inmates whose chronic and incurable illness render their incarceration non-punitive and non-rehabilitative." The statute provided that it was intended to supersede any "other statutory or administrative provisions to the contrary." *Id.*

In 2021, reciting the same humanitarian and cost-saving considerations, the legislature expanded chapter 13-8.1 to add "geriatric parole," extended to all prisoners 65 years or older who "suffer[] from functional impairment, infirmity, or illness," §13-8.1-3(1), except those serving life without parole, again without regard to the length of time they had been imprisoned, the crime committed or the sentence imposed. §13-8.1-2(b).

At the same time that it added "geriatric parole" as a category for parole consideration without regard to sentence, years imprisoned, or crime committed, the General Assembly also adopted Subsection (e), to address the class of prisoners who committed their crimes before the age of 22. Subsection (e) by its express terms applies to any person who was under 22 when they committed their crimes, to all offenses committed on or after January 1, 1991, and to all sentences except the sentence of life without parole. It provides an opportunity for initial parole consideration after 20 years' imprisonment—unless the time was already shorter--for those meeting its terms.

III. The enactment of Subsection (e) is a legislative recognition as identified in the growing body of jurisprudence and in the scientific community that juveniles and young adults who commit crimes warrant different consideration in their path to rehabilitation and reentry than older persons.

Before passing Subsection (e) shortening initial parole eligibility to 20 years' imprisonment for individuals committing offenses before the age of 22, the General Assembly held extensive hearings on earlier versions of the Act, *see, e.g.,* 2021-H5144 and 2021-S0333, which would have shortened the first parole date to 15 years, limited to individuals committing offenses up to age 18. While the stand-alone bills did not advance, the provision ultimately enacted was presented as part of the Governor's Budget, initially proposing that the initial parole eligibility for

youthful offenders would be shortened to 10 years' imprisonment, and enacted as 20 years. [19]

In enacting Subsection (e), the legislature intended to give youthful offenders an earlier opportunity than older offenders to demonstrate that they have matured and transformed themselves from the person who committed the underlying crimes in their early years.

The concept underlying the enactment of Subsection (e) is supported by a growing national recognition, identified in the case law and research within the medical and scientific communities that people who commit crimes as teens or young adults warrant consideration of their youth in evaluating when and whether they can demonstrate that they have been rehabilitated. This growing recognition is discussed in such cases as *Roper v. Simmons*, 543 U.S. 551, 569-70 (2005), and its progeny, *Graham v. Florida*, 560 U.S. 48 (2010), and *Miller v. Alabama*, 567 U.S. 460 (2012). There, the United States Supreme Court recognized that juveniles generally lack the culpability of adult offenders. In *Roper,* the Court observed

> Three general differences between juveniles under 18 and adults demonstrate that juvenile offenders cannot with reliability be classified among the worst offenders. First, as any parent knows and as the scientific and sociological studies respondent and his *amici* cite tend to confirm, "[a] lack of maturity and an underdeveloped sense of

[19] Subsection (e) and earlier versions considered by the legislature in 2021, 2020, and earlier years, were colloquially known as "Mario's Bill" or "Mario's Law" in direct reference to Mario Monteiro and his rehabilitation efforts. (RA182 ¶40). *See* Rep. Casimiro Affidavit, submitted below (RA205-206).

> responsibility are found in youth more often than in adults and are more understandable among the young. These qualities often result in impetuous and ill-considered actions and decisions."
>
> * * *
>
> The second area of difference is that juveniles are more vulnerable or susceptible to negative influences and outside pressures, including peer pressure.
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> * * *
>
> The third broad difference is that the character of a juvenile is not as well formed as that of an adult. The personality traits of juveniles are more transitory, less fixed.

Id. at 569-570 (citations omitted)

As a result, "these differences render suspect any conclusion that a juvenile falls among the worst offenders. The susceptibility of juveniles to immature and irresponsible behavior means 'their irresponsible conduct is not as morally reprehensible as that of an adult.'" *Roper* at 570 (citation omitted). "*Roper* and *Graham* emphasized that the distinctive attributes of youth diminish the penological justifications for imposing the harshest sentences on juvenile offenders, even when they commit terrible crimes." *Miller* at 472.

In *Commonwealth v. Mattis,* 224 N.E.3d 410 (Mass. 2024), the Massachusetts Supreme Judicial Court last month struck down, as a matter of state constitutional law, a sentence of mandatory life without parole for persons who were under 21

years old when they committed their crimes.[20] In reaching its conclusion, the court at great length discussed the extensive record developed below that confirmed that juveniles and young adults share these characteristics and provide support for treating them differently than older adult offenders. *Id.* at 425.

> Advancements in scientific research have confirmed what many know well through experience: the brains of emerging adults are not fully mature. … From the detailed evidence produced in the record, the judge made four core findings of fact regarding the science of emerging adult brains: emerging adults (1) have a lack of impulse control similar to sixteen and seventeen year olds in emotionally arousing situations, (2) are more prone to risk taking in pursuit of rewards than those under eighteen years and those over twenty-one years, (3) are more susceptible to peer influence than individuals over twenty-one years, and (4) have a greater capacity for change than older individuals due to the plasticity of their brains.

Id. at 420-21.

The recognition that "young minds are different" applies with equal force here even though a mandatory sentence of life without parole is not at issue. As the United States Supreme Court observed in *Miller, supra* at 473, "none of what [*Graham*] said about children — about their distinctive (and transitory) mental traits and environmental vulnerabilities — is crime-specific" (quoted in *Mattis, supra* at 419 n. 13).

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[20] Earlier, in *Diatchenko v. District Attorney for the Suffolk Dist.*, 1 N.E.3d 270 (Mass. 2013), the court had concluded that sentencing a juvenile to life without parole—whether mandatory or discretionary—would violate the state constitution.

Thus a number of legislatures throughout the country in recent years have reviewed and reduced initial parole eligibility for juveniles and/or young offenders. *See, e.g.,* District of Columbia Code §24-403.03; Oregon Rev. Statutes §144.397; Connecticut Gen.Stat. §54-125a(f)(1); Wash.Rev.Code §9.94A.730. These provisions go beyond eliminating sentences of mandatory life without parole for juveniles in response to the *Miller* decision.

The Rhode Island General Assembly joined this expanding group of legislatures in enacting special consideration for young offenders when it adopted Subsection (e).

IV. The Superior Court correctly construed and applied Subsection (e) to each youthful offender.

This Court's prior holdings on statutory construction make clear that Subsection (e) encompasses "any sentence"—not just the first sentence—of "any person" who committed "any offense" before he reached 22 years old—except those sentenced to life without parole. The focus is how much time, at a minimum, that person must serve in prison before initial parole consideration. For those whose minimum time is equal to or less than twenty years, nothing changes. For those whose minimum time *in prison* ("twenty years' imprisonment") would otherwise exceed twenty years, Subsection (e) reduces the minimum time to twenty years.

The Court has often addressed the courts' role in statutory construction. As applicable here, the Court has identified the following governing principles, which are paraphrased from the cited cases:

> 1. The Court's role is to determine and effectuate the legislature's intent and to attribute to the enactment the meaning most consistent with its policies or obvious purposes. *Tiernan v. Magaziner*, 270 A.3d 25, 30 (R.I. 2022).
>
> 2. When the language of a statute is clear and unambiguous, the Court must interpret the statute literally and give the words of the statute their plain and ordinary meanings. *Id.*
>
> a. When a statute does not define a word, courts will often apply a common meaning as provided by a recognized dictionary. *Planned Env'ts Mgmt. Corp. v. Robert*, 966 A.2d 117, 123 (R.I. 2009).
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> b. The word "any" has been recognized by the Court as "broadly inclusive," requiring exclusion, not specific inclusion. *Ricci v. RI Commerce Corp.,* 276 A.3d 903, 908-09 (R.I. 2022). *See also State v. LeFebvre*, *supra* at 526; *State v. Caprio*, 477 A.2d 67, 71 (R.I. 1984) ("the very breadth of the term 'any person' defies the exclusion of any class of persons. That term is so broad as to require exclusion, not specific inclusion."). [21]
>
> 3. The Court will not construe a statute to reach an absurd result, and a statute may not be construed in a way that would defeat the underlying purpose of the enactment. *Providence J. Co. v. Rhode Island Dep't of Pub. Safety ex rel. Kilmartin*, 136 A.3d 1168, 1173 (R.I. 2016).

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[21] This broad reading, of all-inclusiveness except that which is expressly excluded, is supported in other jurisdictions. *See, e.g., State v. Gardner*, 889 N.E.2d 995, 1003 (Mass. 2008) ("Given the General Assembly's use of the term 'any' in the phrase 'any criminal offense,' we presume that it intended to encompass 'every' and 'all' criminal offenses recognized by Ohio." Citations omitted); *Three D Departments, Inc. v. K Mart Corp*., 940 F.2d 666, 1991 WL 151903 at *2 (7th Cir. 1991) (table) ("numerous Michigan cases hold that 'any' means more than one and a number up to and including 'all' or 'every.'" Citations omitted).

4. In examining the meaning of a statute, individual sections must be considered in the context of the entire statutory scheme, not as if each section were independent of all other sections. *Houllahan v. Gelineau*, 296 A.3d 710, 720 (R.I. 2023)(citation omitted); *see also Ricci v. RI Commerce Corp.,* 276 A.3d 903, 906 (R.I. 2022).

5. The Legislature is presumed to have intended each word or provision of a statute to express a significant meaning, and the Court will give effect to every word, clause, or sentence, whenever possible. *Swain v. Est. of Tyre ex rel. Reilly*, 57 A.3d 283, 288 (R.I. 2012).

6. The Legislature is presumed to know the state of existing relevant law when it enacts or amends a statute. *Providence Journal Co. v. Rodgers*, 711 A.2d 1131, 1134 (R.I. 1998).

7. Remedial statutes are to be liberally interpreted to effectuate their purposes. *Ricci v. RI Commerce Corp., supra* at 906-07 .

8. The principle "*expressio unius est exclusio alterius*" is a rule of construction that states that an express enumeration of items in a statute indicates a legislative intent to exclude all items not listed. *Id.* at 907.

9. When two laws are *in pari materia*, the Court will harmonize them whenever possible. Even if the laws appear at first to be inconsistent, the Court will make every effort to construe the provisions to avoid the inconsistency. This rule of construction applies even though the statutes in question may contain no reference to each other and are passed at different times. *Purcell v. Johnson*, 297 A.3d 464, 470-71 (R.I. 2023).

10. When faced with competing statutory provisions that cannot be harmonized, the Court adheres to the principle that the specific governs the general. If a statute cannot be construed as more specific, the Court will adopt the statute more recent in time. *Id.* at 471-72.

Applying these principles leads to only one result: Subsection (e) applies to fix the time to serve *in prison* before initial parole consideration for all youthful

offenders (other than those serving a sentence of life without parole) at 20 years, unless it is already less than 20 years.

Subsection (e) is remedial, designed to permit earlier consideration of parole eligibility for youthful offenders, and expressly retroactive.[22] Its coverage, except for life without parole, is all-inclusive, warranting application of the maxim "*expressio unius est exclusio alterius.*" Applying that maxim (Principle 8 above), it is evident that the General Assembly deliberately chose to exclude from the beneficial effect of Subsection (e) only those youthful offenders sentenced to life without parole from all other youthful offenders sentenced for all offenses occurring after January 1, 1991.

The State, in contrast, contends that the term "any offense" can only apply to a prisoner serving a single offense.[23] State's Brief at 24-27. The State's argument is not based upon the words contained in §13-8-13(e), but rather by reference to a different phrase ("an offense or offenses") contained in R.I.G.L. §13-8-14.2. That

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[22] The Superior Court concluded that Subsection (e) is remedial: "the Act's purpose, which is to recognize and require that the Parole Board accord special consideration to youthful offenders not extended to adult offenders. This special consideration evinces the legislative intent that the Parole Board recognize, in evaluating whether a parole permit should issue, that young minds work differently than more mature persons as articulated by the United States Supreme Court in the *Roper-Graham* line of cases." (RA58-59).

[23] As the Superior Court below observed, the State's interpretation would foreclose application of Subsection (e) to a youthful offender serving concurrent sentences. (RA58).

phrase does not appear anywhere in §13-8-13. Nor is there anything about §13-8-14.2 which suggests that its use of the phrase "an offense or offenses" has any application to Subsection (e).[24]

Section 13-8-14.2 is a separate provision of chapter 13-8. It does not address the amount of time a person must serve before they may be considered for parole. It mandates that a juvenile offender receive "a meaningful opportunity to obtain release" and prescribes specific "special parole consideration" by the Parole Board *when* persons come up for parole for crimes they committed before they turned 18.

Subsection (e) captures the entire universe of a different cohort: persons who were under 22 when they committed their crimes, excepting only those sentenced to life without parole. It says nothing about standards the Parole Board must use when considering eligibility. It simply states that youthful offenders are eligible for initial parole consideration after serving 20 years' imprisonment, unless the applicable calculation is already less than 20 years.

[24] The State's reliance on the meaning of "a" in *State v. Badessa*, 869 A.2d 61 (R.I. 2005), is also inapposite. State's Brief at 24. In *Badessa,* the statute at issue narrowly defined a "first offender" as "a" person who has been convicted of "a" felony or misdemeanor, not previously convicted and has no pending charges during the following five (misdemeanor) or ten (felony) years. The Court considered the context of the statutory intent to conclude that "'first offender' as meaning one who has been convicted of only one offense" and that in context "a" meant a single conviction. *Badessa, supra.* at 66.

The State argues that Subsection (e) should be narrowly construed or invalidated because a contrary reading cannot be harmonized with existing provisions of §13-8-13. But even the State's crabbed reading does not escape that complaint. In contending that Subsection (e) applies only to a single offense, the State must concede that its proposed construction of Subsection (e) operates to modify or ameliorate §13-8-13(a)(4). For those youthful offenders serving a single life sentence for a first- or second-degree murder committed on or after July 1, 2015, Subsection (e) operates to reduce the minimum amount of time before initial parole consideration from twenty-five years' imprisonment to twenty years.

Principles 6,7 and 10 of statutory construction, discussed above, make clear that Subsection (e), as a later in time, specific, and remedial statute, controls here to provide an alternative, earlier path to parole consideration for the entire class of youthful offenders than that specified in other provisions of the parole statutory scheme. This is well within the province and jurisdiction of the legislature, as discussed above.

This conclusion is no different than the operation of the statutory provisions creating medical and geriatric parole—allowing individuals meeting those definitions to be brought before the Parole Board at *any* time, regardless of the sentence or how much of the sentence has been served.

The State claims that the Superior Court's construction of Subsection (e) cannot be reconciled with R.I.G.L. §13-8-13(d) providing for minimum amounts of time for consecutive life sentences. State's Brief at 29-30. But Subsection (e), upon enactment, provided an alternative path for youthful offenders to come up for consideration at an earlier date if the calculation under §13-8-13(d) provides a time frame longer than twenty years' imprisonment. Not only does Principle 6 apply—that the legislature is presumed to be aware of existing law when it enacts a modification—the new Subsection (e) appears in the very statutory provision expressly modified by it.

The State claims that the Superior Court's construction of Subsection (e) cannot be reconciled with R.I.G.L. §11-47-3.2 because it would mean that an individual serving mandatory consecutive life sentences "could be paroled from the A.C.I. before he or she begins serving the mandatory consecutive life sentence." State Brief at 31-32. But it is §13-8-13, not §11-47-3.2, which addresses the amount of time one must serve before eligibility for initial parole consideration. And the State has acknowledged that consecutive life sentences *are* aggregated for parole purposes, so one neither "completes" nor "starts" serving a consecutive life sentence even in the absence of Subsection (e).[25] As discussed above, one who is on parole

[25] Section 11-47-3.2 was first adopted in July 2000. Monteiro received a mandatory consecutive life sentence under its terms. None of the other youthful offenders before the Court were sentenced under §11-47-3.2.

continues to serve the sentence, albeit outside the prison walls. Monteiro will always be sentenced to consecutive life terms, regardless of whether he is imprisoned or paroled to the community. It is within the legislature's prerogative to create an alternative path to parole consideration for specific classes of prisoners, as it has done in Subsection (e) and for medical and geriatric parole.

Subsection (e) is intended and designed to provide an earlier path to initial parole consideration for all youthful offenders who meet its terms, without regard to the minimum amount of time they would otherwise be required to serve before initial parole consideration. That this is what the General Assembly intended is underscored by its exclusion *only* and *expressly* of prisoners serving life without parole and its inclusion of the express statement that Subsection (e) applies to *all* offenses committed at any time since January 1, 1991.

The State's claim that the legislature only intended to apply Subsection (e) to those youthful offenders serving a single sentence where initial parole eligibility is more than 20 years is, respectfully, nonsensical and would produce absurd results. As a practical matter, other than life without the possibility of parole—which is expressly excluded from Subsection (e) —there are *no single* sentences which set an amount greater than 20 years to be served before initial parole eligibility except a life sentence for first- or second-degree murder committed after July 1, 2015. R.I.G.L. §13-8-13(a)(4) (25 years).

To reach the State's conclusion, one would need to find that the General Assembly enacted Subsection (e) in 2021 to assist only youthful offenders who committed first- or second-degree murder after July 1, 2015, so that they could be first considered for parole in 2035 instead of 2040. Such a construction cannot be squared with the legislature's explicit directive that Subsection (e) applies to *all* offenses retroactive to 1991.

V. The enactment and application of Subsection (e) to persons sentenced before its effective date does not contravene the separation of powers doctrine.

The State also claims that the doctrine of "separation of powers" is contravened by a construction of Subsection (e) that applies to more than one sentence or which reduces the amount of time a prisoner must serve in prison before initial parole consideration on the claimed basis that it encroaches upon the judiciary's power to determine a prisoner's sentence.[26] State's Brief at 32-33. If the State is correct, then Subsection (e) could not apply, notwithstanding the legislature's express directive to the contrary, to any person otherwise meeting its terms who was sentenced before its effective date of July 6, 2021. It would, therefore, have no practical effect until 2041 or later.

[26] The Court has also requested that the parties address this issue: "To what extent, if any, does §13-8-13(e) violate the principle of separation of powers under the Rhode Island Constitution? *See, e.g., State v. Garnetto*, 75 R.I. 86, 63 A.2d 777 (1949); *G.& D. Taylor & Co. v. R. G.& J. T. Place*, 4 R.I. 324 (1856)." Order of September 12, 2023 at 2.

The State's position is grounded in its view that the grant of parole is equivalent to a sentence reduction. It is not. As discussed at length in Point I, *supra,* the grant of parole does not reduce or modify the sentence imposed by the court; it modifies the location where the sentence is served.

None of the decisions of this Court considering the separation of powers address parole or the determination of initial eligibility for parole. In *State v. Garnetto*, a statute that was passed after Garnetto's conviction purported to quash a conviction and terminate imprisonment. *Garnetto, supra,* 63 A.2d at 778. In *Taylor v. Place*, the General Assembly purported to re-open a civil judgment by later legislative enactment. 4 R.I. at 331. In *Rose v. State,* 92 A.3d 903 (R.I. 2014), Rose claimed that statutory modification of good time credits applied to reduce the amount of time he must serve on his sentence. On appeal, the Court addressed the impact, if any, of petitioner's good time and time served on the total length of his sentence. *Id.* at 907. The Court specifically noted that petitioner "conceded at oral argument that his release on parole did not have any effect on the end date of his probationary period." *Id.*

Application of Subsection (e) to reduce the amount of time a prisoner must serve *in prison* before initial parole eligibility does not usurp the role of the judiciary in issuing sentences. The issuance of a parole permit does not reduce or modify a sentence: A prisoner granted parole continues to serve his sentence "beyond the

confines of the penal institution." *State v. Fazzano, supra* at 478 (citation omitted). A prisoner with a life sentence will always have a life sentence.

Indeed, under the State's separation of powers analysis, medical parole (first adopted July 2, 1999) and geriatric parole (adopted July 6, 2021) would be barred for any prisoner sentenced before those effective dates because each statute authorizes the Parole Board to grant a parole permit to a prisoner satisfying the conditions without regard to the number of years of sentenced or served. *See* R.I.G.L. §13-8.1-2(a) and R.I.G.L. §13-8.1-2(b).

As discussed above, the "separation of powers" argument to defeat the operation of parole systems—including modifications to eligibility dates after the initial sentence was imposed—was often asserted during the initial development of parole jurisprudence and uniformly rejected. The Court relied upon many of those decisions as persuasive in its *Fazzano* decision in 1963.

The analysis reflected in those cases continues to this day. Recent decisions in other states have reached the same conclusion, rejecting "separation of powers" challenges to their state legislature's parole reform legislation for the benefit of youthful offenders.

After the issuance of the *Roper-Graham-Miller* line of cases from the United States Supreme Court, many state legislatures enacted parole reform designed not only to conform with the precise holdings of those cases, but to go further in

recognition that juvenile and young offenders may warrant special and earlier consideration for release for crimes committed as a youth. The strict holdings of those cases mandated the elimination of the death penalty for crimes committed as a juvenile in *Roper*, mandated the elimination of a mandatory sentence of life-without-parole for homicide committed as a juvenile in *Miller*, and mandated the elimination of even the possibility of a sentence of life-without-parole for crimes other than homicide committed as a juvenile in *Graham*.

In enacting laws to conform to these mandates ("*Miller*-fix statutes"), many legislatures adopted more far-reaching reforms applicable to those who committed their crimes as juveniles or at a young age.

For example, in 2015, the State of Washington enacted Revised Code of Washington §9.94A.730, which provided that any person convicted of crimes committed prior to age 18 could seek early release from the parole board after twenty years of confinement. In *Matter of Dodge*, 502 P.3d 349 (Wash. 2022), the Washington Supreme Court, characterizing the statute as a "*Miller*-fix," held that it applied to an individual serving a 50-year sentence for murder and other crimes committed as a juvenile.

In *State v. McCleese,* 215 A.3d 1154 (Conn. 2019), the Connecticut Supreme Court addressed, in part, the constitutionality of a "*Miller*-fix" statute adopted in 2015. The statute there shortened the time for initial parole eligibility for persons

incarcerated on or after October 1, 2015 who committed their crimes prior to age 18. The reductions were not limited to the equivalent of life-without-parole sentences. McCleese was serving a sentence which the court termed "the functional equivalent of his life without the possibility of parole." *Id.* at 1159. The court observed that the legislation made him eligible for parole. *Id.* McCleese attacked the legislation as violative of Connecticut's "separation of powers" doctrine by altering his prior sentence, instead claiming he was entitled to be brought back before the sentencing court for re-sentencing. *Id.* at 1178. The Connecticut Supreme Court, in a lengthy analysis, *id.* at 1175-84, concluded that the legislation providing parole eligibility, where there had been none, did not violate the separation of powers doctrine. "In enacting P.A. 15-84, § 1, the legislature retroactively modified the sentencing scheme (although not any particular sentence), which is included in its power to prescribe and limit punishments for crimes." *Id.* at 1180. The court noted that its analysis "accords with other jurisdictions that have held that the legislature does not intrude on the realm of the judiciary by retroactively changing a sentencing scheme to create more lenient penalty provisions."*Id.* at 1180 n.18 (citing decisions from Louisiana and Arizona).

> The defendant counters that, although the legislature has the power to create the scheme of punishment, it cannot do so retroactively without violating the separation of powers doctrine because the change effectively modifies his sentence. But the fact that the legislature, in exercising its power to create and modify the state's sentencing scheme, has affected a particular defendant's sentence does not mean that it has

> impermissibly encroached upon the judiciary's powers to impose or modify a sentence. It is well established that judicial and legislative powers necessarily overlap in many areas, including sentencing.

Id. at 1181 (internal quotations, citation omitted).

In *Hicklin v. Schmitt*, 613 S.W.3d 780 (Mo. 2020), the Supreme Court of Missouri rejected a similar "separation of powers" challenge to Missouri's "*Miller*-fix" legislation retroactively altering sentences of life-without-parole for juvenile offenders to accord parole eligibility after 25 years. "It was the Missouri General Assembly—not the parole board—that granted to Ms. Hicklin the benefit of parole eligibility. This, of course, does not offend the separation of powers because, '[i]n our tripartite form of government ... sentencing power is not inherent to the judiciary, but is dependent upon legislative authorization.'" *Id.* at 790 (citation omitted). [27]

In *State v. Vera*, *supra* [334 P.3d 754 (Ariz. Ct. App. 2014), *review denied*, Arizona Supreme Court (March 17, 2015), *cert. denied*, 577 U.S. 854 (2015)], the Arizona Court of Appeals considered a separation of powers challenge to a 2014

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[27] The State cites *Fields v. Missouri Board of Probation and* Parole, 559 S.W.3d 12 (Mo.Ct.App. 2018), as support for its statement that Subsection (e) "would *seemingly* constitute an impermissible exercise of judicial power by the legislature." State's Brief at 34 (emphasis added). In so arguing, the State has overlooked the fact that the intermediate appellate court in *Fields* did not address a separation of powers issue but rather a prisoner's argument that a later enactment should be applied retroactively to his benefit. And the State has not acknowledged that two years later in 2020, Missouri's highest appellate court squarely addressed the legislature's authority to retroactively modify parole eligibility standards to the benefit of a class of prisoners—there juvenile offenders—and concluded that such legislative action "does not offend the separation of powers." *Id.*

statute that established or reduced the amount of time to serve before initial parole consideration for individuals sentenced to life who committed their crimes before the age of 18. Vera had been sentenced to "life without parole for twenty-five (25) years" for murder, with concurrent sentences for two counts of burglary. He was 16 years old at the time of the offenses. *Id.* at 755. Vera sought post-conviction relief, claiming that his sentence violated *Miller*. *Id.* The trial court agreed and ordered that Vera be resentenced. *Id.* at 756. During the pendency of proceedings in 2014, the Arizona legislature passed a statute "which appears to provide parole eligibility for Vera and other similarly sentenced juvenile offenders." *Id.* The State appealed the order of resentencing, contending, among other things, that Vera's sentence did not violate *Miller,* that *Miller* did not apply to collateral review and that the 2014 legislation applied retroactively to defeat Vera's *Miller* challenge. *Id.*

On appellate review, Vera claimed that the 2014 statute did not provide a sufficient remedy for his *Miller* challenge. Vera further claimed that the 2014 statute "may not be applied retroactively", *Id.* at 756, and that to do so would contravene Arizona's constitutional doctrine of separation of powers. *Id.* at 759. The State contended that the 2014 statute was not retroactive and did not violate the separation of powers. *Id.*

Without deciding whether Vera's sentence actually violated *Miller*, the court upheld the application of the 2014 statute to afford him parole eligibility after 25

years over Vera's challenge that the 2014 statute altered his sentence, interfered with the judiciary and contravened the "separation of powers" doctrine. Analyzing earlier precedents, the court observed that a beneficial amendment to a parole statute amendment which is remedial in nature should apply to inmates sentenced before its effective date. *Id.* at 759. The statute at issue "does not alter Vera's penalty, create an additional penalty, or change the sentence imposed." *Id.* The court also rejected Vera's claim that the 2014 statute "impermissibly infringes on the role of the judiciary", *Id.* at 759, instead concluding that the "legislature does not violate separation of powers when it acts to make a law retroactive without disturbing vested rights, overruling a court decision, or precluding judicial decision-making." *Id.* at 760 (internal quotations, citations omitted).

In each of the cited cases, the court considered and rejected a "separation of powers" argument under a state constitutional provision similar to Rhode Island.[28]

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[28] Rhode Island's mandate appears in Article V of the Constitution ("The powers of the government shall be distributed into three separate and distinct departments: the legislative, executive and judicial.").

In Connecticut, the mandate appears in Article Second ("The powers of government shall be divided into three distinct departments, and each of them confided to a separate magistracy, to wit, those which are legislative, to one; those which are executive, to another; and those which are judicial, to another.")

In Missouri, the mandate appears in Article II, section 1 ("The powers of government shall be divided into three distinct departments—the legislative, executive and judicial—each of which shall be confided to a separate magistracy, and no person, or collection of persons, charged with the exercise of powers properly

In each case, the court independently assessed whether such legislation comports with state constitutional law.[29]

These decisions are persuasive and should not be disregarded on the basis that the challenged statute was enacted to apply a "*Miller* fix" approved by the United States Supreme Court.

In *Montgomery v. Louisiana,* 577 U.S. 190 (2016), the United States Supreme Court determined that its decision in *Miller* was retroactive and applied to a juvenile whose mandatory sentence to life without parole was imposed before *Miller* was decided.

The fact that the United States Supreme Court observed that a *Miller* violation could be corrected, as a matter of federal constitutional law, by the enactment of legislation recharacterizing a sentence of life without parole as one where parole

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belonging to one of those departments, shall exercise any power properly belonging to either of the others, except in the instances in this constitution expressly directed or permitted.")

In Arizona, the mandate appears in Article 3 ("The powers of the government of the state of Arizona shall be divided into three separate departments, the legislative, the executive, and the judicial; and, except as provided in this constitution, such departments shall be separate and distinct, and no one of such departments shall exercise the powers properly belonging to either of the others.")

[29] In its Monteiro prebrief at 11, the State argued that decisions of other state courts rejecting a similar separation of powers argument were inapposite because they were addressing "*Miller*-fix" legislation. The State's full brief does not forward that argument.

may be granted says nothing about whether such legislative action would transgress a state's separation of powers doctrine. That is why, in the cited cases, the state courts addressed the issue as a matter of *state* constitutional law. If that state's separation of powers doctrine did not permit the *Miller* fix legislation, then *Montgomery* mandated vacation of the original unconstitutional sentence as a matter of federal law. In each of the above-cited cases, the state court concluded that a *Miller*-fix did not violate that state's separation of powers doctrine. The cases are on point and, along with the Court's own jurisprudence, demonstrate that the passage of Subsection (e) and geriatric and medical parole and their application to persons sentenced before their effective dates does not alter or reduce the sentence imposed by the court and does not implicate or contravene the separation of powers doctrine.

VI. The Superior Court did not exceed its authority and fully respected the autonomy of the Parole Board.

The relief provided by the Superior Court for each youthful offender did not usurp the authority or autonomy of the Parole Board. In each case, the Parole Board had concluded not that it disagreed with the issuance of a parole permit with release to the community, but rather that its hands were tied by the contrary determination of RIDOC. But for the Court's determination that each youthful offender met the eligibility standards of Subsection (e) for release on parole to the community, the Parole Board would not act. In each instance, the Superior Court did no more than

mandate that the youthful offender be released on such conditions as the Parole Board had *already* set or had *refused* to set not on their merits but because RIDOC told the Board it had no authority to act. The Superior Court at no time made an independent determination that the youthful offender satisfied the standards for parole and at no time set the conditions for release on parole. As discussed above, the Parole Board has determined and set conditions for release on parole for Neves, Ortega, Nunes and Monteiro. The Department of Corrections blocked their release.

Conclusion

Respondents Neves, Nunes, Ortega, and Monteiro each pray that the Judgment of the Superior Court in his case be affirmed in all respects. In addition, Monteiro prays that the stay of judgment and order of his release on parole previously entered by the Court be vacated, with such remand to the Superior Court as necessary to effectuate his release in accordance with the Parole Board's conditions.

Respectfully submitted,

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CERTIFICATION OF WORD COUNT AND COMPLIANCE WITH RULE 18(B).

1. This brief contains 13,745 words, excluding the parts exempted from the word count by Rule 18(b).

2. This brief complies with the font, spacing, and type size requirements stated in Rule 18(b).

/s/ Sonja L. Deyoe
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CERTIFICATE OF SERVICE

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