



Office of the Attorney General

July 25, 2008

LEGAL MEMORANDUM

Ref: DOC 08-0602

TO: Chairman, Guam Parole Board

FROM: Attorney General *K*

SUBJECT: Parole of Inmate Convicted in 1975

On July 1, 2008, you requested our opinion regarding the parole eligibility of an inmate convicted in 1975 of three counts of First Degree Murder. These are the relevant facts.

On June 6, 1975, the Superior Court of Guam entered a Judgment in 76F-75 for three murders committed on May 29, 1975. The Defendant was convicted after a jury trial on January 26, 1976 and sentenced on February 6, 1976 to serve three terms of life imprisonment. Curiously, the judgment states that the Defendant shall begin serving his sentence on June 12, 1975, approximately seven months before sentencing. Apparently that was the day of his arrest.

You ask whether the three life sentences for First Degree Murder were to be consecutive or concurrent since the Judgment is silent on that point. We conclude that the Defendant is eligible for parole in either case.

The criminal laws of Guam were very different in 1975 when these murders were committed. They were extensively revised by P.L. 13-187 in 1977 and have been revised again and re-codified since. At the time of the murders and the sentencing in this case, the relevant sections of the Penal Code, as it was then called, were as follows:

- §187. **Murder defined.** "Murder" is the unlawful killing of a human being, with malice aforethought.
- §189. **Degrees of murder.** All murder which is perpetrated by means of poison, or lying in wait, torture, or by any other kind of willful, deliberate, and premeditated killing; or which is committed in the perpetration of or attempt to perpetrate arson, robbery, burglary, mayhem, or kidnapping is murder of the first degree; and all other kinds of murders are murders of the second degree.

§190. Punishment for murder. Every person guilty of murder in the first degree shall suffer confinement in prison for life;...

The most relevant statute, however, is in the old Government Code.

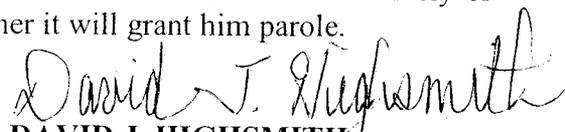
§39100. Authority to grant parole. The Board is hereby authorized to release on parole any person confined in any penal or correctional institution of this territory...when the person is eligible for parole...*A person sentenced to life imprisonment shall be eligible for parole after he has served a minimum of ten (10) years of his sentence.* A person shall be eligible for parole after he has served ten (10) years of any sentence or combination of sentences...

The court sentenced Defendant pursuant to these statutes. He was convicted of First Degree Murder as defined by Sections 187 and 189 of the Penal Code and sentenced to life imprisonment pursuant to Section 190. Section 39100 granted him a possibility of parole after ten years. At the present time, the law requires a convicted murderer to serve fifteen years before eligibility. See 9 GCA 16.40. There is no longer a crime of "First Degree Murder", there is only Aggravated Murder and Murder. See 9 GCA 16.30 and 16.40.

The judgment in question does not state whether the sentences were to be sentenced consecutively or concurrently. When the Legislature revised the criminal laws in 1977, it said nothing about revising the sentences of persons convicted of crimes. In the absence of express legislative intent or language to the contrary, a legislative revision of a sentencing statute does not change the sentence of a defendant who has been convicted and sentenced. In re Chavez, 114 Cal.App.4th 989, 8 Cal.Rptr. 395 (2004); Stennis v. State of Kansas, 127 P.3d 349 (Kan.App. 2006).

If the sentences were to be served concurrently, the Defendant would have been eligible after serving ten years. However, if we assume that the three life sentences were to be served consecutively, the Defendant had to serve thirty (30) years to be eligible for parole. However, since he has been incarcerated for thirty-three years, he is already eligible in either case. However, Section 39100 indicates that the Defendant was eligible for parole after ten years since it refers to "any combination of sentences."

Therefore, it does not matter whether the sentences were to be served consecutively or concurrently. The Parole Board must now determine whether it will grant him parole.


DAVID J. HIGHSMITH
Assistant Attorney General