
Unfair Parole Board Interpretation of Lifer Law

By Paul C. Louisell

As of October, 2001, 1,740 prisoners were serving “parolable” life offenses in Michigan.¹ Some of these prisoners need to be in prison. Many do not. Under current Parole Board policy, all are being treated as if they received non-parolable life sentences in apparent defiance of the legislative scheme and the intent of the sentencing judges.

The Parole Board has publicly stated in response to legislative inquiries that no prisoner receiving a “life sentence” should ever expect to be paroled.² In other words, a person receiving a parolable life sentence is no more likely to be paroled than a person serving a mandatory life sentence.³ Persons convicted of such crimes as armed robbery, CSC 1 and second degree murder, who are sentenced to life imprisonment, have little or no chance of being released from prison under current Parole Board policies.

During the 70’s and 80’s, it was generally believed by judges, defense attorneys and prosecutors that persons sentenced to parolable life sentences had a good chance of being released within 15 years of incarceration.⁴ In fact, defendants charged with capital crimes in the 70’s and 80’s would typically plea bargain for “parolable life” sentences rather than risk lengthy indeterminate sentences under the general belief that there would be a realistic opportunity for parole after serving the mandatory minimum sentence. After serving 20 or more years in prison, these defendants are just now realizing that their plea bargains were no bargains at all.

The “lifer law”, MCL 791.234, was originally enacted in 1941 to provide a mechanism for the early release of prisoners serving life sentences and long minimum terms.⁵ The original purpose of the law has been subverted to ensure most of those serving parolable life sentences die in prison.

In 1992, the legislature amended the statute to require that all persons sentenced to parolable life after October 1, 1992, serve a minimum of 15 years in prison before becoming subject to the jurisdiction of the Parole Board. At the same time, the makeup of the Parole Board was changed from a panel of civil service employees consisting of corrections professionals to a politically appointed board serving at the whim of the MDOC Director.⁶

In 1999, the lifer law was again amended by eliminating a prisoner’s statutory right to appeal parole board decisions to circuit court. In addition, the language of the statute was subtly altered so that the Parole Board’s decision not to proceed to public hearing does not constitute a “decision to deny parole.”

Currently, after ten years of incarceration, a person serving a parolable life sentence is afforded a single face-to-face interview with a member of the Parole Board. For the statutory parole process to even begin, that member must recommend the case for review by the entire board **and** a majority of the ten person board must then express interest in parole. If no interest is expressed by either the individual member or a majority of the board, the prisoner receives a letter indicating “no interest”. No explanation is provided. No appeal can be taken. No further interview need be granted. The process is repeated every five (5) years.

The 1999 legislation gives the Parole Board absolute power to block a prisoner serving a parolable life sentence from ever receiving a parole hearing. In a statement expressing its approval of the new legislation, the Parole Board stated to the Michigan Judges Association:

“...There are many misconceptions about the lifer law process, and what exactly constitutes a life sentence. There are some who believe a life sentence equates to a number of years of confinement; i.e. life sentence equals 10, 20, 30 years, etc. The parole board believes a life sentence means life in prison...”

“There are usually good reasons why a life sentence was imposed versus an indeterminate (sic) sentence. When a judge hands down a life sentence, the parole board reviews that case very carefully. The parole board will not “re-sentence” the prisoner. Rather, the parole board makes a determination whether the prisoner has earned parole....”⁷

The above sentiments sound almost reasonable until you consider that the Parole Board is addressing its remarks to judges in 2001. How many defendants were sentenced to “parolable life” from 1980 on where the judge, prosecutor, defense attorney and defendant expected them to be paroled within 15 years?

In January, 2002, current and former circuit court criminal trial judges were asked to state their understanding of the lifer law, their intentions when they imposed life sentences and their reaction to current Parole Board policies. Of the 95 judges who responded, the majority thought parolable lifers would actually serve 20 years or less; many thought life imprisonment was less harsh than a 15-year minimum; and some noted they gave life sentences, as opposed to very

long minimum terms, when they wanted the defendant to receive parole consideration.⁸

The Parole Board couldn't care less about what the judges intended. Recently, an unpublished opinion by the Court of Appeals adopted the argument that a parolable life sentence imposed by a trial judge who was acting under the mistaken belief that the defendant would be eligible for parole consideration after 10 years must be set aside because of a misapprehension of the law.⁹ There are currently several cases pending where the sentencing judge has granted Rule 6.500 motions and re-sentenced defendants to a term of years so that they can be seriously considered for parole.¹⁰ Most of these decisions are being appealed by the respective county prosecutor.

CONCLUSION

Unless there is a drastic change in the policy of the Parole Board with respect to inmates serving parolable life sentences, the MDOC budget is going to continue to expand out of control and our prisons will become increasingly overcrowded. In the meantime, parolable lifers who were promised a realistic chance for parole when sentenced, must rely on MCR 6.500 motions and a strong trial judge to change their sentences from life to a term of years.

Note: The author acknowledges the assistance of **Barbara R. Levine** of Grand Ledge, Michigan, Director of the "Lifer Parole Project". The project compiles information from prisoners serving parolable life sentences for use in legal, educational and political efforts to effect a change in the current Parole Board policy denying parole to anyone serving a life sentence. This article also incorporates material provided by **Daniel E. Manville** of the Criminal Defense Resource Center, a recent speaker at the MCBA criminal law seminar on parole policies in Michigan.

Paul C. Louisell is an attorney with the firm Caputo Brosnan, PC.

Footnotes

- ¹ Martin, Steinman, and Marschke, "MDOC, Field Operations Administration, Office of the Parole Board", prepared for Michigan Judges Association Annual Judicial Conference, Traverse City, Michigan, October 1-3, 2001.
- ² Letter from Richard Barker, Executive Assistant to the Director of the MDOC, to the Legislature's Corrections Ombudsman's Office, May 9, 1991.
- ³ In a 1991 memo from the executive director of the DOC to the legislature, Richard M. McKeon wrote: "You are incorrect in your assumption that we think murder second lifers are required to serve 20 calendar years. Clearly, they are required to serve LIFE..." Testimony by the Chairman of the Parole Board to the legislature in 1999 states: "It has been a long standing philosophy of the Michigan Parole Board that a life sentence means just that - life in prison."
- ⁴ Prisons and Corrections Sections, State Bar of Michigan, "What should 'Parolable Life' Mean? Judges Respond to the Controversy" (Lansing, March, 2002)
- ⁵ "Corrections In War Time", Third Biennial Report, 1941-1942, State of Michigan Department of Corrections.
- ⁶ "Does A Politically Appointed Parole Board Cost Michigan Citizens Hundreds of Millions of Dollars?", Manville, p. 2.
- ⁷ see footnote 1, supra.
- ⁸ see footnote 4, supra.
- ⁹ *People v Louis Moore*, Court of Appeals No. 228323, decided July 9, 2002.
- ¹⁰ *People v Davey*, Oakland County Circuit Court No. 74-19410-FY (J. Schnelz), Opinion and Order dated 7/20/99; *People v Bazzetts*, Oakland Circuit No. 88-086394-FC (J. Schnelz) Order dated October 24, 2001, COA No. 237756 (lv.grtd. 11/20/01); *People v Kenneth Foster-Bey*, Wayne Circuit No. 74-000994, COA No. 240140 (lv.grtd. 4/3/02); *People v Hughes*, Wayne Circuit No. 76-01434 (J. Drain) Order for Resentencing Grtd 6/4/02 COA No. 242449 (lv.grntd. 6/13/02)