

TO BE PUBLISHED IN THE OFFICIAL REPORTS

OFFICE OF THE ATTORNEY GENERAL
State of California

GEORGE DEUKMEJIAN
Attorney General

OPINION	:	No. 79-611
of	:	December 5, 1979
GEORGE DEUKMEJIAN	:	
Attorney General	:	
Cecilia H. Johnson	:	
Deputy Attorney General	:	

SUBJECT: RESTORATION OF LIFE TERM—The Community Release Board may not, upon revocation of parole, restore to a life term the life sentence of a prisoner paroled before July 1, 1977, who remained on parole on that date, but who was thereafter committed to prison with a new commitment for a crime he committed before July 1, 1977 and while on parole.

The Community Release Board has requested an opinion on the following: question:

May the Community Release Board, upon revocation of parole, “refix” to a life term the life sentence of a prisoner paroled before July 1, 1977, who remained on parole on that date, but who was thereafter committed to prison with a new commitment for a crime he committed before July 1, 1977 and while he was on parole?

CONCLUSION

The Community Release Board may not upon revocation of parole, restore to a life term the life sentence of a prisoner paroled before July 1, 1977, who remained on parole on that date, but who was thereafter committed to prison with a new commitment for a crime he committed before July 1, 1977 and while he was on parole.

ANALYSIS

The following type of situation is presented. A prisoner who received a life sentence before July 1, 1977, was paroled before July 1, 1977. While on parole and before July 1, 1977, the prisoner committed a new crime for which he was not committed to prison until after July 1, 1977. His parole from the life sentence was not revoked before July 1, 1977. The inquiry concerns whether the Community Release Board (hereinafter CRB) may, upon revoking such parole, restore the original sentence to a life term. We conclude the CRB does not have this authority.

Under the indeterminate sentencing rules in effect until July 1, 1977, the paroling authority could fix and refix the length of a prisoner's term. (Pen. Code, § 3020.)¹ Section 3020 stated:

“In the case of all persons heretofore or hereafter sentenced under the provisions of Section 1168 of this code, the Adult Authority may determine and redetermine, after the actual commencement of imprisonment, what length of time, if any, such person shall be imprisoned, unless the sentence be sooner terminated by commutation or pardon by the Governor of the State.

Section 3020 was repealed with the enactment of the Determinate Sentencing Law, operative July 1, 1977. (Stat. 1977, ch. 165, § 43.) On that date all prisoners who were on parole became subject to the parole provisions of the Determinate Sentencing Law. (§ 1170.2; unpublished opinion of this office dated Dec. 16, 1978 (76/245 I.L. (formerly Op. CR 76/57); unpublished opinion of this office dated July 6, 1977 (77/102 I.L. (formerly Op. CR 77/33).)

Section 1170.2, subdivision (f), which is part of the Determinate Sentencing Law, provides:

“In the case of any inmate who committed a felony prior to July 1, 1977, the length, conditions, revocation, and other incidents of parole shall be the same as if the prisoner had been sentenced for an offense committed on or after July 1, 1977.”

The length of parole is set by section 3000, subdivision (b), which provides:

¹ Unless otherwise indicated all section references are to the Penal Code.

“(b) In the case of any inmate sentenced under Section 1168, *the period of parole shall not exceed five years in the case of an inmate imprisoned under a life sentence*, and shall not exceed three years in the case of an inmate whose prison sentence does not consist of imprisonment under a life sentence, unless in either case the board for good cause waives parole and discharges the inmate from custody of the department. *This subdivision shall be also applicable to inmates who committed crimes prior to July 1, 1977, to the extent specified in Section 1170.2.*”² (Emphasis added.)

Once the statutory maximum period of parole has been completed, the inmate must be discharged from custody in accord with section 3000, subdivision (d). For the life prisoners in question, this date is computed from July 1, 1977. Section 3000, subdivision (d), provides:

“Upon successful completion of parole, or at the end of the maximum statutory period of parole specified for the inmate under subdivision (a) or (b), as the case may be, whichever is earlier, the inmate shall be discharged from custody. The date of the maximum statutory period of parole under this subdivision and subdivisions (a) and (b) shall be computed from the date of initial parole, or July 1, 1977, whichever is later, and shall be a period chronologically determined. Time during which parole is suspended because the prisoner has absconded or has been returned to custody as a parole violator shall not be credited toward such period of parole unless the prisoner is found not guilty of the parole violation. However, in no case, except as provided in Section 3064, may a prisoner sentenced pursuant to Section 1170 be retained under parole supervision or in custody for a period longer than four years from the date of his initial parole, and, except as provided in Section 3064, in no case may a prisoner sentenced pursuant to subdivision (b) of Section 1168 be retained under parole supervision or in custody for a period longer than seven years from the date of his initial parole.”

The Determinate Sentencing Law thus provides that once a prisoner is on parole, he is subject to statutory limits on the length of parole. There is no provision in the Determinate Sentencing Law, such as section 3020 of the old law, to authorize the CRB to redetermine the term of a paroled life prisoner.

² The limits on the length of parole were increased from three years (Stat. 1976, ch. 1139, § 278) to five years (Stat. 1978, ch. 582, § 1) for life prisoners in 1978. In *In re Harper* (1979) 96 Cal. App. 3d 138, 140–142, it was held that the extended periods enacted in 1978, do not apply retroactively to persons released on parole before January 1, 1979.

Where the parole of an inmate placed on parole before July 1, 1977, is revoked after July 1, 1977, the provisions of section 3057 apply to determine the permissible period of confinement upon revocation of parole. (Unpublished opinion of this office dated Dec. 16, 1978 (76/245 IL.)) Section 3057 provides:

“(a) Confinement pursuant to a revocation of parole in the absence of a new conviction and commitment to prison under other provisions of law, shall not exceed twelve months.

“(b) Upon completion of confinement pursuant to parole revocation without a new commitment to prison, the inmate shall be released on parole for a period which shall not extend beyond that portion of the maximum statutory period of parole specified in Section 3000 which was unexpired at the time of each revocation.”

Subdivision (a) of this section states the maximum period of confinement on revocation of parole for persons without a new conviction and commitment is not to exceed twelve months. With regard to a parolee with a new conviction and commitment, we conclude the Legislature also intended that the period of confinement on revocation of parole be a period not to exceed twelve months. The addition of the words “in the absence of a new conviction and commitment to prison under other provisions of law,” does not appear to limit the section’s application only to those without new commitments. Instead, this language expresses the Legislature’s intent to dispel any notion that a parolee who is returned with a new commitment and whose parole on the original sentence is revoked, serves the twelve month maximum confinement on revocation of parole in lieu of the new commitment. Thus section 3057 sets a period of confinement for revocation of parole and it does not permit the CRB to redetermine the term of a paroled life prisoner. The maximum period of confinement under section 3057 was increased from six months to twelve months in 1978. (Stat. 1978, ch. 582, § 4.) In an unpublished opinion dated February 27, 1979 (79/16 I.L. (formerly Op. CR 79/8)), we concluded those who committed offenses before January 1, 1979, should receive the revocation confinement period of six months.

In conclusion, a prisoner on parole from a life sentence, who was on parole on July 1, 1977, may not have the life term restored upon revocation of parole with a new commitment after July 1, 1977.
