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GEORGE DEUKMEJIAN
Attorney General

OPINION	:	No. 81-507
of	:	APRIL 8, 1982
GEORGE DEUKMEJIAN Attorney General	:	
John T. Murphy Deputy Attorney General	:	

THE HONORABLE RAYMOND C. BROWN, CHAIRMAN OF THE BOARD OF PRISON TERMS, has requested an opinion on the following question:

Is a person applying for a certificate of rehabilitation, who committed a felony prior to January 1, 1981, and was not discharged or released on parole prior to May 13, 1943, required to complete the period of rehabilitation set out in Penal Code section 4852.03, as amended effective January 1, 1981, or the period in effect at the time he committed his offense?

CONCLUSION

A person who committed a felony prior to January 1, 1981 and was not discharged or released on parole prior to May 13, 1943, is required to complete the period of rehabilitation set out in Penal Code section 4852.03, as amended effective January 1, 1981, in order to apply for and obtain a certificate of rehabilitation.

ANALYSIS

Article V, section 8, of the California Constitution states in part as follows:

> "Subject to application procedures provided by statute, the Governor, on conditions the Governor deems proper, may grant a reprieve, pardon, and commutation, after sentence, except in case of impeachment. . . ."

This power of executive clemency dates back to California's first constitution. (See Cal. Const. 1849, Art. 5, § 13.) Legislative application procedures for those seeking clemency have taken varying forms. (See Stats. 1853, ch. 173, pp. 270-271; Stats. 1868, ch. 137, p. 116; Stats. 1915, ch. 260, p. 465; Stats. 1929, ch. 384, p. 702.)

A major overhaul of the Penal Code in 1941 (Stats. 1941, ch. 106, pp. 1127-1131) generated the application procedure now found in Penal Code sections 4800-4813.[1] This procedure allows an individual seeking clemency to apply directly to the governor, who may have the request examined by the Board of Prison Terms, or allows the Board of Prison Terms to initiate an application on behalf of a deserving prisoner. If the applicant has been twice convicted of a felony, the California Supreme Court must make a recommendation. A grant of clemency is within the discretion of the governor.

In 1943 the Legislature enacted an "alternative procedure" leading to executive clemency. (§§ 4852.01-4852.2; Stats. 1943, ch. 400, pp. 1922-1927.) Generally, this procedure authorized a superior court, upon petition, to issue a certificate of rehabilitation to a person convicted of a felony who had been discharged from his term of imprisonment or released on parole. The certificate operated to restore to that person certain of his civil rights and to constitute an application to the governor for a pardon.

Some background on this alternative procedure will clarify the discussion. When enacted in 1943, this law contained the following urgency provision (Stats. 1943, ch. 400, p. 1927):

> "There are many able-bodied men who, by reason of previous convictions of felonies, are not accepted for induction into the armed forces of the Nation or for employment in essential war industries. Said armed forces and war industries are in urgent need of men. The provisions of this act will enable men who have suffered previous felony convictions and who have rehabilitated themselves by exemplary conduct to establish the fact of such rehabilitation by judicial action and earn restoration to the rights of

[1] Unless otherwise indicated, all future statutory references will be to the Penal Code.

> citizenship and thus become eligible for service with the armed forces and for employment in essential war industries. It is essential that every opportunity be afforded as soon as possible to the armed forces and the war industries to augment their personnel in order that the present world-wide conflict may be brought to an early and successful conclusion, and this act should therefore go into effect immediately."

One commentator contemporaneously noted[2]:

> "So far as is known, this is an original procedure not in use anywhere in the United States. The need for some such method of removing part of the clemency burden from the Governor and the Advisory Pardon Board has become apparent in recent years. Since the military forces and all defense industries require citizenship, hundreds of persons have discovered that felonies, sometimes committed years previous, bar them from participating in the war effort. As a result applications for pardon have inundated the office of the Governor."

According to this 1943 legislative scheme, a person who had been convicted of a felony prior to the law's enactment on May 13, 1943, who had been discharged from his term of imprisonment or released on parole, could file a notice of intention to petition for a certificate of rehabilitation. If he had been so discharged or released for at least one year and was a resident of California for three years, he could petition the court for the certificate claiming he had completed a specified period of rehabilitation by living an honest and upright life, by conducting himself with sobriety and industry, by exhibiting good moral character and by conforming to the law. On the other hand, a person still in prison on May 13, 1943, or who committed a felony after that date, could file a notice of intention upon his discharge from custody or release on parole and, after completing an appropriate period of rehabilitation and meeting the three-year California residency requirement, could then petition the superior court for a certificate.

The 1943 legislation, in then section 4852.03, did not specify the length of the rehabilitation period necessary to obtain the certificate, providing instead that the Judicial Council make such computation (Stats. 1943, ch. 400, p. 1923):

> "The Judicial Council shall, by general rules, determine the length of the period of rehabilitation for the purpose of this chapter. Different periods shall be provided for different classes of persons, according to the maximum

[2] *Certificates of Rehabilitation and the New Pardon Procedure*, Mosk, Stanley, 18 S. Bar J. 172, 174-175 (1943).

> penalties prescribed for the crimes of which the persons have been convicted, and provision shall be made for appropriate periods of rehabilitation for persons convicted of multiple crimes."

Thereafter, the Judicial Council promulgated rules on the subject. (See Rules on Appeal to the Superior Court, Rehabilitation Rules, Rules 1-2, effective Oct. 1, 1943, repealed Sept. 14, 1955.)

In 1955, the Legislature amended section 4852.03 (Stats. 1955, ch. 708, pp. 1198-1199) to include within the text of the statute the rules for periods of rehabilitation. At the same time the Legislature, in section 4852.03(4), provided that a person who was "discharged after completion of his term or was released on parole before May 13, 1943, [was] not subject to the periods of rehabilitation set forth in these rules." Such persons, under then section 4852.01, could immediately file their notices of intent[3] and their petitions if they had not been incarcerated in a state prison since discharge or release and if they were three-year residents of California.

Consequently, since 1955 the periods of rehabilitation have applied only to those who were in prison on May 13, 1943, or who committed felonies after such date.

The periods of rehabilitation, as calculated by the Judicial Council and as extant from 1943 to 1955, were as follows:

> "Rule 1. Computing period
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> > "(a) [Imprisonment for term of years] The period of rehabilitation shall be 3 years plus 30 days for each year of the term prescribed by statute as the maximum penalty of imprisonment for the crime of which the petitioner was convicted. When the maximum term includes the fractional part of a year, the period of rehabilitation shall be extended by a proportional part of the 30-day period.
> >
> > "(b) [Death penalty or life imprisonment] For the purposes of these rules crimes with maximum penalties of death or life imprisonment or one-half life imprisonment shall be regarded as carrying a maximum penalty of imprisonment for 50 years."

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[3] The filing of a notice of intent was eliminated from the statutory scheme by a 1974 amendment. (Stats. 1974, ch. 1365, pp. 2954-2958.) Presently, the period of rehabilitation begins to run upon discharge of the petitioner from custody due to completion to his term, or upon release on parole or probation, whichever is sooner. (Pen. Code § 4852.03.)

"Rule 2. Determining period for multiple crimes

"Where the petitioner is convicted of multiple crimes as described in Section 669 of the Penal Code, the maximum penalty for the purpose of computing the period of rehabilitation shall be determined as follows: (1) if the sentences are made to run concurrently the greatest maximum penalty prescribed by statute for any such crimes shall constitute the maximum penalty; (2) if the sentences are made to run consecutively the sum of the maximum penalties prescribed by statute for all such crimes shall constitute the maximum penalty."

The 1955 version of section 4852.03 (Stats. 1955, ch. 708, pp. 1198-1199) essentially adopted the Judicial Council rules:

"The period of rehabilitation shall not begin until the notice of intention to apply for a certificate of rehabilitation has been filed. For the purposes of this chapter, such period of rehabilitation shall constitute three years' residence in the county or counties in which such notice or notices are filed, plus a period of time determined by the following rules:

"(1) To the three years there shall be added 30 days for each year of the term prescribed by statute as the maximum penalty of imprisonment for the crime of which the petitioner was convicted. When the maximum term includes the fractional part of a year, the period of rehabilitation shall be extended by a proportional part of the 30-day period.

"(2) For the purposes of this chapter, crimes with maximum penalties of life imprisonment shall be regarded as carrying a maximum penalty of imprisonment for 50 years.

"(3) Where the petitioner is convicted of multiple crimes, the maximum penalty for the purpose of computing the period of rehabilitation shall be determined as follows: (a) if the sentences are made to run concurrently, the greatest maximum penalty prescribed by statute for any such crimes shall constitute the maximum penalty; (b) if the sentences are made to run consecutively, the sum of the maximum penalties prescribed by statute for all such crimes shall constitute the maximum penalty.

"(4) Any person who was discharged after completion of his term or was released on parole before May 13, 1943, is not subject to the periods of rehabilitation set forth in these rules."

By amendment in 1968 (Stats. 1968, ch. 342, p. 726), section 4852.03 was changed to include a new subdivision (3):

> "(3) Where the petitioner is convicted of multiple crimes, the maximum penalty for the purpose of computing the period of rehabilitation shall be determined as follows: (a) if the sentences are made to run concurrently, the greatest maximum penalty prescribed by statute for any such crimes shall constitute the maximum penalty; (b) if the sentences are made to run consecutively, the sum of the maximum penalties prescribed by statute for all such crimes shall constitute the maximum penalty, but in no case shall the maximum penalty exceed the period prescribed for life imprisonment under subparagraph (2) of this section. The trial court hearing the application for the certificate of rehabilitation may, if the defendant was ordered to serve consecutive sentences, order that his statutory period of rehabilitation be extended for an additional period of time which when combined with the time already served will not exceed the period prescribed by statute for the sum of the maximum penalties for all such crimes."

Effective January 1, 1981, section 4852.03 was amended (Stats. 1980, ch. 1117, pp. 3604-3605) to read:

> "The period of rehabilitation shall begin to run upon the discharge of the petitioner from custody due to his completion of the term to which he was sentenced or upon his release on parole or probation, whichever is sooner. For purposes of this chapter, the period of rehabilitation shall constitute three years' residence in this state, plus a period of time determined by the following rules:
>
> "(1) To the three years there shall be added four years in the case of any person convicted of violating Section 187, 209, 219, 4500 or 12310 of the Penal Code, or subdivision (a) of Section 1672 of the Military and Veterans Code, or of committing any other offense which carries a life sentence.
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> "(2) To the three years there shall be added two years in the case of any person convicted of committing any offense which is not listed in subdivision (1) and which does not carry a life sentence.
>
> "(3) The trial court hearing the application for the certificate of rehabilitation may, if the defendant was ordered to serve consecutive sentences, order that his statutory period of rehabilitation be extended for an

additional period of time which when combined with the time already served will not exceed the period prescribed by statute for the sum of the maximum penalties for all such crimes.

"(4) Any person who was discharged after completion of his term or was released on parole before May 13, 1943, is not subject to the periods of rehabilitation set forth in these rules."

Under this latest version of the statute the period of rehabilitation is longer than that under prior law for most offenses although it is shorter for crimes which carry a maximum sentence greater than 24-1/3 years.[4] In effect, the change streamlines the process by eliminating the multiplier.

The question we have been asked is whether or not a person whose offense was committed prior to January 1, 1981, and who was not discharged or released on parole prior to May 13, 1943, must comply with the provisions of section 4852.03 in its present form when applying for a certification of rehabilitation.

When section 4852.03 was amended in 1955 (Stats. 1955, ch. 708, pp. 1198-1199) the only persons excluded from application of the periods of rehabilitation were those who, before May 13, 1943, had been discharged after completion of their terms or had been released on parole. This exception was incorporated into all subsequent amendments and remains the only exception. (Stats. 1968, ch. 342, p. 726; Stats. 1970, ch. 1150, p. 2035; Stats. 1974, ch. 1365, p. 2956; Stats. 1976, ch. 434, p. 1112; Stats. 1980, ch. 1117, p. 3605.) The legislative intent to apply the periods of rehabilitation to all other convicted felons is found in another part of section 4852.03:

"Unless and until the period of rehabilitation, as stipulated herein, has passed, the petitioner shall be ineligible to file his petition for a certificate of rehabilitation with the court. Any certificate of rehabilitation which is issued and under which the petitioner has not fulfilled the requirements of this chapter shall be void."

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[4] Under prior law a crime with a maximum penalty of 24 years required a rehabilitation period of three years plus 720 days (30 days x 24) which equals approximately 1.97 years, less than the two years required by current law. A crime carrying a penalty of 24-1/3 years would have required under old law a rehabilitation period of three years plus two years (730 days) equal to that fixed by the amended statute. Anyone whose offense was punishable by life imprisonment under the old law had a rehabilitation period of three years plus 4.1 years (1500 days, calculated by using 50 years as directed by the former version of the statute) or .1 year longer than the present rehabilitation period.

Consequently, any person who applies for a certificate of rehabilitation after January 1, 1981, unless he fits within the statutory exception (§ 4852.03(4)), is subject to the new periods of rehabilitation. We believe the critical date to be the date on which the application is filed in superior court. The applicant must establish the successful completion of the period of rehabilitation in effect on the date of the filing of the application.

The above construction does not result in a retroactive application of a statute in violation of Penal Code section 3.[5] A change in the criteria for petitioning for a certificate of rehabilitation is the type of procedural change described in *People* v. *Snipe* (1972) 25 Cal.App.3d 742. In *Snipe* the defendants were accused of murdering a child who died 21 months after the assault. At the time of the assault, section 194 provided that the victim must die within a year and a day to make a killing a murder. Before defendants' trial, however, the statute was amended to lengthen the time to three years and a day. The Court of Appeal held, at page 746:

> "Respondents' [defendants'] argument that Penal Code section 3 prohibits the retroactive application of the amendment to section 194 would have merit if the amendment to the section changed an element of the crime of murder. However, according to the decisional law, the amendment makes a procedural change which modifies a rule of evidence, and such changes do not relate to the crime itself, the manner of its commission or the punishment. The change made in this case relates only to the proof; it makes it possible for the prosecution to prove at respondents' trial that Sonja Christol died as a result of the beating she received in February 1969 even though the death did not occur within the common law period of a year and a day. Because the Legislature did not declare otherwise, it must be presumed that the change applies to any trial or proceeding commencing after its effective date; when so applied, it is not retroactive within the ambit of section 3. (See *People* v. *Ward*, *supra*, 50 Cal.2d 702.)"

Accordingly, we view the 1980 amendment to section 4852.03 (Stats. 1980, ch. 1117, pp. 3604-3605) as applying the new periods of rehabilitation prospectively to persons seeking certificates of rehabilitation on January 1, 1981, or thereafter. Persons who applied earlier were covered by the periods in effect at the times of their applications.

We consider next whether or not the application of longer periods of rehabilitation to some of those who committed their offenses prior to January 1, 1981,

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[5] 5ection 3 provides: "No part of it [the Penal Code] is retroactive, unless expressly so declared."

violates the prohibitions in the United States and California constitutions against ex post facto laws. (U.S. Const., art I, § 10, cl. 1; Cal. Const., art I, § 9.) These federal and state prohibitions are described in *People* v. *Ward* (1958) 50 Cal.2d 702, 707, cert. den. (1959) 359 U.S. 945:

> "In general, 'any law which was passed after the commission of the offense for which the party is being tried is an *ex post facto* law, when it inflicts a greater punishment than the law annexed to the crime at the time it was committed [citations]; or which alters the situation of the accused to his disadvantage. . . .' (*Ex parte Medley, Petitioner*, 134 U.S. 160, 171 [10 S.Ct. 384, 33 L.Ed. 835].) Changes which may be designated as procedural do not, as a rule, come within the ex post facto doctrine, but that in itself is not the true test. In *Thompson* v. *Utah*, 170 U.S. 343, the following appears on pages 351 and 352 [18 S.Ct. 620, 42 L.Ed. 1061]; 'It is sufficient now to say that a statute belongs to that class which by its necessary operation and "in its relation to the offense, or its consequences, alter the situation of the accused to his disadvantage." [Citations.] Of course, a statute is not of that class unless it materially impairs the right of the accused to have the question of his guilt determined according to the law as it was when the offense was committed. And, therefore, it is well settled that the accused is not entitled of right to be tried in the exact mode, in all respects, that may be prescribed for the trial of criminal cases at the time of the commission of the offense charged against him. Cooley in his Treatise on Constitutional Limitations, after referring to some of the adjudged cases relating to *ex post facto* laws, says: "But so far as mere modes of procedure are concerned, a party has no more right, in a criminal than in a civil action, to insist that his case shall be disposed of under the law in force when the act to be investigated is charged to have taken place. Remedies must always be under The control of the legislature, and it would create endless confusion in legal proceedings if every case was to be conducted only in accordance with the rules of practice, and heard only by the courts in existence when its facts arose. The legislature may abolish courts and create new ones, and it may prescribe altogether different modes of procedure in its discretion, though it cannot lawfully, we think, in so doing, dispense with any of those substantial protections with which the existing law surrounds the persons accused of crime.". . . The difficulty is not so much as to the soundness of the general rule that an accused has no vested right in particular modes of procedure, as in determining whether particular statutes by their operation take from an accused any right that was regarded, at the time of the adoption of the Constitution, as vital for the protection of life and liberty, and which he enjoyed at the time of the commission of the offense charged against him.'"

(See also *Weaver* v. *Graham* (1981) 450 U.S. 24, 31; *Calde*r v. *Bull* (1798) 3 U.S.(Dall.) 386, 390; *In re Dewing* (1977) 19 Cal.3d 54, 57.)

At the time a felony is committed, no right is annexed to the law which has been broken that the felon be pardoned within a fixed time, or certified as rehabilitated within a fixed time. We believe that an increase in the length of demonstrated good behavior necessary under the alternative procedure, when applying for a certificate, does not increase the punishment inflicted on the felon, i.e., the punishment annexed to the crime.

The case of *Warren* v. *United States Parole Commission* (D.C.Cir. 1981) 659 F.2d 183 is helpful in answering the present inquiry. In *Warren* a federal prisoner asserted that the parole board could not use guidelines which were adopted years after his conviction to determine his parole eligibility. The prisoner had been convicted in 1969 and at that time the parole board exercised its discretion without reference to any explicit standards other than its statutory mandate. In 1976 Congress enacted the Parole Commission and Reorganization Act (18 U.S.C. §§ 4201-4218) which required the parole board to promulgate parole release guidelines. The board applied such guidelines to Warren's parole application. The court, in rejecting an ex post facto law argument, stated at page 196:

> "In short, Warren was not sentenced to be considered for parole and reparole by a Board acting as the Board would have acted had it met to pass on his case at the time of his conviction. He was sentenced to be considered for parole at some much later time, when the nation's circumstances, the Board's member- ship, and the prevailing views of penologists all could have shifted against him. Under the penal theory behind the parole system, Warren's sentence was deliberately designed to be indeterminate within a broad range so that the precise date of his release could be determined by the best professional judgment available at the time of his release as to his prospects for a law-abiding life, among other things. It is contrary to the spirit of that theory to freeze the exercise of discretion by the parole authorities at the moment of Warren's crime. The punishment prescribed for Warren was to be held after his minimum term at the mercy of parole authorities exercising their judgment as best they could. The mere fact that the Parole Commission's mercy is now channeled, structured and rationalized by a formal system of guidelines does not worsen Warren's position. He was sentenced to be held at their discretion. He is being held at their discretion. Such are the wages of crime."

Similarly, when a felon is sentenced in California the governor is vested by the California Constitution with the power to grant a reprieve, pardon or commutation of

that sentence. The existence of this power of discretion in the governor is not altered by any changes in the application procedure by which that discretion is exercised. The law holds out to the convicted felon no promise that executive clemency will be granted in any set fashion. When a person, under the alternative procedure, applies for a certificate of rehabilitation, the periods of rehabilitation then in effect reflect the Legislature's view of present societal standards for rehabilitation. (See *Daudert* v. *People* (1979) 94 Cal.App.3d 580, 588.) Accordingly, we accept the rationale of the *Warren* court.[6]

As we have seen, the pardoning power may be invoked in ways other than by completing a statutory period of rehabilitation. Indeed, section 4852.19 states that the certificate of rehabilitation procedure is "an additional, but not an exclusive, procedure for the restoration of rights and application for pardon." Whether or not a certificate will issue, like whether or not a pardon will be granted, is a discretionary decision. Section 4852.13 provides:

> "If, after hearing, the [superior] court finds that the petitioner has demonstrated by his course of conduct his rehabilitation and his fitness to exercise all of the civil and political rights of citizenship, the court shall make an order declaring that the petitioner has been rehabilitated, and recommending that the Governor grant a full pardon to the petitioner. Such order shall be filed with the clerk of the court, and shall be known as a certificate of rehabilitation."

Changes in procedure relating to the exercise of discretion are not ex post facto laws. A felon is always eligible for a reprieve, pardon or commutation. However, he is only suitable for a certificate of rehabilitation, under the alternative procedure, if he can convince the superior court that during the period of rehabilitation, as set out in the statute at the time of his application, he led an honest, upright, sober, industrious, moral and law-abiding life. We do not believe that asking a felon to live such a life for a longer period is an infliction of greater punishment. Certainly, the Legislature may alter the considerations and factors which affect the issuance of a discretionary certificate.[7]

In *Daudert* v. *People*, *supra*, 94 Cal.App.3d 580, the issue was whether the petitioner's period of rehabilitation should be based on the maximum term of imprisonment

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[6] The United States Court of Appeal for the Seventh Circuit has reached a contrary conclusion. (*Welsh* v. *Mizell* (7th Cir. 1982) 668 F.2d 328.)

[7] Pending before the California Supreme Court are *In re Stanworth*, *In re Davis* and *In re Duarte*, Crim. Nos. 22522, 22526 and 22527, respectively, which involve ex post facto contentions in relation to changes in procedure for determining parole suitability.

for his offense in effect at the time he committed it or that term which was in effect at the time of the petition. The court ruled for the latter and stated, at page 588:

> "The maximum term of imprisonment prescribed by statute represents the Legislature's judgment of the seriousness of the offense. By repealing prior law authorizing a maximum of life imprisonment for armed robbery and substituting a lesser maximum under the determinate sentencing law, the Legislature expressly determined that a life sentence was too severe a penalty by contemporary standards. *No valid purpose or policy would be served by basing the determination of the necessary time presently required for rehabilitation on a former social judgment that has since been rejected by the Legislature*." (Emphasis added.)

The *Daudert* court also noted, at page 588, fn. 5:

> "The issue here is rehabilitation, not punishment. We are concerned with determining the required period of rehabilitation, not with fixing the term of punishment. . . . Petitioner, however, has already been sentenced, has completed his term of imprisonment, and has been discharged from parole. The right to apply for and be given a pardon is not part and parcel of one's punishment but a separate matter related to the appropriate period of rehabilitation."

We construe the 1980 amendment to section 4852.03 as applicable not only to a person who committed his crime prior to January 1, 1981, but also to a person who completed a statutory period of rehabilitation prior to that date but did not apply for a certificate of rehabilitation. If this latter person must wait a longer period before satisfying the good citizenship requirement, such change reflects only a present-day societal determination by the Legislature as to what constitutes evidence of rehabilitation. Every change in the law which adversely affects a defendant is not invalid as an ex post facto law. The state is not prohibited from making all alterations in the criminal process or regulating the conduct of persons previously convicted of crimes. For example, a law prohibiting possession of a firearm by a person previously convicted of a felony can be applied to a person whose felony was committed prior to enactment of the firearm prohibition. (*People* v. *James* (1925) 71 Cal.App. 374, 378.) Not all adverse collateral consequences should be viewed as additional punishment.

The courts have held that statutory changes which liberalize the rules on admissibility of evidence, alter procedures in a criminal trial or extend a statute of limitations were not ex post facto laws even though the changes substantially increased the likelihood of conviction or made a law which was unconstitutional at the time of the crime

constitutional by the time of trial. (See *Hopt* v. *Utah* (1884) 110 U.S. 574 (law was changed to allow ex-felons to testify); *People* v. *Snipe*, *supra*, 25 Cal.App.3d 742 (law changed to allow murder to be charged if the victim died as the result of a criminal act within three years and a day rather than within one year and a day); *Falter* v. *U.S.* (2d Cir. 1928) 23 F.2d 420, cert. den. 277 U.S. 590 (statute of limitations extended after commission of the offense).)

In *Dobbert* v. *Florida* (1977) 432 U.S. 282, the court rejected a contention that a statutory change in the role of the judge and jury in a death penalty case, which change occurred between the time of the murder and the time of the trial, constituted an ex post facto violation. Moreover, a change in the trial rules for the admissibility of evidence, occurring between the trial and the retrial, does not violate the prohibition against an ex post fact law. (*Thompson* v. *Missouri* (1898) 171 U.S. 380.) By analogy, the 1980 change in the application requirements for certificates of rehabilitation is a procedural change and not a change in punishment annexed to a crime or a change which disadvantageously alters a defendant's situation.

Accordingly, we conclude that section 4852.03, as amended effective January 1, 1981, is applicable to determine the period of rehabilitation of a felon applying for a certificate of rehabilitation whose crime was committed before that date and who was not released on parole or discharged prior to May 13, 1943.

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