TO BE FILED IN THE OFFICIAL REPORTS

OFFICE OF THE ATTORNEY GENERAL
State of California

GEORGE DEUKMEJIAN
Attorney General

OPINION	:	No. 81-616
of	:	DECEMBER 22, 1981
GEORGE DEUKMEJIAN Attorney General	:	
Randy Saavedra Deputy Attorney General	:	

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

To which judge and attorneys must the notice of parole consideration hearing for a life prisoner be sent under Penal Code section 3042?

CONCLUSION

The written notices required by Penal Code section 3042 must be sent to the particular judge who presided over the prisoner's trial, to the current incumbent district attorney of the county from which the prisoner was sentenced, and to the prisoner's current attorney of record.

ANALYSIS

Penal Code section 3042[1] states in relevant part:

> "At least 30 days before the Board of Prison Terms shall meet to review or consider the parole suitability or the setting of a parole date for any prisoner sentenced to a life sentence, the board shall send written notice thereof to each of the following persons: *the judge of the superior court before whom the prisoner was tried and convicted, the attorney for the defendant, the district attorney of the county from which the prisoner was sentenced*, and the law enforcement agency that investigated the case. (Emphasis added.)

The question we have been asked in regard to the judge and district attorney is essentially whether the Board of Prison Terms should send the notice required by section 3042 to the individuals who personally appeared at the prisoner's trial or to the persons holding the offices listed in the statute at the time the notice is sent.

We first turn to the words "the judge of the superior court before whom the prisoner was tried and convicted." In interpreting these words we apply the controlling rule of statutory construction, that one is required to ascertain the intent of the Legislature so as to effectuate the purpose of the law. (*Calif. Teachers Assn.* v. *San Diego Community College District* (1981) 28 Cal. 3d 692, 698.) When the language of a statute is clear, its plain meaning should be followed. (*Great Lakes Properties, Inc.* v. *City of El Segundo* (1977) 19 Cal. 3d 152.) The plain language of this phrase clearly indicates that the person to be given notice is the particular judge who actually presided over the trial whether or not that judge is presiding over the same court at the time notice is sent. The word "whom" is the objective case of "who" which is a relative pronoun used *when the antecedent is a person*. (Webster's Third New Internat. Dict., unabridged, at p. 2611.) Therefore, "before whom the prisoner was tried and convicted" modifies the word judge not the word court and thus refers to the judge who presided at the trial.

In an unpublished opinion of this office dated July 2, 1952 (LB 288/803), we examined this same issue and reached the same conclusion in regard to the proper interpretation of the words "the judge of the superior court before whom the prisoner was tried and convicted" in sections 3022 (since repealed) and 3042.[2]

---

[1]All unidentified statutory references are to the Penal Code.

[2]Although section 3042 has been amended a number of times since 1952 when the indexed letter was written, the phrase in question has remained intact since it was passed in 1941. (Stats. 1941, ch. 106, p.

We stated:

> "The purpose of this notification to the designated officials of meetings to fix terms of inmates and to grant paroles is to allow such officers to present their views on the matters coming before the Authority. Many criminal cases are tried by superior court judges assigned by the judicial council from counties other than the county where the trial is held. In such instances the superior court at the place of trial would not be acquainted with the case to the same extent as the actual trial judge and hence would not be able to make any intelligent response to the Authority's notice. The purpose of the notice being to call for such a reply as the actual trial judge may think it proper to make, it appears that such trial judge should receive the notice even in the event he is transferred to another jurisdiction or no longer serving in his official capacity as a judge. In the event the trial judge has died, notice is, of course, impossible, but this is no limitation upon the jurisdiction of the Adult Authority in view of the opinion in *In re Smith*, 33 Cal. 2d 797 at 803, where it was held that if it is impossible to give the notices required by Sections 3022 and 3042 of the Penal Code or if good reason appears why the notice is not given, the Adult Authority may nevertheless act upon the matters before it.
>
> "Thus, both the wording of the Code sections, the context in which the provision is set and the purposes to be accomplished by the notices to be given, indicates to us that the notices in question should be addressed to the particular trial judge who sat at the trial and conviction of the inmate whose term is to be fixed or whose parole is to be determined. (*Id*., at p. 2.)

In this same unpublished opinion we addressed the issue of which individual should be sent the notice to be sent to "the district attorney and the sheriff of the county from which the prisoner was sentenced."[3]

> "In this provision no indication is given that officers other than those occupying the respective positions at the time of the notification are to be

---

1111, art. 3.) The section originally read:

> "At least 30 days before, the board shall meet to consider the granting of a parole to any prisoner the board shall send written notice thereof to the judge of she superior court before whom the prisoner was tried and convicted, and to the district attorney and the sheriff of the county from which the prisoner was sentenced."

[3]The present statute omits reference to the sheriff and requires notice to the law enforcement agency that investigated rise case.

> notified. If the district attorney who was in office at the time of the prosecution was intended to be notified, appropriate language could have been used. The purpose, of course, in notifying the district attorney and the sheriff is to obtain the reaction of these officers to the matters coming before the Authority. There is no doubt that if the district attorney in office at the time of the trial and conviction has been replaced by another individual, the incumbent will not have the same ready knowledge of the case. The same is true in cases where a new sheriff has taken office since the trial and conviction and incidental incarceration. But with district attorneys and sheriffs, there are not the constant assignments and reassignments that take place with judges under the supervision of the judicial council. Thus, the problem is not as acute as it is with the judges and furthermore the language of the Code sections more clearly indicates that the incumbent district attorney and sheriff is the one to be addressed with the notice." (*Id*., at p. 3.)

Our unpublished opinion was concerned with the question of whether notice should be sent to the current holder of the office or the person who occupied the office of district attorney when the prisoner was sentenced. The issue of whether notice should be sent to the particular deputy district attorney who actually appeared in court and prosecuted the case, an issue we have been asked to consider, was not raised. However, there is only one district attorney in each county at any given time. (See Gov. Code, § 26500.) Though a district attorney may have deputies, the deputies exercise his authority and act for him in the prosecution of criminal cases. (Gov. Code, § 24100, 24101.) The language of the statute is clear. Notice is sent to *the* district attorney of the county from which the prisoner was sentenced.

The language of section 3042 has peculiar significance when the prisoner's trial involved a change of venue to another county. Section 3042 requires the notice to be sent to the district attorney of the county *from which the defendant was sentenced*. The district attorney of the county where the offense occurred may actually be the one to prosecute the case in the new county. However, under the clear wording of section 3042 the notice would go to the district attorney of the new county and not to the district attorney who was responsible for the prosecution. Of course nothing in section 3042 or elsewhere precludes the Board from sending such notices to others, including the district attorney responsible for the prosecution.

The third aspect of this question concerns the notice to be sent to "the attorney for the defendant." The use of the term "defendant" rather than the term "prisoner" (the term used in the surrounding statutes on parole) might suggest that notice must be sent to the attorney who defended the prisoner at trial. However, for the reasons stated below,

we conclude that notice must be sent to the prisoner's current attorney of record.

This conclusion is required by the California Supreme Court's interpretation of this language in *In re Schoengarth* (1967) 66 Cal. 2d 295. In this case the petitioner contended that the reference in notice requirement of section 3042 to "the attorney for the defendant" showed a legislative intent to require appointment of an attorney for the prisoner at public expense. The court found that section 3042 is "simply a general notice statute, operating *only if the defendant already has an attorney of record*." This language is clearly incompatible with an interpretation which would require notice to be sent to the trial attorney even if he does not still represent the prisoner.

The purpose of notifying the other persons listed is to allow them to present their views on the possible parole of the prisoner. Section 3046 states that the "Board of Prison Terms shall, in considering a parole for such prisoner [a prisoner imprisoned under a life sentence] consider all statements and recommendations which may have been submitted by the *judge, district attorney, and sheriff* pursuant to Section 1203.01, *or in response to notices given under Section* 3042. . . ."

The attorney for the defendant is not mentioned in section 3046 as a person whose statements and recommendations must be considered. This is reasonable in light of the fact that pursuant to section 3041.7 the prisoner is entitled to be represented by counsel at the hearing itself where presumably he (the attorney) will have ample opportunity to make his recommendations personally and to present other statements and recommendations favorable to the prisoner, including any that might be contributed by the attorney who represented the prisoner at his trial. The inclusion of the prisoner's attorney in the notice requirement ensures that the attorney is given adequate notice of the date of the hearing and has the same time to gather information as do those also sent notice who are likely to present adverse information.

In conclusion, the plain language of section 3042 indicates that written notice of a "life" prisoner's pending parole consideration hearing must be sent to the particular judge who actually presided over the prisoner's trial, to the person holding the office of district attorney, and to the attorney currently representing the prisoner.

*****