



North Carolina Department of Correction

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Beverly Eaves Perdue
Governor

Alvin W. Keller, Jr.
Secretary

November 17, 2009

ADMINISTRATIVE MEMORANDUM

TO: Division Directors, Assistant Directors, Section Chiefs, Regional Directors, Wardens, Institution Heads, Superintendents, Administrative Services Managers, Administrative Officers, Judicial Division Administrators, Assistant Judicial Division Administrators, Judicial District Managers, Inmate Grievance Resolution Board, Parole Commission, Correction Enterprise

FROM: Alvin W. Keller, Jr. 

RE: State v. Bowden Compliance

The appellate courts of North Carolina have ruled in *State v. Bowden* that pursuant to North Carolina General Statutes, Section 14-2, unconditional release dates must be calculated for those prisoners sentenced to life imprisonment for crimes committed on or after 8 April 1974 and before 1 July 1978. Pursuant to the decision in *Bowden*, prisoners with life sentences for crimes committed during this time period now must be treated as having statutory life sentences of 80-years. Therefore I directed that MIS and Combined Records calculate an unconditional release date for each life sentence imposed for crimes committed during this time period. However, the calculation of an unconditional release date does not amend any prisoner's court imposed sentence, as the relevant judgments from the courts that imposed the life sentences have not been amended.

Before determining how to direct that the sentences for prisoners serving statutory life sentences of 80-years be calculated I requested that staff provide me with relevant rules, policies and information concerning sentence calculation, including good time and gain time. Since at least 1955, the Secretary of Correction has possessed statutory



authority to establish rules and regulations or policies governing the state prison system. More specifically, the Secretary has possessed authority to establish rules and regulations or policies as to grades of prisoners, rewards and privileges applicable to the classification of prisoners, and allowances of time for good behavior. Past Secretaries of Correction have from time to time promulgated and revised such rules and regulations or policies.

Based on information provided to me regarding the Department's rules and policies, its interpretation of its rules and policies and its practices with regard to application of good and gain time credits, I have determined that all of my predecessors provided that credits would be applied differently for prisoners serving terms of years and prisoners serving life sentences. More specifically, for those with life sentences, application of good and gain time credits was limited to earning prison privileges such as a more favorable custody grade, becoming parole eligible, and when the sentence was commuted by the Governor. Further, the Department's policy and practice of awarding good behavior credits to prisoners with life sentences only for purposes of earning a more favorable custody grade or parole eligibility and commutations has never changed in anyone's memory.

By law the Secretary of Correction possesses the discretionary authority to promulgate policies awarding good behavior credit for these statutory life 80-year sentences. In the exercise of my discretion and in conformity with my predecessors, I have declined to exercise my discretion to retroactively alter the award of good behavior credits based on past practices of previous Secretaries. I have determined that such life prisoners will not receive good behavior credits for purposes of reducing the amount of time required to be served before unconditional release from prison. As to the award of good behavior credits, the *Bowden* group of prisoners who received life sentences will continue to be treated like all other prisoners with life sentences imposed for crimes committed before 1 July 1981. For each statutory life sentence of 80-years the unconditional release date shall be calculated as eighty years minus the jail credit the prisoner is due for incarceration while awaiting trial, conviction and sentencing.

I will continue the longstanding practice of the Department to award good behavior credits for prisoners with life sentences for the limited purposes of earning a more favorable custody grade or becoming eligible for parole or when the Governor exercises discretionary authority to commute a prisoner's sentence. Indeed those prisoners with statutory life 80-year sentences already have received good behavior credit for purposes of attaining a more favorable custody grade, attaining parole eligibility, or in the event of commutation.

In reaching my decision I considered many factors, foremost was the consistent and unwavering manner in which my predecessors exercised their discretion. Another factor I found persuasive was that the provisions of the Fair Sentencing Act excluded Class A and B felons from receiving good behavior credits for purposes of unconditional release from prison. I cannot see any meaningful difference between prisoners with statutory life sentences of 80-years and Class A and B felons under the Fair Sentencing

Act in that their crimes are similarly heinous. The crimes of other pre-FSA prisoners with life sentences and Class C life sentences under the FSA were sufficiently serious that life sentences (and in some cases death sentences) were imposed by the judges and juries of this State. Prisoners with life sentences imposed under prior sentencing laws should be treated similarly.

I am advised that no prisoner with a life sentence has ever been released by the Department other than as a result of a discretionary decision by the Parole Commission that placed the prisoner under supervision for at least three years. The return to prison rate of prisoners with life sentences who were released under parole supervision from 1995 through 2008 is 7.73 %, showing an effective success rate for these prisoners of 92.27%. In comparison the return to prison rate for other released prisoners was above 50%. I wish to continue the good public policy in North Carolina that prisoners with life sentences may be released only under parole supervision.

Therefore, consistent with the above, I am directing that Division of Prisons policy is to be reviewed to assure that it is and remains consistent with prior practice and my current decision so that the award of good time, gain time and similar credits shall not apply to advance an unconditional release date for a prisoner serving a life sentence. The Division of Prisons is to continue to award good behavior credits for prisoners with life sentences for the limited purposes of earning a more favorable custody grade or becoming eligible for parole or in the event the Governor chooses to exercise discretionary authority to commute a prisoner's sentence. The unconditional release date of statutory life sentences of 80-years shall be calculated as eighty years minus jail credit.

As Secretary of the Department of Correction I am committed to agency compliance with the *Bowden* decision. I also am committed to continuing agency policy and practice that has served the interests of public safety and good prison order by encouraging prisoners with life sentences to abide by prison rules and to improve themselves so that the Parole Commission or Governor may grant, in their respective discretion, parole or commutation. Further, I am convinced that the Department of Correction should continue policy and practices that allow those prisoners who have been sentenced to life to be released *only* under supervision after discretionary parole or commutation.

AWKjr:LH/jk

cc: Jennie Lancaster
James French
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