SJC-12882

WILLIAM DINKINS, JR., & another[1] vs. MASSACHUSETTS PAROLE BOARD.

Suffolk. September 10, 2020. - January 19, 2021.

Present: Lenk, Lowy, Budd, Cypher, & Kafker, JJ.[2]

Parole. Imprisonment, Parole. Regulation. Statute, Construction.

Civil action commenced in the Supreme Judicial Court for the county of Suffolk on May 25, 2018.

After transfer to the Superior Court Department, the case was heard by Anthony M. Campo, J., on motions for summary judgment.

The Supreme Judicial Court granted an application for direct appellate review.

Ryan M. Schiff for the plaintiffs.

Jennifer K. Zalnasky, Assistant Attorney General, for the defendant.

The following submitted briefs for amici curiae:

Jeffrey G. Harris for Committee for Public Counsel Services & another.

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[1] Eugene Ivey.

[2] Justice Lenk participated in the deliberation on this case prior to her retirement.

James R. Pingeon for Prisoners' Legal Services of Massachusetts.

Patricia Garin for Northeastern University School of Law Prisoners' Assistance Project & others.

CYPHER, J. The issues presented on appeal are whether 120 Code Mass. Regs. § 200.08(3)(c) (2017) (regulation), which concerns parole eligibility for inmates sentenced to a prison term that runs consecutive to a life sentence, conflicts with the statutory framework governing parole, violates due process or separation of powers principles, or, as applied to prisoners serving life sentences for offenses committed as a juvenile, violates the Eighth Amendment to the United States Constitution or art. 26 of the Massachusetts Declaration of Rights by failing to ensure that the inmate has a parole hearing at which he or she has a meaningful opportunity to obtain release. We conclude that the regulation is contrary to the plain terms of the statutory framework governing parole and thus is invalid. Accordingly, we decline to reach the constitutional issues raised by the plaintiffs.[3]

Background. 1. William Dinkins, Jr. Dinkins was convicted on two counts of murder in the first degree stemming

[3] We acknowledge the amicus briefs submitted by the Committee for Public Counsel Services and the Massachusetts Association of Criminal Defense Lawyers; Prisoners' Legal Services of Massachusetts; and Northeastern University School of Law Prisoners' Assistance Project, Boston College Lifer Parole Clinic, and Harvard Law School Prison Legal Assistance Clinic.

from two separate and distinct incidents that occurred when he was seventeen years old. See Commonwealth v. Dinkins, 440 Mass. 715 (2004); Commonwealth v. Dinkins, 415 Mass. 715 (1993). In the first case tried, the trial judge imposed a sentence of life without parole on the murder charge and concurrent sentences on charges of assault with intent to murder while armed, for a term of from nine to twelve years, and unlawfully carrying a firearm, for a term of from three to five years. In the other case, the trial judge imposed a sentence of life without parole, ordering it to run consecutively to the other life sentence. In 2000, Dinkins was convicted of assault and battery on a correction officer and assault and battery with a dangerous weapon, and was sentenced to two concurrent terms of from seven to ten years to be served consecutively to the prior sentences. In 2019, as a result of this court's decision in Diatchenko v. District Attorney for the Suffolk Dist., 466 Mass. 655 (2013), both of Dinkins's sentences of life without parole became sentences of life with the possibility of parole after fifteen years.

2. Eugene Ivey. Ivey was convicted of murder in the second degree for an incident that occurred when he was seventeen years old. See Commonwealth v. Ivey, 68 Mass. App. Ct. 1116 (2007). The judge imposed a sentence of life with the possibility of parole after fifteen years. In 2002, Ivey was convicted of three counts of assault and battery on a correction

officer and one count of assault and battery by means of a dangerous weapon. He was sentenced to terms of from four to five years on each count, to be served concurrently with each other and consecutively to the life sentence. In 2009, Ivey was denied parole at his initial parole hearing. He waived his 2014 parole hearing; in March 2020, he was granted parole from his life sentence to begin serving his sentences for the counts of assault and battery on a correction officer.

3. Procedural history. In May 2018, the plaintiffs filed a complaint in the county court, seeking declaratory relief invalidating the regulation. In October 2018, a single justice transferred the case to the Superior Court, as "the matter would benefit from consideration by a judge of the Superior Court in the first instance." The plaintiffs then filed an amended complaint. In July 2019, a judge of the Superior Court granted summary judgment in favor of the defendant, the parole board (board), finding the regulation to be valid. The plaintiffs filed a timely notice of appeal, and the case was entered in the Appeals Court in September 2019. The plaintiffs then filed an application for direct appellate review, which we allowed.

Discussion. 1. Standard of review. We are asked to determine the validity of the regulation. Where a regulation is duly promulgated, it is "presumptively valid." Buckman v. Commissioner of Correction, 484 Mass. 14, 23 (2020), quoting

Craft Beer Guild, LLC v. Alcoholic Beverages Control Comm'n, 481 Mass. 506, 520 (2019). However, an agency "does not have the authority to promulgate a regulation for the . . . administration of a statute that 'is contrary to the plain language of the statute and its underlying purpose.'" Buckman, supra, quoting Massachusetts Teachers' Retirement Sys. v. Contributory Retirement Appeal Bd., 466 Mass. 292, 301 (2013).

In determining the validity of a regulation, we first look to the language of the controlling statute, see Buckman, supra at 24, to determine "whether the Legislature has spoken with certainty on the topic in question." New England Power Generators Ass'n v. Department of Envtl. Protection, 480 Mass. 398, 404 (2018), quoting Goldberg v. Board of Health of Granby, 444 Mass. 627, 632-633 (2005). Where a statute speaks clearly on the issue, "we determine whether the regulation is consistent with or contrary to the statute's plain language," Buckman, supra, in an effort to "give effect to the Legislature's intent" (citation omitted), New England Power Generators Ass'n, supra. Where a regulation does not speak clearly on the issue, "we accord substantial deference to the agency charged with interpreting and administering the statute in question, and do not invalidate regulations unless their provisions cannot by any reasonable construction be interpreted in harmony with the legislative mandate" (quotations and citation omitted). Craft

Beer Guild, LLC, 481 Mass. at 520. However, "[a]n incorrect interpretation of a statute by an administrative agency is not entitled to deference." Kszepka's Case, 408 Mass. 843, 847 (1990).

Additionally, the regulation here must be interpreted within the context of the larger statutory framework governing parole. "[W]here two or more statutes relate to the same subject matter, they should be construed together so as to constitute a harmonious whole consistent with the legislative purpose." Young v. Contributory Retirement Appeal Bd., 486 Mass. 1, 11 (2020), quoting Sebago v. Boston Cab Dispatch, Inc., 471 Mass. 321, 339 (2015).

2. Statutory framework governing parole. The board is tasked with the duty to "determine which prisoners in the correctional institutions of the commonwealth or in jails or houses of correction may be released on parole, and when and under what conditions, and the power within such jurisdiction to grant a parole permit to any prisoner." G. L. c. 27, § 5. The Legislature has not defined parole by statute. However, this court previously has stated, "Parole provides prisoners with the opportunity to serve the balance of their term of imprisonment outside a prison provided that they comply with the conditions established by the parole board . . ." (emphasis added). Commonwealth v. Cole, 468 Mass. 294, 298 (2014). This court

also approvingly has referred to parole as "conditional release of a prisoner from imprisonment before the full sentence has been served . . . on the condition that the parolee regularly report to a supervising officer for a specified period." See id., quoting Black's Law Dictionary 1227 (9th ed. 2009). This definition is in line with the statutory framework established by the Legislature, as laid out in G. L. c. 127, § 130, which governs the granting of parole permits:

> "Permits shall be granted only if the board is of the opinion, after consideration of a risk and needs assessment, that there is a reasonable probability that, if the prisoner is released with appropriate conditions and community supervision, the prisoner will live and remain at liberty without violating the law and that release is not incompatible with the welfare of society. . . . A prisoner to whom a parole permit is granted shall be allowed to go upon parole outside prison walls and inclosure upon such terms and conditions as the parole board shall prescribe . . . ."

See 120 Code Mass. Regs. § 300.04(1) (2017). Pursuant to its statutory authority, then, the board "has the power only to permit a defendant to serve the balance of his term of imprisonment outside the prison walls . . . and the power to revoke the parole permit and return the [parolee] to prison or jail for the balance of his term of imprisonment." Cole, supra at 299.

Once an inmate has served the minimum term of his or her sentence, the inmate may be eligible for parole. See G. L. c. 127, § 133. When an inmate receives two or more sentences

that run consecutively, the inmate becomes eligible for parole at the time of his or her parole eligibility date. General Laws c. 127, § 133, requires the board to establish a single parole eligibility date and provides, in part:

> "Where an inmate is serving two or more consecutive or concurrent state prison sentences, a single parole eligibility shall be established for all such sentences. Prisoners who are granted parole permits shall remain subject to the jurisdiction of the board until the expiration of the maximum term of sentence or, if a prisoner has two or more sentences to be served otherwise than concurrently, until the aggregate maximum term of such sentence, unless earlier terminated by the board under the provisions of [§ 130A]."

Pursuant to the board's regulations, that parole eligibility date is calculated by aggregating the minimum parole eligibility dates for each component sentence and using the latest date as the parole eligibility date -- a process often referred to as "aggregation" or the "aggregation rule." See 120 Code Mass. Regs. § 200.08(2).

The board has established three exceptions to the aggregation rule, as laid out in 120 Code Mass. Regs. § 200.08(3).[4] Exception (c), the regulation at issue in this

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[4] The parties do not argue -- and we do not hold -- that the other two exceptions codified at 120 Code Mass. Regs. § 200.08(3)(a) and (b) suffer the same invalidity as the regulation at issue here. These two exceptions to the aggregation rule relate to (a) crimes committed while on parole and (b) split sentences. The statutory support for these exemptions is questionable. See Commonwealth v. Rodriguez, 482 Mass. 366, 372-373 (2019) (discussing enactment of "truth-in-sentencing" act in 1993 that eliminated split prison sentences,

case, states: "A sentence for a crime committed on or after January 1, 1988 which is ordered to run consecutive to a life sentence shall not be aggregated with the life sentence for purposes of calculating parole eligibility on the consecutive sentence."[5] Thus, for an inmate serving a sentence consecutive to a life sentence, the board does not calculate a single parole eligibility date. Rather, the inmate must first serve the minimum term of the life sentence and be granted parole from the life sentence. Once that occurs -- if it ever does -- the inmate then begins to serve the consecutive sentence. It is only after the inmate serves the minimum term of the consecutive sentence that the inmate may be eligible for parole and potentially may be released from confinement.[6]

3. The regulation. The board argues that the regulation is a valid exception to the aggregation rule because parole eligibility for life sentences is governed exclusively by G. L.

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which are exempted from aggregation rule in 120 Code Mass. Regs. § 200.08[3][b]). Regardless, we emphasize that our holding today is limited to the validity of 120 Code Mass. Regs. § 200.08(3)(c).

[5] All the crimes in this case occurred after January 1, 1988.

[6] The same process is used if the inmate has received multiple life sentences, multiple consecutive sentences, or both. In such a case, the inmate must be paroled from the life sentence(s) before he or she can begin to serve any subsequent consecutive sentences.

c. 127, § 133A, and thus the sole parole eligibility date requirement of G. L. c. 127, § 133, does not apply to sentences ordered to run consecutive to a life sentence. The board reads into § 133A a requirement that the inmate be paroled first from his life sentence before beginning to serve a consecutive sentence.

We conclude that the Legislature has "spoken with certainty" on the topic of parole and the establishment of a single parole eligibility date. See New England Power Generators Ass'n, 480 Mass. at 404. The regulation, by exempting sentences consecutive to a life sentence from the aggregation rule, contravenes the plain meaning of G. L. c. 127, §§ 130 and 133.[7]

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[7] "Significance in interpretation may be given to a consistent, long continued administrative application of an ambiguous statute . . . especially if the interpretation is contemporaneous with the enactment." Connery v. Commissioner of Correction, 414 Mass. 1009, 1010 (1993), quoting Cleary v. Cardullo's, Inc., 347 Mass. 337, 343 (1964). The parties disagree as to whether the regulation represents a long continued practice of the board. Specifically, the parties disagree on whether the board applied the aggregation rule to sentences consecutive to a life sentence prior to this court's decision in Henschel v. Commissioner of Correction, 368 Mass. 130 (1975). The board relies on Hamm v. Latessa, 72 F.3d 947, 950 (1st Cir. 1995), to argue that prior to 1977, it was the practice of the board not to aggregate consecutive sentences to a life sentence. The plaintiffs rely on Hamm v. Commissioner of Correction, 29 Mass. App. Ct. 1011 (1991), to argue the opposite. Because we hold that the board's interpretation of the statute and resulting regulation are contrary to the plain meaning of the statutory framework governing parole, the

The regulation contravenes the plain meaning of § 130. While the Legislature has not defined the term "parole" within the statutory framework at issue here, we are required to "ascertain the intent of a statute from all its parts and from the subject matter to which it relates, and must interpret the statute so as to render the legislation effective, consonant with sound reason and common sense." Harvard Crimson, Inc. v. President & Fellows of Harvard College, 445 Mass. 745, 749 (2006). "[S]tatutory language should be given effect consistent with its plain meaning and in light of the aim of the Legislature unless to do so would achieve an illogical result." Commonwealth v. Wassilie, 482 Mass. 562, 573 (2019), quoting Sullivan v. Brookline, 435 Mass. 353, 360 (2001). See Commonwealth v. Campbell, 415 Mass. 697, 700 (1993), quoting Commonwealth v. Zone Book, Inc., 372 Mass. 366, 369 (1977) ("We derive the words' usual and accepted meaning from sources presumably known to the statute's enactors, such as their use in other legal contexts and dictionary definitions"). General Laws c. 127, § 130, requires that an inmate who is granted a parole permit "shall be allowed to go upon parole outside prison walls and inclosure upon such terms and conditions as the parole board shall prescribe." This plain language evidences the

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interpretation is not entitled to deference, see Kszepka's Case, 408 Mass. at 847, and we need not reach this issue today.

Legislature's intent that, once granted parole, an inmate should be released from confinement subject to conditions of parole. However, under the regulation here, an inmate who is granted parole from a life sentence is not truly released; rather, he or she remains incarcerated while serving the consecutive sentence.[8] Such a result is contrary to the plain language of the statute.

The regulation also contravenes the plain meaning of G. L. c. 127, § 133. General Laws c. 127, § 133A, states, in part:

> "Every prisoner who is serving a sentence for life in a correctional institution of the commonwealth . . . where

[8] The board argues, and the lower court judge agreed, that the regulation does not violate G. L. c. 127, § 130, by granting an inmate parole from the life sentence, but keeping him or her incarcerated on the consecutive sentence, because it is analogous to a situation in which an inmate is paroled from a sentence imposed in Massachusetts, but transferred to another State or into Federal custody to serve a sentence imposed by a different jurisdiction. This argument ignores the status of the Commonwealth as a separate sovereign from both the Federal government and the governments of other States. See Heath v. Alabama, 474 U.S. 82, 89 (1985) ("[T]he States are separate sovereigns with respect to the Federal Government because each State's power to prosecute is derived from its own 'inherent sovereignty,' not from the Federal Government. . . . The States are no less sovereign with respect to each other than they are with respect to the Federal Government"). The Commonwealth has the power "independently to determine what shall be an offense against its authority and to punish such offenses." Id., quoting United States v. Wheeler, 435 U.S. 313, 320 (1978). Such power inherently extends to the ability of the Commonwealth to establish how parole eligibility is determined within its jurisdiction. The fact that an inmate, once paroled by the Commonwealth, may be subject to confinement by a separate sovereign does not alter our understanding of parole in this State or the statutory obligations of the board to allow an inmate granted parole to "to go upon parole outside prison walls and inclosure." G. L. c. 127, § 130.

> the second offense occurred subsequent to the first conviction, shall be eligible for parole at the expiration of the minimum term fixed by the court under [G. L. c. 279, § 24].[9] The parole board shall, within [sixty] days before the expiration of such minimum term, conduct a public hearing before the full membership . . . ."

The board reads "expiration of the minimum term fixed by the court under [G. L. c. 279, § 24,]" and "such minimum term" as the minimum term of the life sentence only, as established by the court in accordance with G. L. c. 279, § 24. Thus, to fulfill the statute's requirements, the board contends, it is required to hold the parole hearing within sixty days before the expiration of the minimum term of the life sentence. If the life sentence was aggregated with the consecutive sentence for purposes of establishing parole eligibility, the public hearing necessarily would occur later than sixty days before the expiration of the minimum term of the life sentence and the board would have, it argues, violated the statutory requirement. However, "expiration of the minimum term fixed by the court under [G. L. c. 279, § 24,]" is more naturally read to signify the aggregation of the minimum terms established under G. L.

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[9] General Laws c. 279, § 24, states: "If a convict is sentenced to the state prison, except as an habitual criminal, the court shall not fix the term of imprisonment, but shall fix a maximum and a minimum term for which he [or she] may be imprisoned. . . . In the case of a sentence to life imprisonment . . . where the second offense occurred subsequent to the first conviction, the court shall fix a minimum term which shall be not less than [fifteen] years nor more than [twenty-five] years."

c. 279, § 24, rather than solely the minimum term of the life sentence. This plain language reading of the statute is also in harmony with the other statutes governing parole, such as G. L. c. 127, § 133.

Put simply, we are not persuaded by the board's interpretation of § 133A. General Laws c. 127, § 133, plainly requires that "a single parole eligibility shall be established" for inmates serving "two or more consecutive or concurrent state prison sentences." The statute does not explicitly or implicitly create an exception for sentences occurring consecutively to a life sentence. Rather, the mandatory language of § 133 -- "shall be established" and "for all such sentences" -- clearly requires the board to calculate a single parole eligibility date for all inmates serving two or more consecutive or concurrent sentences. Contrary to the board's assertions, there is no legislative history that we have found, nor any indication in the statutory language, that the Legislature intended the clear, mandatory language of § 133 to be supplanted by a hidden insinuation in § 133A that the phrase "all such sentences" did not truly mean "all," but meant "all but those occurring consecutively to a life sentence." We presume the Legislature, if it desired to exempt those serving a sentence consecutive to a life sentence from § 133's aggregation rule, would have included language in the statutory framework to

that effect. Cf. Sisson v. Lhowe, 460 Mass. 705, 720 (2011) (Spina, J., dissenting) ("The Legislature knows how to write exceptions . . ."). "[W]e may not rewrite the . . . statute to contain language the Legislature did not see fit to include." Commonwealth v. Newberry, 483 Mass. 186, 195 (2019).

The board also argues that § 133A would be rendered meaningless if we hold that aggregation is required. We are not persuaded. In essence, the board contends that the Legislature intended § 133A to disallow the aggregation of a consecutive sentence with a life sentence, as parole eligibility for life sentences are solely governed by § 133A, and that section requires the board to hold an inmate's parole hearing within sixty days before the expiration of the minimum term of the life sentence. The board argues that by reading "such minimum term" in the statute as denoting the expiration of the minimum term of the aggregated sentences, we would render the timing mandates and other portions of § 133A meaningless. However, interpreting the broad mandate of § 133 to require that the parole eligibility for a consecutive sentences be aggregated with a life sentence would not render § 133A meaningless. The statute provides procedural rules for granting parole to those serving

life sentences, and retains purpose within the statutory framework.[10]

We also note that our holding today produces the most practical result for both the board and the inmates serving these sentences who seek parole. To illustrate the inefficiency of the current system, consider one of the defendants in this case. Dinkins received a life sentence, as well as another life sentence to be served consecutively. If these sentences were aggregated, Dinkins would become eligible for parole after serving at least thirty years -- the aggregation of the minimum term of fifteen years for both life sentences.[11] After thirty years, Dinkins may be granted parole and released from

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[10] For example, § 133A still would exclude certain classes of inmates serving life sentences from parole eligibility, provide a statutory right to a public parole hearing before the board as soon as an inmate serving a life sentence is eligible, and describe additional procedures to be used by the board in hearings for an inmate serving a life sentence.

[11] Although we decline to reach the argument made by the plaintiffs under art. 26 of the Massachusetts Declaration of Rights, we take this opportunity to reiterate that while we previously have held that a juvenile's sentence of three consecutive life terms with the possibility of parole after forty-five years was proportional to the crimes committed and the juvenile's particular characteristics as an offender under art. 26, see Commonwealth v. LaPlante, 482 Mass. 399, 406 (2019), "a constitutional sentencing scheme for juvenile homicide defendants must . . . avoid imposing on juvenile defendants any term so lengthy that it could be seen as the functional equivalent of a sentence of life without parole," Commonwealth v. Brown, 466 Mass. 676, 691 n.11 (2013), and cases cited.

confinement. If he is not granted parole at his first parole hearing because the board does not believe he satisfies the standard articulated in G. L. c. 127, § 130, Dinkins would be eligible for a parole hearing at least every five years thereafter. However, under the current regulation, Dinkins's sentences are not aggregated for parole eligibility purposes, so he became eligible for a parole hearing on the first life sentence after serving fifteen years. If the board determines that there is a reasonable probability that Dinkins "will live and remain at liberty without violating the law and that [his] release is not incompatible with the welfare of society," then Dinkins may be granted parole at that hearing, but would continue to be incarcerated. G. L. c. 127, § 130. Dinkins then would serve the fifteen year minimum term of the second life sentence, at which point he becomes eligible for another parole hearing, with the same standard and procedures as the first, at which he may be paroled and released from confinement. If Dinkins is not granted parole at either hearing, he becomes eligible for a new parole hearing every five years. Thus, under the current system, Dinkins is entitled to at least two identical parole hearings before he truly can be released.[12] If

[12] The amicus brief submitted by the Committee for Public Counsel Services and the Massachusetts Association of Criminal Defense Lawyers aptly describes the time and resources that go into holding a parole hearing for an inmate serving a life

Dinkins does not meet the appropriate standard for parole, the board would be required to hold even more parole hearings to determine Dinkins's eligibility every five years.

Were we to hold in favor of the board, we would be requiring excessive and repetitive parole hearings for those serving sentences consecutive to a life sentence. As we stated more than forty years ago, "requir[ing] the board to make a series of decisions granting parole from one sentence to the next rather than a single decision on the basis of one parole eligibility date for all sentences" would "make[] little sense since the decision to grant parole is to be based on whether the board believes the prisoner can live freely outside of prison without violating the law." Henschel v. Commissioner of Correction, 368 Mass. 130, 136 (1975). We now reiterate that such a result would make little sense, be wasteful of the board's limited time and resources, and create additional burdens on the inmates seeking parole. We also note the additional stress and burden placed on the victims and the families of the victims, who under the current regulation are faced with the choice to attend and speak at more parole hearings that occur sooner to the time of the crime than if the

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sentence, which often are more intensive than those held for inmates serving a sentence for a term of years.

sentences were aggregated. It cannot have been the intent of the Legislature to require such a result.

4. Constitutional claims raised by the plaintiffs. In addition to arguing that the regulation is unlawful, the plaintiffs raise three constitutional claims: (1) the regulation violates the due process provisions of the Massachusetts and United States Constitutions; (2) the regulation violates art. 30 of the Massachusetts Declaration of Rights by infringing on the separation of powers; and (3) as applied to inmates serving life sentences for offenses committed as juveniles, the regulation violates art. 26 and the Eighth Amendment. "Where a particular construction of a statute is the premise of a constitutional claim, [the court] must resolve any issues of statutory interpretation . . . prior to reaching any constitutional issue" (quotations omitted). Commonwealth v. Robertson, 467 Mass. 371, 381 (2014), quoting Commonwealth v. Suave, 460 Mass. 582, 586 (2011). "We do not decide constitutional questions unless they must necessarily be reached." Manor v. Superintendent, Mass. Correctional Inst., Cedar Junction, 416 Mass. 820, 824 (1994). Because we hold that the regulation is contrary to the plain terms of the statutory framework governing parole, we do not reach the constitutional questions raised by the plaintiffs.

Conclusion. The order allowing the defendant's motion for summary judgment and denying the plaintiffs' motion for summary judgment is reversed.

So ordered.