

1976 S.C. Op. Atty. Gen. 31 (S.C.A.G.), 1976 S.C. Op. Atty. Gen. No. 4241, 1976 WL 22861

Office of the Attorney General

State of South Carolina

Opinion No. 4241

February 3, 1976

*1 In order for a parole to be effective a prisoner must accept the order of the Parole Board with all of its conditions and restrictions even though he is being paroled to another state for the service of a sentence imposed there.

TO: Mr. Grady Wallace

Director

S. C. Probation, Parole and Pardon Board

QUESTION PRESENTED

May a prisoner who is offered a parole by the Probation, Parole and Pardon Board refuse that parcel, even though he is being paroled to a correctional institution in another jurisdiction for service of a sentence imposed by that jurisdiction?

STATUTES, CASES, ETC., INVOLVED

59 Am. Jur. 2d Pardon and Parole § 86, p. 60

Ex Parte Taggart, 12 Okla. Crim. 435, 158 P. 288

Sheppard v. State, 18 Arz. App. 108, [500 P.2d 639](#)

[52 A.L.R. 835](#)

[State v. Smith](#), 17 S.C.L. (1 Bail) 283

§ 55–613, Code of Laws of South Carolina, 1962

[Sanders v. MacDougall](#), 244 S.C. 160, 135 S.E.2d 836

§ 55–614, Code of Laws of South Carolina, 1962

DISCUSSION OF ISSUE

The general rule is that a parole must be accepted by the convict before it becomes effective. If a prisoner prefers to serve out his sentence as originally imposed rather than to accept a parole by subjecting himself to the conditions set out in the parole he has a clear right to do so. 59 Am. Jur. 2d Pardon and Parole § 86, p. 60. Before the terms and conditions of a parole can be made binding upon a prisoner he must consent to accept them for he has the right to accept the parole with the condition it imposes or to reject the parole as he sees fit. Ex Parte Taggart, 12 Okla. Crim. 435, 158 P. 288; Sheppard v. State, 18 Arz. App. 108, [500 P.2d 639](#). It has also been said that in order for this conditional release to be effective a prisoner must accept it because the conditions of the release may be more objectionable than the punishment inflicted by the judgment which is being mitigated. See [52 A.L.R. 835](#); [State v. Smith](#), 17 S.C.L. (1 Bail) 283.

In your letter you state that in the particular circumstances involved in the present situation, the prisoner who is eligible to be considered for parole has a detainer on his records from another state. If the parole is granted, he will be paroled to the detainer; that is to say his custody will be transferred to the other state in order that he might serve the sentence imposed by that jurisdiction. You anticipate that the prisoner in question will either refuse parole consideration or refuse parole if it is granted to avoid being returned to the other state to serve his sentence. There does not appear to be any authority for the position that such a circumstance provides an exception to the general rule. As previously set forth, acceptance by the inmate is required because the conditions may be more objectionable than the punishment imposed by the judgment which is being mitigated. The prisoner has the option of accepting the parole with any and all lawful conditions imposed by the board or choosing to serve out the sentence imposed by the judgment of the court. Additionally § 55–613 of the Code provides that the parole is conditional on acceptance by the parolee. If he chooses to complete service of the sentence imposed in this State, then, of course, the detainer or hold order remains on his record and at the completion of the service of the sentence in this State he may be transferred to the custody of the other jurisdiction for the service of that sentence.

*2 To force the prisoner into parole would give rise to the possibility that any future order of the Board with respect to the parolee might be considered a nullity. To release him from our custody without his acceptance of the conditions might be construed as an absolute discharge. Under our law a parole does not terminate a sentence, but only changes the location where the sentence is to be served. [Sanders v. MacDougall](#), 244 S.C. 160, 135 S.E.2d 836. The parolee is subject during the remainder of the original term to all conditions and restrictions imposed by the Board. § 55–614, 1962 Code of Laws.

CONCLUSION

In my opinion, a prisoner may refuse to accept parole even though he is to be paroled to a detainer from another state. The prisoner must accept the order of parole with its conditions and restrictions in order for it to be effective.

Emmet H. Clair
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