

SUPREME COURT DECIDES BOARD OF PAROLE HAS AUTHORITY TO OVERRIDE JUDICIALLY IMPOSED MINIMUM SENTENCES.

- *Court holds that Board's finding prisoner convicted of aggravated murder "capable of rehabilitation" automatically overrides 30 year minimum sentence;*
- *Board to begin holding prison term hearings in July 2011 for 30 prisoners immediately affected by court's ruling.*

In February of 2011, the Oregon Supreme Court issued final judgments in four cases¹ that will have far-reaching impacts on prisoners who were convicted of aggravated murder and are serving life with 30 year minimum sentences.

At the time the prisoners in these cases committed their crimes, the law required that they be sentenced to a minimum of 30 years in prison. However, the law also required that they have the opportunity to be found "capable of rehabilitation within a reasonable period of time," at a hearing before the Board after 20 years. The issue before the Supreme Court was whether the Board's finding that an inmate was "capable of rehabilitation," essentially "overrode" the 30 year minimum. It has been the Board's position, historically, that it does not have the authority to override the minimum sentence and that the intent of the trial courts as well as the legislature was that the prisoner should serve the minimum 30 year term before being considered for a parole even if they have been found capable of rehabilitation after 20 years.

The court, however, determined that the Board does have the authority to override the minimum sentence. In fact, the court concluded that upon finding a prisoner capable of rehabilitation, the Board was simultaneously overriding the minimum sentence and declaring him a candidate for release prior to the expiration of his minimum sentence.² It cannot be emphasized strongly enough that such a result has never been the intent or the practice of the Board.

To implement its decision, the court ordered the Board to utilize the parole matrix rules in effect at the time the prisoner committed his crime in order to set the prisoner's release date. Therefore, the Board will be required to hold a prison term hearing for each inmate who falls within the scope of the court's decision. We estimate that approximately 30 prisoners currently qualify for these hearings. The initial hearings are currently being scheduled and will begin in July, 2011.

¹ *Janowski/Fleming v. Board of Parole*, 349 Or 432 (2010), *Severy/Wilson v. Board of Parole*, 349 Or 461 (2010).

² "To summarize, we conclude, based on our review of the text of ORS 163.105(1985), its context, and our case law, that ORS 163.105(1985) gave the Board the authority to override the 30-year mandatory minimum sentence for aggravated murder, and to consider releasing a prisoner on parole after 20 years, upon a finding that the prisoner is likely to be rehabilitated within a reasonable time." 349 Or at 453.

The sole purpose of the hearing will be to set a prison term under the matrix system. The Board will establish the crime category rating and criminal history risk score that apply in the individual prisoner's case, apply the matrix range that results, and decide whether there are aggravating or mitigating factors. Based on that information, the Board will normally set the prison term, although the Board also has the authority under ORS 144.120(4) to choose not to set a parole date ("deny parole") at the prison term hearing. A "prison term" is the length of time a person serves in prison before being eligible for consideration for parole. The offender will then receive a *projected* parole release date. The next step in the process is usually an exit interview, where the Board meets with the prisoner to decide whether they are safe to be released into the community on parole.

Per the Board's rules, notice as well as an opportunity to participate in the hearing will be provided to victims that have current contact information registered with the Board as well as the District Attorney from the committing jurisdiction. The hearings will be open to the public, and [schedules will be posted on our website.](#)

In *Severy/Wilson v. Board of Parole*, the Supreme Court made a decision involving a similar issue that, like *Janowski/Fleming* has far-reaching impact. Like *Janowski* it involves persons convicted of aggravated murder, sentenced to life in prison with a minimum 30 years imprisonment, but who have been found, 20 years later by the Board, capable of rehabilitation within a reasonable period of time. Similarly, the Supreme Court held that as a result, a prison term hearing must be held in order to determine, under the matrix which existed at the time the prisoners committed their crimes to determine their release date.

The difference in the two sets of cases is that *Severy/Wilson* had been sentenced to two *consecutive* life sentences, each with a 30 year minimum. Basing its decision on prior Supreme Court decisions³, the Oregon Court of Appeals had held that the Board's finding the prisoners likely to be rehabilitated applied only to the *first sentence*. The prisoner had to wait an additional 20 years before seeking a second rehabilitation hearing. The Supreme Court reversed that earlier decision and ruled in *Severy* that after the Board finds a prisoner likely in the first case, it eliminates the requirement of waiting 20 years for a second hearing. The court reasoned that once the minimum in the first case was overridden, it automatically overrode the second. Further, the court found that it "defie[d] logic" to require an offender after proving they are likely to be rehabilitated, to make that same showing again 20 years later.

In its opinion, the court left some questions unresolved relating to how the Board should apply the matrix regarding the second consecutive sentence. It specifically remanded those matters to the Board to address. Therefore, it is the

³ *Norris v. Board of Parole*, 331 Or 194 (2000)

intention of the Board to decide them on a case by case basis as the prison term hearings are decided.

In sum, the Supreme Court did not order any prisoner to be released. However, the court has allowed certain prisoners, convicted of aggravated murder, to be considered for release into the community sooner than many – including the Board – anticipated. Additionally, as a result of these decisions, it is now clear that at Murder Review hearings, the Board's finding that an inmate is capable of rehabilitation carries with it a significant and previously-unexpected implication: upon concluding that the inmate is capable of rehabilitation, the prisoner's mandatory minimum sentence is overridden.