

The Senate of The State of Texas



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APR 20 2006
OPINION COMMITTEE

April 19, 2006

Senator Eddie Lucio, Jr.

The Honorable Greg Abbott
c/o Nancy Fuller
Director, Opinions Division
Office of the Texas Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

RQ-0478-GA

FILE # ML-44752-06
I.D. # 44752

Re: Expedited Request for Texas Attorney General Opinion on Behalf of Texas Southmost College

Dear General Abbott:

I write this letter on behalf of Texas Southmost College (the College), one of the constituent educational institutions within my representative boundaries. On behalf of the College, I respectfully request an expedited opinion from your office regarding a time sensitive election situation. Specifically, Mr. Joe Lee Rubio has filed to be a candidate for the College's Board of Trustees, Place 1. A copy of this application is attached to this letter as Exhibit "A". The election is scheduled for May 13, 2006. The College has concerns regarding Mr. Rubio's eligibility as a candidate and to serve as a member of the Board.

These concerns were based on Mr. Rubio's statements, and public documents subsequently received by the College from the U.S. District Clerk's office in Brownsville. According to these records, Mr. Rubio was convicted of a crime in Mexico, and was sentenced to serve ten (10) years of imprisonment there after conviction for "transportation of marijuana in Mexico." The documents further show that his case was transferred to the United States under the provisions of a treaty with Mexico, and he was required to complete his imprisonment and any parole or supervised release in the United States. U.S. sentencing guidelines appear to classify his crime as a felony for the purposes of imprisonment and parole in the United States. Federal law further states that an offender transferred to the United States serves a sentence of imprisonment as though the offender were convicted in a U.S. district court for a similar offense. A certified copy of Mr. Rubio's district court record is attached as Exhibit "B".

This information raised concerns at the College about Mr. Rubio's Eligibility. Under Chapter 141 of the Texas Election Code, a candidate is disqualified if he has been convicted of a felony for which he has not been pardoned or otherwise released from the resulting disabilities. TEX. ELEC. CODE § 141.001(a)(4). In addition, Chapter 145 of the Texas Election Code allows a voting authority to make a determination on a candidate's eligibility outside of his or her application based on public records. See TEX. ELEC. CODE § 145.003(f). Under Chapter 145, a voting authority may declare a candidate ineligible upon the conclusive establishment of ineligibility based on public record. Id.



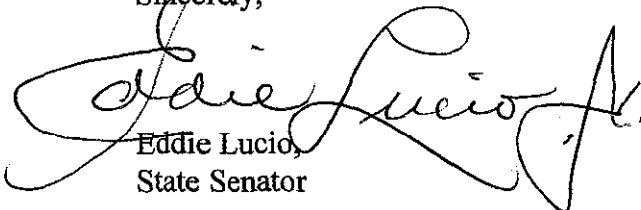
The Hon. Greg Abbott
Opinion Request
Re: Texas Southmost College
April 19, 2006
Page 2

In the College's view, this appears to be a case of first impression. While the College has genuine concerns about Mr. Rubio's eligibility both as a candidate and to serve on the Board, in its view there is enough ambiguity in this situation to allow Mr. Rubio on the ballot. The College could find no cases regarding election eligibility which involved felony cases transferred from the Mexican to the U.S. courts. As a result, the College has decided to allow Mr. Rubio on the ballot for the May 13, 2006 election.

However, the votes from this election will not be canvassed by the College until on or about May 22, 2006. Should Mr. Rubio be elected as a Board member, significant doubt still exists relating to his eligibility to serve as a Board member. Accordingly, the College requests an expedited opinion from your office on Mr. Rubio's eligibility to serve as a Board member under these facts. Specifically, given his criminal background history as demonstrated in attached information, the College request an opinion on whether if elected, Mr. Rubio would be disqualified from service on the Board under Texas Election Code § 141.001(a)(4). Your opinion on this matter would be greatly appreciated. Furthermore, because time is of the essence, I would appreciate expedition consideration no later than May 15, 2006.

Please feel free to call my office if you have questions. Thank you for your attention to this matter.

Sincerely,



Eddie Lucio,
State Senator

Enclosure

Cc: Dr. Juliet Garcia
University of Texas-Brownsville
80 Fort Brown
Brownsville, Texas 78520

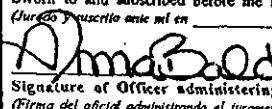
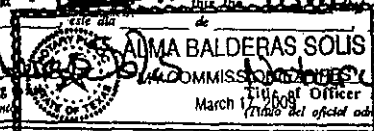
APPLICATION FOR A PLACE ON THE <u>Texas Southmost College</u> GENERAL ELECTION BALLOT <small>(APLICACION PARA UN LUGAR EN LA BOLETA DE <u>District</u> ELECCION GENERAL)</small>		
TO: Secretary of Board <small>(A: Secretario(a) de Junta)</small>		
I request that my name be placed on the above-named official ballot as a candidate for the office indicated below. <small>(Solicito que mi nombre esté puesto en la arriba nombrada boleta como candidato para puesto oficial indicado abajo.)</small>		
OFFICE SOUGHT (PUESTO OFICIAL SOLICITADO) <small>Incluye any place number or other distinguishing number. (Incluya cualquier número de lugar u otro número que hace al puesto oficial diferente a otros.)</small>	INDICATE FULL OR UNEXPIRED TERM <small>(INDIQUE SI EL TERMINO DEL PUESTO OFICIAL ES TERMINO COMPLETO O NO COMPLETADO)</small>	
<u>Board of Trustee Place 1</u>	<u>unexpired term</u>	
FULL NAME (First, Middle, Last) <small>(NOMBRE COMPLETO) (Nombre de Pila, Segundo Nombre, Apellido)</small>	PRINT NAME AS YOU WANT IT TO APPEAR ON THE BALLOT <small>(ESCRIBA SU NOMBRE COMO DESEA QUE APAREZCA SOBRE LA BOLETA)</small>	
<u>Joe Lee Rubio</u>	<u>Joe Lee Rubio</u>	
PERMANENT RESIDENCE ADDRESS Street address and apartment number. If none, describe location of residence (do not include P.O. Box or Rural Rte) (DIRECCION DE RESIDENCIA PERMANENTE: Calle y Número de Departamento; si no tiene, describa la localidad de su residencia. No incluya su caja postal o ruta rural.)	MAILING ADDRESS (if different from residence address) <small>(DIRECCION POSTAL (Si es diferente a su dirección de residencia))</small>	
<u>365 North Iowa Ave. Trailer</u> <u>Brownsville Texas 78521 P</u> CITY, STATE (CIUDAD), (ESTADO) ZIP (ZONA POSTAL)	<u>1804 West Jefferson Street</u> <u>Brownsville Texas 78520-6655</u> CITY, STATE (CIUDAD), (ESTADO) ZIP (ZONA POSTAL)	
OCCUPATION <small>(EMPLEO)</small>	DATE OF BIRTH <small>(FECHA DE NACIMIENTO)</small>	VOTER REGISTRATION CERTIFICATE NUMBER (if applicable) <small>(NUM. DE CERT. DE VOTANTE (si aplicable))</small>
<u>student</u>	<u>07 31 1954</u>	
TELEPHONE NUMBER (Include area code) (Optional) <small>(NUMERO DE TELEFONO - Incluye el código de la área) (Facultativo)</small>	Length of Continuous Residence as of Date Application Sworn <small>(Tiempo en que ha Residido en un Solo Lugar en la Fecha en que Prestó Juramento Sobre la Solicitud)</small>	
OFFICE: <u>956-346-9177</u> <small>(DE SU OFICINA)</small>	IN STATE <small>(EN EL ESTADO)</small>	IN DISTRICT <small>(EN EL DISTRITO)</small>
HOME: <u>956-542-4177</u> <small>(DE SU DOMICILIO)</small>	<u>51 yr(s) 7 mos</u> <small>(año(s) (mes(es)))</small>	<u>51 yr(s) 2 mos</u> <small>(año(s) (mes(es)))</small>
		IN SINGLE-MEMBER DISTRICT <small>(if applicable)</small> <small>(EN EL DISTRITO UNIMEMBRO (si aplicable))</small>
		<u>_____ yr(s) _____ mos</u> <small>(año(s) (mes(es)))</small>
Before me, the undersigned authority, on this day personally appeared <u>JOE LEE RUBIO</u> , who being by me here and now duly sworn, upon oath says: "I, <u>Joe Lee Rubio</u> , of <u>Cameron</u> County, Texas, being a candidate for the office of <u>TSC District Board of Trustee</u> , do hereby declare that I will support and defend the Constitution and laws of the United States and of the State of Texas. I am a citizen of the United States eligible to hold such office under the Constitution and laws of this state. I have not been declared mentally incompetent as determined by final judgment of a court, nor have I been finally convicted of a felony for which I have not been pardoned or had my full rights of citizenship restored by other official action. I am aware of the nepotism law, Chapter 573, Government Code.		
If using a nickname as part of your name to appear on the ballot, you are also signing and swearing to the following statements: I further swear that my nickname does not constitute a slogan nor does it indicate a political, economic, social, or religious view or affiliation. I have been commonly known by this nickname for at least three years prior to this election.		
I further swear that the foregoing statements included in my application are in all things true and correct."		
<small>(Ante mí, la autoridad, suscrita apareció en persona _____, quien habiendo aquí y ahora prestado juramento debido, bajo juramento dice: "Yo, _____ del condado de _____, Texas, siendo candidato para el puesto oficial de _____, siendo elegible para ocupar tal puesto oficial bajo la Constitución y las leyes de los Estados Unidos y del Estado de Texas. Soy ciudadano de los Estados Unidos, no he sido declarado culpable finalmente de una felonía por la cual no he sido perdonado o por la cual no se me han restituido enteramente mis derechos de ciudadanía por medio de otra acción oficial. Yo tengo conocimiento de la ley sobre el nepotismo según el capítulo 573 de Código Gobierno. Además, juro que las precedentes declaraciones que incluyo en mi solicitud son verdaderas y están correctas en todo sentido.")</small>		
Para poder incluir un apodo como parte de su nombre completo en la boleta, Ud. deberá firmar la siguiente constancia: Además, juro que se me ha conocido por este apodo por mas de tres años. Además, juro que el apodo no es un lema político ni una indicación de mis creencias o afiliaciones políticas, económicas, sociales, o religiosas.		
Además juro que las precedentes declaraciones que incluyo en mi solicitud son verdaderas y están correctas en todo sentido."		
Sworn to and subscribed before me at <u>4:21 PM</u> this <u>10th</u> day of <u>March</u> , <u>2006</u> <small>(Jurado y suscrito ante mí en _____ de _____ de _____, _____, Texas, el día _____ de _____ de _____, _____, _____, Texas, a las _____ horas y _____ minutos del año _____)</small>  Adma Balderas Solis Signature of Officer administering oath <small>(Firma del oficial administrando el juramento)</small>  Signature of Candidate: <u>Joe Lee Rubio</u> SIGNATURE OF CANDIDATE (FIRMA DEL CANDIDATO)		
TO BE COMPLETED BY SECRETARY OF BOARD: <u>March 10, 2006</u> Date received <u>[Signature]</u> Signature of Secretary		

EXHIBIT A

United States District Court
Southern District of Texas
FILED

SEP 06 2001

**TRANSFER TREATY DETERMINATION
PURSUANT TO 18 U.S.C. §4106A**

B-01-488
Michael N. Milby
Clerk of Court

NAME: RUBIO, Joe Lee

REG. NO: 22429-180

INSTITUTION: La Tuna FCI

The transferee was convicted of Transportation of Marijuana in Mexico and sentenced to serve 10 years.

The Commission finds that the foreign offense is most similar to Possession With Intent to Distribute a Controlled Substance. The Commission finds that the Total Offense Level is 24, that the Criminal History Category is III, that Career Offender and/or Criminal Livelihood provisions do not apply and that the guideline range is 63-78 months. It is further found that a period of supervised release of 3 to 5 years is applicable.

The Commission orders that the transferee be released on the record after the service of 72 months on 8-28-2001. Your foreign labor credits and good conduct time credits (if any) will be deducted from this release date determination pursuant to Bureau of Prisons procedures.

It is further ordered that the transferee, immediately upon release from imprisonment, commence serving a 60 month period of supervised release, or until the full term date of your foreign sentence currently calculated to be 8-16-2005, whichever is earlier, under the following conditions:

Standard and special conditions of supervised release (see attached).

1. Drug Aftercare
2. Mental Health Aftercare (at discretion of USPO)

The special condition(s) of supervised release has/have been imposed because 1) you admitted to unlawful use of controlled substances; and 2) to help you deal with the trauma from your incarceration in Mexico.

TRUE COPY I CERTIFY
 ATTEST: APR 07 2006
 MICHAEL N. MILBY CLERK
 By _____
 Deputy Clerk

EXHIBIT B

**TRANSFER TREATY DETERMINATION
PURSUANT TO 18 U.S.C. §4106A**


NAME: RUBIO, Joe Lee

REG. NO: 22429-180

INSTITUTION: La Tuna FCI


John R. Simpson
National Commissioner

8/27/2001
Date


Michael J. Gaines
National Commissioner

8-23-01
Date

This action may be appealed to the United States Court of Appeals for the circuit in which the transferee is imprisoned within 45 days after receipt. The notice of appeal must be filed in accordance with Title IV of the Federal Rules of Appellate Procedure (Rule 15(a) et seq.). A notice of appeal must also be filed with the United States Parole Commission, Attn: General Counsel's Office.

**STANDARD CONDITIONS OF SUPERVISION FOR
TRANSFEREE PURSUANT TO 18 U.S.C. §4106A**

TRANSFEREE: RUBIO, Joe Lee

REG. NO: 22429-180

While on supervised release, you shall abide by the following conditions:

1. You shall report in person to the probation office in the district to which you are released within 72 hours of release from the custody of the Bureau of Prisons;
2. You shall not commit another federal, state or local crime;
3. You shall not leave the judicial district without the permission of the court or probation officer;
4. You shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month;
5. You shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
6. You shall support your dependents and meet other family responsibilities;
7. You shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons;
8. You shall notify the probation officer within seventy-two hours of any change in residence or employment;
9. You shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician. Pursuant to 18 U.S.C. §3583(g), the revocation of supervised release is mandatory for possession of a controlled substance;
10. You shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
11. You shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer;
12. You shall permit a probation officer to visit you at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer;
13. You shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
14. You shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court;

15. As directed by the probation officer, you shall notify third parties of risks that may be occasioned by your criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm your compliance with such notification requirement;
16. You shall not possess a firearm or other dangerous weapon.

SPECIAL CONDITIONS OF SUPERVISION

1. You shall be subject to the Special Drug Aftercare Condition which requires that you participate as instructed by your U.S. Probation Officer in a program (inpatient or outpatient) for the treatment of narcotic addiction or drug dependency, which may include testing and examination to determine if you have reverted to the use of drugs. You shall also abstain from the use of alcohol and/or all other intoxicants during and after the course of treatment.
2. You shall be subject to the Special Mental Health Aftercare Condition which requires that you participate in an in-patient or an out-patient mental health program as directed by your U.S. Probation Officer.

NOTE: If the Commission has ordered a period of supervised release that expires before the full term of your foreign sentence, your foreign sentence remains in effect and continues to serve as the maximum authorized term that you may be required to serve. The district court will, therefore, have the option under 18 U.S.C. §3583(e)(2) to extend your period of supervised release to the full term of your foreign sentence. If your supervised release is revoked, the district court may order any combination of reimprisonment and supervised release that does not exceed the sentence imposed by the foreign court, as authorized by 18 U.S.C. §4106A(b)(1)(C).

I have read, or had read to me, the conditions of release printed on this statement and received a copy thereof. I fully understand the conditions and know that if I violate any conditions, I may have my supervised release revoked.

Signature of Transferee

Reg. No. 22429-180

Witnessed

Date

An original signed copy of this statement must be returned to the National Appeals Board of the U.S. Parole Commission within 10 days of receipt.

**TRANSFER OF JURISDICTION FOR SUPERVISED RELEASEES
TRANSFERRED TO U.S. PURSUANT TO TREATY**

Name & Address of Supervised Releasee: Register Number:

**RUBIO, Joe Lee
1804 Jefferson Street
Brownsville, Texas**

22429-180

(956) 542-4177

Country of Transfer & Offense:

Mexico

Transportation of Marijuana

Period of Supervised Release:

60 Months

NOTE: The period may extend to the foreign full-term date, but no longer. Full-term date controls unless absconds.

Pursuant to 18 U.S.C. §4106A(b)(3) the jurisdiction over the above named supervised releasee is conferred upon the United States District Court for the Southern District of Texas. Along with this Notice of Transfer of Jurisdiction are the records compiled by the U.S. Parole Commission for the purpose of determining a release date and periods and conditions of supervised released pursuant to 18 U.S.C. §4106A(b)(1)(A). The transfer of jurisdiction is effective on the date that this transfer is filed with the district court clerk or on the date the transferee is released from custody, whichever is earlier.


John R. Simpson
National Commissioner

8/27/2001

Date


Michael J. Gaines
National Commissioner

8-23-01

Date

Probation Form No. 35
(5/00)

Report and Order Terminating Probation
or Supervised Release
Before Original Expiration Date

United States District Court
for the
Southern District of Texas

United States District Court
Southern District of Texas
FILED

MAR 07 2003

Michael N. Milby
Clerk of Court

United States of America

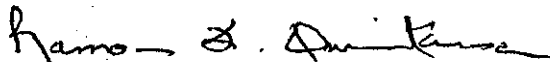
versus

Criminal Case: 1:01XX00466-001

Joe Lee Rubio

On August 27, 2001, Joe Lee Rubio was placed on supervision subject to a termination date of August 16, 2005. The defendant has complied with the court's restrictions and no longer needs supervision. I recommend that this person be discharged from supervised release.

Respectfully submitted,



Ramon D. Quintana
United States Probation Officer

Order of Discharge

On the probation officer's recommendation, the defendant is discharged from supervised release and these proceedings are terminated.

Signed March 7, 20 03, at Brownsville, Texas.


Hilda G. Tagle
United States District Judge

TRUE COPY I CERTIFY
ATTEST
MICHAEL N. MILBY CLERK
By [Signature]
Deputy Clerk

2

18 U.S.C.A. § 3559

United States Code Annotated Currentness

Title 18. Crimes and Criminal Procedure (Refs & Annos)

Part II. Criminal Procedure

Chapter 227. Sentences (Refs & Annos)

Subchapter A. General Provisions (Refs & Annos)

➔**§ 3559. Sentencing classification of offenses**

(a) Classification.--An offense that is not specifically classified by a letter grade in the section defining it, is classified if the maximum term of imprisonment authorized is--

- (1)** life imprisonment, or if the maximum penalty is death, as a Class A felony;
- (2)** twenty-five years or more, as a Class B felony;
- (3)** less than twenty-five years but ten or more years, as a Class C felony;
- (4)** less than ten years but five or more years, as a Class D felony;
- (5)** less than five years but more than one year, as a Class E felony;
- (6)** one year or less but more than six months, as a Class A misdemeanor;
- (7)** six months or less but more than thirty days, as a Class B misdemeanor;
- (8)** thirty days or less but more than five days, as a Class C misdemeanor; or
- (9)** five days or less, or if no imprisonment is authorized, as an infraction.

(b) Effect of classification.--Except as provided in subsection (c), an offense classified under subsection (a) carries all the incidents assigned to the applicable letter designation, except that the maximum term of imprisonment is the term authorized by the law describing the offense.

18 U.S.C.A. § 4106A

United States Code Annotated Currentness

Title 18. Crimes and Criminal Procedure (Refs & Annos)

*Part III. Prisons and Prisoners

*Chapter 306. Transfer to or from Foreign Countries (Refs & Annos)

➔**§ 4106A. Transfer of offenders on parole; parole of offenders transferred**

(a) Upon the receipt of an offender who is on parole from the authorities of a foreign country, the Attorney General shall assign the offender to the United States Parole Commission for supervision.

(b)(1)(A) The United States Parole Commission shall, without unnecessary delay, determine a release date and a period and conditions of supervised release for an offender transferred to the United States to serve a sentence of imprisonment, as though the offender were convicted in a United States district court of a similar offense.

(B) In making such determination, the United States Parole Commission shall consider--

- (i)** any recommendation of the United States Probation Service, including any recommendation as to the applicable guideline range; and
- (ii)** any documents provided by the transferring country; relating to that offender.

(C) The combined periods of imprisonment and supervised release that result from such determination shall not exceed the term of imprisonment imposed by the foreign court on that offender.

(D) The duties conferred on a United States probation officer with respect to a defendant by section 3552 of this title shall, with respect to an offender so transferred, be carried out by the United States Probation Service.

(2)(A) A determination by the United States Parole Commission under this subsection may be appealed to the United States court of appeals for the circuit in which the offender is imprisoned at the time of the determination of such Commission. Notice of appeal must be filed not later than 45 days after receipt of notice of such determination.

(B) The court of appeals shall decide and dispose of the appeal in accordance with section 3742 of this title as though the determination appealed had been a sentence imposed by a United States district court.

(3) During the supervised release of an offender under this subsection, the United States district court for the district in which the offender resides shall supervise the offender.

(c) This section shall apply only to offenses committed on or after November 1, 1987.

CREDIT(S)

(Added Pub.L. 100-690, Title VII, § 7101(a), Nov. 18, 1988, 102 Stat. 4415, and amended Pub.L. 101-647, Title XXXV, §§ 3599B, 3599C, Nov. 29, 1990, 104 Stat. 4931, 4932.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1988 Acts. For Related Reports, see 1988 U.S. Code Cong. and Adm. News, p. 5937.

1990 Acts. House Report Nos. 101-681(Parts I and II) and 101-736, Senate Report No. 101-460, and Statement by President, see 1990 U.S. Code Cong. and Adm. News, p. 6472.

Codification

Amendment by section 3599C of Pub.L. 101-647 directed the insertion of a period at the end of subsec. (b)(1)(C). Such period had already been editorially supplied, therefore, no further change was required.

Amendments

1990 Amendments. Heading. Pub.L. 101-647, 3599B, substituted "parole of offenders" for "parole offenders".

Subsec. (b)(1)(C). Pub.L. 101-647 added a period at the end.

FEDERAL SENTENCING GUIDELINES

See Federal Sentencing Guidelines § 7B1.5, 18 USCA.

LIBRARY REFERENCES

American Digest System

Pardon and Parole ~~C~~68.

Key Number System Topic No. 284.

Prison ~~C~~13.5.

Key Number System Topic No. 310.

RESEARCH REFERENCES

ALR Library

164 ALR, Fed. 61, Downward Departure from United States Sentencing Guidelines (U.S.S.G. §§ 1a1.1 et Seq) Based on Aberrant Behavior.

Forms

Federal Procedural Forms § 20:35, Fees and Expenses.

NOTES OF DECISIONS

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1. Constitutionality

Statute directing the United States Parole Commission to determine release date for a foreign conviction, for which a prisoner is imprisoned in the United States pursuant to a prisoner transfer treaty, "as though the offender were convicted in a United States district court," does not contravene separation of powers principles by giving Parole Commissioners the authority of an Article III judge. Hansen v. U.S. Parole Com'n, C.A.5 1990, 904 F.2d 306, rehearing denied, certiorari denied 111 S.Ct. 765, 498 U.S. 1052, 112 L.Ed.2d 784. Constitutional Law ¶80(2); Pardon And Parole ¶43

2. Power of Commission

United States Parole Commission is authorized to determine release date and period of supervised release, not to sentence prisoner transferred under Prisoner Transfer Treaty. Navarrete v. U.S. Parole Com'n, C.A.5 1994, 34 F.3d 316. Pardon And Parole ¶50

3. Translation foreign sentence

Parole Commission's translation of foreign sentence of prisoner who is transferred pursuant to Prisoner Transfer Treaty between United States and Mexico is tantamount to imposition of federal sentence and should, for all practical purposes, be treated as such. Bennett v. U.S. Parole Com'n, C.A.10 (Colo.) 1996, 83 F.3d 324, certiorari denied 116 S.Ct. 2538, 518 U.S. 1012, 135 L.Ed.2d 1061. Pardon And Parole ¶50

4. Combined periods of imprisonment and supervised release

Statute requiring Parole Commission to determine release date and period of supervised release for offender transferred to United States from foreign country to serve sentence of imprisonment, as though offender were convicted in United States district court of similar offense, was ambiguous; provision that required offender not to be sentenced to term of imprisonment that was greater than that imposed by foreign country required that either mandatory minimum term of imprisonment or supervised release, both of which bound district court, would have to be compromised in cases in which mandatory minimum terms would exceed sentence imposed by foreign country. Cafi v. U.S. Parole Com'n, C.A.7 2001, 268 F.3d 467. Statutes ¶219(6.1)

Combined periods of imprisonment and supervised release that result from Parole Commission's determination may not exceed sentence imposed by foreign court, but need not equal length of foreign sentence. Paura v. U.S. Parole Com'n, C.A.5 1994, 18 F.3d 1188. Pardon And Parole ¶50

5. Sentencing guidelines

In determining release date for prisoners convicted in Commonwealth of Bahamas and transferred to United States pursuant to treaty, Parole Commission properly used applicable Sentencing Guidelines range, rather than prisoners' foreign sentences, as

baseline for downward departure for torture endured by prisoners in Bahamas prison, though Sentencing Guidelines range exceeded prisoners' foreign sentences. Tramel v. U.S. Parole Com'n, C.A.11 1996, 100 F.3d 129. Pardon And Parole c=50

Where prisoner transferred from Mexico to United States pursuant to prisoner exchange treaty, after being convicted of drug charges in Mexico, had been given sentence by Mexican court that was less than what he would have received under Sentencing Guidelines if he had been convicted in United States court, triggering provision of Guidelines requiring application of statutory maximum where Guidelines call for sentence above maximum authorized by statute, Parole Commission, in determining release date, correctly interpreted "statutory maximum" as expiration of sentence less good time credits, and Commission could properly impose supervised release in addition, where the total, after good time credits was not more than the Mexican sentence. Thorpe v. U.S. Parole Com'n, C.A.5 1990, 902 F.2d 291, certiorari denied 111 S.Ct. 185, 498 U.S. 868, 112 L.Ed.2d 148. Pardon And Parole c=53

6. Credits

After converting sentence of prisoner who obtained transfer to United States from England pursuant to Convention on Transfer of Sentenced Persons to "decision" of United States and established initial release date, United States Parole Commission properly refused to apply any credits for good behavior to prisoner's sentence and left it to Bureau of Prisons. Asare v. U.S. Parole Com'n, C.A.4 1993, 2 F.3d 540. Prisons c=15(7)

Under Treaty on Execution of Penal Sentences between United States and Mexico, any pretransfer credits applicable to prisoner's term of incarceration, including but not limited to work done, good behavior or pretrial confinement, shall be applied only to original foreign court-imposed sentence by Parole Commission when making release date determination. Cannon v. U.S. Dept. of Justice, U.S. Parole Com'n, C.A.5 1992, 973 F.2d 1190. Pardon And Parole c=50

In calculating release date of prisoner sentenced in Mexico and transferred to United States authorities, Parole Commission was required to use 90-month Mexican sentence as the guideline sentence and then give credit for time served and good-time credits earned prior to transfer on that sentence. Cannon v. U.S. Dept. of Justice, U.S. Parole Com'n, C.A.5 1992, 961 F.2d 82, rehearing denied 973 F.2d 1190, rehearing denied 979 F.2d 211, certiorari denied 113 S.Ct. 2354, 508 U.S. 915, 124 L.Ed.2d 262. Pardon And Parole c=50

7. Jurisdiction

District court lacked jurisdiction over transfer treaty prisoner's collateral attack on Parole Commission's translation of foreign sentence even though prisoner was currently incarcerated in jurisdiction; court was not sentencing jurisdiction. Bennett v. U.S. Parole Com'n, C.A.10 (Colo.) 1996, 83 F.3d 324, certiorari denied 116 S.Ct. 2538, 518 U.S. 1012, 135 L.Ed.2d 1061. Administrative Law And Procedure c=500; Criminal Law c=1587

Court of Appeals had no jurisdiction to consider claim of inmate transferred from England to United States to serve her prison term after being convicted in England that credits earned in England and potentially earnable in United States had not been, or would not be accounted for in proper manner by Parole Commission in establishing inmate's release date; Court of Appeals' jurisdiction over decision of Parole Commission extended only to Commission's application of Sentencing Guidelines, and calculation of earned foreign and domestic credits was task of Bureau of Prisons. Ajalà v. U.S. Parole Com'n, C.A.9 1993, 997 F.2d 651. Pardon And Parole c=62

8. Hearing

Statute authorizing United States Parole Commission to determine a parole release date for a foreign conviction, when the prisoner is imprisoned in the United States pursuant to a prisoner transfer treaty, does not require that the Commission itself, rather than a panel of examiners, conduct hearing in such a case. Hansen v. U.S. Parole Com'n, C.A.5 1990, 904 F.2d 306, rehearing denied, certiorari denied 111 S.Ct. 765, 498 U.S. 1052, 112 L.Ed.2d 784. Pardon And Parole C=59

18 U.S.C.A. § 4106A, 18 USCA § 4106A

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