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ED GRAY, JR., *Member*
MICHAEL KEELER, *Member*

NEVADA BOARD OF PAROLE COMMISSIONERS

MINUTES
Meeting of the
Board of Parole Commissioners
April 10, 2018

MINUTES APPROVED ON JANUARY 09, 2019

The Board of Parole Commissioners held a public meeting on April 10, 2018 beginning at 4:00 PM at the following locations:

Conference room at the central office of the Board of Parole Commissioners, located at 1677 Old Hot Springs Road, Ste. A, Carson City, NV, video conference to Parole Board Office, 4000 S. Eastern Avenue, Ste. 130, Las Vegas, NV.

I. Open Meeting, call to order, roll call 4:15 PM.

The meeting was called to order by Chairman Bisbee. Present in Carson City were Chairman Bisbee, Commissioner DeRicco, Commissioner Jackson, Commissioner Endel. Present in Las Vegas was Commissioner Keeler.

Commissioner Gray and Commissioner Corda were at parole violation hearings and were excused.

Support staff in attendance:

Darla Foley, Executive Secretary
Brian Stone, Administrative Assistant III

Members of the public present in Carson City included:

Katie Brady, Deputy Attorney General, Office of the Attorney General

Members of the public present in Las Vegas included:

None present.

II. Public Comment. No action may be taken upon a matter raised under this item of the agenda until the matter itself has been specifically included on an agenda as an item upon which action may be taken pursuant to subparagraph (2) of NRS 241.020.

Chairman Bisbee asked if anyone present would like to make a public comment.

Public comment – Carson City, NV

No public comment.

Public comment - Las Vegas

No public comment.

III. **For possible action:** Review/Approval of minutes from the January 29, 2018 Board meeting.

Chairman Bisbee noted that she had been given the opportunity to look at them and made some grammatical corrections.

Motion: Review/Approve the minutes of January 29, 2018 Board Meeting.
Made: Commissioner Jackson
Seconded by: Commissioner Keeler
Votes in Favor: Keeler, Endel, Jackson, Chairman Bisbee, DeRicco
Votes Opposed: None

IV. **For possible action:** Presentation by Deputy Attorney General Katie Brady on the status of the Marlin Thompson Petition for Modification of Sentence filed by the Parole Board in the Second Judicial District Court in case number CR 78-1052. Consideration by the Board as to whether to file a Petition for Writ of Mandamus and/or an appeal in this case.

Katie Brady stated that the underlying case is a petition for modification of sentence in which the Board held a hearing in March of 2017, and the board voted to petition the district court for Mr. Thompson's sentence be reduced to time served. The petition went to the district court, briefing commenced, the district attorney opposed. Briefing occurred on the retroactivity of certain portions of the statute that allow for modification of sentence. Specifically, briefing occurred on the question of whether the term of life with the possibility of parole after 10 years is equivalent to a 10 to life sentence such that it can be modified. The court determined that the only available sentence was life imprisonment and declined to modify Mr. Thompson's sentence to time served.

Katie Brady provided that this decision has caused a split in the jurisdictions because in the Eighth Judicial District Courts, the courts have been modifying these cases. She provided that the Parole Board will need to decide whether or not to appeal to get a decision on whether or not a 10 to life sentence is equivalent to a sentence for life with possibility parole after 10 years

Katie Brady also recommended that because of the procedural posture of the case if the parole board does want to appeal, the Board could file a petition for Writ of Mandamus and simultaneously file an appeal that it would be stayed pending resolution of the petition for Writ of Mandamus to preserve the ability to appeal.

Chairman Endel asked about the importance of this issue and Chairman Bisbee provided that the problem is that relief now depends on what court you were sentenced in, in what district you were sentenced in, and this determines whether or not the Board can even request a modification.

Katie Brady also noted that during the 1995 legislative session, the statutes were all amended to provide for minimum and maximum sentences. She noted that if this case is not appealed, there is a precedent in the Second Judicial District Court going forward that pre-1995 convictions cannot be modified.

Commissioner Keeler noted that it may take longer, but could this be cleaned up through legislature by submitting a bill draft to make it very clear that the Board has authority and go that route rather than through longer process of appeal. Katie Brady noted that also would be an option.

Chairman Bisbee asked whether or not the board had the appetite to do that, to put in a request for the legislative change. Katie Brady noted that because doing a bill amendment or a BDR was not on the agenda, this item would need to be placed on the next agenda for discussion.

Commissioner Keeler asked how long it would take to go through the court and get a final resolution. Katie Brady replied that it would take anywhere between six months to a year on average, to get a resolution from either the Nevada Court of Appeals or the Nevada Supreme Court. She also pointed out that the Board can go forward on both options—it can appeal and then also consider doing a BDR at the next meeting.

Commissioner Keeler asked whether the Board could run into an issue that the courts might want see what the legislature is going to do before they acted on the issue, elongating the process. Chairman Bisbee noted that that is always a risk. Katie Brady agreed and noted that the legal issue could be resolved legislatively, but an issue would remain in other cases as to what a minimum sentence is prior to the implementation of the statutory changes in 1995.

Chairman Bisbee asked what would it look like if the Board decided to file the petition and to appeal the case? Katie Brady responded that the petition and the appeal would be filed simultaneously, and they would be very similar documents. They would be just using different standards, and the Board would seek to have the appeal stayed pending resolution of the Petition and that the appeal would only proceed if the court determined that the Parole Board is a party in the criminal case.

Chairman Bisbee noted that she would prefer that the Board both petition and appeal in this case. Commissioner Keeler noted that he was in agreement.

Commissioner Jackson asked for advice from counsel. Katie Brady explained that the Parole Board has two options here and it's up to the Board on whether or not they feel it's important to get the issue resolved. She explained that there is a case with a decision in the Second Judicial District Court that would preclude the type of relief that the Board is seeking in these cases in that court

Chairman Bisbee indicated that the reason that she supports taking action is that this is a matter of fairness because of the differing applications of the law in the different courts.

Chairman Bisbee sought a motion.

Commissioner Keeler made the motion that the Board appeal this case and also have council file a Writ of Mandamus. Commissioner Jackson seconded the motion.

Chairman Bisbee called for any further conversation and Commissioner DeRicco asked if the Board was just looking to do this for clarification purposes, solely so that the Board can get a decision on how the courts should handle these types of cases in the future. Katie Brady indicated that was the case. Commissioner DeRicco noted that with that clarification, he was in support of the motion.

Commissioner Endel also voted in support of the motion.

The Motion passed unanimously.

Motion: File a Petition for Writ of Mandamus and an appeal in this case.
Made: Commissioner Keeler
Seconded by: Commissioner Jackson
Votes in Favor: Keeler, Endel, Jackson, Bisbee, DeRicco
Votes Opposed: None

V. **Public Comment.** No action may be taken upon a matter raised under this item of the agenda until the matter itself has been specifically included on an agenda as an item upon which action may be taken pursuant to subparagraph (2) of NRS 241.020.

Chairman Bisbee asked if anyone present would like to make a public comment.

Public comment – Carson City, NV

No public comment.

Public comment - Las Vegas

No public comment.

VI. **For possible action: The Board may act to adjourn the meeting.**

Motion: To adjourn meeting.
Made: Commissioner Endel
Seconded by: Commissioner Jackson
Votes in Favor: Keeler, Endel, Bisbee, Jackson, DeRicco