

PAROLE REQUESTS AND REVIEW PROCEDURES

Applicable to requests for review of sentences to determine eligibility for parole filed on or after August 1, 1999 and sentence reviews undertaken thereafter.

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Preface

Parole is a privilege created by statute. There is no constitutional or inherent right for a convicted person to be released, conditionally or otherwise, before the expiration of a valid sentence. As stated in *Yalmed v. FSM*, 5 FSM Intrm. 32, (App. 1991), 11 F.S.M.C. 1401 does not require a sentencing justice to review a criminal sentence the justice imposed on a prisoner after that prisoner has served the minimum portion of his sentence necessary for parole consideration. When the reviewing justice is the one who imposed the sentence on the prisoner it should be assumed that the sentence was initially believed to fit the offender as well as the offense. Under such circumstances, a prisoner seeking parole should not expect it to be lightly granted. The same assumptions should be made when the reviewing justice is not the one who imposed the sentence, as long as the sentence was imposed under the laws of the FSM.

Even when the sentence is imposed in another jurisdiction but carried out in whole or in part in the FSM, a prisoner should not expect a request for review of his sentence, or the grant of parole following review, to be granted as a matter of course. 11 F.S.M.C. 1401 merely authorizes review of sentences, it does not mandate review.

In circumstances where a sentence review is undertaken, a heavy burden is upon the convicted person to persuade the reviewing justice that the prisoner's behavior in prison, and

factors indicative of the prisoner's chances for a successful adaptation to community life after release, are such as to warrant a change of the original sentence. The initial decision to grant or deny a request for review, along with any review subsequently undertaken, is subject only to the sound discretion of the Court.

Rule 1. THRESHOLD REQUIREMENTS FOR FILING A REQUEST FOR REVIEW

The review of a sentence to determine eligibility for parole may only occur after the prisoner has served at least one-third of the total period of incarceration required by his sentence, unless he is serving a life sentence or a sentence of thirty (30) years or more, in which case the review may not occur until the prisoner has served at least ten (10) years of his sentence. A prisoner who has not served at least one-third of the total period of incarceration required by his sentence is not authorized to file a request for review of his sentence under these rules and any such request shall be denied.

Rule 2. CONTENT OF SENTENCE REVIEW REQUEST

(a) Format:

Any request for review of a sentence to determine eligibility for parole shall be typewritten on paper 8 1/2 inches in width and 11 inches in length. The face page of the request shall bear the complete caption and case number of the criminal matter(s)

in which the sentence was imposed and shall be titled, "REQUEST FOR REVIEW OF SENTENCE PURSUANT TO GCO 1999-1 TO DETERMINE ELIGIBILITY FOR PAROLE."

Immediately beneath this title shall appear the name of the prisoner, the crime or crimes for which the sentence was imposed (including any statutory references), the date incarceration began, the name and address of any facility where the prisoner has been incarcerated for at least thirty (30) days during the term of the sentence (specifying the applicable dates), and the total length of incarceration required by the sentence.

If the request is made by an attorney on the prisoner's behalf, the attorney's name, address and telephone number shall appear in the upper left hand corner of the face page followed by a statement of who the attorney represents.

Multiple page requests shall be consecutively numbered at the bottom center of each page. Exhibits attached to the request shall be sequentially numbered. The body of the request shall be double-spaced

(b) Filing Requirements:

(1) copies

The original request and three copies shall be filed.

(2) Service.

When filed, the request shall be accompanied by proof of

service on the following parties: (A) the prosecutor or prosecuting authority; (B) the prisoner's attorney if he was

represented by counsel during the criminal prosecution (unless the attorney submitting the request represented the prisoner or is employed by the same office or firm that represented the prisoner at the time judgment of conviction was rendered and the sentence was imposed); (C) the person or persons in charge of any facility where the prisoner has been incarcerated for thirty (30) days or more during the sentence he is requesting to be reviewed; (D) the victim of the crime or at least one member of the victim's immediate family if the victim is deceased; and, (E) the prisoner's village or municipal leaders.

(c) Body of the request:

(1) Statement of facts; Circumstances of conviction.

The request shall contain a concise statement of the facts upon which the sentence was based. This statement shall detail how the conviction was obtained, whether by verdict following trial or based on a plea agreement. It shall include a summary of all charges pending against the prisoner at the time judgment of conviction was rendered (with applicable statutory references) and shall specify the disposition of each charge. The statement shall contain sufficient information about the prosecutor (including his or her name address and phone number) to allow the court to perform the inquiry required of it by Rule 6(a) of these rules.

(2) Grounds for parole.

The body of the request shall separately and

specifically set forth each ground the prisoner contends warrants the granting of parole.

(3) Supporting evidence.

The request shall be accompanied by evidence supporting each ground identified in the request. The evidence may take the form of affidavits or documents for which adequate foundation has been laid. Additionally, a copy of the order imposing the sentence, along with any findings of fact and conclusions of law issued by the sentencing court (or an affidavit explaining why either or both of these are unavailable) shall be attached to the request. If the request is supported by statements of third persons, they shall be submitted under oath subject to the penalties of perjury. Statements made on information and belief shall be identified as such. Supporting statements from persons residing outside of the FSM must also be notarized.

(4) Details concerning victim.

The request shall provide all available information about the victim and his or her family to assist the court in performing the inquiry required of it by Rule 6(c)

Rule 3. REVIEWING JUSTICE; ORDER OF ASSIGNMENT

Both the initial determination of whether to grant the request to review the sentence (required by Rule 4), and any sentence review

subsequently undertaken, shall be made by the trial justice of the National Court who imposed the sentence on the prisoner. However, if that justice is unavailable, or if the sentence at issue was not rendered by the FSM Supreme Court but jurisdiction to review it otherwise exists, the Chief Justice may designate himself or another justice or any duly appointed temporary justice of the FSM Supreme Court to make the initial determination of whether to grant or deny the request and to perform the review if the request is granted. Any such designation shall be made by an order of assignment entered within thirty (30) days of the date a sentence review request is filed with the Court.

Rule 4. PROCESSING OF SENTENCE REVIEW REQUESTS

Sentence review requests shall be processed as follows:

(a) Initial determination:

The justice responsible for the matter shall make an initial determination on whether to grant or deny the prisoner's request to have his sentence reviewed. Notice of this determination shall be by written order of the court specifying the grounds for the decision. The order shall be entered within sixty (60) days from the date the request is filed.

(b) Effect of denial; burden of producing

evidence:

If the initial determination results in denial of the request on the grounds of: (1) insufficient supporting evidence; or, (2) failure to comply with these rules, the court may at its discretion notify the prisoner of the inadequacies and grant him

one or more thirty (30) day extensions within which to file a renewed request with sufficient evidence or one which properly complies with these rules.

The person requesting to have his sentence reviewed shall have the burden of producing competent supporting evidence from which the court may reasonably conclude that a review is warranted. Failure to meet this burden shall be sufficient grounds to deny the request for review of sentence to determine eligibility for parole.

If a request is denied without providing a thirty (30) day renewal extension, no further action is required by the Court and the prisoner may not renew his request for one year as specified by Rule 8 of these rules.

(c) Effect of granting review:

If the review request is granted, a sentence review following these rules shall be undertaken.

Rule 5. PLACE OF FILING REQUEST

Requests for sentence reviews shall be filed with the clerk of court in the trial division of the FSM Supreme Court where the sentence was issued if the justice who imposed the sentence continues to preside in that court. In all other circumstances, the request shall be filed with the Chief Clerk of Courts in the trial division of the FSM Supreme Court in the State of Pohnpei.

Rule 6. SCOPE OF REVIEW; RELEVANT CONSIDERATIONS

If a request for review is granted, the reviewing justice shall make reasonable efforts to obtain and consider the following information:

(a) The justice shall request and consider the views of

(1) the prosecutor;

(2) the prisoner and his counsel;

(3) the victim, the head of the victim's family, and any member of the victim's immediate family wishing to be heard; and,

(4) when requested by the prosecutor or the prisoner, the justice shall also consider the views of such community leaders as clergy and municipal or traditional leaders.

(b) At his discretion, the reviewing justice may also consider the views of the following individuals:

(1) any jailor having substantial responsibility for the prisoner; and

(2) any person having a close relationship with the victim or any person the justice deems as having relevant information concerning the prisoner and his request for parole.

(c) After considering the views expressed by the various

interested persons, the justice shall base the determination of whether to grant parole on the following factors:

- (1) the prisoner's behavior in prison;
- (2) any factors indicative of the prisoner's chances of successful adaptation to community life after release.

Rule 7. HEARING

At his sound discretion, the justice responsible for determining whether to grant the request for review, and for conducting the review if one is granted, may order a hearing for any purpose. If a hearing is ordered, reasonable notice shall be given to all persons upon whom service of the request for review was made pursuant to Rule 2(b)(2). The notice shall specify the purpose of the hearing.

However, no hearing is mandatory with respect to any request for review of a sentence to determine eligibility for parole nor with respect to any review if one is undertaken.

Rule 8. LIMITATION ON REPETITIVE REQUESTS

Except as provided in Rule 4(b), a prisoner otherwise qualified under Rule 1 whose request for parole has been denied (either before or after review) shall not be permitted to file another request until one year after the entry of the order denying the request for review

or denying modification of sentence following review.

Rule 9. CONDITIONS OF PAROLE

If a reviewing judge determines that justice would best be served by granting the prisoner parole, it may be granted conditionally, subject only to the sound discretion of the court.

The court may order the prisoner to report from time to time to the National or State Justice Ombudsman for the purpose of ensuring that the prisoner is complying with any condition of parole or for any other lawful purpose.

Rule 10. REVOCATION OF PAROLE

The procedures governing revocation or modification of probation or supervised release as fully set forth in Criminal Rule 32.1 shall be followed prior to revocation or modification of parole. For purposes of applying Criminal Rule 32.1 to these rules, parole shall be deemed a form of supervised release.