

To: Commission to Examine Reestablishing Parole
From: Legislative Staff
Date: October 7, 2022
Re: Case Summaries

Gilbert v. State, 505 A.2d 1326 (Me.1986)

Gilbert, a man serving a life sentence, sued the State for denying him parole. The lower court held that Gilbert could not be granted parole because applying changes to his sentence, based on statutory changes that were enacted following his conviction, would infringe upon the Governor's commutation power. On appeal the Law Court held that parole is not unconstitutional because parole "...does not shorten the length of a sentence. Instead, parole is a change in the *manner* in which a sentence is served in that the parolee remains under the custody of the institution from which he is released but executes the unexpired portion of his sentence outside of confinement."¹ However, the court also held that the changes in statute, which provided that the parole board could grant full discharge to a prisoner after he successfully served ten years of parole, were unconstitutional because the discharge would infringe upon the Governor's commutation power.

Bossie v. State, 488 A.2d 477 (Me.1985)

Three people incarcerated by the Department of Corrections sued the State for an alleged miscalculation of the amount of "good time" reduced from their sentences. The Law Court denied their request for relief and held that, because the statute allowing for the "good time" deductions was passed after the dates on which the people had been sentenced, applying those deductions to their sentences would infringe on the Governor's exclusive power to commute sentences. The court stated that the constitutionality of the law turned on whether it allowed anyone but the Governor to reduce the length of a sentence.

Mottram v. State, 232 A.2d 809 (Me.1967)

Mottram had been out of prison on parole and was subsequently brought in front of the parole board for a hearing. During the hearing the parole board determined that he had violated the conditions of his parole and returned him to prison. Mottram then brought a claim raising two issues. First, that his constitutional due process rights had

¹ *Id.* at 1328.

been violated due to lack of notice and lack of proper hearing. Second, that his rights under Maine law had been violated because, at his parole hearing, he was not given a list of charges against him or allowed to present witnesses. The Law Court held that he had no constitutional or statutory right to either. When addressing the due process issue the court held “A parolee has no constitutional right to a hearing on revocation of parole, and such a revocation without notice and hearing does not constitute a denial of constitutional due process.”² Then, when looking at the statutory issue, the court stated that the legislature can grant the Parole Board the exclusive right to determine if parole shall be revoked and any such revocation by the Parole Board, made within limits of legislative authority, cannot be undermined.³ The court stated that the revocation of parole is an administrative rather than “quasi-court” function. The court concluded that the hearing Mottram was provided by the parole board was sufficient to satisfy the relevant statutory requirements.

Collins v. State, 161 Me. 445 (Me.1965)

Collins was released on parole and arrested several days later for a new crime. His parole was then revoked. The main issue raised in this case was one of statutory interpretation. The Law Court examined whether the word “may,” in a then existing statute, required the Parole Board to take custody of a person who violated parole immediately. The court found that it did.

In addition to this statutory issue, and more relevant to the examination of parole, Collin’s raised that his parole revocation and remand order was invalid, and that due to the errors in that order he should be released. Specifically, that the order did not state the date of revocation, failed to state the remaining term of confinement, and did not state when he would become eligible for parole again. The Law Court found no legal errors in the Parole Board’s process and denied his claim. However, the court commented that such information was relevant to the calculation of good time, and therefore pertinent. In its reasoning, the court stated that parole and its execution is discretionary and delegated to the Parole Board by the Legislature. The court also noted that “while on parole the individual is executing, out of confinement, his original sentence.”⁴ The court further explained that release on parole is conditional, and the parolee is subject both to the continuing supervision of his parole officer and to the threat of return to prison to serve out his sentence there if he violates a condition of parole.

² *Id.* at 813.

³ *Mottram* A.2d 809 quoting *State v. Fazzano*, 1963, 96 R.I. 472, 194 A.2d 680

⁴ *Id.* at 451.