

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

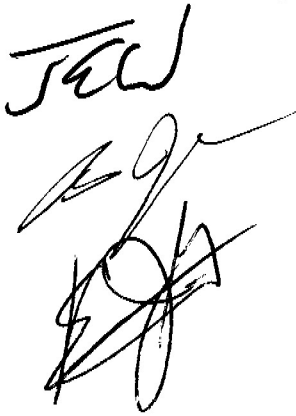
FIRST CIRCUIT

NUMBER 2010 CA 0352

THOMAS BILLARD

VERSUS

RHONDA KLING, RECORD ANALYSIS;
CORNEL HUBERT, WARDEN ELAYN HUNT CORRECTIONAL CENTER
AND RICHARD STALDER, SECTARY DEPARTMENT OF PUBLIC
SAFETEY AND CORRECTIONS



Judgment Rendered: February 11, 2011

Appealed from the
Nineteenth Judicial District Court
In and for the Parish of East Baton Rouge, Louisiana
Trial Court Number 553,285

Honorable Kay Bates, Judge

Thomas Billard
St. Gabriel, LA

In Proper Person
Plaintiff – Appellant

William L. Kline
Baton Rouge, LA

Attorney for
Defendants – Appellees
James M. LeBlanc, Secretary,
La. Dept. of Public Safety

BEFORE: CARTER, C.J., GAIDRY AND WELCH, JJ.

WELCH, J.

Thomas Billard, an inmate in the custody of the Louisiana Department of Public Safety and Corrections (DPSC), appeals a judgment affirming DPSC's decision denying him consideration for parole eligibility. We affirm.

BACKGROUND

In 1999, Billard committed the offense of armed robbery. He was convicted of the crime of armed robbery, a violation of La. R.S. 14:64, and was sentenced on January 28, 2002 to a term of 50 years. At the time the crime was committed, La. R.S. 14:64 mandated that a person convicted of armed robbery be sentenced without the benefit of parole, probation, or suspension of sentence. Billard plead guilty as a second felony offender and on January 28, 2002, he was sentenced to serve 50 years without benefit of probation or suspension of sentence. The sentencing transcript at the habitual offender hearing indicates that the trial judge informed Billard that he would be eligible for parole.¹

In June of 2006, Billard initiated an administrative remedy procedure, seeking to have his DPSC master prison sheet reflect that he is eligible for parole after serving 20 years in custody and reaching the age of 45. Billard argued that he is eligible for parole consideration under La. R.S. 15:574.4(A)(3),² commonly referred to as the "old timers parole provision," upon serving 20 years of his sentence and reaching the age of 45. His request was denied on the basis that

¹ The fact that the sentencing judge did not impose a parole restriction on Billard's sentence does not make Billard eligible for parole. At the time of the commission of the offense, La. R.S. 14:64 provided that persons convicted of armed robbery were not eligible for parole. Even if the habitual offender law did not specifically require a parole restriction, the conditions imposed on the habitual offender sentence are those called for in the reference statute. Therefore, Billard's sentence as a habitual offender based on the underlying conviction of armed robbery is without parole, probation, or suspension of sentence. *See State v. Bruins*, 407 So.2d 685, 687 (La. 1981). The correction to Billard's habitual offender sentence to deny parole eligibility is statutorily effected by La. R.S. 15:301.1, which provides that statutory restrictions are included in a sentence given, whether or not they are imposed by the sentencing court.

² Subsection A(3) was subsequently renumbered by the Legislature as Subsection A(2). For the purposes of this appeal, we shall refer to the old timers parole provision as Subsection A(3).

Paragraph B of La. R.S. 15:574.4, originally enacted in 1968 but subsequently reenacted in 1995 by Act 1099, after La. R.S. 15:574.4(A)(3) went into effect, specifically precludes persons convicted of armed robbery and denied parole eligibility under the provisions of La. R.S. 14:64 from being eligible for parole consideration.

On March 16, 2007, Billard filed this petition seeking judicial review of DPSC's decision, urging that he is statutorily and jurisprudentially eligible for parole consideration upon serving 20 years of his sentence and reaching the age of 45. A commissioner concluded that at the time Billard committed the offense of armed robbery in 1999, Act 1099 of 1995, which reenacted Paragraph B's denial of eligibility for parole consideration for those persons convicted of armed robbery, was the latest expression of the legislative will. The trial court adopted the commissioner's reasons as its own and entered judgment affirming DPSC's denial of consideration for parole eligibility to Billard.

DISCUSSION

The only issue in this appeal is whether in 1999, when Billard committed the crime of armed robbery, a person convicted of armed robbery and ineligible for parole consideration under La. R.S. 15:574.4(B) was nevertheless entitled to be considered for parole eligibility upon serving 20 years of the sentence and reaching the age of 45 pursuant La. R.S. 15:574.4(A)(3). In order to determine whether the Legislature intended to extend eligibility for parole consideration to persons convicted of armed robbery in enacting La. R.S. 15:574.4(A)(3), we are guided by the following rules of statutory construction, set forth by the Supreme Court in **Black v. St. Tammany Parish Hospital**, 2008-2670, pp. 9-10 (La. 11/6/09), 25 So.3d 711, 717-718 as follows:

One determines the meaning and intent of a law "by considering the law in its entirety and all other laws on the same subject matter and by placing a construction on the law that is consistent with the express

terms of the law and with the obvious intent of the legislature in enacting the law.” A statute must be applied and interpreted in a manner that is logical and consistent with the presumed fair purpose and intent of the Legislature in enacting it. The text of the law is the best evidence of legislative intent.

Words and phrases must be read with their context and construed according to the common and approved usage of the language. La.Rev.Stat. § 1:3. “The word ‘shall’ is mandatory and the word ‘may’ is permissive.” Further, every word, sentence, or provision in a law is presumed to be intended to serve some useful purpose, that some effect is given to each such provision, and that no unnecessary words or provisions were employed. Consequently, courts are bound, if possible, to give effect to all parts of a statute and to construe no sentence, clause, or word as meaningless and surplusage if a construction giving force to and preserving all words can legitimately be found.

Where two statutes deal with the same subject matter, they should be harmonized if possible, as it is the duty of the courts, in the construction of statutes, to harmonize and reconcile laws. However, if there is a conflict, the statute specifically directed to the matter at issue must prevail as an exception to the statute more general in character.

(Citations omitted in part).

Pursuant to these well-established rules of statutory construction, we must harmonize the provisions of La. R.S. 15:574.4(A)(3) and (B), if possible, but in the case of conflict, we must interpret the more specific statute to prevail as an exception to the more general statutory provision.

Louisiana’s system of parole is set out in La. R.S. 15:574.2 *et seq.* Parole eligibility, which is determined by the sentence, and eligibility for parole consideration, which is dependent on meeting certain criteria and conditions specified by statute, are closely regulated by the Legislature. **Bosworth v. Whitley**, 627 So.2d 629, 631 (La. 1993). Louisiana’s parole statutes do not create an expectancy of release or liberty interest in general. Although the right to be considered for parole is a substantial one, it is not bestowed on a prisoner until statutory requirements are met. **Damone v. Whitley**, 96-0635, p. 3 (La. App. 1st Cir. 5/9/97), 694 So.2d 1205, 1207.

In 1968, by virtue of Act 191, the Legislature enacted La. R.S. 15:574.4 to set forth rules governing eligibility for parole consideration. The statute as originally enacted provided:

A. A person convicted of a felony and sentenced to imprisonment in any penal or correctional institution in this state shall be eligible for parole consideration upon serving one-third of the sentence imposed; except that a parole may be granted to a first offender who has been sentenced to less than 5 years in prison and who has never previously been convicted of a felony in this or any other state or country without requiring that the offender shall have served the required one-third of his sentence, provided that the sentencing judge shall be notified at least 10 days in advance of the parole hearing where the offender has served less than one-third of his sentence. For purpose of this subsection, a person who has been convicted of a felony and has thereafter been pardoned shall not be considered a first offender.

B. No person shall be eligible for parole consideration who has been convicted of armed robbery and denied parole eligibility under the provisions of R.S. 14:64, or who has been convicted of a violation of the Uniform Narcotic Drug Law and denied parole eligibility under the provisions of La. R.S. 40:981. No prisoner serving a life sentence shall be eligible for parole consideration until his life sentence has been commuted to a fixed term of years. No prisoner may be paroled while there is pending against him any indictment or information for any crime suspected of having been committed by him while a prisoner.

1968 La. Acts. No. 191 § 1.

In 1986, the Legislature amended Paragraph A of La. R.S. 15:574.4 to add another subsection, placing the substance of the original paragraph into subsection (1) and adding subsection (2) to provide for eligibility for an intensive incarceration and intensive parole supervision program. 1986 La. Acts. No 185 § 1. The following year, in Act 60 of 1987, the Legislature added a third subsection to Paragraph A, enacting La. R.S. 15:574.4(A)(3), to provide for time periods and requirements for parole eligibility for certain inmates based on the length of sentence, age, and the amount of time incarcerated. As originally enacted, the old-timers parole provision stated:

(3) Notwithstanding the provisions of Paragraph (A)(1) or any other law to the contrary, unless eligible for parole at an earlier date, a

person committed to the Department of Public Safety and Corrections for a term or terms of imprisonment with or without benefit of parole for thirty years or more shall be eligible for parole consideration upon serving at least twenty years of the term or terms of imprisonment in actual custody and upon reaching the age of sixty. This provision shall not apply to a person serving a life sentence unless the sentence has been commuted to a fixed term of years.

1987 La. Acts No. 60 § 1.

Subsequently, Paragraphs A(3) and B of La. R.S. 15:574.4 were amended a number of times. In 1990, the legislature amended Paragraph A(3) to lessen the age requirement from 60 to 45. 1990 La. Acts No. 790 § 1. In 1995, by Act 1099, the legislature amended and reenacted Paragraph A(1) to insert the language “[e]xcept as provided for in Subsection B of this Section” and amended and reenacted Paragraph B to require certain offenders to serve eighty-five percent of their sentence before becoming eligible for parole. As amended and reenacted in 1995, Paragraph B of La. R.S. 15:574.4 provided:

B. No person shall be eligible for parole consideration who has been convicted of armed robbery and denied parole eligibility under the provisions of R.S. 14:64. No prisoner serving a life sentence shall be eligible for parole consideration until his life sentence has been commuted to a fixed term of years. No prisoner may be paroled while there is pending against him any indictment or information for any crime suspected of having been committed by him while a prisoner. Notwithstanding any other provisions of law to the contrary, a person convicted of a crime of violence and not otherwise ineligible for parole shall serve at least eighty-five percent of the sentence imposed, before being eligible for parole. The victim or victim’s family shall be notified whenever the offender is to be released.

1995 La. Acts No. 1099 § 1.

In Act 1099, the Legislature specifically provided that its provisions would become effective on January 1, 1997, and that the Act applied only to those persons convicted of offenses on or after the effective date of the Act. 1995 La. Acts No. 1099 §§ 2 and 3.

At the time Billard committed the offense of armed robbery in 1999, La. R.S. 14:64 denied parole eligibility to persons convicted of the crime of armed

robbery. In 1999, and at the time of Billard's sentencing in 2002, Paragraph A(3) of La. R.S. 15:574.4 provided that "notwithstanding the provisions of Paragraph A(1) or any other law to the contrary," persons who met the requirements of that provision were eligible for parole consideration, while Paragraph B of La. R.S. 15:15:474.4 denied eligibility for parole consideration to those persons convicted of armed robbery.

In 2006, the 19th Judicial District Court in the case of **Tell v. Stalder**, #541,059, judgment rendered on March 29, 2006, relied on by Billard, construed the language "notwithstanding ... any other law to the contrary" in La. R.S. 15:574.4(A)(3) to include any other provision which would operate to limit parole consideration, including the first sentence of Paragraph B of La. R.S. 15:574.4. Additionally, the trial court believed it was significant that in enacting La. R.S. 15:574.4(A)(3), the Legislature expressly maintained Paragraph B's restriction of ineligibility of parole consideration for "lifers," but made no such inclusion in the provision for inmates serving sentencing for armed robbery. Therefore, the trial court concluded, the Legislature clearly intended to extend consideration for parole eligibility to persons who were convicted of armed robbery and who met the statutory requirements of the old timers parole provision. Soon after the **Tell** decision, in 2008, the Legislature amended Paragraph A(3) of La. R.S. 15:574.4 to provide that the old timers parole provision "shall not apply to any person who has been convicted under the provisions of R.S. 14:64." 2008 La. Acts No. 624 § 1.

In the instant case, the trial court concluded that **Tell** did not control the issue of Billard's eligibility for parole because the petitioner in **Tell** had been sentenced in 1987. However, Billard had been sentenced in 1999, and at that time Paragraph B of La. R.S. 15:574.4, as reenacted by Act 1099 of 1995, had gone into effect. The court found Act 1099 of 1995 to be the latest expression of legislative intent to deny persons convicted of armed robbery from eligibility for parole

consideration under the old timers parole provision.

As noted above, in 2008, the Legislature expressly excluded persons convicted of armed robbery from eligibility for parole consideration under the old timers parole provision. With respect to persons convicted of crimes committed after the effective date of this amendment, there can be no doubt as to the Legislature's intent. However, we must decide whether in 1999, when Billard committed the crime of armed robbery, the Legislature intended to extend the benefits of the old timers parole provision to persons convicted of armed robbery. Applying the rules of statutory construction, we conclude the Legislature did not.

Although La. R.S. 15:574.4 has undergone numerous amendments since its enactment in 1968, one provision has remained unchanged: Paragraph B's denial of eligibility for parole consideration for persons convicted of armed robbery and denied parole eligibility under La. R.S. 14:64. Moreover, the statutory scheme has remained constant: In Paragraph A of La. R.S. 15:574.4, the Legislature provided for eligibility for parole consideration for those persons meeting specified standards and criteria. In Paragraph B of La. R.S. 15:574.4, the Legislature denied and restricted eligibility for parole consideration to certain persons. At the time the Legislature enacted La. R.S. 15:574.4(A)(3) to extend consideration for parole eligibility to certain persons, all persons who had been convicted of armed robbery were already precluded from consideration for parole eligibility by virtue of Paragraph B of the same statute. Thus, there was no need for the Legislature to specifically exempt armed robbers from the benefits of the newly enacted law. Moreover, we believe that by using the language "notwithstanding ... any other provision of law to the contrary" in Paragraph A(3), the Legislature was referring to any other provision of the law other than Paragraph B. To read the statute any other way would render the legislative prohibition on consideration for parole eligibility for persons convicted of armed robbery set forth in Paragraph B, which

has been a part of La. R.S. 15:574.4 since its 1968 enactment, meaningless.

Thus, reading all parts of the statute as a whole and giving it the construction that best harmonizes all of its provisions, we conclude that persons convicted of armed robbery are not entitled to be considered for parole eligibility upon satisfying the requirements of La. R.S. 15:574.4(A)(3) because they are ineligible for parole consideration by virtue of La. R.S. 15:574.4(B). Even if the language chosen by the Legislature could be discerned to create a conflict between La. R.S. 15:574.4(A)(3) and (B), it is clear that Paragraph A(3) is a general rule addressing the eligibility of persons for parole consideration based on the length of sentence, the length of incarceration, and the person's age. Paragraph B is a specific prohibition from consideration for parole eligibility for persons convicted of armed robbery. To the extent the language in both provisions conflicts, we interpret the more specific statute, La. R.S. 15:574.4(B), to prevail as an exception to the more general statutory provision, La. R.S. 15:574.(A)(3).

For these reasons, we conclude that DPSC and the trial court did not err in concluding that Billard is ineligible for parole consideration.

CONCLUSION

For the foregoing reasons, the judgment appealed from is affirmed. All costs of this appeal are assessed to appellant, Thomas Billard.

AFFIRMED.