

# Attorney General of New Mexico



PAUL BARDACKE  
Attorney General

P.O. Drawer 1508  
Santa Fe, New Mexico 87504  
505-827-6000

KAY MARR  
STEPHEN WESTHEIMER  
Deputy Attorneys General

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OPINION  
OF  
PAUL BARDACKE  
Attorney General

Opinion No. 86-1

BY: G.T.S. KHALSA  
Assistant Attorney General

TO: Mr. Thomas A. Rutledge  
District Attorney  
101 West Mermod Street  
P.O. Box 1448  
Carlsbad, New Mexico 88220-1448

FACTS:

Defendants who are sentenced to life imprisonment pursuant to Judgments finding them guilty of having committed capital offenses are seeking good time credits which would reduce their parole eligibility dates.

QUESTION:

Section 31-21-10 (A) NMSA 1978 states that a defendant sentenced to life imprisonment as a result of the commission of a capital felony does not become eligible for parole until he has served 30 years of his sentence. Can this minimum eligibility date be reduced by good time awards?

CONCLUSION:

No.

Mr. Thomas A. Rutledge  
April 23, 1986  
Page -2-

ANALYSIS:

The question involves the interpretation of two statutes. Section 33-2-34 NMSA 1978 passed in 1978 provides that

Any inmate confined in the penitentiary of New Mexico... may be awarded... good time....

Section 31-21-10A passed in 1980 states that

An inmate of an institution who has been sentenced to life imprisonment as a result of the commission of a capital felony becomes eligible for parole after he has served thirty years of his sentence...

For the reasons set forth below, the good time statute does not apply to capital offenders sentenced pursuant to Section 31-21-10A.

First, Section 30-21-10A was passed after Section 33-2-34. The legislature is presumed to have enacted law with existing law in mind. See State v. Trivitt, 89 N.M. 162, 548 P.2d 442 (1976), New Mexico Board of Pharmacy v. New Mexico Board of Osteopathic, 95 N.M. 780, 626 P.2d 1280 (App. 1981). Second, when there is a conflict between a general statute and a specific statute, statutory construction requires that the specific statute be considered an exception to the general statute. See Martinez v. Cox, 75 N.M. 417, 405 P.2d 659 (1965), City of Albuquerque v. Reelding, 93 N.M. 757, 605 P.2d 1156 (1980), New Mexico Bureau of Revenue v. Western Elect. Co., 89 N.M. 468, 553 P.2d 1275 (1976), State v. Thompson, 79 N.M. 748, 449 P.2d 656 (1969), Lopez v. Baneras, 77 N.M. 52, 419 P.2d 251 (1966). Finally, a similar problem was presented in Martinez v. Cox, supra. In that case the court interpreted the provisions of Section 54-7-15 (1953 Comp.) which stated that pursuant to a certain drug offense "...the imposition or execution of a sentence shall not be suspended or probation or parole shall not be granted until the minimum imprisonment provided for the offense shall have been served." The court concluded that when the legislature specifically states that a defendant is not eligible for parole until a specific amount of time has been served, good time only applies in that case as a deduction from the maximum sentence imposed by law and not from the minimum sentence. See also Coutts v. Cox, 75 N.M. 761, 411 P.2d 347 (1966).

For the foregoing reasons, it is the opinion of this office that a defendant sentenced to life imprisonment for the commission of a

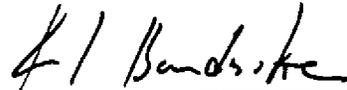
Mr. Thomas A. Rutledge

April 23, 1986

Page -3-

capital felony does not become eligible for parole until he has served thirty years of his sentence.

If you have any further questions concerning this matter, please feel free to contact me.



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PAUL BARDACKE  
Attorney Genral



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G.T.S. KHALSA  
Assistant Attorney General