

STATE OF RHODE ISLAND
DEPARTMENT OF CORRECTIONS
40 HOWARD AVENUE
CRANSTON, RHODE ISLAND

In the Matter of the Petition of
Miguel Lacourt for a
Declaratory Ruling

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RIDOC2024PDR013

DECISION

Introduction

On July 25, 2024, the Department of Corrections (“Department”) received Petitioner’s *Petition for Declaratory Ruling* (“Petition,” attached hereto as Exhibit A.) In the Petition, the Petitioner requests that the Department issue a “declaratory order on how it interprets and applies R.I. Gen Laws, sections 13-8-9(b) and 13-8-13(1), in so far as they pertain to establishing my aggregated parole eligibility.” *Exhibit A.* The Petition contains no factual allegations.

Issue

Whether the Department shall issue a declaratory order, decline to issue an order, or schedule the matter for further consideration.

Discussion

The applicable law regarding petitions for declaratory orders in the

administrative law context begins with R.I. Gen. Laws § 42-35-8(a), which states: “[a] person may petition an agency for a declaratory order that interprets or applies a statute administered by the agency or states whether, or in what manner, a rule, guidance document, or order issued by the agency applies to the petitioner.” Additionally, R.I. Gen. Laws § 42-35-8(c) provides: “[n]ot later than sixty (60) days after receipt of a petition under subsection (a), an agency shall issue a declaratory order in response to the petition, decline to issue the order, or schedule the matter for further consideration.” If an agency declines to issue a declaratory order, the decision must be in a record and must include a brief statement of the reasons for declining. An agency decision to decline to issue a declaratory order is subject to judicial review for abuse of discretion.

The Rhode Island Supreme Court has stated that R.I. Gen. Laws § 42-35-8 is “an administrative counterpart of the Declaratory Judgments Act.” *Liguori v. Aetna Casualty & Surety Company*, 384 A.2d 308, 312 (R.I. 1978). It is well-settled rule that “the Superior Court is without jurisdiction under the Uniform Declaratory Judgments Act unless it is confronted with an actual justiciable controversy.” *McKenna v. Williams*, 874 A.2d 217, 226 (R.I. 2005); *see also State v. Cianci*, 496 A.2d 139, 146 (R.I. 1985) (“the main prerequisite to successful prosecution of an action for declaratory judgment is the existence of an actual or justiciable controversy”). This principal applies equally to declaratory rulings under § 42-35-8. *See City of Providence Board of Licenses v. Department of Business Regulation of R.I.*, 2013 R.I. Super. LEXIS 195, *9 (November 18, 2013).

“It is fundamental that, to be entitled to a declaratory judgment, a plaintiff must both demonstrate a personal stake in the outcome of the controversy and advance allegations claiming an entitlement to actual and articulable relief.” *McKenna*, 874 A.2d at 227. “A declaratory-judgment action may not be used for the determination of abstract questions or the rendering of advisory opinions, nor does it license litigants to fish in judicial ponds for legal advice.” *Sullivan v. Chafee*, 703 A.2d 748, 751 (R.I. 1997)(internal quotations omitted). Additionally, a claim must be ripe for judicial review. “[A] claim is not ripe for adjudication if it rests upon contingent future events that may not occur as anticipated, or indeed may not occur at all.” *State v. Gaylor*, 971 A.2d 611, 614 (R.I. 2009). Ripeness is ultimately a “justiciability doctrine which seeks to avoid premature adjudication.” *Barletta/Aetna I-195 Wash. Bridge North Phase 2 JV v. State*, 2020 R.I. Super. LEXIS 107, *11 (PC-2020-06551).

The Petitioner’s request for a declaratory ruling is not justiciable. Petitioner has not presented the Department with any allegations or facts to support a finding that there is an actual case or controversy surrounding his “aggregated parole eligibility.” Furthermore, Petitioner has not advanced any allegations to suggest that he has standing, specifically that he has suffered an injury in fact or that he is immediately in danger of sustaining some direct injury. Petitioner is currently serving a sixty (60) years sentence for second degree murder, a consecutive life sentence for discharging a firearm when committing a crime of violence, and a 10 year sentence for carrying a pistol without a license which is concurrent to his life


sentence. *See* Exhibit B. Petitioner's sentences were imposed on April 22, 2024, and were made retroactive to August 19, 2021, giving him credit for time he spent incarcerated while he was awaiting trial. Petitioner's parole eligibility date is governed by R.I. Gen Laws § 13-8-9, Issuance of parole and § 13-8-13, Life prisoners and prisoners with lengthy sentences. Petitioner must serve more than twenty years of his sentence(s) to be eligible for parole under these statutory provisions. As of the date of this decision, Petitioner has only served three (3) years and nine (9) days. Accordingly, Petitioner's initial parole eligibility date is so afar that it is inconceivable that Petitioner has suffered any injury or is in danger of suffering any imminent injury as it pertains to his parole eligibility.

Additionally, the Department believes that this matter is currently not ripe for adjudication as a result of the Rhode Island Supreme Court's decision in *Neves v. State of Rhode Island*, SU-2022-0092-MP (PM-2022-00259); *Nunes v. State of Rhode Island*, SU-2022-0093-MP (PM-2022-00901); *Ortega v. State of Rhode Island*, SU-2022-0094 (PM-2022-00260); and *Monteiro v. State of Rhode Island*, SU-2023-167-MP (PM-2023-00921) (consolidated) which was issued on July 2, 2024. In this decision, the Court addressed chapter 8 of title 13 of the Rhode Island General laws, the statutory scheme that governs parole, and set forth specific findings regarding the calculation of parole eligibility. As a result of this decision, the Department is reviewing its methodology for calculating parole eligibility dates to ensure that's its methodology is in accord with the Court's findings. Accordingly, the Department believes that this matter is unripe for adjudication until it fully

implements changes to its parole calculation methodology and reviews Petitioner's parole eligibility date in the coming months.¹ *See Sasso v. State*, 686 A.2d 88, 91 (R.I. 1996) ("that which is not ripe for decision cannot and should not be decided in a declaratory-judgment action").

Petitioner's ultimate failure to establish the essential prerequisites of standing and the existence of an actual controversy demonstrate that this matter is not justiciable and that Plaintiff's request for declaratory ruling is nothing more than a request for an advisory opinion. Mindful of the Department's position that this matter is currently unripe for adjudication and in light of there being no justiciable basis for the requested declaratory ruling, the Department will not render an opinion on this matter.

For these reasons, the Department declines to issue a declaratory ruling.



Wayne T. Salisbury, Jr.
Director
Rhode Island Department of Corrections

August 27, 2024

¹ The Department is in the process of reviewing all prisoner parole eligibility dates that are affected by the Rhode Island Supreme Court's decision. Petitioner will receive a letter in the coming months that details his exact parole eligibility date.

NOTICE OF APPELLATE RIGHTS

This decision constitutes a denial to issue a declaratory order requested under R.I. Gen. Laws § 42-35-8(a). Pursuant to R.I. Gen. Laws § 42-35-8(d), this order may be subject to judicial review.

Certification

I hereby certify that on this 27th day of August 2024, that a copy of the within Decision was sent by inter-departmental mail to:

Miguel Lacourt (#163179)
Maximum Security
P.O. Box 8273
Cranston RI 02929

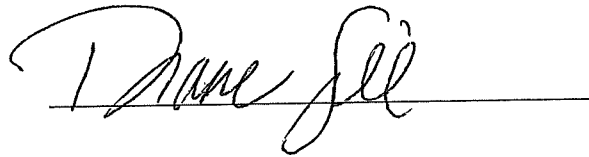


EXHIBIT A

Department of Corrections

JUL 25 2024

Office of the Director

LEGAL COUNSEL

JUL 25 2024

Department of Corrections

Miguel Lacourt
163479
Max A2-30

July 23, 2024

To: Acting Director Salisbury

Pursuant to R.I. Gen. Laws, section 42-35-8(a), I hereby petition the RIDOC to issue a declaratory order on how it interprets and applies R.I. Gen. Laws, sections 13-8-9(b), and 13-8-13(1), in so far as they pertain to establishing my aggregated parole eligibility.

Sincerely
Miguel Lacourt
Miguel Lacourt

EXHIBIT B

Providence/Bristol County Superior Court

Case Summary

Case No. P1-2022-0053AG

State of Rhode Island v. Miguel Lacourt

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Location: Providence/Bristol County Superior Court

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Filed on: 01/05/2022

Case Information

Offense	Statute	Degree	Offense Date	Filed Date	Case Type: Felony - Gun Calendar - Indictment
Jurisdiction: Providence Police Department					
1. Murder - 1st Degree	11-23-1	F	08/07/2021	01/04/2022	Case Status: 04/24/2024 Notice of Appeal Filed
2. Discharge of a Firearm When Committing a Crime of Violence - Death	11-47-3.2(b)	F	08/07/2021	01/04/2022	
3. Murder - 2nd Degree	11-23-1	F	08/07/2021	01/04/2022	
<i>Filed As: Murder - 1st Degree</i>					
<i>Original Statute: 11-23-1</i>					
<i>Original Degree: F</i>					
<i>Amended Date: 01/17/2024</i>					
4. Discharge of a Firearm When Committing a Crime of Violence - Death	11-47-3.2(b)	F	08/07/2021	01/04/2022	
5. Carry Pistol or Revolver Without License or Permit	11-47-8(a)	F	08/07/2021	01/04/2022	

Related Cases

62-2021-07779 (Related Case Number)
SU-2024-0251-MP (Supreme Lower Court Case)

Statistical Closures

01/17/2024 Disposed at Jury Trial

Party Information

Plaintiff State of Rhode Island

ERICKSON, SCOTT ALLAN
Retained

PITTNER, ARIEL
Retained

Defendant Lacourt, Miguel

PINE, JEFFREY B
Retained

Yingling, Angela M.
Public Defender

Agency PROVIDENCE POLICE DEPARTMENT

Dispositions

Providence/Bristol County Superior Court

Case Summary

Case No. P1-2022-0053AG

- 01/17/2024 **Disposition** (Judicial Officer: Krause, Associate Justice Robert D.)
1. Murder - 1st Degree
Not Guilty By Jury
 2. Discharge of a Firearm When Committing a Crime of Violence - Death
Not Guilty By Jury
 3. Murder - 2nd Degree
Found Guilty by Jury to Lesser Offense
 4. Discharge of a Firearm When Committing a Crime of Violence - Death
Found Guilty By Jury
 5. Carry Pistol or Revolver Without License or Permit
Found Guilty By Jury
- 04/22/2024 **Sentence** (Judicial Officer: Krause, Associate Justice Robert D.)
3. Murder - 2nd Degree
Judgment of Conviction Entered
Criminal Sentence
Effective Date: 04/22/2024
Term: 60 Years
Credit for Time Served
Condition - Adult:
 1. Total Assessments, 04/22/2024, Active 05/08/2024
- 04/22/2024 **Sentence** (Judicial Officer: Krause, Associate Justice Robert D.)
4. Discharge of a Firearm When Committing a Crime of Violence - Death
Judgment of Conviction Entered
Criminal Sentence
Effective Date: 04/22/2024
Life
Consecutive with Count 3
Credit for Time Served
- 04/22/2024 **Sentence** (Judicial Officer: Krause, Associate Justice Robert D.)
5. Carry Pistol or Revolver Without License or Permit
Judgment of Conviction Entered
Criminal Sentence
Effective Date: 04/22/2024
Term: 10 Years
Concurrent with Count 3
Credit for Time Served

Events and Orders of the Court

- 01/05/2022 Indictment Filed
- 01/07/2022 Entry of Appearance
- 01/11/2022 Entry of Appearance by Attorney General
- 01/21/2022 **Arraignment** (9:30 AM) (Judicial Officer: McBurney, Magistrate John F., III)
01/12/2022 Reset by Court to 01/19/2022
01/19/2022 Reset by Court to 01/19/2022
01/19/2022 Reset by Court to 01/21/2022
Passed
- 01/31/2022 **Arraignment** (9:30 AM) (Judicial Officer: McBurney, Magistrate John F., III)
Defendant Appears, Is Arraigned and Pleads Not Guilty
- 01/31/2022 Clerks Note (Remanded) PSC
- 01/31/2022 **Bond Setting**
Held Without Bail
- 02/01/2022 Motion for Discovery and Inspection
- 02/17/2022 Motion for Speedy Trial

Providence/Bristol County Superior Court

Case Summary

Case No. P1-2022-0053AG

03/08/2022 **Pre Trial Conference** (9:30 AM) (Judicial Officer: Krause, Associate Justice Robert D.)
01/26/2022 Reset by Court to 03/08/2022
Continued for Further Hearing

03/08/2022 Clerks Note PSC

03/31/2022 Response to Defendant's Request for Discovery and Inspection

03/31/2022 Request for Discovery and Alibi

04/07/2022 State's Supp Response to Motion for Discovery & Inspection

06/01/2022 **Pre Trial Conference** (9:30 AM) (Judicial Officer: Krause, Associate Justice Robert D.)
04/26/2022 Reset by Court to 06/01/2022
Continued for Further Hearing

06/01/2022 Clerks Note PSC

06/21/2022 State's Supp Response to Motion for Discovery & Inspection

06/22/2022 **Pre Trial Conference** (9:30 AM) (Judicial Officer: Krause, Associate Justice Robert D.)
Continued for Further Hearing

06/22/2022 Clerks Note PSC

08/04/2022 **Pre Trial Conference** (9:30 AM) (Judicial Officer: Krause, Associate Justice Robert D.)
07/29/2022 Reset by Court to 08/04/2022
Continued for Further Hearing

08/04/2022 Clerks Note PSC

09/07/2022 **Pre Trial Conference** (9:30 AM) (Judicial Officer: Krause, Associate Justice Robert D.)
Pending Further Investigation

09/07/2022 Clerks Note PSC

10/13/2022 **Pre Trial Conference** (9:30 AM) (Judicial Officer: Krause, Associate Justice Robert D.)
Case Passed for Trial

10/13/2022 Clerks Note PSC

10/17/2022 Motion

10/25/2022 **Hearing on Motion to Compel** (9:30 AM) (Judicial Officer: McBurney, Magistrate John F., III)
Pending Further Investigation

11/15/2022 **Hearing on Motion to Compel** (9:30 AM) (Judicial Officer: McBurney, Magistrate John F., III)
Pending Further Investigation

12/06/2022 **Hearing on Motion to Compel** (9:30 AM) (Judicial Officer: Procaccini, Associate Justice Daniel A.)
Pending Further Investigation

12/14/2022 **Hearing on Motion to Compel** (9:30 AM) (Judicial Officer: McBurney, Magistrate John F., III)
Pending Further Investigation

01/06/2023 **Hearing on Motion to Compel** (9:30 AM) (Judicial Officer: McBurney, Magistrate John F., III)
Passed

01/10/2023 Motion for Bail Review

01/13/2023 State's Supp Response to Motion for Discovery & Inspection

01/23/2023 **Bail Review** (9:30 AM) (Judicial Officer: Krause, Associate Justice Robert D.)
Denied

01/23/2023 Clerks Note (Remanded) PSC

02/08/2023 Entry of Appearance by Attorney General

03/13/2023 **CANCELED Trial** (9:30 AM) (Judicial Officer: Krause, Associate Justice Robert D.)
03/15/2023 Reset by Court to 03/13/2023
Date Vacated By Judge

03/13/2023 **Pre Trial Conference** (9:30 AM) (Judicial Officer: Krause, Associate Justice Robert D.)
Continued for Further Hearing

03/13/2023 Clerks Note PSC

Providence/Bristol County Superior Court

Case Summary

Case No. P1-2022-0053AG

05/01/2023 **Pre Trial Conference** (9:30 AM) (Judicial Officer: Krause, Associate Justice Robert D.)
Defense Attorney on Trial Other Court

05/01/2023 Clerks Note PSC

05/22/2023 **Pre Trial Conference** (9:30 AM) (Judicial Officer: Krause, Associate Justice Robert D.)
Pending Further Investigation

05/22/2023 Clerks Note PSC

06/19/2023 **CANCELED Trial** (9:30 AM) (Judicial Officer: Krause, Associate Justice Robert D.)
04/17/2023 Reset by Court to 06/19/2023
Date Vacated By Judge

07/12/2023 **Frye Hearing** (9:30 AM) (Judicial Officer: Krause, Associate Justice Robert D.)
06/29/2023 Reset by Court to 06/28/2023
06/28/2023 Reset by Court to 07/12/2023
Continued for Further Hearing

07/12/2023 Clerks Note (Remanded) PSC

07/26/2023 Clerks Note (Remanded) PSC

07/26/2023 State's Supp Response to Motion for Discovery & Inspection

09/15/2023 **Frye Hearing** (9:30 AM) (Judicial Officer: Krause, Associate Justice Robert D.)
07/26/2023 Reset by Court to 09/08/2023
09/08/2023 Reset by Court to 09/13/2023
09/13/2023 Reset by Court to 09/15/2023
Completed

09/15/2023 Clerks Note (Remanded) PSC

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Financial Information

Limited Appearance Yingling, Angela M.	
Total Financial Assessment	78.00
Total Payments and Credits	78.00
Balance Due as of 08/27/2024	0.00
07/23/2024 Transaction Assessment	78.00
07/23/2024 State Waiver	(78.00)