19-5127 NUMBER ORIGINAL

UNITED STATES SUPREME COURT

WILLIAM DUNNE, PETITIONER-APPELLANT,

VERSUS

G. J. BISSETT, WARDEN, RESPONDENT-APPELLEE.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT REGARDING ITS AFFIRMATION OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF CALIFORNIA'S DENIAL OF PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO TITLE 28 UNITED STATES CODE SECTION 2241

PETITION FOR WRIT OF CERTIORARI

BY WILLIAM DUNNE, PRO SE

FEDERAL REGISTER NUMBER 10916-086

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QUESTION FOR REVIEW

Does pre-Sentencing Reform Act of 1984 (SRA)--"old law" --parole statute 18 USC §4206(d) mandating federal prisoners' release on parole absent certain findings after service of two-thirds or thirty years of each consecutive term or terms, whichever is earlier, apply to petitioner's 1980 95 year aggregate federal sentence such that he is eligible for mandatory parole after serving 30 years or to the dis-aggregated individual components of that sentence such that he must serve two-thirds of each for a total of 63 1/3 years prior to mandatory parole eligibility?

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PARTIES

Petitioner-Appellant William Dunne (hereinafter "Dunne") is a federal prisoner currently confined to Federal Correctional Institution One of the Federal Correctional Complex at Victorville, California (FCC Victorville FCI-1). The United States Bureau of Prisons (BOP) transferred Dunne to FCI-1 on 24 April 2017. Dunne was arrested in 1979 in Seattle, Washington. He is presently serving a 95 year federal sentence with no detainers or warrants pending. He complains of the BOP's computation of that snetence and is proceeding pro se.

Respondent-Appellee Warden G. J. Bissett was the chief executive officer of the Federal Correctional Institution at Herlong California, the federal prison at which Dunne was confined when he filed the Petition for Writ of Habeas Corpus Pursuant to 28 USC §2241 whose denial occasioned the appeal whose denial begat this petition. Dunne is unaware of Bissett's current whereabouts or official position, if any. Dunne has been litigating this case on appeal through respondent's counsel, Timothy Delgado, Assistant U. S. Attorney, 501 I St., Ste. 10-100, Sacramento, CA 95814.

When Felicia Ponce succeeded Bissett as Warden of FCI Herlong and Dunne's immediate custodian, the District Court for the Eastern District of California, in which Dunne's petition was still pending, substituted Ponce as respondent. After Dunne's transfer from FCI Herlong to FCC Lompoc Medium, the district court changed the respondent to Dunne's then immediate custodian, Stephen Langford, warden of FCC Lompoc. The district court denied Dunne's

petition under the name Dunne vs. Langford. The Ninth Circuit Court of Appeals sua sponte restored Bissett and deleted Langford as respondent on appeal.

The BOP, though not named as a respondent, is also an interested party to this petition because it is the BOP's Designation and Computation Center's (DSCC) computation of Dunne's Sentence this petition challenges. The BOP's Central Office address is: 32o First St. NW, Washington, DC 20534. Its DSCC address is: 346 Marine Forces Dr., Grand Prairie, TX 75051.

The U. S. Parole Commission is another unnamed interested party. The statute at issue directs the Commission to release Dunne on his completion of 30 years' service of his sentence or make certain findings. The Commission has done neither; it claims it may not do the former and does not have to do the latter on the basis of the BOP's calculation of Dunne's (and many other prisoners') dis-aggregated federal sentences.

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CITATIONS OF THE CASE

The citation for the Ninth Circuit Court of Appeals's Memorandum Opinion that motivated this petition is: Dunne vs. Bissett, 735 F.Appx. 405 (9th Cir. 2018); 2018 U. S. App. LEXIS 23399, Ninth Circuit Number 17-16231. See Appendix 2-4. The 14 January denial of Dunne's Petition for Rehearing En Banc is Appendix 2.

The citation for the District Court for the Eastern District of California's denial of Dunne's Petition for Writ of Habeas Corpus Pursuant to 28 USC §2241, which he appealed to the Ninth Circuit resulting in the above denial citation, is: Dunne vs. Langford, 2017 U. S. Dist. LEXIS 5598 (EDCA 2017), EDCA Number 2:15-cv-0549-JAM-EFB-P. See Appendix 5-17.

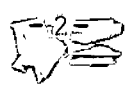
The citations for the administrative remedy requests for resolution of Dunne's complaint about his sentence computation addressed herein are: BOP() administrative remedy request ID Number 389274-F1 for the first formal, institution, level, 389274-R1 for the regional appeal, and 389274-A1 for the central office appeal. See Appendix 17-26.

STATEMENT OF JURISDICTION

After a district court sentences a federal offender, the Attorney General, through the BOP, has the responsibility for administering the sentence. U. S. vs. Wilson, 503 U.S. 329, 325 (1992)(citing 18 USC §3621(a)). This includes responsibility for computing time credits and determining a sentence termination date once the defendant actually commences serving his or her sentence. 503 U. S. at 333-35; U. S. vs. Checcini, 967 F.2d 348, 349 (9th Cir. 1992).

The BOP's custody of Dunne, and thus its authority to administer his sentence, including calculating his time credits and sentence termination date, however, are accorded by 18 USC §4082, because Dunne was sentenced prior to the Sentencing Reform Act of 1984 (SRA). In U. S. vs. Rocha-Leon, 187 F.3d 1157, 1158 (9th Cir. 1999), the Ninth Circuit Court of Appeals wrote: "The Sentencing Reform Act of 1984 (SRA), 18 USC §3551 et seq., repealed and replaced it with 18 USC §3621." (emphasis added), citing Delancy vs. Crabtree, 131 F.3d 780 (9th Cir. 1997. In Delancy, the Ninth Circuit found that Delancy was in BOP custody under 18 USC §4082 because his offenses, like Dunne's, occurred before 1 November 1987.

Once a federal prisoner commences his or her federal sentence and exhausts his or her administrative remedies, he or she can petition for judicial review of the Attorney General's computation of his or her sentence. Wilson, 503 U. S. at 335; Checcini, 967 F.2d at 350. This is done by way of a petition for writ of habeas corpus under 28 USC §2241. U. S. vs.



Keller, 956 F.2d 1408, 1417 (9th Cir. 1992); accord, U. S. vs. Giddings, 740 F.2d 770, 772 (9th Cir. 1984). The writ can issue only from a court with jurisdiction over the prisoner or his or her custodian, so any habeas petition seeking review of time credits must be addressed to the district court where the petitioner is confined. Id. See also Dunne vs. Henman, 875 F.2d 244, 249 (9th Cir. 1989).

Dunne contends the BOP miscalculates his sentence and its termination date based on the BOP's misinterpretation of "old law" parole statute 18 USC §4206(d). See next section, "Relevant Constitutional Provisions, Statutes, and Regulations". Dunne exhausted administrative remedies regarding the BOP's computation error on 8 April 2014. See Appendix 17-26. Dunne was confined to the Federal Correctional Institution at Herlong, California, within the territory adjudicated by the U. S. District Court for the Eastern District of California (EDCA) at the time he filed his petition. Thus, the EDCA had jurisdiction to hear his petition contesting the calculation error pursuant to 28 USC §2241(c)(3). The court denied Dunne relief in a final order dated 19 April 2017, adopting the magistrate-judge's "Findings and Recommendations" of 13 January 2017. See Appendix 5-16. Dunne timely filed a notice of appeal on 12 June 2017.

The territory of the Ninth Circuit Court of Appeals encompasses the EDCA, so it had jurisdiction pursuant to 28 USC §1291 to hear Dunne's appeal of the EDCA's final order denying his petition. Sanchez vs. Matavousian, 2017 U. S. App. LEXIS 2017 (9th Cir. 2017). The Ninth Circuit denied Dunne's appeal,

Ninth Circuit Number 17-16321, on 21 August 2018 and his Petition for Rehearing En Banc on 14 January 2019. See Appendix (2-4).

This Court has jurisdiction to hear this Petition for Writ of Certiorari to the Ninth Circuit's denial of Dunne's appeal of the denial by the EDCA of his Petition for Writ of Habeas Corpus Pursuant to 28 USC §2241 pursuant to 28 USC §1254 (1). See also Hiatt vs. Brown, 339 U. S. 103, 106 & n. 1 (1950).

RELEVANT CONSTITUTIONAL PROVISIONS, STATUTES, & REGULATIONS

U. S. Constutution, Amendment 5: No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb, nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, limb, or property without due process of law; nor shall private property be taken for public use, without just compensation.

Title 18 United States Code Sections 4161-4166: The Federal Correctional Institution to which petitioner is confined provides an electronic law library that does not include these repealed statutes. Education Department staff responsible for what legal materials are available have been unable to locate a source for these statutes.

Title 18 United States Code Section 4205(a): Time of Eligibility for Release on Parole. Whenever confined and serving a definite term or terms of more than one year, a prisoner shall be eligible for release on parole after serving one-third of such term or terms or after serving ten years of a life sentence or of a sentence of over thirty years, except to the extent otherwise provided by law.

Title 18 United States Code §4206(d): Parole Determination Criteria. Any prisoner, serving a sentence of five years

or longer, who is not earlier released under this section or any other applicable provision of law, shall be released on parole after having served two-thirds of each consecutive term or terms, or after serving thirty years of each consecutive term or terms or more than forty-five years including any life term, whichever is earlier. Provided, however, [italicized in original], That the Commission shall not release such prisoner if it determines that he [sic] will commit any Federal, State or Local crime.

Sentencing Reform Act of 1984, Pub.L. 98-473, Title II, Ch. II, §235, 98 Stat. 2031, as amended: Dec. 26, 1985, Pub.L. 99-217, §§2, 4, 99 Stat. 1728; Nov. 10, 1986, Pub.L. 99-646, §35, 100 Stat. 3559; Dec. 7, 1987, Pub.L. 100-182, §2, 101 Stat. 1226; Oct. 2, 1996, Pub.L. 104-232, §§3(b)(2), 4, 10, 110 Stat. 3056; Aug. 12, 2008, Pub.L. 110-312, §2, 122 Stat. 3013; Oct. 21, 2011, Pub.L. 112-44, §1, 125 Stat. 3282; Oct. 31, 2013, Pub.L. 113-47, §1, 127 Stat. 572; U. S. Parole Commission Extension Act of 2018, H. R. 6896.

(b)(1) The following provisions of law in effect on the day before the effective date of this Act shall remain in effect for 33 years after the effective date as to an individual who committed an offense or an act of juvenile delinquency before the effective date and as to a term of imprisonment during the period described in subsection (a)(1)(B):

(A) Chapter 311 of Title 18, United States Code;

(B) Chapter 309, United States Code;

(F) The maximum term of imprisonment in effect on the effective date for an offense committed before the effective date.

Title 28 Code of Federal Regulations §2.5. Sentence Aggregation. When multiple sentences are aggregated by the Bureau of Prisons pursuant to 18 USC 4161 and 4205, such sentences are treated as a single aggregate for the purpose of every action taken by the Commission pursuant to these rules, and the prisoner has a single parole eligibility date as determined by the Bureau of Prisons.

Title 28 Code of Federal Regulations §2.53. Mandatory Parole. (a) A prisoner... serving a term or terms of five years or longer shall be released on parole after completion of two-thirds of each consecutive term or terms or after completion of thirty uears of each term or terms of more than 45 years (including life terms), whichever comes earlier, unless pursuant to a hearing under this section, the Commission determines that there is a reasonable probability that the prisoner will commit any Federal, State, or local crime or that the prisoner has frequently or seriously violated the rules of the institution in which he is confined. If parole is denied pursuant to this section, such prisoner shall serve to the expiration of his sentence less good time.

STATEMENT OF THE CASE

Dunne was arrested on 14 October 1979 in Seattle, WA. He was charged in state court with conspiring to effect and effecting the escape of prisoners, auto theft, and possession of a machine gun. He was convicted of these offenses by King County Superior Court after a jury trial in 1980 and sentenced to 15 years in state prison, case number 79-1252-0. See Appendix 30-31).

Dunne was also indicted by the Western District of Washington (WDWA) for conspiracy to effect the escape of a federal prisoner and committing three armed bank robberies in furtherance of the conspiracy. He was convicted of all four counts after a U. S. District Court for the WDWA jury trial in 1980 and sentenced to 80 years in federal prison. The court ordered the 75 years for the banks to run consecutively to the state time and recommended that the five years for the conspiracy be concurrent to the state time. The court apparently intended the recommendation to reflect the government needed the conspiracy charge for its vicarious liability theory in the federal bank robbery case against Dunne even though the conspiracy had already been tried in the state. See Appendix 27.

Finally, Dunne was charged with attempted escape, aiding and assisting attempted escape, and conveying a weapon within a penitentiary by the Middle District of Pennsylvania (MDPA) in 1983. He was convicted of these offenses after a 1984 U. S. District Court for the MDPA jury trial, case number CR83-0154-01.

He was sentenced to a consecutive 15 years in prison on these convictions. See Appendix 28-29.

In October of 1980, Dunne was sent to Washington State Penitentiary to serve his state sentence, against which presentence jail time was credited. See Appendix 28. In June of 1982, Dunne was consigned to the federal prison system as a state boarder. He was changed to a federal prisoner a few weeks later in light of his prospective federal sentence. The state sentence ended on 18 March 1991. See Appendix 31.

The BOP initially started computing Dunne's federal sentence from the date of his federal sentencing. Later it changed that date computation began (DCB) to 18 March 1991. In 1999, however, it rolled the DCB back to 18 March 1986. It did this in response to Dunne's administrative complaint that the government had started his federal sentence running as of his federal sentencing and was bound by that error. The BOP contended, and still contends, that the 18 March 1986 DCB adequately addresses that complaint and the recommendation that the 1980 federal five year conspiracy sentence be concurrent with the state time. See Appendix 30-31.

From that DCB, the BOP computed Dunne's initial parole eligibility (one-third or ten year date)and statutory good-time based on the aggregate 95 year sentence (the WDWA 80 plus the MDPA 15). See Appendix 29. It then, based on its 1994 policy (Program Statement 5880.30, Appendix 32-34) for calculating old-law sentences, computed his mandatory release (two-thirds or 30 year parole date) based on the dis-aggregated sentence. It

contends the two-thirds dates of each of Dunne's 5, 25, 25, 25, 5, and 10 year terms are "stacked", so Dunne must serve them serially. The BOP claims that since no single term is more than 45 years, the 30 year maximum is inapplicable. See Appendix 29; see also Appendix 20, 22, administrative remedy responses. Therein lies the rub.

("Mandatory Release" is a misnomer. The mandatory release envisioned by 18 USC §4206(d) and 28 CFR §2.53 after two-thirds or 30 years is conditioned on the parole commission not finding the prisoner is likely to commit another crime or has seriously or frequently violated prison rules. While there may be a problem with the commission making findings it then uses to postpone release beyond the statutory maximum, release is not truly mandatory under §4206(d) as written. "Statutory Release", on the other hand, is release after all good time credits earned under old law statutes 18 USC §4161 et seq. are deducted and is thus the true "Mandatory Release". Custom and long use, however, have made "Mandatory Release" the term or art for the two-thirds or 30 year parole date.)

The U. S. Parole Commission gave Dunne an initial parole hearing in 2000, which resulted in the commission setting a 15 year reconsideration hearing date for 2015. Dunne requested, and the commission gave him, statutory interim hearings in 2002, 2004, 2007, 2009, 2011, and 2013. After the 2009 hearing, the commission advanced Dunne's reconsideration hearing to 2014 for "superior program achievement". At the 2014 hearing, however, the commission set another 15 year reconsideration hearing for

2029. The commission also gave Dunne an interim hearing in 2016 but did not in 2018 despite his properly made request. That failure/refusal is currently under administrative appeal with both the commission and the BOP.

Dunne challenged the commission's 2000 postponement of parole conisderation beyond 30 years from the time he then believed his federal sentence started as one of several issues in Dunne vs. Olson, TH02-062-C, a habeas corpus petition he filed in the Southern District of Indiana (SDIN) in 2002. Dunne reasoned that 18 USC §4206(d) requiring his release after 30 years absent certain findings by the commission was aimed at the commission as the only body authorized to parole prisoners and obligated the commission to make its own calculation of his sentence for §4206(d) purposes. The district court ignored §4206 (d)'s 30 year provision and merely insisted Dunne must serve two -thirds of his sentence without citing any authority for the claim. The Seventh Circuit, however, concluded: "Dunne has not demonstrated that he exhausted his administrative remedies within the Bureau of Prisons regarding his release date, and we cannot consider it now." It did indicate the likely result of such consideration would be unfavorable. Dunne vs. Olson, 67 F.App'x 939, 945 (7th Cir. 2003). This Court declined to review that decision. Dunne vs. Olson, 540 U.S. 1068 (2003).

Dunne also challenged the commission's 2009 decision to not grant parole via habeas corpus in the Eastern District of Kentucky in Dunne vs. Zuercher, 2011 U. S. Dist. LEXIS 156275 (EDKY 2011). The EDKY accepted the exhaustion of the parole

commission's administrative remedy process as exhaustion, but it denied itself jurisdiction to hear the case on the basis that the Seventh Circuit had made a "determination" on the §4206(d) issue, precluding consideration by the EDKY. Like the Seventh Circuit, after deciding it could not decide the issue, the EDKY disparaged Dunne's §4206(d) claim, albeit without citing any authority. The Sixth Circuit upheld the EDKY sub nom Dunne vs. Martinez, 2012 U. S. App. LEXIS 27123 (6th Cir. 2012), but merely insisted that Dunne must serve two-thirds of each of his deaggregated terms. It also cited no authority.

Dunne sought this Court's review of the decision in 2013, but his petition was rejected as untimely because his then place of confinement was locked down long enough that he could not get the petition mailed in 90 days plus one 60 day extension. Dunne vs. Martinez, No. 13M44, 187 L.Ed.2d 314 (21 October 2013).

Unsuccessful at challenging the parole commission's use of the BOP's calculation of his sentence to circumvent §4206(d)'s 30 year provision, Dunne challenged the BOP's calculation itself. After exhausting administrative remedies (See Appendix 17-26), Dunne filed a habeas corpus petition contesting the BOP's computation of his Mandaroty Release date in the Eastern District of California (EDCA) in March of 2015. The EDCA denied the petition in April of 2017 sub nom Dunne vs. Langford, 2017 U.S. Dist. LEXIS 5598 (EDKY 2017). See Appendix 7-16. Dunne appealed. The Ninth Circuit denied Dunne's appeal on 21 August 2017 and his petition for rehearing en banc on 14 January 2019. It also cited no authority for its conclusion. See Appendix 2-4. This ensues.

ARGUMENT

The Introduction

Prior to the 1 November 1987 effective date of the Sentencing Reform Act of 1984 (SRA), federal prisoners' sentences were executed pursuant to the Parole Commission Reorganization Act of 1976, Pub.L. 94-233, 90 Stat. 219 (March 15, 1976). Under this Act, prisoners with long sentences were eligible for discretionary release on parole after serving one-third or ten years of their term or terms and mandatory release on parole after the lesser of two-thirds or thirty years of their term or terms. Congress had used that Act to prescribe that system for determining how much time a prisoner actually serves on the sentence imposed by the judge. Congress charged the U.S. Bureau of Prisons with calculating eligibility and expiration dates and the U. S. Parole Commission with granting or denying parole according to the statutes derived from the Act.

The parole statutes were repealed by the SRA but remained in effect for prisoners whose offenses occurred prior to 1 November 1987. Petitioner Dunne is such a prisoner. Dunne is serving a 95 year federal sentence composed of one ten, two five, and three 25 year terms. According to "old law" statute 18 USC §4206(d), he should have been scheduled for Mandatory Release (MR) on parole on 17 March 2016, 30 years from his date computation began (DCB), 18 March 1986, absent certain findings by the commission it has not made. See Appendix 28. Section

4206(d) provides for the "mandatory release" (MR) on parole of prisoners who have served "thirty years of each consecutive term or terms of more than 45 years, including any life term, whichever is earlier." 18 USC §4206(d).

The BOP claims--and the parole commission accepts--that the "thirty years of each consecutive term or terms of more than 45 years" language means Dunne must serve two-thirds of each nickel, dime, quarter serially and, because none of the individual terms is more than 45 years, the 30 year provision does not apply. But the words "each consecutive term" would have enunciated that intent without the "or terms". Dunne contends the "or terms" is not surplusage and applies as "or group of terms" would to his (and any other old law prisoner's) aggregate sentence and not to its dis-aggregated parts.

The statutory interpretation question, however, is not the most important one in this petition (except to Dunne), although it necessarily must be answered to resolve the issue. The more important issue is the meaning of an aggregate sentence and the Ninth Circuit's departure from the teachings of no less than four of this Court's relevant cases and the inconsistencies the departure induces in the law.

The Ninth Circuit diverges here from this Court's ruling in Peyton vs. Rowe, 391 U. S. 54 (1968). Therein the Court determined that consecutive sentences are a single aggregate for purposes of challenges to sentence components. The Ninth Circuit here allows--indeed, requires--sentence dis-aggreegation.

The Ninth Circuit diverges here from this Court's ruling in Garlotte vs. Fordice, 515 U. S. 39 (1995). Therein the Court held that consecutive sentences are a single aggregate for purposes of retrospective challenges to sentence components. Garlotte cited Peyton, somewhat testily over having to revisit a done deal. The Ninth Circuit here allows--indeed, requires--sentence dis-aggregation.

The Ninth Circuit diverges here from this Court's ruling in U. S. vs. Addonizio, 442 U. S. 178 (1979). Therein the Court described the system Congress prescribed for determining how long a prisoner would actually serve on a given old-law sentence as the parole statutes applied to the aggregate sentence in explaining why the sentencing judge's expectations about actual sentence duration were entitled to no deference. The Ninth Circuit here ratifies applying the statutes to dis-aggregated sentences.

The Ninth Circuit diverges here from this Court's ruling in Chevron vs. Natural Resources Defense Council, 467 U. S. 837 (1984). Therein this Court held that agency regulations interpreting statutes have the force of law and are entitled to deference by courts. The Ninth Circuit here ignores Title 28, Code of Federal Regulations's interpretation of old-law parole statutes in favor of contrary BOP "program statements".

Accordingly, in the following four sections, Dunne propvides discussion of "The Statutes and Regulations", "The Supreme Court Cases", "The Lower Court Cases", and "The BOP's

Position's Inconsistencies" that makes him think the BOP's misinterpretation of old-law statute 18 USC §4206(d) as applied to his case is evidence of a larger problem whose solution will not only save him 31 1/3 years in prison (he has already served almost 40), but will also repair the damage to the law the Ninth Circuit's failure to follow this Court's lead has done and will do not only regarding pre-SRA sentences but regarding sentence aggregation generally.

The Court's statutory interpretation of §4206(d) and its application thereof to aggregate sentences is also an important issue of public concern beyond the legal issue: it may also determine the fate of the U. S. Parole Commission. Virtually all of the fewer than 400 old-law prisoners have now served more than 30 years. Apprendi and progeny may foreclose the Commission making the findings required to take them beyond §4206(d)'s statutory maximum. Thus, the Court's decision could finally get the commission to do what Congress told it to do 35 years ago.

The Statutes and Regulations

The BOP is interpreting old-law statute 18 USC §4206(d) as requiring serial rather than aggregate service of Dunne's 95 year aggregate federal sentence. It errs. This section states:

> Any prisoner, serving a sentence of five years or longer, who is not earlier released under this section or any other applicable provision of law, shall be released on parole after having served two-thirds of each consecutive term or terms, or after serving thirty years of each consecutive term or terms of more than forty-five years, including any life term, whichever is earlier. Provided, however, That the Commission shall not release such prisoner if it determines that he [sic] has seriously or frequently violated institution rules and regulations or that there is a reasonable probability that he [sic] will commit any Federal, State, or local crime.

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Congress has repeatedly passed legislation to keep the pre-SRA parole system, including 18 USC §§4201-4218 and §§4161-4166 in effect for those prisoners who committed crimes prior to 1 November 1987. The latest is the Parole Commission Extension Act of 2018, which extended the life of the commission until 1 November 2020, its eigth extension for a total of 33 years. No amendments to these parole statutes have been made since their passage as part of the Parole Commission Reorganization Act of 1976 in any way that might affect their meaning. Indeed, Congress has reconsidered these statutes many times in extending the life of the parole commission and has not changed them, a clear indication of Congressional intent and satisfaction with the intent's statutory expression in these statutes. Terrell vs.

U. S., 564 F.3d 442, 449 (6th Cir. 2009).

Lest there be any doubt that Congress intended §4206 (d)'s "thirty uears of each consecutive term or terms of more than forty-five years" to apply to aggregate federal sentences, another old-law statute Congress has repeatedly reauthorized, 18 USC §4161, makes it more explicit. Section 4161 states in relevant part:

> When two or more consecutive sentences are to be served, the aggregate of the several sentences shall be the basis on which the deduction shall be computed.

The deduction is reduction in the prisoner's sentence for observance of the rules and "programming" during imprisonment--an entitlement to good conduct time of various kinds. See 18 USC § 4166 and 4206(d). The reduction due pursuant to §4206(d) on Dunne's 95 year sentence to 30 years' service and release on parole is such a deduction. Wyatt vs. U. S. Parole Com'n, 1999 U. S. App. LEXIS 21539 (9th Cir. 1999). Title 18 USC §4205(a)'s relevant language further demonstrates the aggregation intent:

> Whenever confined and serving a term or terms of more than one year, a prisoner shall be eligible for release on parole after serving one-third of each term or terms or after serving 10 years of a life sentence or of a sentence of more than 30 years.

Aggregation is required to determine the one-third or 10 year date, and the BOP does, indeed, aggregate all sentences in order to do so. None of these statutes say anything about non- or dis-aggregation or treating computation of discretionary parole eligibility (one-third/ 10 year) and mandatory parole

eligibility (two-thirds/thirty year) differently. These statutes' language prompted the Justice Department to promulgate interpretive regulations to implement the Congressional intent. They, too, require aggregation of sentences for administrative purposes. Title 28 CFR §2.5 states in relevant part:

> When multiple sentences are aggregated by the Bureau of Prisons pursuant to 18 USC 4161 and 4205, such sentences are treated as a single aggregate sentence for the purpose of every action taken by the [Parole] Commission pursuant to these rules, and the prisoner has a single parole eligibility date as determined by the Bureau of Prisons. [Emphasis added.]

Those actions include those prescribed by 28 CFR §2.53, the language of which mirrors §4206(d):

> A prisoner... shall be released on parole after completing two-thirds of each consecutive term or terms or after completing thirty years of each term or terms of more than forty-five years (including life terms), whichever comes earlier, unless pursuant to a hearing under this section the Commission determines that there is a reasonable probability that the prisoner will commit... a crime or... has violated... the rules.

Determining whether to accord Mandatory Release (parole after serving two-thirds or 30 years of long sentences) is "action taken by the Commission pursuant to these rules". Hence, if the commission is going to be able to treat the sentences as an aggregate, the BOP must do so, too, in fulfilling its part of the regulation's instructions. 28 CFR §523.1(a) directs the BOP to do precisely that:

> The total amount of statutory good time which [a prisoner] is entitled to have deducted on any given sentence, or aggregate of sentences, is calculated and

credited in advance, when the sentence is computed.

Through all of these statutes and regulations, it is not until the matter descends all the way to the BOP Program Statement that there is any mention of dis-aggregation or "stacking". Program Statement (PS) 5880.30, Sentence Computation Manual ("Old-Law--Pre-CCCA of 1984), directs the computation of the one-third/10 year date on the basis of the aggregate sentence, emphacizing that there is a "10 year cap rule" for discretionary parole eligibility. See Appendix 32. The PS does not and has not and cannot explain why this rule does not also apply to the two-thirds/30 year date. The PS says the two-thirds/30 year date must be computed on the basis of each individual term "stacked". See Appendix 20, 28, 31. In other words, the BOP aggregates prior to computing the 10 year date but dis-aggregates prior to computing the 30 year date.

Hence, instead of following the plain statutory and regulatory language and according Dunne the 30 year Mandatory Release on parole date, the BOP claims that pursuant to its current iteration of PS 5880.30 the 30 year parole date does not apply to Dunne. The BOP claims that Dunne must serve two-thirds of each deaggregated term, each "stacked" upon the next, which stack is then reaggregated to an altitude of 63 1/3 years rather than 30 years. The BOP claims this is because none of the dis-aggregated individual terms is more than 45 years, even though the BOP's "stack" is. These claims are inconsistent with the BOP's determination of Dunne's (and other old law prisoners')

initial, discretionary parole eligibility under §4205(a), good time under §4161, and the plain Mandatory Release language of §4206(d).

"[A]fter serving thirty years of each consecutive term or terms of more than forty-five years" clearly encompasses both single terms and aggregate sentences of more than forty-five years. "[O]f each consecutive term" by itself would have covered the BOP's position if that is what Congress intended, but that would leave "or terms" meaningless surplusage. But an agency such as the BOP must give effect to every word of a statute and not act so as to leave any without meaning. Syed vs. M-I LLC, Inc., 846 F.3d 1034, 1042 (9th Cir. 2016)("It is our duty to give effect, if possible, to every clause and word of a statute." (Internal quotations and citations omitted.))

"Each consecutive term or terms" in §4206(d) covers "each consecutive term" and "each consecutive group of terms" in the same way "such term or terms" means "such term or group of terms in Garlotte vs. Fordice, 515 U. S. at n. 5: "the maximum term or terms" means "the maximum term or group of terms" in Benny vs. U. S. Parole Commission, 295 F.3d 977, 982 (9th Cir. 2002); "a definite term or terms" means "a definite term or group of terms" in U. S. vs. Allen, 157 F.3d 661, n. 4 (9th Cir. 1998; "each term or terms" means "each term or group of terms" in 18 USC §4205(a); "a specified term or terms" means "a specified term or group of terms: in In re Gil, 2008 Bankr. LEXIS 1814 (DID 2008); and "a subsequent term or terms" means "a subsequent term or group of terms" in U. S. vs. Wing, 682 F.3d 861,

871 (9th Cir. 2014). None of the words in these "term or terms" phrases as used are nonsensical, unclear, or without meaning when they are read thusly. The same is true of "each consecutive term or terms" in §4206(d). It is not true in PS 5880.30.

Section 4206(d), especially when read together with §4205(a), §4161, §2.5, and §2.53, thus directs the release on parole of prisoners such as Dunne who have served 30 years on sentences such as Dunne's federal 95 year aggregate and regarding whom the parole commission has not made the specified findings. Dunne's DCB plus 30 years should therefore be listed as his projected satisfaction/Mandatory Release date in the BOP's "Sentence Monitoring Computation Data" sheet. See Appendix 28. Mandatory language such as §4206(d)'s creates a legitimate expectation of parole and thus a liberty interest in and a constitutional right to parole, Greenholtz vs. [Prisoners] of Nebraska Penal and Correctional Complex, 442 U. S. 1, 12 (1979). Section 4206(d) gave Dunne this interest in and right to a mandatory release on parole date of 17 March 2016.

The Supreme Court Cases

In Peyton vs. Rowe, 391 U. S. 54 (1968) and Garlotte vs. Fordice, 515 U. S. 39 (1995), this Court bookended the aggregation issue. In Peyton, the Court held that prisoners were "in custody" under the aggregate of their consecutive sentences and so could challenge sentences the State of Virginia contended they could not because they had not begun to serve them. The Peyton Court predicated its conclusion in part on the fact that Virginia considered Rowe to be in custody for 50 years, the aggregate of his 30 and 20 year terms, not two separate terms. 391 U. S. at 64. Here, the BOP considers Dunne to be in custody for 95 years, not six separate terms. See Appendix 28.

In Garlotte vs. Fordice, the Court wrote a generation later: "Garlotte seeks to attack a conviction that was first in a consecutive series, a sentence already served, but one that nonetheless persists to postpone Garlotte's eligibility for parole. Following Peyton, we do not dis-aggregate Garlotte's sentences, but comprehend them as a continuous stream." 515 U. S. at 41, and at 46-47: "Having construed the term 'in custody' to require that consecutive sentences be served in the aggregate, we will not now adopt a different construction simply because the challenged conviction lies in the past rather than the future.... Under Peyton, we view consecutive sentences in the aggregate, not as discrete segments." But the BOP is treating Dunne's sentences as discrete segments, not in the aggregate.

Dunne seeks to do what Rowe and Garlotte did: challenge

the unconstitutional execution of both sentences that have already run and sentences that cannot have run under the BOP's mandatory parole eligibility scheme. Specifically, he challenges the BOP's practice of disaggregating consecutive terms, finding two-thirds or 30 years of each term and claiming the sum of the two-thirds dates is the proper Mandatory parole eligibility date for an aggregate sentence of greater than 45 years.

Sentences come to the BOP aggregated, §2.53 (and other authority) instructs the BOP to administer sentences and so derive mandatory parole eligibility on the basis of the aggregate, and Garlotte instructs the BOP not to disaggregate sentences. The BOP thus cannot even "see", let alone use, consecutive terms' individual two thirds dates in its calculations. It cannot escape its error of "stacking" these two-thirds dates by calling their sum an aggregate. That stack would, itself, be a sentence of more than 45 years to which the 30 year Mandatory Release on parole date would apply.

Making Peyton, and particularly Garlotte, directly applicable to Dunne's case is that the Court predicated its holdings in substantial part on Rowe's and Garlotte's parole treatment under the laws of their respective states. The Garlotte Court wrote at footnote five:

> That Mississippi itself views consecutive sentences in the aggregate for various penological purposes reveals the difficulties courts and prisoners would face trying to determine when one sentence ends, and another begins. For example, Mississippi aggregates consecutive sentences for the purposes of parole eligibility, see Miss. Code Ann. 47

> -7-3(1)(Supp. 1994)("Every prisoner who has served not less than one-fourth (1/4) of the total of such term or terms for which such prisoner was sentenced... may be released on parole as hereinafter provided....")[] and for the purposes of meritorious earned time, see Miss. Code Ann. §47-5-134(3)(1981)("An offender under two or more consecutive sentences may seek commutation based on the total term of the sentences.").

The Eastern District of California says here merely that neither Peyton nor Garlotte address the specific issue Dunne raises. Au contraire! If sentences are single, aggregate entities and must be administered as such as all the statutes, regulations, and these cases say, then Dunne is correct; if sentences are a concatenation of separate entities that can be treated independently, then the BOP is right. Peyton and Garlotte say they are aggregates and so militate in favor of Dunne. The Ninth Circuit says nothing about Peyton or Garlotte.

U. S. vs. Addonizio, 442 U. S. 178 (1979), also supports Dunne. There, this Court clarified the application of the 30 year mandatory parole release eligibility specifically at note 13:

> A federal prisoner is entitled to release at the expiration of his [sic] maximum sentence less good time computed according to 18 USC §4161. In addition, any prisoner sentenced to more than five years' imprisonment is entitled to release on parole after serving two-thirds of each consecutive term or 30 years, whichever is first, unless the Commission determines the prisoner "has seriously or frequently violated institution rules" or that there is a reasonable probability that he [sic] would commit further crimes.

Two-thirds of each consecutive term is thus two-thirds

of the aggregate, capped at 30 years. The "stacking" of the two-thirds dates of an aggregate's terms is foreclosed by the "two-thirds of each consecutive term or 30 years, whichever is first" language. Accordingly, Addonizio says the statutory language reads "of each consecutive term" or "of each group of terms" and thus caps the two-thirds date at 30 years, consistent with the one-third date being capped at 10 years.

The district court disparages Dunne's reliance on this Court's plain and direct language in Addonizio with the comment: "Neither the holding in Addonizio or dicta in the footnote are sufficient to suspport petitioner's assertion that his convictions must be aggregated...". The Ninth Circuit here says nothing about Addonizio. See Appendix 13 (EDKY) and 3-4 (9th Cir.).

Addonizio, a former mayor, appealed his 10 year sentence for conspiracy and 63 substantive counts of corruption on the ground that the sentencing judge did not expect him to serve as much time as parole commission policies revised after his sentencing required. The Court rejected this argument, holding that a sentencing judge's expectations about the amount of time to be served are entitled to no deference and cannot sustain a collateral attack on the sentence or its execution once a lawful sentence has been imposed.

The Court explained why this is so: Congress has provided other means to determine how much time a prisoner would serve under a federal sentence. Specifically, Congress provided the system outlined by Justice Scalia, writing for the Court, in footnote 13. Hence, the footnote IS part of the holding and not

mere dicta. It describes the statutorily mandated mechanism for determining time to be served to illustrate its incompatibility with deference to judicial expectations not within the governing statutes' ambit. That description is also incompatible with the BOP's administrative actions here.

In Chevron vs. Natural Resources Defense Council, Inc., 467 U. S. 837 (1984), this Court held that courts must defer to an agency's interpretation of a statute where Congress left a gap for it to fill or the agency makes a reasonable interpretation of an uncertain provision. 467 U. S. at 844; Lujan-Armendariz vs. INS, 222 F.3d 728, 748-49 (9th Cir. 2000).

In Sodipo vs. Rosenberg, 77 F.Supp.3d 997 (NDCA), the question was whether the INS's interpretation of an immigration statute in the Code of Federal Regulations (CFR) required deference. The Sodipo Court wrote at 1004: "[T]he Court must defer to the regulation unless it is contrary to clear Congressional intent or frustrates the policy Congress sought to implement." quoting Chevron at 842 and Providence Yakima Medical Center vs. Sebelius, 611 F.3d 1181, 1189-90 (9th Cir. 2010).

The Ninth Circuit here, however, overlooked Chevron's (and Providence's) imposition on the court of a duty to defer to an agency's interpretations of statutes in regulations subject to notice and comment requirements in their promulgation such as 28 CFR §§2.5, 2.53, and 523.1(a) requiring treatment of federal sentences as aggregates for all sentence computations. This oversight led it to require Dunne to serve his sentence as discrete segments--as "each consecutive term".

BOP program statements such as PS 5880.30 are interpretive rules, general statements of policy, procedure, and practice not subject to notice and comment requirements in their promulgation. They are entitled to some deference unless they are "plainly erroneous or inconsistent with the regulation" they interpret. Auer vs. Robbins, 519 U. S. 452, 461 (1997). Here, the PS 5880.30 provision that consecutive sentences be dis-aggregated so their two-thirds Mandatory Release dates may be set to run as discrete segments--may be "stacked"--is plainly erroneous because it is inconsistent with 28 CFR §§2.5. 2.53, and 523.1(a)(not to mention the statutes, 18 USC §§4205(a), 4206(d), and 4161). The Ninth Circuit thus, under Chevron, should have deferred to the those regulations over the BOP's interpretive rule. That would have required according Dunne the 30 year Mandatory Release on parole date.

The Lower Court Cases

Other courts have addressed the aggregation issue central to this case as well. "It is well settled that consecutive sentences are considered to be one term. Grant vs. Hunter, 166 F.2d 673 (10th Cir. 1949)." McCray vs. U. S. Bd. of Parole, 542 F.2d 558, 569 (10th Cir. 1976). "There is no authority for the proposition that consecutive sentences 'expire' independently of one another. The argument that consecutive sentences have separate mandatory release dates and that as each sentence reaches that date, the next sentence begins has been made before and summarily rejected. See Brown vs. Kearney, 302 F.2d 22 (5th Cir. 1952); U. S. ex rel. Klein vs. Kenton, 327 F.2d 229 (2nd Cir. 1964).... Once having been aggregated under the mandatory provisions of [18 USC] §4161, consecutive sentences are not to be deaggregated." McCray, 542 F.2d at 560. See also Rutledge vs. U. S., 230 F.3d 1041, 1048 (7th Cir. 2000)("Sentence" refers to an aggregate, indivisible term of imprisonment.); Lyels vs. Samuels, 2007 U. S. Dist. LEXIS 7642 (DNJ 1997)(Same).

The district court here said this about all of that: "None of the cited authorities address the specific issue presented in petitioner's §2241 petition and therefore do not dictate the result here." See Appendix 12. All of these authorities do, however, show that prison sentences are all single, indivisible entities, either one term or an aggregate of terms or life. Once aggregated--and they are from pronouncement--they cannot be deaggregated. If sentences cannot be deaggregated,

then the BOP cannot break Dunne's sentence down into its constituent terms where two-thirds of each may be added serially. Calling the "stack" of two-thirds times obtained by such breaking an aggregate does not cure the problem. Dunne does not have two aggregate sentences, one of 63 1/3 years composed of a "stack" of two-thirds dates an another of 95 years composed of his consecutive terms, but a single aggregate of 95 years. 28 CFR §2.5. The BOP's very language ("stack", "stacked", "stacking") suggests the impermissible serial, dis-aggregated, discrete service and expiration of Dunne's consecutive terms.

In light of the proviso in §4206(d) that the two-thirds /30 year Mandatory Release on parole eligibility can be denied upon a finding of serious or frequent rule violations or probability of criminality, the Grant holding closely supports Dunne's contention. The Grant court held that Grant's good time credits were properly determined on the basis of his aggregate sentence and deducted from it, whereas the BOP in Dunne's case is improperly determining his eligibility for mandatory parole on the basis of his individual terms. Brown handled the matter of federal consecutive sentences imposed at different times, as were Dunne's 1980 and 1984 sentences, concluding that they also aggre- with others already running and/or yet to be imposed.

McCray subsequently applied the Peyton (and, then undecided Garlotte) principle to conclude that all consecutive sentences are aggregates that do not have separate mandatory release dates. How these factors do not address the specific issue here the district court does not explain. Nor does the Ninth

Circuit explain or even mention any of this law. In light of McCray, the BOP cannot add the two-thirds Mandatory Release eligibility dates of Dunne's terms because there are no separate Mandatory Release eligibility dates for Dunne's 95 year sentence.

Rutledge also follows the Peyton and Garlotte principle of sentence unity, concluding that the word "sentence" refers to the entire package of terms a defendant receives for his or her convictions. That reference also applies to Dunne's sentnece in almost the same way as McCray.

So it goes with the rest of Dunne's authorities. The district court merely dismisses them as inapplicable without explanation, their facial applicability notwithstanding. The Ninth Circuit ignores them and the issue generally, merely insisting on the BOP position without any authority.

The Ninth Circuit's evasion is perplexing considering that it has weighed in on the aggregation issue itself. In Wyatt vs. U. S. Parole Commission, 1999 U. S. App. LEXIS 21539 (9th Cir. 1999), Wyatt's contention was opposite to Dunne's here: Wyatt claimed his two consecutive five year sentences should have been served serially because he would then have been paroled from the first to the second sentence via Mandatory Release after serving two-thirds of the first sentence. That would have allowed the parole from the first sentence to run concurrently with the second sentence, thereby reducing his time on parole and subject to revocation. The Wyatt court had this to say about that:

> Although now repealed, 18 USC §4161 governed the computation of sentences and deductions when Wyatt was sentenced, and supports the

> Parole Commission's use of aggregate sentences for determining deductions. The statute contemplates aggregation of sentences noting that "when two or more consecutive sentences are to be served, the aggregate of the several sentences shall be the basis on which the deductions shall be computed." Under the statute, any deduction Mr. Wyatt may have been eligible for would be based on a ten year aggregate sentence. The Parole Commission acted within its statutory authority by concluding that the aggregated sentence was also the proper term for determining parole eligibility where there is plain statutory authority for using aggregated sentences for other sentencing calculations such as good time credits.

Dunne seeks only to have his eligibility for Mandatory Release on parole determined on the basis of his 95 year aggregate sentence as Wyatt says it must. Indeed, Wyatt removes the only potential cavil to doing so--that §4161 applies only to good time credits--by holding that where statutory authority is clear, it is appropriate to use the aggregate for other determinations like parole eligibility. Hence, Dunne's eligibility for Mandatory Release on parole pursuant to §4206(d) must be determined on the basis of his 95 year aggregate.

In Wyatt, the Ninth Circuit did defer to the CFR's aggregation regulations to prevent a prisoner's earlier release from parole due to dis-aggregation. But it now chooses to treat Dunne differently. But it cannot refuse such deference merely because it does not like the result of allowing a prisoner's earlier release to parole due to aggregation.

The BOP's Position's Inconsistencies

Other results of dis-aggregating sentences than making Dunne serve more prison time also argue against the practice. The BOP's aggregation policy is inconsistent. Its interpretation of §4205(a) with respect to initial, discretionary parole eligibility shows this inconsistency. Section 4205(a) directs:

> Whenever confined and serving a definite term or terms of more than one year, a prisoner shall be eligible for release on parole after serving one-third of such term or terms or after serving ten years of a life sentence or of a sentence of over thirty years except to the extent otherwise provided by law.

Under §4205(a), Dunne's (and all other old-law prisoners') sentence's initial, discretionary parole eligibility dates were calculated as one-third or ten years, whichever is earlier, of the aggregate. The BOP even has a 10 year cap rule for this. See Appendix 31. Otherwise, Dunne would not have been eligible for parole on 17 March 1996 as in Appendix 28, but 31 2/3 years after his DCB, or 17 November 2017. The BOP also computes Dunne's good time on the aggregate because the two five year sentences mean he would get only 11,197 days if the sentence were disaggregated, not the 11,400 days Appendix 28 lists. The same language cannot mean one thing in one statute and another in the next.

That inconsistency and those revealed in the administrative remedy request responses (See Appendix 17-25) and other records pertaining to Dunne, the "Progress Report" included as Appendix 34, for example, showing BOP calculation of Dunne's sentence as it should have been, albeit from an incorrect DCB. (See

Appendix 28 for subsequent DCB change), suggest the BOP has lost the capacity to calculate old law sentences. The BOP central office administrative remedy response has Dunne's Mandatory Release on parole eligibility as both 17 July 2049 and 23 March 2043 based on a computation policy written in 1993 and different than the one in effect at the time of Dunne's offenses in 1979. See Appendix 31-33. The central office claims this policy replaces one written in 1972, but that cannot be correct. The Parole Commission Reorganization Act of 1976 would have necessitated replacement of a 1972 policy prior to 1993. Dunne has also had other Mandatory Release on parole eligibility dates under this policy as well, including but not limited to, for example, 2021 (Appendix 34), 2051, and 2047, his current one (Appendix 28). Those are some of the "difficulties" Peyton and Garlotte saw for prisoners and courts where consecutive terms are not aggregated.

The BOP's dis-aggregation practice also has the bizarre effect of making some federal sentences for the same number of years mean different things and life sentences shorter than some terms of years. Thus a sentence of 60 years for 20 counts of uttering a false money order would be longer than 60 years for a murder.

Since at least two iterations of the old-law system of sentence computation and parole before Dunne's offenses, Congress has been working on removing such unintended difficulties for courts and prisoners. In U. S. vs. Hagen, 857 F.2d 258, 279 (6th Cir. 1988), the question was about parole eligibility. As the Hagen Court described the situation: From 1914 to 1951, prisoners

with a life sentence were eligible for parole after 15 years, while those with a sentence of a term of years were eligible after one-third of the sentence. Thus a prisoner serving a term totaling more than 45 years would have to serve more time prior to parole eligibility than a prisoner with a life sentence. This disparate treatment led Congress to amend the statute so it:

> [w]ould make prisoners sentenced to imprisonment of over 45 years eligible for consideration of parole after 15 years to conform to the minimum period of eligibility for life prisoners. The present inflexible rule that a prisoner sentenced to a definite term must serve one-third of his [sic] sentence to become eligible for parole seems unjust in its application to prisoners sentenced to more than 45 years because a prisoner serving a life sentence becomes eligible in 15 years. Thus, under the present law, a prisoner sentenced to a total of 60 years on a charge less severe in its nature than homicide will have to serve 20 years before becoming eligible for parole, while a person sentenced to life for homicide becomes eligible for parole after serving 15 years. The committee believes the amendment desirable as removing a patent discrimination. [S. R. No. 524, 82nd Cong., & Ad. News 1676, 1677]

The Senate Report repeated the House Report in substance (quoted from Hagen, 857 F.2d at 279).

Since old-law prisoners with life sentences are still accorded the 30 year eligibility for Mandatory Release on parole pursuant to §4206(d), denying it to Dunne with his 95 year aggregate sentence is precisely the "patent discrimination" Congress intended to eliminate. According it to Dunne would remove the discrimination and the Peyton/Garlotte "difficulty" of having some terms more than 45 years longer than others for the same number of years and longer than life sentences.

CONCLUSION

Petitioner Dunne is an "old-law" prisoner serving a 95 year aggregate federal sentence imposed by the Western District of Washington and the Middle District of Pennsylvania after jury trials in 1980 and 1984. Under 18 USC §4206(d), Dunne is entitled to a Mandatory Release on parole eligibility date (MR) after 30 years' service of his sentence. Dunne's "date computation began" (DCB) is 18 March 1986. Ergo, his Mandatory Release on parole date should be 17 March 2016.

The BOP, however, whose statutory duty it is to compute Mandatory Release dates, says Dunne is not entitled to the 30 year MR on the 95 year aggregate sentence because it computes the MR on the basis of each consecutive term, not the aggregate. Since these terms are all less than 45 years, the BOP claims, Dunne must serve the two-thirds MR of each for a total of 63 1/3 years.

Voluminous statutory, regulatory, and case law, particularly this Court's precedents, shows the contrary, that sentences are single entities in a continuous stream that must be administered as an aggregate, especially for parole eligibility purposes. The BOP cannot explain the derivation of its policy of dis-aggregating sentences for only the MR calculation of the several types of computations it performs; notwithstanding regulatory direction to use aggregate sentences for every action taken regarding sentences. Nor did the district court advance any viable authority for its position. Nor did the Ninth Circuit in

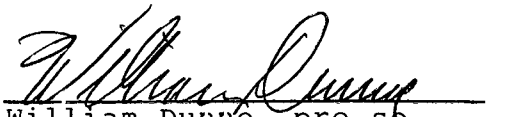
upholding the decision from which Dunne herein seeks relief advance any authority.

Accordingly, Dunne requests that this Court order that Mandatory Release on parole dates for old-law prisoners be computed on the basis of their aggregate federal sentences. Specifically, Dunne requests that the Court order the BOP to calculate Dunne's sentence on that basis and establish 17 March 2016 as His Mandatory Release on parole eligibility date pursuant to 18 USC §4206(d). Should the Court find such action inappropriate, Dunne requests an explanation of the finding and his errors in interpreting the authorities.

I, William Dunne, declare under penalty of perjury pursuant to 28 USC §1746 that the foregoing is true and correct.

DATE: 27/MARCH/2019

Respectfully submitted,



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