STATE OF RHODE ISLAND

PROVIDENCE, SC. **SUPERIOR COURT**

(FILED: May 17, 2023)

MARIO MONTEIRO, ***Petitioner,***	:	
V.	:	**C.A. No. PM-2023-00921**
STATE OF RHODE ISLAND, ***Respondent.***	:	

DECISION

NUGENT, J. Before this Court are the State and Petitioner Mario Monteiro's (Petitioner) cross-motions for summary disposition of Petitioner's Application for Post-Conviction Relief challenging his consecutive life sentences for first-degree murder and discharge of a firearm with death resulting committed when he was seventeen years old in 2001. Jurisdiction is pursuant to G.L. 1956 § 10-9.1-1.

I

Facts & Travel

A

Petitioner's Post-Conviction Relief Application

On February 24, 2023, Petitioner filed the instant Application for Post-Conviction Relief. (*See generally* Application for Post-Conviction Relief (Application) (setting forth essential claim).) Petitioner directly appealed his convictions to our Supreme Court, which affirmed those convictions, *State v. Monteiro*, 924 A.2d 784 (R.I. 2007); from this opinion, the Court draws the following summary of the pertinent facts of Petitioner's criminal convictions, which are not in dispute.

B

Facts Underlying Petitioner's Criminal Convictions

In the early morning of July 3, 2001, a gang-related conflict culminated in the tragic shooting death of an innocent bystander, one Rom Peov (Peov) in the city of Providence, Rhode Island. *Monteiro*, 924 A.2d at 788. The Providence Police identified two suspects: Petitioner and Fidel DelPino (DelPino), each a member of the "Providence Street Boyz," a Providence-area street gang. *Id.* at 787-88.[1] On October 11, 2001, Petitioner was arrested at home pursuant to an arrest warrant. *Id.* at 788. Petitioner was advised of his rights, and with his guardian present, the police questioned him about his involvement in Mr. Peov's death. *Id.* at 789.

Petitioner gave a statement to police wherein he admitted to being at the scene of the murder and he admitted to firing the murder weapon earlier in the day in a skirmish with Rocky Sok, a rival Providence gang member. *Id.* However, he placed the weapon in Mr. DelPino's hand at the time of the murder. *Id.*

Subsequently, the grand jury returned a twenty-eight-count indictment against Petitioner. *Id.* After trial, the jury convicted Petitioner of nine counts in the indictment. *Id.* The trial justice denied Petitioner's motion for a new trial and then sentenced him. *Id.* Most importantly for the Court's analysis, Petitioner was sentenced to two mandatory consecutive sentences of life imprisonment for first-degree murder and for using a firearm resulting in death.[2] *Id.*

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[1] For his part in the crimes, Mr. DelPino was named as a codefendant in five counts of the indictment. *State v. Monteiro*, 924 A.2d 784, 789 n.9 (R.I. 2007). Subsequently, Mr. DelPino pled guilty to conspiracy, possession of a firearm without a license, and using a firearm while committing a crime of violence; as punishment for these offenses, he received a ten-year sentence, with five years to serve and the balance suspended. *Id.* Mr. DelPino did not testify at Petitioner's trial. *Id.*

[2] Additionally, Petitioner was also sentenced to five concurrent sentences of ten years to serve for conspiracy to commit murder, carrying a pistol without a license, and three counts of felony

C

Legislative Changes to Determination of Parole Eligibility

On July 6, 2021, the General Assembly enacted (as part of its annual budget appropriation) an amendment (the Juvenile Offender Parole Act) to G.L. 1956 § 13-8-13 to add the following Subsection (e):

> "Any person sentenced for *any offense* committed prior to his or her twenty-second birthday, other than a person serving life without parole, shall be eligible for parole review and a parole permit may be issued after the person has served no fewer than twenty (20) years' imprisonment unless the person is entitled to earlier parole eligibility pursuant to any other provisions of law. This subsection shall be given prospective and retroactive effect for all offenses occurring on or after January 1, 1991."[3] P.L. 2021 ch. 162, Art. 13, § 3 (emphasis added).

D

Petitioner's Parole Eligibility Status Prior to Enactment of Subsection (e)

Petitioner is currently being held by the State of Rhode Island in the custody of the Rhode Island Department of Corrections (RIDOC); he is serving his sentence of confinement at the Adult Correctional Institutions (ACI) located in Cranston, Rhode Island. (Application ¶¶ 1-3; Answer ¶¶ 1-3 (admitting the allegations).) It is uncontested that, prior to the enactment of Subsection (e), Petitioner had completed serving all five of his ten-year concurrent sentences. (Application ¶¶ 11-12; Answer ¶¶ 11-12 (admitting the allegations).) It is also uncontested that Petitioner's non-jail sentences (suspended sentence of ten years and two consecutive ten-year probation terms "are not material to a determination of initial parole eligibility date." (Application ¶ 13, Answer ¶ 13 (admitting the allegation).) Petitioner contends that the only remaining operative sentences

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assault, as well as ten years suspended, with ten years of probation, for using a firearm while committing a felony. *Monteiro*, 924 A.2d at 789.

[3] For ease of reference, the Court shall hereinafter refer to the just-quoted subsection as "Subsection (e)."

are the two consecutive life sentences. (Application ¶ 14.) Petitioner contends and the State does not dispute that under the law prior to the enactment of Subsection (e), Petitioner would have initially become "eligible to be considered for parole to the community when he has served thirty years (fifteen on each life sentence), in or about November 2031." (Application ¶ 22; Answer ¶ 22 (admitting the allegation).)

Petitioner alleges:

> "Upon information and belief, at some point after 2017, and without notice to [Petitioner], RIDOC decided to alter its internal method of calculating parole eligibility date for inmates serving more than one sentence, where one of the sentences was for life, apparently by 'disaggregating' sentences so as to determine an initial 'parole eligibility date' for the 'primary' or 'controlling' life sentence, and thereby requiring an inmate with consecutive sentences to first be paroled from the controlling life sentence to serve the consecutive sentence, with no possibility of release from incarceration until the inmate has been approved for parole at least twice."
>
> "Under this altered method of calculating parole eligibility dates, an inmate serving a life sentence and an additional consecutive sentence would first have to be granted parole on the life sentence, and then be paroled to his consecutive sentence. In order to be considered for release-from physical custody of RIDOC, the inmate paroled from their life sentence would then be required to serve the minimum eligibility period of the consecutive sentence before again seeking parole."
>
> "Upon information and belief, there has been no material change to the Rhode Island statutes governing parole eligibility, or their interpretation by the Rhode Island Supreme Court, authorizing or justifying this unilateral and arbitrary action by RIDOC." (Application ¶¶ 25-28.)

Petitioner contends that the "Rhode Island Superior Court has previously addressed and rejected the RIDOC decision to disaggregate life and consecutive term sentences in *McMaugh v. State*, PM-2017-05673; *Eddie Martinez v. State*, PM-2020-05568; and *Francisco Martinez v. State*, PM-2021-03544 (petition for certiorari granted, SU-2021-0292-MP)[.]" (Application ¶ 28.)

E

Petitioner's Parole Eligibility Status Following Enactment of Subsection (e)

With respect to the effect of the enactment of Subsection (e) on Petitioner's parole eligibility status, Petitioner alleges that he came before the Parole Board (Parole Board or Board) on December 15, 2021 to consider his eligibility for parole. (Application ¶ 46; Answer ¶ 46 (admitting the allegation).) In the minutes from the December 15, 2021 meeting,[4] the Board unanimously voted to grant parole to Petitioner stating:

> "We understand that he has a mandatory consecutive life sentence and that there is an existing legal debate in court on the application of this consecutive term – whether it is aggregated and consumed by the first life sentence eligibility or whether he has yet to and must serve this next term. Board members agree this debate is outside the statutory authority of the Parole Board and we must leave this to the Department of Corrections to apply and/or the Court to decide. For our part, the Board votes unanimously to parole [Petitioner] from his first life sentence. If it is determined that he must serve another consecutive life term, then the effective parole release date shall be the date of this decision (December 15, 2021). If it is determined that he is eligible for immediate release to the community, then the effective parole release date shall be no sooner than December 2022. The reason for the staggered release (if to the community) is the Board believes there should be some time for [Petitioner] to transition to a lower security and preparation for eventual release. Upon his eventual release to the community, special conditions of parole shall include: successful completion of the 9 Yards transitional program with GPS for a minimum of six months." (Application, Ex. 6 attached thereto at 2-3 (Parole Board Minutes of Oct. 19, 2022).)

Petitioner was given a "paper" parole on December 22, 2021; that is, he was paroled to begin serving his next consecutive life sentence, and he was given an "initial parole hearing" date of January 1, 2037 ("approximately fifteen additional years from his 'parole' to the consecutive

[4] Although these minutes record the Board's activities during its December 15, 2021 meeting, during which Petitioner appeared before it, the minutes themselves have been dated to October 19, 2022.

sentence and more than thirty-five years after his original commit date of November 29, 2001"). (*See* Application ¶ 33.)

The Parole Board, in unanimously granting him parole from his first life sentence took into account that Petitioner has served as a model of reform to his fellow inmates by availing himself of some of the many rehabilitative programs offered by the RIDOC. Through his participation in the garden time program, he has an offer for full-time employment upon his release to the community. (Hr'g Tr., Apr. 12, 2023.) Additionally, Petitioner has addressed his temper and impulsivity by completing an anger management and a mindfulness program. *Id.* Over his two decades inside the ACI, Petitioner has fundamentally reformed himself from a violent teenage thug into a mentor of young prisoners, an anti-gang advocate, the valedictorian of the ACI's medium security gang step-down program, and a high school graduate working on a degree from the Community College of Rhode Island. *See Juvenile Offender Parole Act: Hearing on H5144 Before the H. Comm. on Judiciary*, 2021 Leg., Jan. Sess. (R.I. 2021) (statement of bill sponsor Julie Casimiro, Member, H. Comm. on Judiciary) *https://upriseri.com/juvenile-offender-parole-act*. In his own words, delivered to the House Judiciary Committee as testimony on H5144 (the Juvenile Offender Parole Act) by Representative Julie Casimiro, Petitioner stated:

> "I would like to take a minute to tell you about myself as a child growing up and acknowledge the actions that led to my incarceration. As a child, I had moved through the system of multiple and abusive group homes and by the age of nine, both my parents were deceased. Over the next seven years, at the hands of my legal guardian, I endured many forms of physical and emotional abuse. By the age of 12, it was common for my stepmother to involve me in her criminal lifestyle of drug use, packaging drugs, and making deliveries. Refusing her demands ended in beatings. Finally, at the age of 16, I took control and decided to escape this life, which was devoid of any love, support, or guidance. I foolishly turned to the streets and eventually a gang, believing it was a solution to []the toxic environment that was my home. I was blinded by impulsiveness and an inability to comprehend the lifelong

consequences that this choice would have. Without ever having been in trouble before, I managed, in the span of one year, to throw my life away and take away the life [of] Mr[.] Rom Peov. I understand the reality that no number of apologies or good deeds will atone for my actions. I have also thought about the amount of pain and heartache that I have caused along with the lasting effects that it has on his family, the community, and my own family. I will live with this for the rest of my life and forever be sorry and remorseful.

"I have spent the last 20 years, because of incarceration, facing up to this tragedy, believing in what is the central point of this legislation before you: Youth are not beyond change and they have redemptive qualities, which will allow them to become capable of becoming mature adults who are productive contributors to society. During my time incarcerated, I have continuously pursued a path that would allow me the opportunity to one day prove that change is possible [a]nd [that] I do possess the ability to realize my full potential. I have been successful in my pursuit of education, striving for an Associate[']s Degree, and I'm proud to have completed the highly regarded [S]RG gang renunciation step-down program. I have also participated in mentoring youth at the ACI and currently assist with the training of service dogs for veterans. I have also developed and maintained strong relationships with family and friends that continue to inspire me. These, and other accomplishments over the years, have allowed me to demonstrate the potential that the Juvenile Offender Parole Act speaks to." *Id.*[5]

II

Standard of Review

Postconviction relief is a statutory remedy for:

> "Any person who has been convicted of, or sentenced for, a crime, a violation of law, or a violation of probationary or deferred sentence status and who claims:

[5] It bears noting that Petitioner contends that the Juvenile Offender Parole Act, and "earlier versions considered by the legislature in 2021, 2020, and earlier years, were colloquially known as 'Mario's Bill' or 'Mario's Law' in direct reference to [Petitioner] and his rehabilitation efforts." (Pet'r's Mem. at 15 n.15 (citing Ex. F attached thereto (Aff. of Julie A. Casimiro, ¶ 4 ("In my conversations and in deliberations with my legislative colleagues considering this legislation, from year to year, I and my colleagues informally referred to the bills as 'Mario's Law' in direct reference to [the Petitioner], as a shorthand way of identifying both who would benefit from passage and why it should be passed. I consistently identified [Petitioner] and his achievements in rehabilitation as the reason that I and my colleagues should support passage of the legislation."))).)

> ". . .
>
> "(5) That his or her sentence has expired, his or her probation, parole, or conditional release unlawfully revoked, or he or she is otherwise unlawfully held in custody or other restraint . . . ." Section 10-9.1-1(a).

In pursuing such claims, a petitioner "bears the burden of proving, by a preponderance of the evidence, that he is entitled to postconviction relief." *Burke v. State*, 925 A.2d 890, 893 (R.I. 2007). The proceedings for such relief are "civil in nature." *Ouimette v. Moran*, 541 A.2d 855, 856 (R.I. 1988). In accordance with the statute, the "court shall make specific findings of fact, and state expressly its conclusions of law, relating to each issue presented." Section 10-9.1-7.

Pursuant to § 10-9.1-6(c):

> "The court may grant a motion by either party for summary disposition of the application when it appears from the pleadings, depositions, answers to interrogatories, and admissions and agreements of fact, together with any affidavits submitted, that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law."

III

Analysis

Neither party disputes the material facts of this case; rather, the bones of contention that lie between the parties are legal questions for this Court to decide.

The State lodges two major arguments in support of its Motion for Summary Judgment. (*See generally* State's Mem. in Supp. of its Mot. for Summ. J. (State's Mem.) (enumerating arguments).) First, the State contends that according to the plain meaning of Subsection (e), that provision does not apply to Petitioner's consecutive life with possibility of parole sentence. *See id.* at 4-6.

Second, the State contends that Subsection (e) contravenes the doctrine of the separation of powers because "it is clear that the legislature cannot intervene to alter a judicially imposed legal sentence of consecutive life terms by enacting legislation that effectively negate[s] the consecutive sentence." *Id.* at 10. The State essentially argues that applying Subsection (e) to reduce the parole requirements for mandatory consecutive life sentences amounts to an impermissible encroachment by the Legislature into the domain reserved for the Judiciary. *See id.* 9-11. To decide the issues in this case, the Court has thoroughly examined the evidence on the record and, after a discussion of the law of parole in this state, will proceed to address the State's two arguments as well as Petitioner's responses to those arguments.

A

The Law of Parole

Under this state's law, "[i]n the case of a prisoner sentenced to imprisonment for life for a first- or second-degree murder committed after June 30, 1995, [but before July 1, 2015,] the [parole] permit may be issued only after the prisoner has served not less than twenty (20) years' imprisonment. . . ." Section 13-8-13(a)(3). And, "in the case of a prisoner sentenced consecutively to more than one life term for crimes occurring after June 30, 1995, [but before July 1, 2015,] the permit may be issued only after the prisoner has served not less than fifteen (15) years consecutively on each life sentence." *Id.* § 13-8-13(d).

Section 13-8-10(a) provides:

> "If a prisoner is confined upon more than one sentence, a parole permit may be issued whenever he or she has served a term equal to one-third (⅓) of the aggregate time which he or she shall be liable to serve under his or her several sentences, unless he or she has been sentenced to serve two (2) or more terms concurrently, in which case the permit shall be issued when he or she has served a term equal to one-third (⅓) of the maximum term he or she is required to serve."

In construing this provision, our Supreme Court has held that calculating the minimum time that a prisoner must serve before becoming eligible for parole from consecutive life sentences is done by adding or "aggregating" the minimum time to serve for each of the prisoner's consecutive sentences. *DeCiantis v. State*, 666 A.2d 410, 413 (R.I. 1995); *Lerner v. Gill*, 463 A.2d 1352 (R.I. 1983) (holding that prisoner serving two consecutive life sentences had to serve the ten-year minimum consecutively on each term before becoming eligible for parole); *see also Brown v. State*, 32 A.3d 901, 911 (R.I. 2011) (holding that "the second clause of § 13–8–10(a) [does not] create[] a separate, nondiscretionary parole mechanism for prisoners serving concurrent sentences"). The Court will now proceed to interpret Subsection (e) according to our rules of construction.

B

Statutory Construction of Subsection (e)

In order to decide whether to grant Petitioner's application for postconviction relief, the Court must harmonize Subsection (e) with the overall statutory framework governing parole eligibility. The Court '"reviews issues of statutory interpretation de novo."' *McCulloch v. McCulloch*, 69 A.3d 810, 819 (R.I. 2013) (quoting *Bucci v. Lehman Brothers Bank, FSB*, 68 A.3d 1069, 1078 (R.I. 2013)). '"[W]hen the language of a statute is clear and unambiguous, this Court must interpret the statute literally and must give the words of the statute their plain and ordinary meanings."' *State v. Hazard*, 68 A.3d 479, 485 (R.I. 2013) (quoting *Alessi v. Bowen Court Condominium*, 44 A.3d 736, 740 (R.I. 2012)). The Court's '"ultimate goal is to give effect to the purpose of the act as intended by the Legislature."' *Swain v. Estate of Tyre ex rel. Reilly*, 57 A.3d 283, 289 (R.I. 2012) (quoting *Webster v. Perrotta*, 774 A.2d 68, 75 (R.I. 2001)). And, "[t]o that end, 'it is well settled that 'the plain statutory language' is 'the best indicator' of the General

Assembly's intent.'" *Twenty Eleven, LLC v. Botelho*, 127 A.3d 897, 900 (R.I. 2015) (quoting *Zambarano v. Retirement Board of the Employees' Retirement System of Rhode Island*, 61 A.3d 432, 436 (R.I. 2013)). In cases where "a statute does not define a word, courts will often apply a common meaning as provided by a recognized dictionary." *Planned Environments Management Corp. v. Robert*, 966 A.2d 117, 123 (R.I. 2009).

The State argues that according to the plain meaning of the term "any offense" rather than "offenses" in the plural renders "no other way to interpret this language as meaning anything other than 'an offense' in the singular." (State's Mem. at 5.) Further, the State contends that "[h]ad the Legislature intended the [Juvenile] Offender [Parole] Act to apply to individuals serving more than one sentence, it could have and should have used the phrase 'offense or offenses.'" *Id.* The State asserts that, as a result, Subsection (e) does not apply to the facts of Petitioner's case. *See id.* The Court disagrees.

The term "any" is defined as: "One, some, every, or all without specification." The American Heritage Dictionary of the English Language 81 (4th ed. 2000); *see also* Bryan A. Garner, *Garner's Modern American Usage* 53 (3d ed. 2009) (noting that in "affirmative sentences it means 'every' or 'all'"). Our Supreme Court has had occasion to discuss the meaning of the term "any" in several contexts.

Most recently, our Supreme Court construed the term in *Ricci v. Rhode Island Commerce Corporation*, 276 A.3d 903 (R.I. 2022). In *Ricci*, the plaintiff, a former deputy police chief employed by the Rhode Island Airport Police Department (RIAPD), sought protections pursuant to G.L. 1956 chapter 28.6 of title 42 (Law Enforcement Officers' Bill of Rights (LEOBOR)). *Ricci*, 276 A.3d at 904. The statute provided:

> "'Law enforcement officer' means any permanently employed city or town police officer, state police officer, permanent law

> enforcement officer of the department of environmental management, or those employees of the airport corporation of Rhode Island who have been granted the authority to arrest by the director of said corporation. However[,] this shall not include the chief of police and/or the highest ranking sworn officer of any of the departments including the director and deputy director of the airport corporation of Rhode Island." *Id.* at 905 n.3 (quoting § 42-28.6-1(1))

In construing this provision, the Court relied on the venerable principle of *expressio unius est exclusio alterius*, which means that "an express enumeration of items in a statute indicates a legislative intent to exclude all items not listed" and held that the plaintiff was entitled to the protections of LEOBOR because the statute did not expressly exclude the position of deputy chief. *Id.* at 907. To explain its holding, the Court provided the following rationale:

> "The General Assembly showed itself fully capable of writing with specificity. The drafters of the statute spoke with specificity in excluding from LEOBOR coverage 'the chief. . . .' The exclusions from that statutory grant of rights are few in number and involve only very high-ranking individuals. Significantly, however, it made no reference to the Deputy Chief. It is important to bear that context in mind. . . .
>
> "We also are impressed by the breadth of the language used in the statutory definition—most notably its use of the word 'any.' Notably, the statutory definition of 'law enforcement officer' expressly uses the *broadly inclusive word 'any'* before it makes mention of a very limited number of positions that are excluded from coverage." *Id.* at 908 (internal citations omitted) (emphasis added).

In other contexts, our Supreme Court has stated: '"the very breadth of the term 'any person' defies the exclusion of any class of persons. That term is so broad as to require exclusion, not specific inclusion."' *In re Steven*, 510 A.2d 955, 957 (R.I. 1986) (quoting *State v. Caprio*, 477 A2d 67, 71 (R.I. 1984)); *State v. LeFebvre*, 198 A.3d 521, 526 (R.I. 2019) ("The plain meaning of the phrase 'any judicial proceeding relating to child abuse or neglect' . . . encompasses the full spectrum of matters that relate to the abuse or neglect of a child."); *State v. Young*, 519 A.2d 587, 588 (R.I. 1987); *see also State v. Mann*, 119 R.I. 720, 724, 382 A.2d 1319, 1321-22 (1978) (holding

that "any person" unlawfully in possession of controlled substances included licensed physicians unauthorized to possess such substances); *City of Providence v. Paine*, 41 R.I. 333, 103 A. 786, 789 (1918) (holding that statutorily required payment of damages sustained by "any person" through negligent operation of a motor vehicle carrying passengers for hire, was not just for the benefit of injured passengers but also included injured pedestrians and injured persons riding in other cars as well); *cf. Giroux v. Board of Dental Examiners*, 76 N.E.2d 758, 759 (Mass. 1948) ("[T]he [medical licensing] board was authorized to revoke and cancel the [dental practice] certificate and registration of the petitioner, upon finding him 'guilty of deceit, malpractice, gross misconduct in the practice of his profession, or of any offense against the laws of the commonwealth relating thereto.' The words 'any offense' are not limited to misconduct as a dentist, but include the violation of any law 'relating' to the practice of the profession of dentistry.").

According to our just-mentioned jurisprudence, the meaning of Subsection (e) is therefore not ambiguous; accordingly, the plain meaning of each word will be given effect. *Hazard*, 68 A.3d at 485. The State's contention that Subsection (e) only applies to a single offense is wrong because the term "any" clearly connotes an unlimited quantity—without specification. If the Legislature had intended to vary this meaning, it could have used the phrase "any *one* offense," or "any *single* offense." Given the plain meaning of the term "any," the Legislature clearly intended Subsection (e) to apply to all offenses without limitation, except for those not "committed prior to [the offender's] twenty-second birthday." Subsection (e). Accordingly, the Court holds that absent a constitutional violation, Subsection (e) would apply to the facts of Petitioner's case, thereby making him eligible for parole after serving twenty years of confinement. The Court will next

consider whether Subsection (e) presents a constitutional violation of the separation of powers doctrine.

C

Separation of Powers

Article V of the Rhode Island Constitution states: "The powers of the government shall be distributed into three separate and distinct departments: the legislative, executive and judicial." R.I. Const., art. V. Our Supreme Court has stated: "Since the adoption of our state's constitution in 1842, it has been a well established and accepted principle that the General Assembly cannot rightfully exercise judicial power. That power is conferred only upon the courts and is necessarily prohibited to the Legislature." *Lemoine v. Martineau*, 115 R.I. 233, 238, 342 A.2d 616, 620 (1975). Petitioner responds to the State's separation of powers argument with three of his own. (*See generally* Pet'r's Reply Mem. (responding to State's separation of powers argument).)

The State argues that applying Subsection (e) to Petitioner's case would in effect "reduce" his sentence thereby allowing the impermissible encroachment by the Legislature into the domain reserved for the judicial branch of government. (State's Mem. at 9-10 (quoting *State v. Parillo*, 158 A.3d 283, 291 (R.I. 2017) ("The power to reduce a sentence, either directly or indirectly, is reserved to the judiciary.")). To flesh out its separation of powers argument, the State heavily relies on the Rhode Island Supreme Court case of *Rose v. State*, 92 A.3d 903 (R.I. 2014). However, the State's reading of *Rose* is inapposite to the facts of Petitioner's case because the facts of *Rose* were concerned with the effect of good-time credits on the length of an offender's probation. Furthermore, the holding in *Rose* supports Petitioner's legal argument rather than that of the State's. *See Rose*, 92 A.3d at 909 (holding that Legislature intended good-time credits to mitigate

the length of a prisoner's confinement but not to modify the length of the prisoner's overall sentence).

The Court will next address each of Petitioner's arguments set forth in response to the State's separation of powers argument.

1. Parole Is *Not* a "Modification" of a Sentence.

First, Petitioner argues that mitigating the length of a prisoner's confinement is not tantamount to "modifying" the prisoner's sentence. The Court agrees.

Black's Law Dictionary provides the following definition for "modify": "to reduce in degree or extent; to limit, [or] qualify . . . ." Black's Law Dictionary, *Modify (2),* (11th ed. 2019). Petitioner contends that "early release from the ACI" is not an impermissible "modification of the overall length of a judicially imposed sentence" because: "A person released from incarceration on parole is still subject to and must complete the judicial sentence or sentences imposed." (Pet'r's Reply Mem. at 5.) In other words, Subsection (e) modifies the offender's term of confinement but does not modify the offender's sentence length. The Court agrees. Furthermore, a plain reading of the parole statutory scheme merely provides qualifying prisoners with eligibility to go before the Parole Board, part of our executive branch of government, which ultimately has discretion to decide whether to grant parole case by case. *See* § 13-8-9 (establishing process for issuance of parole). Furthermore, a decision by the Parole Board to grant parole in the case of a life sentence must be unanimous in the state of Rhode Island. Section 13-8-3. Here, the Parole Board has already decided to unanimously grant parole to the Petitioner on his "first" life sentence for murder. (Application, Ex. 6 attached thereto (Parole Board Minutes of Oct. 19, 2022).)

Seen from this vantage point, Subsection (e) is not inconsistent with the doctrine of separation of powers because it does not intrude into the activities reserved for the judicial branch

(determining punishments for convicted offenders) nor into those of the executive branch (carrying out punishments for convicted offenders).

Most importantly, it bears mention that Petitioner's parole does not amount to a get-out-of-jail-free card; rather, Petitioner will remain subject to revocation of his parole and being ordered to serve inside the walls of the ACI if he violates the conditions of his parole. *See* § 13-8-14(b). ("In the case of a prisoner sentenced to imprisonment for life who is released on parole and who is subsequently convicted of a crime of violence as defined in section 11-47-2, the conviction shall constitute an automatic revocation of parole and the prisoner shall not be eligible for parole thereafter.")

2. The State's Legal Theory Would Irrationally Lead to a Result that Would Also Bar Geriatric and Medical Paroles.

Second, Petitioner argues that accepting "the State's contrary argument would also preclude medical and geriatric parole for any prisoner sentenced before the effective date of the statutory provisions creating them." (Pet'r's Reply Mem. at 6.) The Court agrees that taken to its logical conclusion, the State's theory would preclude the Legislature from retroactively changing the length of any term of confinement for offenders—even for purposes of geriatric and medical parole. The Court agrees that this is clearly not what the Legislature intended. If the Legislature had intended to limit geriatric and medical parole, it would have chosen to directly enact amendments to those statutes rather than tinker with them in such an oblique fashion.

3. Persuasive Authority from Sister State Courts Reviewing Similar Legislation Found No Separation of Powers Violation.

Third, Petitioner supports his arguments with persuasive authority from our sister state courts. Petitioner explains that

> "[a]fter the issuance of the *Roper-Graham-Miller* line of cases from the United States Supreme Court,[6] many state legislatures enacted parole reform designed not only to conform with the precise holdings of those cases, but to go further in recognition that juvenile and young offenders may warrant special and earlier consideration for release for crimes committed as a youth." (Pet'r's Reply Mem. at 7.)

Petitioner provides four cases where state courts affirmed "*Miller*-fix" legislative provisions analogous to Subsection (e) which sought to reduce lengthy terms of confinement for prisoners who offended as youths. Pet'r's Reply Mem. at 7-11 & n.3 (discussing *Matter of Dodge*, 502 P.3d 349 (Wash. 2022) (affirming statute providing early release from confinement after serving twenty years for offenders whose crimes were committed prior to age eighteen); *see also Hicklin v. Schmitt*, 613 S.W.3d 780, 790 (Mo. 2020) (analogous statute did "not offend the separation of powers because, in our tripartite form of government . . . sentencing power is not inherent to the judiciary, but is dependent upon legislative authorization" (brackets and internal quotation marks omitted)); *State v. Vera*, 334 P.3d 754, 760 (Ariz. Ct. App. 2014) (analogous statute did not violate separation of powers because "legislature does not violate separation of powers when it acts to make a law retroactive without disturbing vested rights, overruling a court decision, or precluding judicial decision-making") (internal quotation omitted). In *State v. McCleese*, 215 A.3d 1154 (Conn. 2019), the Connecticut Supreme Court, affirming that state's analogous "*Miller*-fix" statute, reasoned that:

> "[A]lthough the legislature has the power to create the scheme of punishment, it cannot do so retroactively without violating the separation of powers doctrine because the change effectively modifies his sentence. But the fact that the legislature, in exercising

[6] *See Roper v. Simmons*, 543 U.S. 551 (2005) (holding that a sentence of death is an unconstitutional punishment for juvenile offenders); *Graham v. Florida*, 560 U.S. 48 (2010) (holding that sentences of life without parole for juvenile offenders are unconstitutional except for offenses involving homicide); *Miller v. Alabama*, 567 U.S. 460 (2012) (holding that mandatory minimum life without parole sentences for juvenile offenders are unconstitutional unless the court has considered mitigating circumstances).

> its power to create and modify the state's sentencing scheme, has affected a particular defendant's sentence does not mean that it has impermissibly encroached upon the judiciary's powers to impose or modify a sentence. It is well established that judicial and legislative powers necessarily overlap in many areas, including sentencing. *See, e.g., State v. Campbell, supra*, 224 Conn. at 178, 617 A.2d 889 ("[a]lthough the judiciary unquestionably has power over criminal sentencing . . . the judiciary does not have exclusive authority in that area"). *McCleese*, 215 A.3d at 1181.

Although these cases are not binding on this Court, the Court finds the rationales of these decisions suitably convincing for the Court to adopt their reasoning as its own.

Petitioner has succeeded in demonstrating that he is entitled to judgment as a matter of law. The Court holds that Subsection (e) does not violate separation of powers. Accordingly, the plain meaning of the provision must be applied to the facts of Petitioner's case. As a result, the Court holds that Subsection (e) made Petitioner eligible for parole after serving twenty years of confinement.

IV

Conclusion

After reviewing the record, the Court finds that Petitioner has successfully met his burden of establishing by a preponderance of the evidence that postconviction relief is warranted in this case. Accordingly, Petitioner's motion for summary disposition is granted and the State's motion for summary disposition is denied. Prevailing counsel shall submit an appropriate order for entry.

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE:	**Monteiro v. State of Rhode Island**
CASE NO:	**PM-2023-00921**
COURT:	**Providence County Superior Court**
DATE DECISION FILED:	**May 17, 2023**
JUSTICE/MAGISTRATE:	**Nugent, J.**
ATTORNEYS:	
For Plaintiff:	**Sonja L. Doyoe, Esq.** **Lisa S. Holley, Esq.** **Lynette J. Labinger, Esq.**
For Defendant:	**Judy Davis, Esq.**