

STATE OF RHODE ISLAND  
PROVIDENCE, SC. SUPERIOR COURT

FRANCISCO MARTINEZ  
Petitioner

v.

PATRICIA COYNE-FAGUE, in her capacity  
as Director, Rhode Island Department of  
Corrections  
Respondent

**PETITION FOR WRIT OF HABEAS CORPUS**

**INTRODUCTION**

This petition seeks the immediate release of Francisco Martinez from incarceration at the Adult Correctional Institutions, under the control and custody of the Rhode Island Department of Corrections (RIDOC), to parole supervision by the Rhode Island Parole Board. Mr. Martinez has been incarcerated for more than 30 years. He is now being unlawfully detained despite his eligibility for parole and his satisfaction of the standards for parole acknowledged in a unanimous decision of the Rhode Island Parole Board to parole him, due to the arbitrary, unlawful, and unconstitutional actions of the RIDOC and the acquiescence of the Rhode Island Parole Board in a miscarriage of justice and an unlawful assertion of authority.

**Your Petitioner states as follows:**

1. Your petitioner, Francisco Martinez, is a prisoner presently in the custody of the Rhode Island Department of Corrections (RIDOC).
2. Mr. Martinez is confined at the Adult Correctional Institutions, Cranston, Rhode Island.

3. Mr. Martinez is held by the State of Rhode Island.
4. Respondent Patricia Coyne-Fague is the Director of the Rhode Island Department of Corrections and Petitioner's legal custodian.
5. The Superior Court has jurisdiction to hear the within Petition pursuant to R.I.G.L. §§ 10-9-1 and 10-9-3.
6. Mr. Martinez is incarcerated following his conviction in State v. Martinez, P1-1991-0678A.
  - a. Mr. Martinez's controlling sentence was life imprisonment upon his conviction for murder in the first degree. He was sentenced on April 23, 1993 for an offense committed December 21, 1990.
  - b. According to the Judgment of Conviction, attached hereto and incorporated herein as Exhibit 1, Mr. Martinez received a consecutive sentence of five years to serve based upon his conviction for assault with a dangerous weapon.
7. Parole is an essential part of the Rhode Island criminal justice system. It offers an incentive to inmates to rehabilitate themselves with a goal of becoming contributing and productive members of society. Any prison sentence (excluding sentences of life without parole) imposed in the state courts of Rhode Island that exceeds six months "shall be subject to the parole board[.]" R.I.G.L. § 13-8-8. The Parole Board chairperson and Parole Board members are appointed by the Governor of Rhode Island. See R.I.G.L. §§ 13-8-1 and 13-8-3.
8. Mr. Martinez, serving a life sentence and a five-year consecutive sentence, is among those prisoners who can be considered for parole.
9. Parole eligibility is prescribed by statute.

10. Under Rhode Island law, R.I.G.L. § 13-8-13(a)(3), an inmate sentenced to life imprisonment for first degree murder committed after July 10, 1989 and before June 30, 1995, is considered eligible for parole after serving fifteen (15) years of that sentence.
11. Under Rhode Island law, R.I.G.L. § 13-8-9 (a), an inmate serving a term of 5 years (60 months) is considered to be eligible for parole after serving one third (1/3) of the sentence, or one year and eight months (20 months).
12. R.I.G.L. § 13-8-10 specifically provides that when a prisoner is serving more than one sentence, “a parole permit may issue whenever he or she has served a term equal to one third (1/3) *of the aggregate time* which he or she shall be liable to serve under his or her several sentences.” (Emphasis added).
13. Because of the requirement to aggregate sentences under R.I.G.L. § 13-8-10, Mr. Martinez, as an inmate sentenced to life imprisonment for an offense committed after July 10, 1989 and before June 30, 1995 and a consecutive sentence of a term of 5 years, would have parole eligibility determined by adding the minimum eligibility date of a life sentence to the minimum eligibility date of the consecutive term of years. See R.I.G.L. § 13-8-10.
14. Under the requirement to aggregate sentences, Mr. Martinez’s sentence required him to serve a total of 16 years and 8 months before being eligible for parole (15 years for the controlling life sentence and 20 months for the consecutive five-year sentence).
15. Upon information and belief, at all times material hereto, RIDOC by practice calculates the projected initial parole eligibility date for each person committed to

its custody for a sentence in excess of six months and periodically adjusts the calculation to reflect additional and/or corrected sentences.

16. In 2007, RIDOC calculated Mr. Martinez's parole eligibility date in accordance with the foregoing aggregated sentence protocol. At that time, RIDOC incorrectly informed Mr. Martinez that his aggregated initial parole eligibility date was April 2013. See Exhibit 2, letter of Kim Avedisian, Parole Coordinator, Rhode Island Department of Corrections, dated October 2, 2007, attached hereto and incorporated herein. In doing so, RIDOC aggregated the consecutive sentences, but failed to consider that Mr. Martinez was required to serve one-third of the consecutive five-year sentence, and not the entire sentence, in determining the initial parole eligibility date.
17. At some time thereafter, and in conformance with RIDOC's corrected calculation of the parole eligibility date for Mr. Martinez based upon an aggregated date for initial parole eligibility, the Parole Board first considered and denied Mr. Martinez for parole in 2009 and on two-year intervals thereafter until 2017. Mr. Martinez was next considered and denied parole in 2018 and next considered on October 29, 2020, when parole was granted by unanimous vote. The Board's minutes of its consideration of Mr. Martinez are attached hereto and incorporated herein as Exhibit 3.
18. The Board's minutes, Exhibit 3, reflect that Mr. Martinez presented home and re-entry plans to the community. The minutes report that Mr. Martinez "has served almost thirty years to date, has expressed both remorse and insight into his actions and a[] very positive institutional record for programming as well as no discipline

for the past seven years.” The Board, by unanimous vote, found “that Mr. Martinez meets parole release criteria.”

19. Notwithstanding the foregoing, the Parole Board stated that Mr. Martinez would not be released to the community but rather would be “paroled” to commence his consecutive five-year sentence. Exhibit 3.
20. Upon information and belief, at some point after 2007, and without notice to Mr. Martinez or to the Parole Board prior to a notation in the minutes in May 2019, Exhibit 3, RIDOC decided to alter its internal method of calculating parole eligibility dates 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.
21. Under this altered method of calculating parole eligibility dates, an inmate serving a life sentence would first have to be granted parole under 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 his life sentence, would then be required to serve the minimum eligibility period of the consecutive sentence before again seeking parole.
22. 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.

23. The Rhode Island Superior Court has addressed this issue previously in McMaugh v. State, PM-2017-0563. In McMaugh, a prisoner sought a parole hearing based on the aggregated policy described herein. The state objected, arguing that McMaugh was not entitled to a parole hearing. Justice Vogel granted McMaugh's request for post-conviction relief, specifically finding that McMaugh's parole eligibility was established at the time of his sentencing in 1995, noting that his life and consecutive sentences were aggregated pursuant to R.I.G.L. § 13-8-10. See Exhibit 4, Order of 10/18/18, McMaugh v. State, attached hereto and incorporated herein.
24. The Rhode Island Superior Court has addressed this issue previously in Eddie Martinez v. State, PM-2020-05568. In E. Martinez, based on RIDOC application of the altered method of calculating parole eligibility, Eddie Martinez was paroled in February 2019, effective July 1, 2018, to his consecutive ten-year sentence. Justice Nugent granted Eddie Martinez's request for post-conviction relief, specifically finding that his life and consecutive sentences should have been aggregated pursuant to R.I.G.L. § 13-8-10(a). See Exhibit 5, Order of July 2, 2021, Eddie Martinez v. State, attached hereto and incorporated herein (order stayed and petition for certiorari by the attorney general pending).
25. Upon information and belief, the Rhode Island Parole Board has acquiesced in this unlawful recalculation by RIDOC, and, notwithstanding its unanimous determination that Mr. Martinez should be released from incarceration to parole,

issued a parole permit merely releasing Mr. Martinez to begin serving his consecutive sentence. After Mr. Martinez objected, the Parole Board, by its Chair, rejected the objection, stating that “[t]he Department of Corrections, not the Parole Board, is responsible for calculating Initial Parole Eligibility.” The Parole Board corrected a clerical error to establish the date of “parole to the consecutive sentence” to take effect September 1, 2020, meaning that Mr. Martinez is treated as ineligible for parole to the community until he has served at least 20 months from September 1, 2020, or not before May 1, 2022. See Exhibit 6, Letter of Pisaturo, Chairperson, RI Parole Board, attached hereto and incorporated herein.

26. The action of RIDOC to calculate separate “parole eligibility dates” for inmates such as Mr. Martinez is contrary to law and irrational. The internal and unilateral decision of the RIDOC to reverse its own method of calculating parole eligibility dates is entitled to no deference. See Lerner v. Gill, 463 A.2d 1352 (R.I. 1983).
27. The decision of the Parole Board to rely, without question, upon the RIDOC’s recalculation of “parole eligibility dates” regardless of the mandates of law is an abdication of its exercise of control pursuant to R.I.G.L. §13-8-8 over the sentence of every person convicted and sentenced to be imprisoned at the ACI for a period of more than six months.
28. Rhode Island’s statutory scheme for parole is set forth in R.I.G.L. chapter 13-8. As set forth in that chapter, the decision of the Parole Board to release an inmate on parole entitles the inmate “to be at liberty during the remainder of his or her term of sentence upon any terms and conditions that the board may prescribe.” R.I.G.L. §13-8-9(a). Among the criteria which the Parole Board is statutorily charged to

find as a condition for granting a parole permit is “[t]hat there is a reasonable probability that the prisoner, if released, would live and remain at liberty without violating the law” and “[t]hat the prisoner can properly assume a role in the city or town in which he or she is to reside.” R.I.G.L. §13-8-14(a)(3), (4).

29. Under Rhode Island’s statutory parole system, release on parole can only mean release—under terms and conditions prescribed by the Parole Board—from the physical custody of RIDOC. “Parole to a consecutive sentence”—which means remaining in prison—is contrary to and not contemplated by Rhode Island’s statutory parole system. It requires the Parole Board to consider mandatory standards for parole that are meaningless in the context of “parole” to continued incarceration by RIDOC, and mandates multiple considerations of parole, to the prejudice of the inmate, the Parole Board, and all members of the community who are required to be notified and entitled to be heard whenever parole is considered.
30. In reviewing a similar statutory parole system in Massachusetts, the Massachusetts Supreme Judicial Court rejected the substantively similar statutory interpretation there formally adopted by the Massachusetts Parole Board and here unilaterally applied by RIDOC, concluding that Massachusetts law—which contains similar language to Rhode Island concerning aggregation of sentences—“requires the board to establish a single parole eligibility date.” Dinkins v. Massachusetts Parole Board, 486 Mass. 605, 609 (Mass. 2021). “The [Parole Board’s] regulation, by exempting sentences consecutive to a life sentence from the aggregation rule, contravenes the plain meaning” of the Massachusetts statutory scheme. Id. at 610-611.



31. RIDOC's arbitrary action, to which the Parole Board has acquiesced, unlawfully requires Mr. Martinez to remain in custody until at least May 1, 2022 before release to the community, notwithstanding the Parole Board's unanimous determination that he has already satisfied conditions of parole, and his incarceration for more than 30 years. Mr. Martinez is being deprived of at least 1 year and 8 months of liberty before he can seek his release on parole under RIDOC's altered methodology, which contravenes R.I.G.L. § 13-8-10's provision that sentences should be aggregated for determination of parole eligibility.
32. In addition, his ability to secure community placement in the future depends on availability of scarce community resources which Mr. Martinez previously obtained, but are not guaranteed at a future date. See Exhibit 7, letter of the Rhode Island Reentry Collaborative of August 12, 2020, attached hereto and incorporated herein.
33. As a direct result, Mr. Martinez is being unlawfully incarcerated and is entitled to release to the community on parole.
34. Mr. Martinez's continued incarceration constitutes an unreasonable seizure in violation of the Fourth Amendment of the United States Constitution, and Article I, Section 6 of the Rhode Island Constitution.
35. Mr. Martinez's continued incarceration deprives him of due process, in violation of the Fifth and Fourteenth Amendments of the United States Constitution, and Article I, Section 10 of the Rhode Island Constitution.
36. RIDOC's alteration of Mr. Martinez's terms of sentence so as to increase the amount of time he must serve before consideration for parole to the community is

cruel and unusual punishment, in violation of the Eighth Amendment of the United States Constitution and Article I, Section 8 of the Rhode Island Constitution.

WHEREFORE, Mr. Martinez prays this court to

- a. Find that he has been unlawfully detained beyond the terms of his sentence, in violation of the United States and Rhode Island Constitutions;
- b. Grant his immediate release to the community, pursuant to the recommendation, and subject to the supervision, of the Rhode Island Parole Board;
- c. Enjoin or prohibit Respondent and RIDOC from administering any policy or practice other than the “aggregated” policy in place at the time of Petitioner’s 1993 conviction and judgment; and
- d. Grant such further relief as this court deems just and proper.

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 2nd day of August, 2021, I emailed a copy of this document to Kathleen Kelly, Chief Legal Counsel, Rhode Island Department of Corrections, at kathleen.kelly@doc.ri.gov and filed this document through the electronic filing system. The document electronically filed is available for viewing and/or downloading from the Rhode Island Judiciary's Electronic Filing System.

/s/ Camille A. McKenna

