

Handout #1

RE: AGENDA ITEM E.

Review of Arkansas Department of Corrections (ADC) Parole Policies and Recent Decision to Revoke Parole and Re-Incarcerate Individuals with Prior Convictions for Residential Burglary

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Review of Arkansas Supreme Court Cases

- *Aguilar v. Lester*, 2011 Ark 329
- *Rogers v. State*, 2022 Ark 19

Aguilar v. Lester, 2011 Ark 329

Aguilar was convicted of second-degree murder and residential burglary in 2005. His total sentence was 30 years. The then Dept. of Correction calculated his sentence on the second-degree murder conviction (an enumerated offense under Act 1805) at 100% due to a prior violent offense, occurring prior to 8/13/2001 in another state (battery, 1970). Aguilar sued, asking in part for the Court to require the Department to recompute his parole eligibility date.

The relevant portion of the Court's opinion is related to Aguilar's classification as a second-time violent offender for purposes of parole eligibility. He asserted that this violated the Ex Post Facto clause of the US Constitution. The Court was not persuaded by his argument. Instead, the court said

"Act 1805 was in effect at the time of appellant's present offenses, and it is applied by the department to these present offenses, not to appellant's prior conviction. Therefore, there was no ex post facto violation."

There are two critical elements that must be present for a criminal law to be ex post facto: (1) it must be retrospective, that is, it must apply to events occurring before its enactment; (2) it must disadvantage the offender affected by it. *Brown v. Lockhart*, 288 Ark. 483, 707 S.W.2d 304 (1986). Neither element is present in this case.

Rogers v. State, 2022 Ark 19

Rogers was convicted of aggravated robbery by a jury in 2006 for offenses committed in 2005. He was sentenced to 360 months' imprisonment for the offense and 180 months for the firearm enhancement, which was to run consecutively, for a total sentence of 540 months. The statute was silent regarding application of parole eligibility law to the enhancement at the time Rogers committed his offense, so the ADC considered the offense and enhancement together and applied the same parole eligibility rules to the enhancement as applied to the underlying offense. [70%]. Rogers appealed and said that he should not be required to serve 70% on the enhancement because that provision was not enacted until after he committed the offense. On remand, the circuit court held that the two sentences had to be considered separately, but concluded that the ADC had erroneously calculated parole eligibility on the enhancement, and that Rogers should be entirely ineligible for parole on the enhanced portion of the sentence. Rogers appealed again from this ruling by the circuit court.

Similar to Aguilar, the Court did discuss ex post facto laws and said the ADC must determine parole eligibility by the law in effect when the offense was committed and therefore has no discretion in applying parole eligibility laws.

The Supreme Court ultimately ruled that the time had to be recalculated because statute, not ADC interpretation, determined the parole eligibility provisions applied to Mr. Rogers' enhancement.