



**THE ATTORNEY GENERAL  
OF TEXAS**

**AUSTIN, TEXAS 78711**

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ATTORNEY GENERAL**

November 1, 1971

Honorable A. C. Turner  
Chairman  
Board of Pardons and Paroles  
Room 501  
John H. Reagan Building  
Austin, Texas 78701

Opinion No. M-981

Re: Authority of Board  
of Pardons and Paroles  
to commute the Death  
Sentence to a Life  
Sentence upon reversal  
of penalty in a case  
by the United States  
Supreme Court under  
facts presented, and  
related question.

Dear Mr. Turner:

You have recently requested an opinion on the following facts:

"This Board would like to know if it has the authority, under the law, to commute the DEATH sentence to a LIFE sentence in view of the action by the United States Supreme Court in reversing the penalty in this case. Can this Board act in this case without the application of the inmate for a Commutation of Sentence?

"In view of the ruling of the United States Supreme Court in this case, is this inmate under a DEATH sentence at this time, and what action can this Board take under the law?

"Is this Board required to have a hearing in the event it has the authority to act in this case?

"Did the defendant request a Commutation of Sentence in his action to the Supreme Court of the United States?"

In keeping with our policy of not giving opinions on matters presently in litigation we cannot answer your questions regarding

the Quintana case. However, for your guidance, we will honor your request for advice in this general area. This advice does not necessarily control any specific case.

Article 48.01, C.C.P., provides,

"In all criminal cases, except treason and impeachment, the Governor shall have power, after conviction, on the written signed recommendation and advice of the Board of Pardons and Paroles, or a majority thereof, to grant reprieves and commutations of punishments and pardons; . . ."

This Article is taken verbatim from the second paragraph of Article IV, Section 11 of the Texas Constitution.

The power of the Governor to grant commutations of punishment after conviction, has been provided in the Constitution of Texas from its inception. Although Article IV, Section 11 of the Texas Constitution has been amended, this basic grant of authority remains unchanged, except it now provides that the Governor has this power "on the written signed recommendation and advice of the Board of Pardons and Paroles, or a majority thereof".

This constitutional power of the Board of Pardons and Paroles and the Governor can be exercised at any time "after conviction". In this context the phrase "after conviction" means after a finding of guilty. As Stated by the Court in Snodgrass v. State, 150 S.W. 162 (Tex.Crim. 1912),

" . . . Under the common law, a person was said to be convicted of the crime when verdict was rendered thereon adjudging him guilty, . . ." (at p. 172).

" . . .

" . . . The foregoing references show that the ordinary meaning of the word 'conviction' is the verdict of guilty pronounced by a jury. . ." (at p. 173).

" . . . Thus it is seen that the terms 'after conviction' in our Constitution do not embrace the sentence, but simply mean the determination of

guilt by the tribunal authorized to try the issue of guilt or innocence of a defendant, and the person becomes subject to pardon whenever that issue is finally determined." (at p. 174).

This interpretation is supported by the language of Article IV, Section 11A, added to the Texas Constitution in 1935. Section 11A granted authority to the Courts of Texas having original jurisdiction of criminal actions to suspend the imposition or execution of sentences and place defendants on probation "after conviction". In Article IV, Sections 11 and 11A of our Constitution, the term "after conviction" means only that the defendant must have been found guilty. The executive power to commute attaches as soon as punishment is assessed, without regard to whether the conviction is on appeal or has become a "final" conviction. Davenport v. State, 78 S.W.2d 605 (Tex.Crim. 1935); Goss v. State, 298 S.W. 585 (Tex.Crim. 1927); 138 ALR 1162, 1164.

Therefore, even though a death penalty conviction may be on appeal, the executive power to commute that death sentence to life imprisonment exists. Even though the United States Supreme Court may reverse a judgment insofar as it imposes the death penalty and remand the case back to the Texas Courts for further proceedings in conformity with its judgment, unless and until the Texas Court takes final action on the case, it is still a conviction subject to the executive power to commute.

"Commutation of sentence means the change of the punishment assessed to a less severe one. It differs from a pardon in that it may be imposed without consent of the convict or against his will."  
Ex Parte Lefors, 303 S.W.2d (Tex.Crim. 1957).

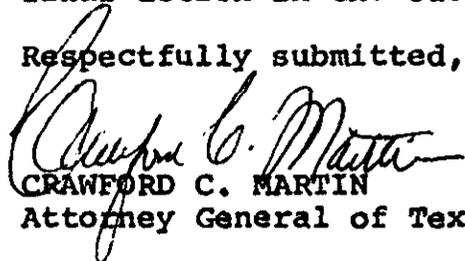
The Board of Pardons and Paroles can recommend to the Governor that a death sentence be commuted to life imprisonment, and the Governor, pursuant to such recommendation, can commute the sentence without consent of the convict. Neither do we find in our laws any requirement that the Board of Pardons and Paroles conduct a hearing before it recommends commutation nor before commutation is given.

#### S U M M A R Y

The questions regarding a specific case presently in litigation are unanswered. However, the Board of Pardons and Paroles generally can

recommend and the Governor, based on such recommendation, can commute a death sentence to life imprisonment even though the conviction is on appeal and has not been finally determined by the Texas Courts. The Board and Governor may do the same even though the United States Supreme Court may reverse a judgment insofar as it imposes the death penalty and remands the case to the Texas Court for further proceedings in conformity with its judgment, so long as the Texas Court has taken no final action in the case.

Respectfully submitted,

  
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APPROVED:  
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