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Crimes and Offenses -- Paroles -- Sentences

A person convicted of attempting to traffic in cocaine is eligible for parole consideration when a person convicted of trafficking in cocaine is eligible.

Dear Sirs:

This opinion is issued in response to your request for an opinion from the Attorney General.

QUESTION

If any person is convicted of trafficking in cocaine, in a quantity between 500 grams and one kilogram, Section 20-2-80(2)(b) requires a sentence of not less than 5 years. Trafficking in cocaine in quantities in excess of one kilogram requires a sentence of not less than 15 years. Section 20-2-81 provides that any person "who is found to have violated Section 20-2-80" shall not be eligible until he serves the mandatory minimum sentence.

> If a person is convicted of "Attempting to Traffic in Cocaine" and receives a life sentence, and the quantity involved was one kilogram, when may this Board schedule him for parole consideration hearing?

FACTS AND ANALYSIS

Code of Alabama 1975, §13A-12-203(c) (1989 Cum. Supp.) provides as follows:

> "(c) An attempt to commit a controlled substance crime shall be punished the same as the controlled substance crime attempted."

Trafficking in cocaine, §13A-12-231(2), is a controlled substance crime.

Code of Alabama 1975, §13A-12-231(2)(c) provides the following punishment for trafficking in cocaine:

> "If the quantity involved:
>
> * * *
>
> "c. Is one kilo, but less than 10 kilos, then such person shall be sentenced to a mandatory minimum term of imprisonment of 15 calendar years and to pay a fine of $250,000.00. . . ."

Pursuant to this section and §13A-12-203(c), a person convicted of attempting to traffic in cocaine, where the amount of cocaine involved is one kilogram, would be subject to a mandatory minimum sentence of 15 years.

Code of Alabama 1975, §13A-12-232(a) provides, in pertinent part, as follows:

> "(a) Notwithstanding the provisions of Chapter 22, Title 15, or any other provision of law, with respect to any person who is found to have violated section 13A-12-231, adjudication of guilt or imposition of sentence shall not be suspended, deferred, or withheld, nor shall

> such person be eligible for any type of parole, . . . prior to serving the mandatory minimum term of imprisonment prescribed in this article or 15 years, whichever is less. . . ."

Because a person who is convicted of attempting to traffic in cocaine is punished as if he had committed the offense of trafficking in cocaine under §13A-12-231, that person would be eligible for parole at the same time as a person convicted of trafficking in cocaine.

CONCLUSION

A person convicted of attempting to traffic in cocaine where the amount involved was one kilogram would be eligible for parole consideration after serving 15 years. A person convicted of attempting to traffic in cocaine is punished the same as one who traffics in cocaine and, therefore, is eligible for parole consideration when a person convicted for trafficking in cocaine is eligible.

I hope that this sufficiently answers your question. If our office can be of further assistance, please do not hesitate to contact us.

Sincerely,

Don Siegelman
Attorney General
By

John Gibbs
Assistant Attorney General

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