

Stephen A. Avery

From: Frank, Ella, NMCD [Ella.Frank@state.nm.us]
Sent: Wednesday, December 14, 2005 12:22 PM
To: savery@averycpa.com
Cc: Garcia, Francine M., NMCD
Subject: FW: confirm telephone conversation
Importance: High

Mr. Avery,

My sincere apologies! I just now realized that the email that I thought I had sent to you yesterday was actually not! Your original email had been forwarded to me and I hit reply, which sent it to Francine and not to you! I am so sorry.

Please review the information below and if we can help you in any other way, please let us know. I will be away from the office on Thursday and Friday, but Francine will be able to assist you in my absence.

One other note, regarding the Victim Rights Statute, and as a matter of clarification, there may be other remedies for its breach, but it is not possible to invalidate the application of good time.

Again, I apologize for my oversight.

Ella Frank, Director
NM Parole Board
ph: 505-827-8825
fax: 505-827-8933

From: Frank, Ella, NMCD
Sent: Tue 12/13/2005 5:14 PM
To: CDVictimSrvcs, NMCD
Cc: Lambert, Tammi, GOV; Garcia, Francine M., NMCD; D'Angelo, Nick, NMCD
Subject: RE: confirm telephone conversation

Mr. Avery,

Ms. Garcia was kind enough to forward me your email today; we have also discussed your situation with Tammi Lambert, Director of the Governor's Office on Victim Advocacy.

The state statute to which you have referred does provide that victims should be informed of the possibility of meritorious good time deductions for inmates; however, it does not provide a remedy in the event that such information is not provided. As a result it is in the class of statutes that is viewed more as "advisory" in nature. While we agree that you had every right to be, and should have been, informed, the fact that you were not, sadly, has no available remedy.

As far as Ms. Long's sentencing goes, the Court has broad discretion. The Court does not lose its jurisdiction, and the District Court continues to have authority over the case itself. (For example, it will continue to have authority over Ms. Long through the Probation that it imposed on her as part of the original judgment and sentence and also has the power to amend it's original Judgment and Sentence.) Once the offender is turned over to the Corrections Department, however, it is up to Corrections to enforce that sentence including any calculations of the time of the incarceration.

We are very sorry for the difficulties that this matter has caused you and will assist in any way we can. As you are aware, Ms. Long is scheduled for her Parole Board hearing on Monday, December 19th. You are welcome to participate and the Board will work with you to make the arrangements that best suit your situation. In view of the dangerous nature of the crime against you, you may wish to confer with the Board without Ms. Long's knowledge. Our Board chairman resides in Albuquerque and I am sure he would do his best to make the necessary arrangements with you if you so desire.

Additionally, you may wish to speak to Ms. Lambert at the Governor's Office of Victim Advocacy at 841-2480 or with Linda Atkinson of the NM Victim Rights Project at 292-2838. Again, we are very sorry that these issues have been so problematic and we sincerely wish you the best.

Ella Frank, Director
NM Parole Board
ph: 505-827-8825
fax: 505-827-8933

From: CDVictimSrvcs, NMCD
Sent: Tue 12/13/2005 2:51 PM
To: Frank, Ella, NMCD
Subject: FW: confirm telephone conversation

From: Stephen A. Avery [mailto:savery@averycpa.com]
Sent: Tue 12/13/2005 10:43 AM
To: CDVictimSrvcs, NMCD
Subject: confirm telephone conversation

Ms. Garcia,

I guess I am still in a little bit of a shock after the statements Ms. Frank made yesterday. Could you look these over and assure me that I am correct?

1. The Parole Board now only set conditions for release. The Department of Corrections decides on release based on automatic meritorious deductions according to the crime.
2. The statute 31-26-4(l) is without value, according to Ms. Frank, because it does not outline a penalty or consequence. The statute says that I, as the victim, must receive notice but does not say that the criminal forfeits meritorious deductions if the victim is not notified.
3. That the sentencing judge loses jurisdiction over the inmate after thirty days and the Department of Corrections is responsible for the criminal's treatment and other issues that may have been part of sentencing.

Additionally, could you confirm that Ms. Long is being released based on meritorious deductions and what the anticipated release date is?

Thank you,

Stephen A. Avery
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