BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS ON REFERRAL BY THE COMMISSIONER OF REVENUE

In the Matter of	)	
	)	
K. D., JR.	)	OAH No. 23-0636-PFD
	)	
	)	

DECISION

I. Introduction

The Department of Revenue Permanent Fund Dividend Division ("Division") denied K. D., Jr. a 2023 Permanent Fund Dividend ("PFD") because he was incarcerated during 2022 following parole revocation on a felony sentence. Mr. D. contends incarceration following parole revocation should not render a person ineligible for a PFD. As discussed below, the statutory language, legislative history, and past Commissioner decisions demonstrate that incarceration following parole revocation on a felony conviction constitutes incarceration "as a result of" the underlying felony and therefore a person is ineligible when incarcerated during the qualifying year. Because Mr. D. was incarcerated as a result of a felony conviction during 2022, he is ineligible for a 2023 PFD. The Division's decision is affirmed.

II. Background

A person who is incarcerated during any part of the qualifying year "as a result of the conviction in this state of a felony" is not eligible for a PFD.[1] K. D. was convicted of a felony on January 19, 2018 by pleading guilty to kidnapping under felony statute AS 11.41.300(a)(1)(C).[2] On July 15, 2022, Mr. D. was found to have violated parole stemming from this conviction.[3] Because of this parole violation, Mr. D. was incarcerated starting March 12, 2022 and remains incarcerated as of the time of this decision.[4] Mr. D. admits he was convicted of a felony, on parole for that felony, and that he was incarcerated in 2022 because that parole was revoked.[5]

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1 AS 43.23.005(d)(2)(A).
2 Courtview docket for 3AN-13-00000CR, of which administrative notice is taken.
3 Ex. 4; Ex. 6 at 2-3.
4 *Id.*
5 D. testimony.

Mr. D. applied for a 2023 PFD, listing a state correctional facility for his mailing and physical address.[6] The Division confirmed with the Department of Corrections that Mr. D. was incarcerated during 2022 — the qualifying year for a 2023 PFD — and that his incarceration resulted from a felony conviction. The Division therefore denied his application.[7]

Mr. D. requested an informal appeal, arguing that he was not convicted of a felony or misdemeanor in 2022 and that incarceration due to a parole violation should not be a basis for denying a PFD.[8] In the informal appeal, the Department of Corrections confirmed that Mr. D. was incarcerated during 2022 as a result parole violations stemming from his felony conviction for case number 3AN-13-00000CR.[9] The Division thus affirmed its denial.[10]

Mr. D. appealed, arguing again that his incarceration for parole violations should not render him ineligible for a PFD.[11] A hearing was held on November 27, 2023.

III. Discussion

A person who was incarcerated in the in 2022 "as a result of the conviction in this state of a felony" is not eligible for a 2023 PFD.[12]

The Division provided evidence Mr. D. was convicted of a felony for case 3AN-13-00000CR, that he was on parole for that conviction, and that his parole was revoked in 2022, resulting in his incarceration starting that year. Mr. D. does not dispute these facts. Rather, he argues that because the statute prohibiting PFDs for persons incarcerated as a result of a felony does not apply to him because the statute does not expressly refer to incarceration following parole revocation on a felony conviction.

Statutes are interpreted according to the plain meaning of the words, considering the legislature's intent in choosing those words; the more plain the language, the more compelling a contradictory legislative history must be to interpret those words differently.[13]

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6 Ex. 1 at 1.

7 Ex. 2.

8 Ex. 3 at 2-3.

9 Ex. 4. Mr. D. took issue with this document to the extent it could be interpreted to indicate he was convicted of a felony in 2022. The ALJ understood the document to state that Mr. D. had parole violations in 2022, resulting in incarceration. Mr. D. admits his felony conviction, parole revocation, and incarcerated in 2022. Exhibit 4 is consistent with these facts.

10 Ex. 5.

11 Ex. 6 at 1; Ex. 7.

12 AS 43.23.005(d)(2)(A).

The statute at issue here states that "an individual is not eligible for a permanent fund dividend for a dividend year when . . . during all or part of the qualifying year, the individual was incarcerated as a result of a conviction in this state of a . . . felony."[14] The key language here is "as a result of." Notably, the statute does not limit ineligibility to a felony sentence, but to any incarceration resulting from a felony conviction. This language is broad enough to include a probation violation or parole revocation. Probation and parole are inextricably connected to an underlying conviction. A person does not find themselves on probation or parole absent that conviction. Thus when a person violates these conditions of release and is thereafter incarcerated, the incarceration is a result of the underlying conviction itself. The causal connection to the underlying conviction is particularly strong with a parole revocation. Parole is a reprieve from a criminal sentence. Violation of that parole is not itself a separate crime and does not result in a new or separate sentence. Rather, when parole is revoked, a person resumes serving the original sentence.[15] That person may have had a temporary reprieve while on parole, but their incarceration is for the original conviction and sentence. When that conviction is for a felony, the incarceration is "as a result of" a felony and therefore falls within the language of the statute or PFD ineligibility.

The Division and Department of Revenue Commissions have long interpreted the statute's "as a result of" language to mean that a person incarcerated on a felony probation violation is incarcerated because of the felony conviction and therefore ineligible for a PFD.[16]

The legislative history supports this interpretation. When the Legislature adopted the statutory language in 1996, it included uncodified language in the bill stating that the purpose was, in part, to "obtain reimbursement for some of the costs imposed on the state

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13 *Alaskans For Efficient Gov't, Inc. v. Knowles*, 91 P.3d 273, 275 (Alaska 2004) ("Rather than rigidly apply a plain meaning rule of statutory interpretation, we favor a 'sliding scale approach' under which 'the plainer the language of the statute, the more convincing contrary legislative history must be.'"); *McLeod v. Parnell*, 286 P.3d 509, 514 (Alaska 2012) ("When interpreting a statute, we look 'to the legislature's intent, with due regard for the meaning the statutory language conveys to others.'"); *Tesoro Alaska Petroleum Co. v. Kenai Pipe Line Co.*, 746 P.2d 896, 905 (Alaska 1987) ("[U]nless words have acquired a peculiar meaning, by virtue of statutory definition or judicial construction, they are to be construed in accordance with their common usage.").

14 AS 43.23.005(d)(2)(A).

15 AS 33.16.220.

16 *See*, *e.g.*, *In re MGD, Jr.*, OAH 12-0072-PFD at 2 (Commissioner Revenue 2012); *In re MK*, OAH 11-0464-PFD at 2 (Commissioner Revenue 2012); *In re TB*, OAH 09-0001-PFD at 3 (Commissioner Revenue 2009).

criminal justice system related to incarceration *or probation* of individuals convicted of a felony."[17] In a hearing on the bill, House Judiciary Chairman Brian Porter asked if a person was convicted and given probation and in a later year violated probation and was then incarcerated, would they lose PFD eligibility in that later year. Then-PFD Division Director Nanci Jones confirmed that would be the case.[18] The legislature thus understood the bill would make persons PFD-ineligible when incarcerated on a probation violation from an underlying felony, and expressly stated this was the intent of the bill. Since "as a result of" is broad enough to encompass probation violations, it is broad enough to encompass a parole violation, which is even more closely tied to the underlying conviction and sentencing.

Based on the language of the statute, the legislative history, and past Commissioner decisions, when a person is incarcerated following parole revocation, that incarceration is a result of the underlying crime. And when that crime is a felony, a person is ineligible for a PFD when incarcerated during the qualifying year.

Here, Mr. D. was convicted of a felony in 2018. He was later granted parole from serving out his full sentence. But the Parole Board determined that he violated the terms of parole and revoked it. He was thus obligated to serve out at least some of his sentence on the 2018 felony conviction. Mr. D. started serving the remainder of his sentence on March 12, 2022 and remained incarcerated for the rest of 2022. Accordingly, Mr. D. was incarcerated as a result of a felony during the qualifying year and is ineligible for a 2023 PFD.

IV. Conclusion

Because Mr. D. was incarcerated in 2022, and his incarceration was a result of an earlier felony conviction, he is ineligible for a 2023 PFD. The Division's decision is affirmed.

Dated: November 28, 2023

Signed

Rebecca Kruse
Administrative Law Judge

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17 1996 Alaska Laws Ch. 46 (S.B. 232), Sec. 1 (emphasis added).

18 S.B. 232, House Judiciary Standing Committee, (Alaska 19th Legislature, March 27, 1996).

Adoption

This Order is issued under the authority of AS 43.05.010 and AS 44.17.010. The undersigned, on behalf of the Commissioner of Revenue and in accordance with AS 44.64.060, adopts this Decision as the final administrative determination in this matter.

Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with Alaska R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this 22nd day of December, 2023.

By: *Signed*
Rebecca Kruse
Administrative Law Judge

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