

SUPREME COURT

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Contact:

Steve Armitage
Staff Attorney
steve.armitage@ojd.state.or.us

Case decided May 8, 2024.

Brown v. Kotek (S071034)

Original proceeding in habeas corpus. It is hereby ordered that plaintiff immediately be discharged from her illegal imprisonment. Pursuant to ORAP 1.20(5) and notwithstanding ORAP 9.25 and ORAP 14.05(3)(b), the State Court Administrator shall issue the appellate judgment immediately. Opinion of the Court by Justice Christopher L. Garrett.

Today, the Oregon Supreme Court held that Governor Tina Kotek lacked authority to revoke an earlier conditional commutation ordered by Governor Kate Brown. Because the commuttee (the plaintiff in this proceeding for a writ of habeas corpus) had finished serving all of her sentences when Governor Kotek revoked the conditional commutation, the Court explained, the Governor had lacked authority, under the terms of the commutation, to issue the revocation. As a result, the Court concluded that plaintiff's imprisonment was unlawful, and it ordered her immediate discharge.

In the underlying criminal prosecution, plaintiff pleaded guilty to two counts of mail theft or receipt of stolen mail; she was sentenced to 30 months of incarceration and 24 months of post-prison supervision (PPS) on Count 1, and 30 months of incarceration (consecutive to Count 1), but no PPS, on Count 2. As of December 2020, plaintiff's term of incarceration was set to be completed in August 2021. In December 2020, Governor Brown, in connection with the COVID-19 pandemic, ordered a "Conditional and Revocable Commutation of Sentence" in plaintiff's criminal case, commuting her remaining term of incarceration to PPS. The commutation was subject to a variety of conditions, including that plaintiff agree to and abide by the terms of an acceptance agreement, which in turn required that plaintiff (1) not violate any state or federal law from the date of the commutation order through August 22, 2021; and (2) abide by the terms and conditions of any PPS imposed in connection with the conditional and revocable commutation and her judgment of conviction. The agreement included a waiver provision, stating that plaintiff waived any legal challenges to future revocation of the commutation and to being returned to prison, including through a petition for a writ of

habeas corpus. Plaintiff signed the acceptance agreement and was released from prison and placed under the authority of the Board of Parole and Post-Prison Supervision (BOPPS) to serve her PPS.

In May 2021, approximately four months after plaintiff's release from prison, plaintiff pleaded no contest to violating a general condition of PPS, for which a 30-day jail sanction was imposed. Almost two years later, in February 2023, BOPPS issued a certificate stating that plaintiff had completed her period of PPS and that her supervision had expired. Later that year, in December 2023, Governor Kotek revoked plaintiff's commutation, stating that she had determined that plaintiff had violated conditions of her conditional commutation. Plaintiff then was arrested and again incarcerated in prison. Thereafter, plaintiff filed a petition for a writ of habeas corpus, contending that she is unlawfully incarcerated.

In a unanimous opinion written by Justice Christopher L. Garrett, the Supreme Court held that plaintiff's imprisonment was unlawful and ordered her immediate discharge from custody. The Court explained that Governor Brown had exercised her clemency power through the issuance of a conditional commutation order that had included an acceptance agreement, which meant that Governor Brown had structured plaintiff's commutation similar to a contractual arrangement that required plaintiff's acceptance. The Court concluded that, by specifying that plaintiff was obligated to serve PPS, which is governed by a statutory and regulatory scheme, her conditional commutation -- together with the acceptance agreement to which plaintiff was bound -- incorporated the general principle that the authority to sanction an offender for a PPS violation, or to revoke the offender's PPS altogether, is time-limited and must be initiated before the offender's PPS term ends and while the offender remains subject to a sentence. The Court reasoned that, by requiring plaintiff to serve PPS, and without clearly expressing an intent to depart from the temporal limitations that otherwise apply to PPS, the Governor had limited any Governor's ability to revoke plaintiff's commutation to the period of time before her PPS had ended and her sentence had expired.

Applying that reasoning to the facts, the Court concluded that, under the terms of the December 2020 commutation order, Governor Kotek had lacked authority in December 2023 to revoke plaintiff's commutation. The Court reiterated that, in February 2023, BOPPS had already issued its certificate stating that plaintiff had completed her period of PPS and her supervision had expired, which meant that plaintiff was no longer subject to any sentence at that time. The Court also acknowledged, but rejected, the state's argument that plaintiff had waived her right to challenge her imprisonment. The Court explained that the waiver provision that plaintiff had signed did not address the circumstance in which a Governor might revoke her commutation even after she had finished serving her sentence. Even assuming that such a waiver, if made, could be enforceable, the Court concluded, the acceptance agreement in this case failed to express that intention with the necessary degree of clarity. Accordingly, the Court concluded

that, under the circumstances of this case, Governor Kotek lacked authority to revoke plaintiff's conditional commutation, and, as a result, plaintiff's present imprisonment was unlawful. The Court accordingly ordered that plaintiff immediately be discharged.