

MAY 5, 1953.

THE HONORABLE HOMER C. ZINK, *Chairman*,  
*State Parole Board*,  
State Office Building,  
Trenton, New Jersey.

## FORMAL OPINION—1953. No. 16.

MY DEAR MR. ZINK:

You have inquired, under date of May 5, 1953, as to the extent of the authority of the State Parole Board to consider for release on parole a prisoner undergoing life imprisonment at the State Prison and upon whom sentence of death had been imposed and which said sentence of death was commuted by the former Court of Pardons to life imprisonment.

In *State vs. Hildebrand*, 25 N. J. Super. 82 (App. Div., 1953) this very question was considered. You will recall that in the case of *George Hildebrand*, a prisoner in confinement at State Prison having the status alluded to above, that he made application to your board for consideration for release on parole under section 11, Chapter 84, P. L. 1948, relating to life sentence prisoners. On July 3, 1952, your board ruled that it had no authority to consider him for release on parole because (1) he was not serving a sentence of life imprisonment imposed by a trial criminal court and (2) that Section 4, Chapter 83, P. L. 1948, provided that when a sentence of death was commuted to one of life imprisonment that "such term of imprisonment shall not be remitted or commuted except by the Governor."

The Court in the *Hildebrand* decision, *supra*, considered both grounds and rejected them and the Court said:

"This defendant qualifies under section 11 as a 'prisoner serving a sentence of life.' We conclude that the ruling of the State Parole Board is invalid and that the defendant is not ineligible for consideration for parole by the State Parole Board for any of the reasons set forth in the letter of said parole board dated July 3, 1952."

It seems clear from a reading of this decision that *Hildebrand* can now be considered as eligible for consideration for release on parole under section 11 of the Parole Act, *supra*, assuming, of course, that he qualifies as to length of time served in confinement.

Very truly yours,

THEODORE D. PARSONS,  
*Attorney General*,

By: EUGENE T. URBANIAK,  
*Deputy Attorney General*.

ETU:HH