

FILED
CLERK U.S. DISTRICT COURT

2004 SEP 24 P 4:01

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

BY: _____
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UNITED STATES OF AMERICA

Plaintiff,

vs.

WELDON ANGELOS

Defendant.

ORDER CLARIFYING
ADDITIONAL BRIEFING ON THE
PAROLE ELIGIBILITY OF FIRST
DEGREE MURDERERS

Case No. 2:02-CR-00708PGC

The court has been reviewing the parole eligibility of first degree murderers. Counsel recalls that during oral argument on this case on September 14, 2004, the court and counsel for the government discussed Mr. Angelos' parole eligibility when compared to a first degree murderer. Counsel also recalls that the court directed briefing from the government on whether a first degree murderer who is sentenced to life in prison under 18 U.S.C. § 3559(c) is eligible for release at the age of 70, assuming (of course) the other qualifications of 18 U.S.C. 3582(c) are met.

The court now wishes to clarify its understanding of the way in which 18 U.S.C. § 3559(c) operates. The court understands that someone who is convicted of first degree murder is, if not sentenced to death, sentenced to life in prison pursuant to 18 U.S.C. § 1111(b). However, a

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first degree murderer – or, more realistically, a second degree murderer -- could also be sentenced to life in prison pursuant the so-called “Federal Three Strikes Law,” 18 U.S.C. § 3559(c). This would occur, for example, if the second degree murderer had, at the time of sentencing, been convicted on separate prior occasions for two or more serious violent felonies or one or more serious violent felonies and one or more serious drug offenses. See 18 U.S.C. § 3559(c)(1). If so, the second degree murderer sentenced under the Federal Three Strikes Law would then be eligible for compassionate release under 18 U.S.C. § 3582(c)(1)(A)(ii) at age 70, while Weldon Angelos would not be eligible for such release.

The court is planning on considering this analysis in its forthcoming opinion in *Angelos*. If the government disagrees with any of the foregoing analysis, it is directed to file an appropriate pleading by **September 29, 2004**. Also, if the government intends to formally take the position that either (1) a *second* degree murderer sentenced under the Federal Three Strikes Law is not eligible for compassionate release at age 70 as described above or (2) Weldon Angelos is eligible for compassionate release at age 70, the court directs that the United States Attorney’s Office coordinate its position with the Bureau of Prisons so that the court can be fully informed about the criteria the Bureau uses in evaluating release requests.

The court appreciates the assistance that all counsel have provided on this difficult case.

DATED this 24th day of September, 2004.

BY THE COURT:



Paul G. Cassell
United States District Judge

United States District Court
for the
District of Utah
September 24, 2004

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:02-cr-00708

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

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