**THE INFORMATIONAL CORRLINKS NEWSLETTER (ICON) # 69**

**July 2021- On Presidential Pardons**

ICoN provides legal, treatment, activism news & practical info for incarcerated SOs. Send inquiries by CorrLinks email (iamthefallen1@yahoo.com) or to Derek Logue, 2211 Co. Rd. 400, Tobias NE 68453. Our focus is SO laws; we don’t advise or assist on appeals, sentencing issues, non-SO news, & services like people-finding, penpals & mail forwarding.

**LEGAL ROUNDUP**

*Karsjens v. Lourey,* No. 18-3343 (8th Cir. 2021): On appeal for a second time, the Court clarified the legal standard applicable to the conditions of confinement claims brought by the civilly committed individuals in MN. The court concluded that the district court properly dismissed Count 3 of appellants' 3rd Amended Complaint after applying the "shocks the conscience" standard. However, the district court erred as a matter of law when it applied the "shocks the conscience" standard to Counts 5, 6, and 7, which appellants allege that they were subjected to punitive conditions of confinement. The court instructed the district court, on remand, to consider the claim of inadequate medical care under the deliberate indifference standard outlined in Senty-Haugen v. Goodno, 462 F.3d 876, 889-90 (8th Cir. 2006), and to consider the remaining claims under the standard for punitive conditions of confinement outlined in Bell v. Wolfish, 441 U.S. 520, 535 (1979).

*Powell v Keel*, Opinion No. 28033 (SC 2021): SC Sup Ct held SORA's lifetime registration requirement was unconstitutional absent any opportunity for judicial review to assess the risk of re-offending; those who demonstrate a low risk of re offending may have their names removed through judicial order.

*People v Manaois* (2021 CO 49): CO sup Ct ruled, “Sex offenses are different. Our General Assembly has historically acknowledged as much, handling sex offenses differently from other offenses for more than half a century. But exactly how different are sex offenses from other offenses? Today we are called upon to explore this question, as we determine whether a particular sentencing restriction governing felony offenses applies to sex offenses. Just last term, we decided in Allman v. People that a district court lacks authority under our general sentencing statutes to sentence a defendant to prison for one offense and to probation for another in a multi-count case. 2019 CO 78, 28, 451 P.3d 826, 833. But Allman received consecutive prison-probation sentences for non-sex offenses (forgery, theft, and related offenses), while the defendant in this case received consecutive prison-probation sentences that included a sentence to SO Intensive Supervision Probation (“SOISP”) for a “sex offense” under the SO Lifetime Supervision Act (“SOLSA”). So, does Allman’s sentencing restriction apply in a case where, as here, the defendant receives a prison sentence for a nonsex offense and a consecutive SOISP sentence for a sex offense? … After revisiting Allman (including the general sentencing statutory provisions to which its holding is largely tethered), examining the General Assembly’s longstanding treatment of sex offenses, studying the significant differences between SOLSA and the general sentencing statutes, and considering the court of appeals’ recent decision in People v. Ehlebracht, 2020 COA 132, 480 P.3d 727, we answer no… SOLSA is fundamentally different from the general sentencing statutes to which the Allman sentencing restriction is anchored. Of particular relevance here, while the general sentencing statutes reflect the legislature’s disapproval of consecutive prison-probation sentences, SOLSA, by contrast, reflects the legislature’s approval of such sentencing in cases including a sentence for a non-sex offense and a sentence for a sex offense. Therefore, we hold that Allman’s sentencing prohibition, while alive and well, does not apply in cases where a defendant receives a prison sentence for a non-sex offense and a consecutive SOISP sentence for a sex offense.”

*People v Keen*, (2021 CO 50): Companion to the People v Manaois ruling, CO Sup Ct ruled, “The supreme court now holds that Allman does not prohibit courts from sentencing a defendant in a multi-count case to prison for a non-sex offense followed by SOISP for another offense—regardless of whether the latter is a sex offense requiring an indeterminate sentence or a sex-related offense (i.e., an offense that does not qualify as a “sex offense” but that nevertheless falls within SOLSA’s scope and involves participation in SOISP) requiring a determinate sentence. So long as the probation sentence in that scenario falls within the confines of SOLSA (as does every SOISP sentence), Allman’s sentencing restriction is inapplicable. In this case, the defendant received a prison sentence for a non-sex offense and a consecutive determinate sentence to SOISP for a sex-related offense. The Sup Ct concludes that Allman’s sentencing prohibition does not apply and that the consecutive prison-SOISP sentences imposed were legal.” In short, the CO Sup Ct said that a 2019 decision that stated that the state can’t order both prison and probation for the same event does not apply to SOs.

**ON FEDERAL PARDONS**

If you’re hoping for a Presidential Pardon to have your rights restored, these pardons are extremely rare across the board. First, the President cannot pardon to state-level crimes, only federal crimes (and crimes committed in DC). Each state has their own procedures for potential registry relief; some states may even extend these procedures to those convicted in other jurisdictions. Second, those listed as Tier 1 or Tier 3 for federal convictions can petition federal courts for a reduction after 10 years (Tier 1s) or 25 years (Tier 3s); unfortunately, those on Tier 2s get no way to reduce the registration period. In general, you can apply for a Presidential pardon if it has been 5 years after sentence or release from confinement and you’re generally not eligible if on parole (28 CFR § 1.2). This does not expunge the record. There is no formal pardon advisory board.

There are no stats breaking down how many pardon petitions come specifically from people convicted of sexual offenses. At best, I can give you a general idea about the Presidential pardon habits from 1967 to the present, so let’s begin by looking at the stats since Nixon took office in 1969 (full stats are at https://www.justice.gov/pardon/clemency-statistics). I chose Nixon as the starting point because the clemency stats were not divided into pardons and commutations were not separated until 1967, when Lyndon B. Johnson was in office, and thus I cannot get a full idea of Johnson’s pardon habits (though he seemingly processed fewer pardons in his later years in office). On a related note, Nixon was the first elected President to officially declare a “war on crime,” which began the trend of “tough on crime” rhetoric which still plagues the US Justice System.

Nixon (R) 1699 pardon petitions received, 863 granted (50.8%) ; Ford (R) 978 pardon petitions received, 382 granted (39.1%); Carter (D) 1581 pardon petitions received, 534 granted (33.8%); Reagan (R) 2099 pardon petitions received, 393 granted (18.7%); Bush, Sr. (R) 731 pardon petitions received, 74 granted (10%); Clinton (D) 2001 pardon petitions received, 396 granted (19.8%); Bush Jr. (R) 2498 pardon petitions received, 189 granted (7.5%); Obama (D) 3395 pardon petitions received, 212 granted (6.2%); Trump (R) 1969 pardon petitions received, 144 granted (7.3%)

The pardon trend has been in the decline since the “war on crime” began in the 1960s, and in the 21st century, pardons have remained below 10%. Also, with the exception of Bush, Jr., every president since Bush, Sr., has granted the majority of their petitions in the last year or so in office. With Obama and Trump, that trend was particularly pronounced; Obama granted 142 of his 212 pardons (67%) on his last days in office, while Trump granted 116 of his 144 pardons (80.6%) of his pardons on his last days in office.

Clinton outright denied 655 pardon petitions and refused action on 353 more (or, as it is officially stated, Petitions Closed Without Presidential Action”); Bush Jr outright denied 1742 petitions and refused action on 464 more; Obama outright denied 1708 petitions and refused action on 508 more; Trump outright denied 84 petitions and refused action on 625 more. The number of pending petitions had remained steady but jumped dramatically under the past two administrations; under Obama the number of unprocessed petitions jumped from 864 to 1920 (+1056) under Obama and to 2834 (+914) under Trump. Many past pardons have been high profile, too, mainly of white collar and political criminals.

A review of the list of pardon recipients (https://www.justice.gov/pardon/clemency-recipients) shows no one has officially been pardoned for a sexual offense since the national registry laws were enacted in 1994 (the Jacob Wetterling Act, as part of the same controversial 1994 crime bill that became a point of contention in the 20209 presidential election); Alabama judge Roy Moore was verbally “pardoned” by Trump at a Thanksgiving turkey pardon ceremony as he faced allegations of abusing an underage girl decades ago, but is not officially pardoned. Our current President as of this writing, Joe Biden, is a “tough on crime” politician who helped get sex crime legislation passed on the federal level, including the national registry laws and the Adam Walsh Act, and he is proud of that fact. (On a related note, no sentencing commutations have been granted, either).

Unfortunately, prospects for a presidential pardon seem to be non-existent on the federal level. Some states offer a chance at a pardon even if you were convicted in federal or out-of-state courts. Based on some anecdotal evidence, a push to change the federal pardon system to a board may help. For example, in AL, a state at the top of my “worst states for RCs” list, an RC still at least has a 2% (1 in 50) chance of obtaining a pardon from the pardon and parole board. That is still an extremely low number, but 2% is greater than 0%. Another problem in need of reform is our “tough on crime” mentality; in 2010, 1513 of 1554 pardon petitions by RCs in Canada were approved; a 2000 report noted that only 114 of the 4883 (2.8%) Canadians pardon for sex offenses from 1970-1998 reoffended, so granting pardons to RCs have not caused great harm to Canada.

To reiterate: If you are not a federal conviction, the US President cannot pardon you at all. The President can only pardon federal/military offenses, and the chances of obtaining a federal pardon is nearly impossible. If your only conviction is on the federal level, you can petition the courts for early termination with a clean record of 10 years if a Tier 1 or 25 years if you’re a Tier 3 (for some reason, Tier 2s have no way to petition for early termination under federal law).

**OCEAN Community Conference and Rally, Sunday, 7/18/21 1:00 PM at the Minnesota State Capitol Grounds, St Paul MN**

OnceFallen.com and Women Against Registry (WAR) is assisting a coalition of civilly committed persons and their loved ones in MN called OCEAN (Overcoming Corruption Empowering All Nations) in hosting a Conference and Rally at the MN State Grounds on Sunday, July 18, 2021 starting 1pm. This includes a community conference with speakers on the issue of MN’s unique civil commitment problem. The MSOP has conditionally released roughly a dozen people in over 20 years; far more have “graduated” through death. After the community conference ends, we will walk/drive to the Governor’s Residence for a rally and a demand for change to the civil commitment program at the Governor’s Residence. If you have loved ones in MN who can attend this event, please notify them of this event. We need hundreds of people to show up.

**ICoN SURVEY**

To better serve prisoners, I developed a brief survey. Please answer the following:

1. How you get the ICoN? (Subscribed, fellow prisoner shares it, loved one sent by mail, etc)

2. How did you hear about OnceFallen/ICoN? (Word of mouth/fellow prisoner, loved one on the outside, just found a printed copy of newsletter, etc)

3. Have you read my book “Your Life on the List”? How did you get it? (Ordered a copy, borrowed it from another prisoner, loved one printed a copy, etc)

4. If you bought a copy, did you share it? With how many?

5. Do you have suggestions for topics to the ICoN or the book?