

**Minnesota Board of Pardons
Annual Report to the Legislature
2008 Activity**

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2008 LEGISLATIVE REPORT MINNESOTA BOARD OF PARDONS

Background

Pursuant to Minn. Stat. §638.075, the Minnesota Board of Pardons is required to file a written report with the legislature by February 15 of each year, summarizing the actions taken by the Board during the previous year.

The Minnesota Board of Pardons is made up of the Governor, the Chief Justice of the Supreme Court, and the Attorney General. The Board is granted the power, under Article V, Section 7, of the Minnesota Constitution and Minn. Stat. Chapter 638, to grant the following types of extraordinary relief to persons who have been convicted of crimes:

- *Pardon* – an act of forgiveness that exempts the convicted person from the punishment imposed by law.
- *Commutation* – the substitution of a lesser or different type of punishment for that imposed in the original sentence.
- *Pardon Extraordinary* – a statutorily-created relief granted to applicants who have served their sentence. When a pardon extraordinary is granted, the court is directed to issue an order setting aside the conviction, and the applicant is no longer required to report the conviction except in specific limited circumstances. The conviction remains on the applicant's criminal record, but the fact of a pardon extraordinary is also recorded.

2008 Notes

The Spring 2008 meeting of the Board was unusual in that the largest number of cases (32) in several years was considered. In addition, in two of the cases, respectively, the Governor and Chief Justice each recused himself because of prior association with the applicant or the case. Following an informal review of the matter by the Attorney General's Office, it was determined that the cases could proceed and be granted upon the unanimous vote of the remaining two Board members.

The Spring meeting was also the last Board meeting for Chief Justice Russell Anderson, who has since retired. In Fall 2008, Chief Justice Eric Magnuson joined the Board.

Applications Requested

Under the law, the commissioner of corrections is responsible for administering the day-to-day activities of the Board through her designated staff. During 2008, administrative staff sent out 169 applications for pardons extraordinary or pardon/commutation in response to requests. As in the past, when an inquiry for application is made, staff make every effort to determine whether the potential applicant meets the eligibility requirements before an application is sent. As a result, the number of applications returned due to ineligibility remains relatively low. Moreover, the number of completed applications returned is substantially lower than the number sent out.

Decisions

The Board, which met on April 16 and October 21, granted 24 pardons extraordinary during 2008, including one re-application. Seventeen applications for pardons extraordinary were denied. Nine additional applications were not considered because the Board declined to set aside the waiting period. The Board did grant a set-aside of the waiting period in two cases, eventually granting a pardon extraordinary in one case and denying the other. One application for pardon extraordinary was taken under advisement and remains pending. Additionally, one applicant was granted a pardon extraordinary for one prior offense and denied for another.

There were ten applications for pardon/commutation reviewed under Minn. R. 6600.0500 and, of these, five were deemed to be ineligible based on criteria listed in the rule for preliminary review by the Board. This number included one applicant whose case was considered prior to both meetings. As required by law, summaries of the applications and the basis for exclusion were presented to and ratified by the Board. The Board heard five applications for general pardon from three incarcerated individuals and two who were on probation or supervised release. All were denied.

One request for leave to re-apply was denied in 2008.

Waiver of Waiting Period

Pursuant to Minn. Stat. § 638.02, there is a waiting period of five years for general offenses and ten years for crimes of violence as defined in Minn. Stat. §624.712, subd. 5. This period is measured from the most recent date of final discharge. Over the years as the collateral consequences of criminal conviction appear to have increased, there has also been an increase in the number of applicants seeking waiver of the waiting period, which the statute permits upon the unanimous written consent of the Board. Often, this has previously resulted in the applicants and their families traveling to St. Paul for the meeting only to be told the waiting period would not be waived. As was done last years, these applications were considered by the Board separately.

Other Activities

Board staff continue to do automated records checks in an effort to assist local law enforcement agencies screen potential job applicants. In 2008, staff checked records on 167 police employment and other permit applicants. Staff also responded to approximately 500 telephone inquiries.

APPLICATIONS RECEIVED AND ACTION TAKEN IN 2008

| <i>Type of Relief</i> | <i>Number of Applications</i> | <i>Not Eligible/Denied</i> | <i>Granted</i> |
|--|-------------------------------|----------------------------|----------------|
| Pardon/Commutation | 10 | 10 | -0- |
| Pardon Extraordinary | 41 | 17 | 24 |
| Pardon Extraordinary Waiver of Waiting Period | 11 | 9 | 2 |

PARDONS EXTRAORDINARY GRANTED IN 2008 (total of 24)

| <i>Applicant</i> | <i>Year of Conviction</i> | <i>Crime(s) /Age at Conviction</i> | <i>Granted</i> |
|--------------------------|---------------------------|---|----------------|
| Binns, Gary | 1993 | Theft /26 | 04/16/08 |
| | 1992 | Misdemeanor Theft /27 | |
| Boyd, DeAnn | 1998 | Assault, 5 th Degree /23 | 10/21/08 |
| Brackin, Timothy | 1989 | Burglary /19 | 04/16/08 |
| | 1989 | Receiving Stolen Property /19 | |
| Chavez, Shawn | 1994 | Theft /21 | 10/21/08 |
| | 1994 | Criminal Damage to Property /22 | |
| Donovan, Gregory | 1990 | Possession of a Controlled Substance, 5 th Degree /40 | 10/21/08 |
| Elliot, Michael | 1981 | Burglary /18 | 04/16/08 |
| | 1981 | Burglary /18 | |
| Geifer, Jeremy | 1994 | Criminal Sexual Conduct, 3 rd Degree /21 | 10/21/08 |
| Gordon, David | 1995 | Violate Order of Protection /25 | 04/16/08 |
| | 1995 | Violate Order of Protection /25 | |
| Gould, Michael | 1977 | Theft from Person /30 | 04/16/08 |
| Hagerty, James | 1993 | Aggravated Robbery /33 | 04/16/08 |
| Hamilton, William | 1959 | Burglary, 3 rd Degree /23 | 10/21/08 |
| | 1968 | Burglary /32 | |
| | 1968 | Burglary /32 | |
| Hanson, Kip | 1982 | Misdemeanor Theft /20 | 04/16/08 |
| Herrmann, Jeffrey | 1994 | Theft, Gross Misdemeanor /19 | 04/16/08 |
| Hope (Burtard), Stacy Jo | 1991 | Criminal Sexual Conduct, 4 th Degree /19 | 04/16/08 |
| Jaeger, Scott | 1989 | Obstruction /24 | 04/16/08 |
| Johnson, Gerald | 1975 | Burglary /22 | 10/21/08 |
| Le, Thao | 1999 | Unemployment Benefits Fraud /27 | 04/16/08 |
| Miska, Justin | 1993 | A/A Temporary Motor Vehicle Theft /19 | 04/16/08 |
| Orth, Mark | 1990 | A/A Burglary, 3 rd Degree /20 | 10/21/08 |
| Saffle, Christopher | 1994 | Criminal Sexual Conduct, 4 th Degree /22 | 04/16/08 |
| Tyler, Kevin | 1993 | Distribution, 2 nd Degree /36 | 10/21/08 |
| Vagle, Melissa | 1999 | Assault, 5 th Degree /21 | 04/16/08 |
| Warren, Lisa | 1993 | Sale of Controlled Substance, 3 rd Degree /28 | 04/16/08 |
| Wiley, Tomeka | 2002 | Receiving Stolen Property /22 | 10/21/08 |