

Titus House Newsletter

Titus House Ministries, PO Box 2376, Tijeras, NM 87059

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Denied a probation or parole 5-year review hearing?

By Barry Porter . . . Everyone with a sexual crime conviction who is placed on an enhanced term of probation and/or parole supervision has a right to a review hearing. It is a right mandated by New Mexico Statutes Sections [31-20-5.2 \(probation\)](#) and [31-21-10.1 \(parole\)](#). The first review hearing is supposed to happen when the individual completes the initial five-years of probation or parole supervision. After the initial review hearing, if probation or parole is not terminated, he or she has the right to subsequent review hearings at 2 ½-year intervals thereafter until the full enhanced term expires (20 years or life).

The review hearing for probation supervision must be held in court, and the burden of bringing forth evidence that someone should remain on probation is on the state (prosecutor's office). The review hearing for parole supervision must be held before the parole board; the burden of proving that someone should remain on parole is on the Attorney General's office. Thus, to really get out from under the strict rules of the enhanced supervision, these individuals must usually fight for their freedom in two forums: probation discharge in court and parole discharge in front of the parole board.

Despite there being a statutory right to probation and parole review hearings, both the prosecutor's office and the New Mexico Parole Board are notorious about failing to set up the hearings in a timely manner – if at all.

If someone's initial five-years of probation or parole have expired, they should move to assert their right to the mandatory review hearing. Here is what works to get the state bureaucracies to do their job.

In the case of probation, the right to have a probation review hearing should be asserted through the probation/parole officer. If the probation/parole officer fails to request the hearing, an offender can file a motion (request) with the Court to hold a review hearing and also request that his or her probation be discharged. It is the state's burden to prove to a reasonable certainty that the petitioner should remain on probation.

In the case of parole, the right to have a parole review hearing should also be asserted through the probation officer. If the probation/parole officer fails to request the hearing in front of the parole board, a petitioner should send a demand letter for a hearing as well as a tort claim notice directly to the parole board. The reason for the tort claim notice is to put the state on notice that an offender's liberty is being restricted because the parole board has failed to set up a mandated review hearing. The tort claim notice is basically telling the state that there may be grounds to sue the state if the review hearing is not set, which hopefully will motivate the appropriate action to be taken.

*To request the forms for filling contact Attorney Barry Porter at : 400 Gold Ave SW Ste 910, Albuquerque, NM 87102

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Stories from the Treasure Chest

As I look back over my life I can see that fear has been my greatest hindrance. Prior to prison, I had those common fears like: what people thought of me, did I measure up? What would the neighbors say? What the people in church thought about me and my family. All those fears seem mild. Once I was convicted of a sex offense and sentenced to prison. I received a four-year to life sentence. Back then they called us lifers, never knowing if we would ever be released. Many intense fears about prison life like being beat up or raped. I had heard all of the jailhouse stories about sex offenders in prison. So much so that I was seriously considering suicide. I thank the Lord that I did not. None of those stories were true nor was I ever assaulted and rarely mistreated. My time of prison became my monastery experience. I embraced my time of corrections. I immersed myself in God's word and cultivated the soil of my heart. I learned how to control my thoughts and change my behaviors. I engaged in every self-help and treatment program offered in the DOC. SO treatment also came with a lot of fear. Fear of being transparent. Fear of being honest. Fear of being judged. Fear of not being liked. God knows the end from the beginning and he

well knew what it would take for me to break that cycle of fear and trust Him. The only audible words I've ever heard from God are "**trust me**" on the bus on my way to the DOC. My time in the DOC was one of the greatest blessings in my life. I was freer



on the inside of the prison fences, then I ever was on the outside. That was when I learned that **prison is a state of mind**, not a location. I learned many things while in treatment about how I got to that place in my life and how to never go down that path again, which I would've never learned on the outside. I learned about my cycle of abuse and how to intervene in it. I learned that I am adequate and need not fear what people think. I learned to do my best at everything I put my hand, heart and mind to and trust the Lord in all things. 8 ½

years after being sentenced. I was granted parole. One of the first waves of sex offenders being released from prison in those days. Years prior to my release. I began to write down my plans for a successful life. I worked that plan over and over in my mind and on paper. I presented it to others. I took it back to the drawing board time and time again for revision and improvement. Finally, that day came when I was released back into society. Fear tried to creep its way back in. However, now I had coping tools to overcome fears and temptations. While life does present some challenges, I tackle them head-on with confidence that I could do anything through the strength of my Lord. And if He before me, who could be against me. That I could do all things through him who strengthens me. These days I'm living a successful life as a productive member of my community. I don't worry about what people think about my past. I've learned that people are not focused on my past. They look at what currently doing with my life. Learning to live transparent, be honest, having integrity, be where you're supposed to be and do what you're supposed to do. And perfect love casts out all fear. I pray this story has been encouraging to you. Start planning for your success and you will see it manifest. "Failing to plan is planning to fail."

Stories from the treasure chest.
LAM.

Join us for a morning devotional on a free conference call. This is for registered citizens/SOs and family and friends. We meet each morning at 7:00pm, Mountain Standard Time. Call at (605) 475-4092 . The access number is 278954#

6 am Pacific 9 am Eastern

We are reading from "Our Daily Bread" devotional. Our meeting lasts about a half an hour.



By Larry . . . The case of *Dennis J. Powell Jr. v. Mark Keel, Chief, and The State of South Carolina* was an awesome victory for our cause. This appeal was the result of the circuit court's granting summary judgment in favor of Dennis Powell, Jr. on his claims challenging the internet publication and lifetime duration of his mandated registration as a sex offender under the South Carolina Sex Offender Registry Act (SORA).

On December 1, 2008, Powell was indicted for having knowingly through the Internet contacted and communicated with a person whom he reasonably believed to be a twelve-year-old girl, for the purpose of or with the intent of persuading, inducing, enticing, or coercing the person to engage or participate in a sexual activity in violation of SC Code Ann. §16-15-342. On April 2, 2009, Powell pled guilty to the indictment and was sentenced to two years' imprisonment suspended to one year of probation. At sentencing, the court notified Powell that he would be required to register as a sex offender under SORA, which mandates lifetime registration for sex offenses, including criminal solicitation of a minor.

On November 21, 2016, Powell filed a petition in the circuit court for a declaratory judgment, claiming SORA does not permit publication of the state's sex offender registry on the internet, and the lifetime duration of his sex offender registration constitutes excessive punishment in violation of the Eighth Amendment of the United States

Fantastic win in South Carolina

Constitution and article I, section 15 of the South Carolina Constitution, deprives him of due process and equal protection, and warrants equitable relief in the form of his removal from the registry. After cross-motions for summary judgment by the parties, the circuit court held a hearing and granted Powell's motion on all claims. The circuit court held SORA's lifetime registration requirement is punitive under the Eighth Amendment and violates Powell's rights to due process and equal protection. The circuit court also determined SORA does not permit publication of the state's sex offender registry on the internet.

Mark Keel, Chief of the State Law Enforcement Division ("SLED"), and the State of South Carolina, were not happy with the circuit court's decision. The state filed a motion to alter or amend the judgment, which the circuit court considered under Rule 59(e), South Carolina Rules of Civil Procedure (SCRCP), and denied. Thereafter, the state appealed to the court of appeals, which transferred the case to the Supreme Court pursuant to Rules 204(a) and 203(d)(1)(A)(ii), SCACR. The South Carolina Supreme Court affirmed the circuit court and held SORA's lifetime registration requirement is unconstitutional absent any opportunity for judicial review to assess the risk of re-offending. Unfortunately, they reversed the circuit court and held that subsection 23-3-490(E) permits dissemination of the State's sex offender registry information on the internet.

The South Carolina Supreme Court has previously recognized the state's legitimate interest in requiring sex offender registration. The court noted, "We find the initial mandatory imposition of sex offender registration satisfies the rational relationship test in light of the General As-

sembly's stated purpose. In *Conn. Dep't of Pub. Safety v. Doe*, 538 U.S. 1, 4 (2003), the U.S. Supreme Court found that due process does not require a pre-deprivation hearing where the registry requirement is based on the fact of previous conviction. The South Carolina Supreme Court overruled itself and stated, ". . . notwithstanding this finding, we hold SORA's lifetime registration requirement without any opportunity for judicial review to assess the risk of re-offending is arbitrary and cannot be deemed rationally related to the legislature's stated purpose of protecting the public from those with a high risk of re-offending."

The court noted that the development of a judicial review process is a matter best left to the General Assembly and stated, "We are confident in the General Assembly's ability to fulfill our request to fashion the particulars of the hearing process. Nevertheless, we require the hearings at which sex offenders may demonstrate they no longer pose a risk sufficient to justify continued registration be conducted with reasonable promptness and meet standards of fundamental fairness." NARSOL is hopeful that the General Assembly will find it within its power to create a process that is fair and offers all registrants a way to be removed from the registry list and resume a more normal life. Our advocates in South Carolina are optimistic that legislators will do the right thing as ordered by the state's highest tribunal.

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Hebrew 13:3 - Continue to remember those in prison as if you were together with them in prison, and those who are mistreated as if you yourselves were suffering.

Remember if you change your address you need to let us know if you want to continue to receive this newsletter

DENNIS the MENACE



IF HEAVEN IS THAT PRETTY ON THE BOTTOM, THINK HOW IT MUST LOOK ON TOP!

Upcoming Conventions

ACSOL— Alliance for Constitutional Sex Offense Laws

It is now possible to [sign up for this year's annual ACSOL virtual conference](#) which will be held on Friday, September 17, and Saturday, September 18. The conference will feature three distinguished keynote speakers as well as feature presentations by subject matter experts and panels on a variety of topics important to registrants and their families.

Keynote speakers include Jill Levenson, Ph.D., attorney Miriam Aukerman and law professor Ira Ellman.

For more information visit ACSOL website at <https://all4consolaws.org/>

The cost to sign up for the two-day conference is only \$25, however, additional funds can be contributed in order to provide scholarships for those who cannot afford to pay.

NARSOL's National Conference is scheduled for October 8-10, 2021, in beautiful Houston, Texas, and it's getting closer. This event offers much that goes above and beyond the amazing speakers, enlightening information, and wonderful connections that you'll make. Details are still being finalized for the conference, but it's never too early to mark your calendar and to [book your room](#) at the attractive group rates we've negotiated for attendees.

These are the **confirmed** speakers for NARSOL's October conference in Houston:

Dr. Jill Levenson, nationally recognized researcher & social worker:

Dr. Emily Horowitz, professor of Sociology and Criminal Justice; director, Institute for Peace & Justice:

Atty. Paul Dubbeling, civil rights attorney and general counsel, NARSOL:

Mrs. Mary Sue Molnar (banquet speaker), Executive Director, Texas Voices:



Circle of Concern has gone ZOOM

Circle of Concern is aimed at breaking down isolation and fear by providing a safe place for registrants and their loved ones to get together, build community, and learn ways to step out and take charge of their lives and overcome the stigma they face. The Circle of Concern is a group of concerned registered citizens, family and friends that meet together on the 3rd Sunday of each month. We are meeting this month on **August 15, 2021** at 3 pm—5 p.m. MST. We will meet on Zoom. We encourage and try to help each other. It is a safe place to share our strengths and struggles. We hope you will join us. If you are planning to attend call Don at (505) 315-7940.. He will send you the link to join by computer or phone. You can contact him at the number above or email him at

donmagicjohnston@gmail.com