

STATE OF RHODE ISLAND
PROVIDENCE, SC. SUPERIOR COURT

MARIO MONTEIRO

v.

STATE OF RHODE ISLAND

PM-2023-

APPLICATION FOR POST-CONVICTION RELIEF

INTRODUCTION

This Application for Post-Conviction Relief seeks the immediate release of Mario Monteiro from incarceration at the Adult Correctional Institutions, under the control and custody of the Rhode Island Department of Corrections (RIDOC), to parole supervision as directed by the Rhode Island Parole Board. Mario Monteiro has been incarcerated for more than 20 years. He is now being unlawfully detained despite his eligibility for parole and his satisfaction of the standards for parole acknowledged in a unanimous decision of the Rhode Island Parole Board to parole him. All of these actions are due to the arbitrary, unlawful, and unconstitutional actions of RIDOC and the acquiescence of the Rhode Island Parole Board in a miscarriage of justice and an unlawful assertion of authority.

Your Applicant states as follows:

1. Mario Monteiro is a prisoner presently in the custody of the Rhode Island Department of Corrections (RIDOC).
2. Monteiro is confined at the Adult Correctional Institutions, Cranston, Rhode Island.
3. Monteiro is held by the State of Rhode Island.

4. Monteiro is incarcerated following his conviction in *State v. Mario Monteiro*, case number P1-2002-0061AG in the Superior Court of the State of Rhode Island.
 - a. Monteiro was sentenced on July 18, 2002, for a total of nine offenses committed on July 2 and 3, 2001. He was sentenced to life imprisonment upon his conviction for murder in the first degree (Count 1), to serve ten years on Counts 2, 3, 15, 22 and 28 concurrent with the life sentence on Count 1, with a suspended sentence of 10 years and 10 years' probation consecutive to count 15 on Count 19, and a suspended sentence of 10 years and 10 years' probation consecutive to count 22 on Count 26. He was sentenced to a mandatory second life sentence consecutive to Count 1 on Count 7 for discharge of a firearm during the commission of a crime of violence resulting in death.
 - b. The Judgment of Conviction is attached hereto and incorporated herein as Exhibit 1.
5. Monteiro was found guilty by a jury as to each of the offenses for which he is sentenced and incarcerated.
6. Monteiro appealed his conviction to the Rhode Island Supreme Court, and it was affirmed by the Court. See *State v. Mario Monteiro*, 924 A.2d 784 (R.I. 2007).
7. Monteiro has exhausted all state appellate remedies available to him pursuant to the Rhode Island Rules of Criminal Procedure and its statutory and constitutional provisions.
8. The Superior Court has jurisdiction to hear the within Application pursuant to R.I.G.L. §§ 10-9.1-1, 10-9.1-2, *et seq.*
9. Monteiro was born on January 11, 1984. At the time Monteiro committed the aforesaid offenses, he was approximately 17 years and 6 months old.
10. Monteiro is now 39 years old. He has been incarcerated his entire adult life.

By December 2011, Monteiro was serving two consecutive life sentences and no other sentences.

11. Upon information and belief, as a result of pretrial incarceration, Monteiro is considered as having commenced his sentence on or about November 29, 2001 (“commit date”).
12. Upon information and belief, based upon a commit date of November 29, 2001, Monteiro completed serving his 10-year concurrent sentences on Counts 2, 3, 15, 22 and 28. These sentences were imposed to be served concurrent with the life sentence on Count 1, and therefore ended no later than November 29, 2011.
13. Upon information and belief, Monteiro’s non-jail sentences (suspended sentence of 10 years and 10 years’ probation consecutive on Count 19 and Count 26) are not material to a determination of initial parole eligibility date.
14. Upon information and belief, since in or about December 2011, Monteiro has been incarcerated to serve two consecutive life sentences, and for no other sentences of a designated term of incarceration.
15. Upon information and belief, the imposition of consecutive life sentences was mandatory under controlling statutes, R.I.G.L. §§11-47-3.2(b)(3), 11-47-3.2(c), enacted by the General Assembly, *see State v. Monteiro*, 924 A.2d 784, 789 (R.I. 2007) (“he was sentenced to two mandatory consecutive sentences of life imprisonment for first-degree murder and for using a firearm resulting in death”), and not the result of exercise of discretion of the sentencing judge, *id.*, 924 A.2d at 793-794.

For a person serving two consecutive life sentences with possibility of parole, the initial date for parole eligibility is a total of thirty years under R.I.G.L. §13-8-13(d).

16. Mario Monteiro, serving consecutive life sentences, is among those prisoners who can be considered for parole.
17. Parole eligibility is prescribed by statute.

18. Parole is an essential part of the Rhode Island criminal justice system. It offers an incentive to inmates to rehabilitate themselves with a goal of becoming contributing and productive members of society. Any prison sentence (excluding sentences of life-without-parole) imposed in the state courts of Rhode Island that exceeds six months “shall be subject to the parole board[.]” R.I.G.L. § 13-8-8. The Parole Board chairperson and Parole Board members are appointed by the Governor of Rhode Island. *See* R.I.G.L. §§ 13-8-1 and 13-8-3.
19. Under Rhode Island law, R.I.G.L. §13-8-13(a)(3), an inmate sentenced to life imprisonment for first-degree murder committed after June 30, 1995, and before July 2, 2015, is considered eligible for parole after serving twenty (20) years of that sentence.
20. Under Rhode Island law, R.I.G.L. §13-8-13(d), an inmate sentenced consecutively to more than one life sentence for crimes committed after June 30, 1995 and before July 2, 2015, is considered eligible for parole after serving not less than fifteen (15) years consecutively on each life sentence.
21. Upon information and belief, under precedent of the Rhode Island Supreme Court, the determination of the minimum service for determining parole eligibility on consecutive life sentences is made by adding or aggregating the minimum time for each such sentence. *See, e.g., DeCiantis v. State*, 413 (R.I. 1995) (referring to a time when the minimum term before parole eligibility on a life sentence was 10 years, “a prisoner who is serving only one life sentence consecutively to another life sentence must serve twenty years before even seeking parole”); *Lerner v. Gill*, 463 A.2d 1352, 1365 (R.I. 1983) (“There is nothing in the language of § 13–8–13 which would justify the conclusion that an individual such as Lerner who has been found guilty of committing two murders should receive the benefit of the

same parole-eligibility provisions as are indicated for one who is serving a life sentence for having committed one murder. Thus, Lerner was not and is not entitled to be considered for parole until he has served at least twenty years at the ACI.”). *See also Brown v. State*, 32 A.3d 901, 911 (R.I. 2011) (“In *DeCiantis*, the applicant, then serving two concurrent life sentences and a consecutive life sentence, asked this Court to require his parole on the two concurrent life sentences after only ten years, even though a prisoner serving just one life sentence consecutively to another life sentence must wait twenty years before seeking parole. *DeCiantis*, 666 A.2d at 411”).

22. Upon information and belief, based upon the foregoing statutes and court precedent, as a prisoner serving two consecutive life sentences for crimes committed on July 2 and 3, 2001, with a commit date of November 29, 2001, Monteiro would first be eligible to be considered for parole to the community when he has served thirty years (fifteen on each life sentence), in or about November 2031.
23. Upon information and belief, at all times material hereto, RIDOC by practice calculates the projected initial parole eligibility date for each person committed to its custody for a sentence in excess of six months and periodically adjusts the calculation to reflect additional and/or corrected sentences.
24. Attached hereto and incorporated herein as Exhibit 2 is a true copy of an “Inmate Parole Information” record of the Rhode Island Department of Corrections (RIDOC) generated by the Inmate Facility Tracking System (“INFACTS”) on November 20, 2017, reflecting that the parole eligibility date for Monteiro at that time was November 1, 2031, that is, thirty years after his original commit date.

The State, contrary to statutory authority and practice, recalculated Monteiro’s parole date so as to extend the initial date for parole eligibility for parole to the community by at least five years.

25. Upon information and belief, at some point after 2017, and without notice to Monteiro, RIDOC decided to alter its internal method of calculating parole eligibility dates for inmates serving more than one sentence, where one of the sentences was for life, apparently by “disaggregating” sentences so as to determine an initial “parole eligibility date” for the “primary” or “controlling” life sentence, and thereby requiring an inmate with consecutive sentences to first be paroled from the controlling life sentence to serve the consecutive sentence, with no possibility of release from incarceration until the inmate has been approved for parole at least twice.
26. Under this altered method of calculating parole eligibility dates, an inmate serving a life sentence and an additional consecutive sentence would first have to be granted parole on the life sentence, and then be paroled to his consecutive sentence. In order to be considered for release-from physical custody of RIDOC, the inmate paroled from their life sentence would then be required to serve the minimum eligibility period of the consecutive sentence before again seeking parole.
27. Upon information and belief, there has been no material change to the Rhode Island statutes governing parole eligibility, or their interpretation by the Rhode Island Supreme Court, authorizing or justifying this unilateral and arbitrary action by RIDOC.
28. The Rhode Island Superior Court has previously addressed and rejected the RIDOC decision to disaggregate life and consecutive term sentences in *McMaugh v. State*, PM-2017-05673; *Eddie Martinez v. State*, PM-2020-05568, *Francisco Martinez v. State*, PM-

2021-03544 (petition for certiorari granted, SU-2021-0292-MP), and *Michael Lambert v. Coyne-Fague*, PM-2021-02362 (petition for certiorari pending, SU-2022-0079-MP).

29. Upon information and belief, as a result of its internal “disaggregation” decision, RIDOC recalculated Monteiro’s initial parole eligibility date for consideration for parole to his consecutive life sentence and then set that initial date as November 1, 2021, or twenty years, notwithstanding the express statutory mandate of R.I.G.L. §13-8-13(d) setting parole eligibility on consecutive life sentences as fifteen years for each sentence.
30. Attached hereto and incorporated herein as Exhibit 3 is a true copy of an “Inmate Sentence Information” record of RIDOC generated by INFACTS on August 16, 2018, reflecting that the parole eligibility date for Monteiro at that time was November 1, 2021, that is, twenty years after his original commit date.
31. Attached hereto and incorporated herein as Exhibit 4 is a true copy of an “Inmate Parole Information” record of RIDOC generated by INFACTS on March 18, 2019. Exhibit 4 contains identical information about the Parole Board action of November 8, 2017 as Exhibit 2, but now, as of 2019, RIDOC has modified the record to change the parole eligibility date for Monteiro as November 1, 2021, that is, twenty years after his original commit date.
32. Upon information and belief, the State has purported to disregard the express statutory mandate of R.I.G.L. §13-8-13(d) setting parole eligibility on consecutive life sentences as fifteen years for each sentence, and is now applying its “disaggregation” decision to require that Monteiro serve a minimum of twenty years before first eligibility for parole on his first life sentence, to be followed by “parole” to his next life sentence, with a separate minimum

of fifteen years before eligibility for parole “to the community” on his second consecutive life sentence.

33. Attached hereto and incorporated herein as Exhibit 7 is a true copy of a RIDOC “screenshot” generated by INFACETS on or about February 15, 2023, recording Monteiro as “paroled to consecutive sent[ence]” on December 22, 2021, and reflecting an “initial parole hearing” date of January 1, 2037, that is, approximately fifteen additional years from his “parole” to the consecutive sentence and more than thirty-five years after his original commit date of November 29, 2001.
34. Upon information and belief, the State’s unilateral decision and direct disregard of the express statutory mandate of R.I.G.L. §13-8-13(d), if allowed to continue, will have the effect of requiring Monteiro to serve more than thirty-five years total before first consideration of parole to the community when the applicable statute imposes an initial parole eligibility of thirty years total before first consideration of parole to the community.
35. Upon information and belief, under the State’s “disaggregation” decision, Monteiro should have been first been presented to the Parole Board for consideration for “parole to his consecutive sentence” when he had served a minimum of fifteen years, or on or about November 1, 2016.
36. The State’s disregard of statutory mandates and its own practices and policies has directly delayed timely consideration of Monteiro’s parole eligibility, to his great harm.

The enactment of the Youthful Offenders Act applies to Monteiro and shortens the initial date for parole eligibility for parole to the community to twenty years.

37. On July 6, 2021, the General Assembly enacted, and the Governor signed into law, Public Law 2021, chapter 162, Article 13 §3, effective July 6, 2021, which amended R.I.G.L. §

13-8-13, to add a new subparagraph (e), hereinafter referred to as “the Youthful Offenders Act” or “the Act,” which provides:

(e) Any person sentenced for any offense committed prior to his or her twenty-second birthday, other than a person serving life without parole, shall be eligible for parole review and a parole permit may be issued after the person has served no fewer than twenty (20) years’ imprisonment unless the person is entitled to earlier parole eligibility pursuant to any other provisions of law. This subsection shall be given prospective and retroactive effect for all offenses occurring on or after January 1, 1991.

R.I.G.L. § 13-8-13(e) (emphasis added).

38. The express terms of the Youthful Offenders Act provide that, notwithstanding any other provision, and excepting only individuals serving a sentence of life-without-parole, any person, serving any sentence, for an offense committed before that person reached the age of 22 years old, is entitled to parole consideration after twenty (20) years (unless they are already entitled to an earlier parole date by their sentence).
39. In enacting the Youthful Offenders Act, the legislature intended to give youthful offenders, including juveniles and young adults such as Monteiro at the time they committed their offenses, an opportunity to demonstrate that they have matured from the person who committed the underlying crimes in their early years. Before passing the Act shortening initial parole to twenty (20) years for individuals committing offenses up to age 22, the General Assembly held extensive hearings on earlier versions of the Act, 2021-H 5144¹ and 2021-S0333,² which would have shortened the first parole date to 15 years, limited to individuals committing offenses up to age 18.

¹ <https://legiscan.com/RI/bill/H5144/2021>. The full House Committee hearing, including the testimony of the primary sponsor, Representative Casimiro, can be accessed at <https://upriseri.com/juvenile-offender-parole-act/>, accessed 2/20/2023.

² <https://legiscan.com/RI/bill/S0333/2021>, accessed 2/20/2023.

40. Upon information and belief, each of the various versions of the bills considered by the General Assembly were colloquially known as “Mario’s law,” named after Monteiro, and expressly intended to provide an opportunity for shortened initial parole eligibility for release to the community upon parole to Monteiro and other individuals like him.
41. Such a law is supported by *Roper v. Simmons*, 543 U.S. 551, 569-70 (2005) and its progeny, *Graham v. Florida*, 560 U.S. 48 (2010), and *Miller v. Alabama*, 567 U.S. 460 (2012), where the United States Supreme Court recognized that juveniles generally lack the culpability of adult offenders because:
- a. “[a] lack of maturity and an underdeveloped sense of responsibility are found in youth more often than in adults and are more understandable among the young. These qualities often result in impetuous and ill-considered actions and decisions.” *Roper*, 543 U.S. at 569 (citations omitted).
 - b. juvenile offenders are “more vulnerable or susceptible to negative influences and outside pressures, including peer pressure” and which “is explained in part by the prevailing circumstance that juveniles have less control, or less experience with control, over their own environment.” *Id.* at 569 (citations omitted).
 - c. “the character of a juvenile is not as well formed as that of an adult. The personality traits of juveniles are more transitory, less fixed.” *Id.* at 570 (citation omitted).

As a result, “these differences render suspect any conclusion that a juvenile falls among the worst offenders. The susceptibility of juveniles to immature and irresponsible behavior means ‘their irresponsible conduct is not as morally reprehensible as that of an adult.’” *Id.* “*Roper* and *Graham* emphasized that the distinctive attributes of youth diminish the

penological justifications for imposing the harshest sentences on juvenile offenders, even when they commit terrible crimes.” *Miller*, 567 U.S.at 472.

42. Such a law is part of a developing trend acknowledging the results of “brain science and psychological research [that] shows that young adults, whose brains are still developing, are similarly less culpable and more capable of reform than older adults, and thus ought be treated more like juveniles than adults when they commit crimes.” “Consideration of Youth for Young Adults,” Juvenile Sentencing Project, Quinnipiac University School of Law (January 2020), accessed on 2/20/2023 at https://juvenilesentencingproject.org/wp-content/uploads/model_reforms_consideration_of_youth_for_young_adults.pdf, and authorities cited therein.
43. Monteiro meets all of the terms of the Youthful Offenders Act, in that he has served at least twenty (20) years’ imprisonment on sentences for offenses committed prior to his twenty-second birthday.
44. Attached hereto and incorporated herein as Exhibit 5 is a true copy of a letter from the Parole Coordinators Office of the RIDOC dated August 20, 2021, informing Monteiro that the Youthful Offenders Act does apply to him and had the effect of changing his initial parole eligibility date to December 2021, but with a grant of parole resulting in parole to serve the term of any consecutive sentence.
45. In the letter, Exhibit 5 hereto, the Parole Coordinator for RIDOC describes the Act as follows: “The new law states youthful offenders must serve 20 years on the [life] sentence before being eligible for parole (as opposed to 25 years).” These words do not appear in the Act at all.

46. On December 15, 2021, the Parole Board considered Monteiro for parole. Attached hereto and incorporated herein as Exhibit 6 is a true copy of an “Inmate Parole Information” record of RIDOC generated by INFACETS on October 19, 2022. Exhibit 6 contains the minutes of the Board’s consideration of Monteiro on December 15, 2021.
47. The Parole Board acknowledged that the passage of the Youthful Offenders Act raised the question whether Monteiro was eligible for parole from all sentences to the community or whether Monteiro could only be paroled from his life sentence to begin serving his consecutive life term, Exhibit 6 at 2-3, stating “We understand that he has a mandatory consecutive life sentence and that there is an existing legal debate in court on the application of this consecutive term – whether it is aggregated and consumed by the first life sentence eligibility or whether he has yet to and must serve this next term. Board members agree this debate is outside the statutory authority of the Parole Board and we must leave this to the Department of Corrections to apply and/or the Court to decide. For our part, the Board votes unanimously to parole Mr. Monteiro from his first life sentence. If it is determined that he must serve another consecutive life term, then the effective parole release date shall be the date of this decision (December 15, 2021). If it is determined that he is eligible for immediate release to the community, then the effective parole release date shall be no sooner than December 2022. The reason for the staggered release (if to the community) is the Board believes there should be some time for Mr. Monteiro to transition to a lower security and preparation for eventual release. Upon his eventual release to the community, special conditions of parole shall include: successful completion of the 9 Yards transitional program with GPS for a minimum of six months.”

48. The Parole Board, characterizing the issue as one to be determined by RIDOC or the courts, announced that it would consider Monteiro for release to the community on parole in or after December 2022, provided he remained “booking free” and “in any program or educational courses in which he is currently enrolled”: “If it is determined that he is eligible for immediate release to the community, then the effective parole release date shall be no sooner than December 2022.” All conditions for parole to the community were outlined by the Board in its determination. Exhibit 6 at 3.
49. Notwithstanding the foregoing, on information and belief, Monteiro has not been brought before the Parole Board on or after December 2022 for consideration of parole to the community.
50. Notwithstanding the foregoing, on information and belief, RIDOC has announced that the Youthful Offenders Act merely shortens the time—but only if it is more than 20 years—that a youthful offender must serve before consideration on parole from the *first* or life sentence to any consecutive sentence and must thereafter serve all consecutive sentences in accordance with the adult parole eligibility provisions without regard to the provisions of the Act.
51. Upon information and belief, the Parole Board has acquiesced in and accepted RIDOC’s interpretation of the Youthful Offenders Act as applying only to shorten, if at all, parole eligibility for an initial life sentence from 25 to 20 years and has further ignored the express mandate of R.I.G.L. §13-8-13(d) that fixed the minimum time served for consecutive life sentences for offenses committed before July 2, 2015 as fifteen years on each sentence, or a total of thirty years.

52. According to RIDOC's interpretation, the Act merely shortens the initial disaggregated parole eligibility date for those youthful offenders sentenced to life for a crime committed after July 1, 2015, when the minimum term to serve before parole was increased from twenty to twenty-five years.
53. The Youthful Offender Act by its express terms "shall be given prospective and retroactive effect for all offenses occurring on or after January 1, 1991."
54. Upon information and belief, notwithstanding the foregoing, the State, by its Attorney General, now takes the position that the Youthful Offenders Act does not apply to any person, such as Monteiro, who is sentenced to and serving more than one offense.
55. The interpretations and applications of the Youthful Offenders Act by the State, RIDOC and the Parole Board are absurd and illogical, contrary to the express terms of the Act and effectively operate to nullify its terms and defeat its purposes.
56. The interpretation and application of the Act by RIDOC and the Parole Board renders nugatory the Act's impact for any juvenile life sentence crime committed before July 2, 2015 notwithstanding its explicit retroactive effect to 1991.
57. As a direct result thereof, RIDOC does not consider Monteiro eligible for parole "to the community" under the Act at this time and, in the absence of relief from this Court, will not consider him eligible for parole to the community until he has served at least an additional fifteen years beyond the twenty years he has already served.
58. As a direct result thereof, the Parole Board and RIDOC have ignored the mandate of the Act, as well as the express mandate of R.I.G.L. §13-8-13(d).
59. The action of RIDOC to disregard the express terms of the Youthful Offenders Act and to calculate separate "parole eligibility dates" for inmates such as Monteiro is contrary to law

and irrational. The internal and unilateral decision of RIDOC to alter its own method of calculating parole eligibility dates is entitled to no deference. *See Lerner v. Gill*, 463 A.2d 1352 (R.I. 1983).

60. The decision of the Parole Board to rely upon RIDOC’s calculation of “parole eligibility dates” regardless of the mandates of law is an abdication of its exercise of control pursuant to R.I.G.L. §13-8-8 over the sentence of every person convicted and sentenced to be imprisoned at the ACI for a period of more than six months.
61. Rhode Island’s statutory scheme for parole is set forth in R.I.G.L. chapter 13-8. As set forth in that chapter, the decision of the Parole Board to release an inmate on parole entitles the inmate “to be at liberty during the remainder of his or her term of sentence upon any terms and conditions that the board may prescribe.” R.I.G.L. §13-8-9(a). Among the criteria which the Parole Board is statutorily charged to find as a condition for granting a parole permit is “[t]hat there is a reasonable probability that the prisoner, if released, would live and remain at liberty without violating the law” and “[t]hat the prisoner can properly assume a role in the city or town in which he or she is to reside.” R.I.G.L. §13-8-14(a)(3), (4).
62. Under Rhode Island’s statutory parole system, release on parole can only mean release—under terms and conditions prescribed by the Parole Board—from the physical custody of RIDOC. “Parole to a consecutive sentence”—which means remaining in prison—is contrary to and not contemplated by Rhode Island’s statutory parole system. It requires the Parole Board to consider mandatory standards for parole that are meaningless in the context of “parole” to continued incarceration by RIDOC, and mandates multiple considerations of parole, to the prejudice of the inmate, the Parole Board, and all members

of the community who are required to be notified and entitled to be heard whenever parole is considered.

63. RIDOC's unlawful action, to which the Parole Board has acquiesced, unlawfully requires Monteiro to remain in custody for at least another fifteen years, notwithstanding the Parole Board's unanimous determination that he has already satisfied conditions of parole, including all conditions for release to the community as of December 2022, and has already served a minimum of twenty (20) years in prison for offenses committed while he was a teenager.
64. Monteiro is being deprived of at least fifteen years of liberty before he can seek his release on parole under RIDOC's unlawful interpretation, which contravenes the express language of the Youthful Offenders Act, R.I.G.L. § 13-8-13(e).
65. The interpretation of RIDOC and the Parole Board, to limit the Youthful Offenders Act to the "first" or life sentence, instead of "any sentence" as set forth in the Act, defeats and denies the purpose of the Act, directly contravenes its terms, and is arbitrary and capricious.
66. The Youthful Offenders Act supersedes any contrary provision applicable to adult offenders, because it is self-contained, unambiguous, and of later date.
67. In addition, RIDOC's determination to disaggregate Monteiro's consecutive life sentences is not correct, in that the disaggregation decision is itself arbitrary, capricious, and contrary to the letter and intent of the parole statutes, including the express mandate of R.I.G.L. §13-8-13(d).
68. The Rhode Island Superior Court has previously addressed and rejected the State's interpretation of the Youthful Offenders Act, determining that the Act serves to authorize the Parole Board to consider parole to the community once a youthful offender has served

at least twenty (20) years on his sentences in *Neves v. State of Rhode Island*, PM-2022-0259, petition for certiorari granted, SU-2022-92-MP; *Ortega v. State of Rhode Island*, PM 2022-0260, petition for certiorari granted, SU-2022-94-MP; *Nunes v. State of Rhode Island*, PM-2022-0901, petition for certiorari granted, SU-2022-93-MP. In each of the aforesaid cases, the Court granted relief, resulting in the inmate's release on parole to the community, and the Rhode Island Supreme Court denied the State's application for a stay. Each matter is pending briefing in the Supreme Court.

69. In reviewing a statutory parole system in Massachusetts, the Massachusetts Supreme Judicial Court rejected the statutory interpretation there formally adopted by the Massachusetts Parole Board and here unilaterally applied by RIDOC, concluding that Massachusetts law—which contains similar language to Rhode Island concerning aggregation of sentences—“requires the board to establish a single parole eligibility date.” *Dinkins v. Massachusetts Parole Board*, 486 Mass. 605, 609 (Mass. 2021). “The [Parole Board's] regulation, by exempting sentences consecutive to a life sentence from the aggregation rule, contravenes the plain meaning” of the Massachusetts statutory scheme. *Id.* at 610-611.
70. As a direct result, Monteiro is being unlawfully incarcerated and is entitled to immediate release to the community on parole.
71. Monteiro is unlawfully detained in violation of the laws of the State of Rhode Island in that he is entitled to immediate release under the laws governing parole.
72. Monteiro's continued incarceration constitutes an unreasonable seizure in violation of the Fourth Amendment of the United States Constitution, and Article I, Section 6 of the Rhode Island Constitution.

73. Monteiro's continued incarceration deprives him of due process, in violation of the Fifth and Fourteenth Amendments of the United States Constitution, and Article I, Section 10 of the Rhode Island Constitution.
74. RIDOC's alteration of Monteiro's terms of sentence so as to increase the amount of time he must serve before consideration for parole to the community is cruel and unusual punishment, in violation of the Eighth Amendment of the United States Constitution and Article I, Section 8 of the Rhode Island Constitution.

WHEREFORE, Mario Monteiro prays this court to:

- a. Find that he has been unlawfully detained beyond the terms of his sentence, in violation of the laws of the State of Rhode Island governing parole and the United States and Rhode Island Constitutions;
- b. Declare that the Youthful Offenders Act, R.I.G.L. § 13-8-13(e), applies to establish an initial single parole eligibility date of no more than twenty (20) years as to individuals serving any and all sentences (other than life-without-parole) for offenses committed before their twenty-second birthday, whether concurrent or consecutive;
- c. Grant his immediate release to the community, pursuant to the recommendation, and subject to the supervision, of the Rhode Island Parole Board, or, in the alternative, order that he be returned for consideration by the Parole Board forthwith for determination of his satisfaction of standards for immediate release to the community;
- d. Grant such further relief as this court deems just and proper.

MARIO MONTEIRO
By his attorneys,

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VERIFICATION OF MARIO MONTEIRO

MARIO MONTEIRO, first being duly sworn, hereby states under oath as follows:

1. I am the Applicant in the above-captioned matter.
2. I have read the within Application for Post-Conviction Relief.
3. The statements in the Application are true to the best of my knowledge, information, and belief.


MARIO MONTEIRO

STATE OF RHODE ISLAND
PROVIDENCE, SC

On this 22 day of February, 2023 before me a notary public, personally appeared MARIO MONTEIRO, personally known to the notary or proved to the notary satisfactory evidence of identification, which was a Prisoner ID card, to be the person who signed the preceding or attached document in my presence, and who swore or affirmed to the notary that the contents of the document are truthful and accurate to the best of his or her knowledge and belief.


Notary Public

