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CITATION: VAOPGCPREC 59-91
Vet. Aff. Op. Gen. Couns. Prec. 59-91

TEXT:

Reduction of Compensation During Incarceration Pursuant to 38 U.S.C. s 3113-- Community Control

QUESTION PRESENTED:

If, as a result of a felony conviction in the State of Florida, a veteran receives a sentence consisting of "community control with conditions" should his compensation benefits be subject to reduction pursuant to 38 U.S.C. § 3113?

COMMENTS:

1. The question arose when VA learned that the veteran had pleaded guilty to a felony of the third degree. As a result of this conviction, the veteran was sentenced on June 11, 1990, to "community control with conditions" for six months. In our view, such community control does not constitute incarceration in a penal institution for purposes of 38 U.S.C. § 3113.

2. Section 3113 of title 38, United States Code, requires reduction in VA compensation benefits for a beneficiary "who is incarcerated in a Federal, State, or local penal institution for a period in excess of sixty days for conviction of a felony ... for the period beginning on the sixty-first day of such incarceration and ending on the day such incarceration ends." See also 38 C.F.R. § 3.665. In order for the provisions of the above statutes to apply, two criteria must be met, (1) the beneficiary must be incarcerated in a penal institution in excess of 60 days, and (2) the incarceration must be for conviction of a felony. The statute will not operate in the absence of either factor.

3. "Community control" is defined in the Florida statutes as follows:

"Community control" means a form of intensive, supervised custody in the community, including surveillance on weekends and holidays, administered by officers with restricted caseloads. Community control is an individualized program in which the freedom of an offender is restricted within the community, home, or noninstitutional residential placement and specific sanctions are imposed and enforced.

Fla. Stat. Ann. s 948.001(1) (West 1985). We understand that in Florida community control is essentially house arrest, under which the convicted felon generally is required to remain at his or her place of residence except to go to

work, has no more civil rights than prisoners in traditional confinement situations, and is subject to visits and telephone contact by appropriate officials. An individual under community control may live at home or in a community facility under public or private control and, if the latter, may be required to pay a monthly contribution to the entity involved. See Fla. Stat. Ann. §§ 945.30 (West Supp. 1991) and 948.010 (West 1985).

4. A review of Florida statutes governing "community control" indicates Florida views this program as an alternative to incarceration. Section 948.10(1) of those statutes, entitled "Community control programs," provides that the community control program shall be used to "offer the courts and the Parole Commission an alternative, community-based method to punish an offender in lieu of incarceration." Fla. Stat. Ann. § 948.10(1) (West Supp. 1991) (emphasis added). Also, section 948.01(4) refers to "community control" as a "sentencing alternative to incarceration." Fla. Stat. Ann. s 948.01(4) (West Supp. 1991). See also Mitchell v. State, 463 So. 2d 416 (Fla. Dist. Ct. App.) (Community control is not to be regarded as incarceration but rather is a nonprison custodial alternative developed by the legislature to alleviate prison overcrowding.), appeal dismissed, 469 So. 2d 750 (Fla. 1985), overruled in part on other grounds, Skeens v. State, 556 So. 2d 1113 (Fla. 1990).

5. Although "penal institution" is not defined in the Florida statutes, "state correctional institution" is defined as "any prison, road camp, prison industry, prison forestry camp, or any prison camp or prison farm or other correctional facility, temporary or permanent, in which prisoners are housed, worked or maintained, under the custody and jurisdiction of the Department of Corrections ." Fla. Stat. Ann. s 944.02(6) (West 1985). In contrast, as noted in section 948.001 of the Florida statutes, persons sentenced to "community control" are housed "within the community, home, or a noninstitutional residential placement."

6. Treating participation in the Florida community control program as incarceration would not further the principle objective of 38 U.S.C. § 3113. The primary purpose of 38 U.S.C. s 3113, enacted in Pub. L. No. 96-385, s 504(a), 94 Stat. 1528, 1534-35 (1980), is to prevent duplication of governmental expenditures benefiting incarcerated persons in receipt of veterans' compensation benefits. Congressman G.V. "Sonny" Montgomery, the principal sponsor of H.R. 7511, 96th Cong., the bill which became Pub. L. No. 96-385, stated in explaining the measure "I do not see the wisdom of providing hundreds and thousands of dollars of tax free benefits to incarcerated felons when at the same time the taxpayers of this country are spending additional thousands of dollars to maintain these same individuals in penal institutions." 126 Cong. Rec. H9072 (daily ed. Sept. 18, 1980). These sentiments were echoed by Congressman Chalmers P. Wylie, a co-sponsor of the bill, who commented on the futility of payments designed to maintain a beneficiary's standard of living, when the beneficiary is fully supported by government funds provided for operation of a penal institution. Id. at H9076. The House committee report on the

bill also referred to the cost-saving features of the provision. H.R. Rep. No. 96-1155, 96th Cong., 2d Sess. 15-16, reprinted in 1980 U.S.Code Cong. & Admin. News 3307, 3321-22. Congressman Montgomery also noted veterans' disability compensation is intended to replace lost earning capacity and is unnecessary where a person, by reason of imprisonment, suffers no economic detriment as a result of a disability. 126 Cong. Rec. H9072 (daily ed. Sept. 18, 1980).

7. A person sentenced to community control, who is either living at home or required to contribute to his or her maintenance under the provisions of section 945.30 of the Florida statutes, would not be maintained by government funds provided for operation of a penal institution and would continue to rely on veterans' benefits for support. Reducing benefits to such a person would not further the congressional purpose of avoiding duplicate government expenditures to provide maintenance for convicted felons.

HELD:

The provisions of 38 U.S.C. 3113 requiring reduction of veterans' disability compensation to persons incarcerated in a Federal, state, or local penal institution for a period in excess of sixty days for conviction of a felony do not apply to beneficiaries sentenced to "community control" in Florida since, by the nature of the community-control program under Florida law, a person sentenced to "community control" would not be considered incarcerated and application of the compensation-reduction provisions to such a person would not further the objectives of section 3113.

VETERANS AFFAIRS OPINION GENERAL COUNSEL PRECEDENAT 59-91
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