



## Administrative Office of the Courts

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### Supreme Court orders possible lifetime parole period for sex offender

SANTA FE – The state Supreme Court today ordered a district court to correct an illegal sentence by imposing possible lifetime parole, as required by state law, on a Raton man who pleaded guilty more than a decade ago to having sex with an underage girl.

In a unanimous opinion, the Court also ruled that Derrick Romero was entitled to an opportunity to withdraw his plea because he was denied due process by not being advised of the potential for an indeterminate parole period when his sentence was changed by the district court.

Under a plea agreement with prosecutors in 2011, Romero pleaded guilty to one count of second-degree criminal sexual penetration. The district court in Colfax County imposed a nine-year prison sentence and two years of parole. Part of the prison term was suspended. Thirteen days later, the court amended its order to apparently correct an initial sentencing error by making it a parole period of five-to-twenty years. No hearing was conducted, however.

Romero challenged the longer parole requirement in a petition of habeas corpus. A district court in Raton granted the petition in 2020, and reinstated the original sentencing order that provided for two years of parole. The district court concluded that it never had the jurisdiction to correct the illegal two-year parole sentence. State prosecutors appealed the district court's decision to the Supreme Court.

In an opinion by Chief Justice C. Shannon Bacon, the Supreme Court wrote that both the two-year and five-to-twenty-year parole periods were "illegal sentences" because state law requires an "indeterminate period of supervised parole for ... not less than five years and up to the natural life of the sex offender" for a conviction of second-degree criminal sexual penetration.

The Court concluded that historical changes to rules about modifying sentences "did not remove a district court's common law jurisdictional authority to correct an illegal sentence." The Court's holding overruled a decade-old Court of Appeals decision on that issue.

The justices reversed the decision that granted Romero’s writ of habeas corpus and remanded the case to the district court to impose the parole sentence required by state statute. The Court wrote that “imposition of the statutorily required parole period constitutes replacing the nullity of the illegal parole sentence” rather than “increasing an otherwise valid sentence.”

The Court determined that the terms of Romero’s plea bargain with prosecutors “did not include the length of the parole period and that the two-year parole period was established in the first instance by the district court.”

“Because the two-year parole sentence was not a term of the plea agreement, correction of that illegal sentence does not constitute a change to the plea agreement,” the Court wrote. “It follows logically that imposition of a more onerous indeterminate parole sentence does not deprive Appellee of the benefit of his bargain, as he did not bargain concerning the length of the parole. Accordingly, neither the district court’s purported parole sentence correction of five-to-twenty years nor imposition on remand of the five-years-to-life parole period can be construed as a broken promise of the prosecution.”

However, the Court concluded that Romero was entitled to an opportunity to withdraw his plea because he “was completely deprived of his right to a knowing and voluntary plea when his sentence was changed” to five-to-twenty-years without a hearing. The record of the case does not affirmatively show that Romero “understood that the range of possible penalties associated with his plea included either of the indeterminate parole sentences,” the Court stated.

The district court must conduct a new hearing to advise Romero of the potential lifetime parole sentence he faces and offer him the opportunity to withdraw his plea.

“Without such additional process, Appellee’s plea under our ruling herein cannot be knowing and voluntary,” the Court wrote.

Additionally, the Court directed its Rules of Criminal Procedure for State Courts Committee “to clarify the length of time in which a district court retains the relevant jurisdiction to correct an illegal sentence in accordance with this opinion.”

Under the Court’s rulemaking process, appointed committees of lawyers, judges, and members of the public recommend changes to the justices in the rules governing court procedures.

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To read the decision in *State v. Romero*, No. S-1-SC-38452, please visit the New Mexico Compilation Commission's website using the following link:

<https://nmonesource.com/nmos/nmsc/en/item/521637/index.do>