

EXECUTIVE ORDER 72-08

Don Anthony White was convicted May 27, 1960, of one count of First Degree Murder and a second count of Second Degree Murder in King County, Washington. He was sentenced to death July 18, 1960. The Washington State Supreme Court affirmed the conviction and sentence September 25, 1962, and a petition for rehearing was denied March 13, 1963. A petition to the United States Supreme Court for a Writ of Certiorari was denied in October, 1963, and the Washington State Supreme Court on March 19, 1964, denied a petition for a writ of habeas corpus. Further habeas corpus proceedings in the United States District Court for the Western District of Washington resulted in the granting to the petitioner of a new trial on April 7, 1966. As a result of a new trial, Don Anthony White was again found guilty as charged and was sentenced July 26, 1968, to serve two concurrent terms of life imprisonment.

At the time of his second conviction, RCW 9.95.063 provided that where a new trial was granted as a result of an appeal (but not other posttrial proceedings such as habeas corpus proceedings) and the person upon a new trial was again convicted, the period of that person's earlier imprisonment would be deducted by the Superior Court from the period of imprisonment to be fixed as a result of the new trial. This statute was amended in 1971 when the 42nd Legislature unanimously enacted Engrossed Senate Bill 153 (Chapter 86, Laws of 1971, First Extraordinary Session) to provide for the deduction by the Superior Court of the period of former imprisonment from the period of imprisonment to be fixed on a renewed verdict of conviction where a new trial has been granted as a result of any post-trial proceedings in a state or federal court. However, in expanding RCW 9.95.063 to include any post-trial proceeding resulting in a new trial the legislature did not make the benefits of the law retroactive.

Don Anthony White has served approximately eight years in prison as a consequence of his sentence of July 18, 1960, which was reversed as a result of the ancillary habeas corpus proceedings in 1966. Because Chapter 86, Laws of 1971, First Extraordinary Session, was not made retroactive the time he has served prior to his new trial may not be taken into account by the Board of Prison Terms and Paroles in determining when he may be eligible for parole. This result is clearly contrary to the intent of the legislature when it unanimously voted to expand RCW 9.95.063 to allow credit for time served prior to a new trial when ordered as a result of any proceedings subsequent to the first trial.

It is the recommendation of the trial judge who presided at the second trial of Don Anthony White and of the Board of Prison Terms and Paroles that it is appropriate for the Governor to grant to Don Anthony White credit for the time served prior to his new trial and the King County Prosecuting Attorney does not object to such action.

THEREFORE, it is hereby ordered that the period of imprisonment of Don Anthony White commencing from July 18, 1960 and incurred during any post-trial proceedings shall be credited in the computation of time served by Don Anthony White to the sentences imposed by the King County Superior Court on July 26, 1968. This order shall not be construed in any way as a reduction in the maximum sentences of Don Anthony White or as a recommendation for parole which is the responsibility of the Board of Prison Terms and Paroles upon recommendation of the Superintendent of the penitentiary as provided in RCW 9.95.115.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the State of Washington to be affixed at Olympia this 30th day of June A.D., Nineteen hundred and seventy-two.

Daniel J. Evans
Governor of Washington

BY THE GOVERNOR:

Secretary of State
