



JOHN M. O'CONNOR
ATTORNEY GENERAL

ATTORNEY GENERAL OPINION
2022-1

The Honorable Dr. George E. Young, Sr.
Oklahoma State Senate, District 48
2300 N. Lincoln Boulevard, Room 518
Oklahoma City, OK 73105

January 13, 2022

Dear Senator Young:

This office has received your request for an official Attorney General Opinion in which you ask, in effect, the following questions:

1. **What effect, if any, does a Governor's commutation of a person's felony sentence have on that person's eligibility to register to vote?**
2. **If an individual participates in and successfully completes a drug court program, which results in the charges being dismissed, is there any effect on the individual's eligibility to register to vote?**

I.
BACKGROUND

The Oklahoma Constitution enshrines Oklahomans' right to vote in the following terms: "***Subject to such exceptions as the Legislature may prescribe***, all citizens of the United States, over the age of eighteen (18) years, who are bona fide residents of this state, are qualified electors of this state." OKLA. CONST. art. III, § 1 (emphasis added). As permitted by the Constitution, the Legislature in the Election Code enacted certain limitations regarding the right to vote. Most broadly, an individual must be properly registered in order to vote. 26 O.S.2021, § 4-102. And relevant to your questions, the Legislature provided that "[p]ersons convicted of a felony shall be eligible to register to vote when they have ***fully served their sentence of court-mandated calendar days, including any term of incarceration, parole or supervision***, or completed a period of probation ordered by any court" 26 O.S.2021, § 4-101(1) (emphasis added).

Your questions involve the interpretation of this provision if (i) the person's sentence is commuted by the Governor, or (ii) the person participates in, and successfully completes, a drug court program. Accordingly, further explanation of each scenario may be helpful.

A. Sentence Commutations.

The Oklahoma Constitution empowers the Governor, upon recommendation from the Pardon and Parole Board, to grant commutations for most criminal offenses. OKLA. CONST. art. VI, § 10; *see also* 57 O.S.2021, § 332. As with the Governor’s other powers under Article VI, Section 10 of the Oklahoma Constitution, the commutation of an offender’s sentence “is an act of grace and mercy bestowed by the state through its chief executive . . .” *Ex parte Collins*, 1925 OK CR 470, 239 P. 693, 696. The effect of a commutation was described in an early decision of the Oklahoma Court of Criminal Appeals in the following terms:

[A] commutation of a sentence is a substitution of a less for a greater punishment. After commutation the commuted sentence is the only one in existence, and the only one to be considered. After commutation, the sentence has the same legal effect, and the status of the prisoner is the same, as though the sentence had originally been for the commuted term.

Ex parte Warren, 1928 OK CR 125, 265 P. 656, 657 (citation omitted).

As referenced in your request, the Governor’s commutation authority took on added significance after the passage of State Question 780 (“S.Q. 780”) in 2016 and House Bill 1269 (“H.B. 1269”) in 2019. By voter initiative, S.Q. 780 reclassified all simple drug possession and certain property crimes from felonies to misdemeanors. H.B. 1269 then provided for the review of past convictions for acts that were felonies at the time but would—following the changes brought about by S.Q. 780—be considered misdemeanors. 2019 Okla. Sess. Laws ch. 459. With respect to commutations, H.B. 1269 provided, in pertinent part, as follows:

The Pardon and Parole Board shall establish an accelerated, single-stage commutation docket for any applicant who has been convicted of a crime that has been reclassified from a felony to a misdemeanor under Oklahoma law. The Pardon and Parole Board shall be empowered to recommend to the Governor for commutation, by majority vote, any commutation application placed on the accelerated, single-stage commutation docket that meets the eligibility criteria provided above.

Id. § 5(F) (codified at 57 O.S.2021, § 332.2(F)). These reforms led to a record-setting day of commutations in Oklahoma. On November 4, 2019, over 450 people were released from prison after their sentences were commuted. *See* Darla Slipke, ‘A second chance’: Hundreds of inmates released from Oklahoma prisons in largest commutation in U.S. history, THE OKLAHOMAN, Nov. 5, 2019, 2019 WLNR 33270750.

B. Drug Courts.

Established in 1997 by the Oklahoma Drug Court Act, 22 O.S.2021, §§ 471–471.11, a “drug court program” is “an immediate and highly structured judicial intervention process for substance abuse treatment of eligible offenders which expedites the criminal case and requires successful completion of the plea agreement.” 22 O.S.2021, § 471.1(A). Drug court programs “require a separate judicial processing system differing in practice and design from the traditional adversarial

criminal prosecution and trial systems.” *Id.* § 471.1(D). The program team includes a judge to administer the program, a prosecutor and defense attorney, and persons such as health and substance abuse professionals “who shall have appropriate understanding of the goals of the program and of the appropriate treatment methods for the various conditions.” *Id.*

The drug court team may consider a non-violent drug offender, who is seeking to avoid imprisonment or a felony conviction, for participation in the drug court program at any time before disposition and sentencing or before revocation of a suspended sentence. 22 O.S.2021, § 471.2(A). Upon acceptance into the program, the offender must sign a performance contract and agree to a treatment plan. *Id.* § 471.2(B)(6). Successful completion of the drug court program—which is measured by the terms of the contract and written plea agreement—results in the charges being dismissed or, for offenders with prior felony convictions, a disposition agreed to in the plea agreement. *Id.* § 471.9(A).¹ Failure to complete a drug court program generally results in conviction and incarceration. *See id.* § 471.2(B)(8), (9); *see also Swanson v. State*, 2021 OK CR 2, ¶¶ 1–3, 2021 WL 948409; *D.A. v. State ex rel. Okla. State Bureau of Investigation*, 2018 OK 102, ¶ 3, 433 P.3d 727, 729.

II. DISCUSSION

With this background in mind, you pose two questions regarding a person’s eligibility to register to vote. First, how does a commutation of a felony sentence affect the timing of such eligibility? Second, how does acceptance into, and eventual completion of, a drug court program affect such eligibility? Before analyzing these questions, it is important to first note that an individual offender’s voter eligibility will turn on the actual terms of the commutation or drug court program in question. Because each situation is different, this opinion provides only generalized guidance.

A. An offender whose sentence is commuted is eligible to register to vote once the commuted sentence is “fully served.”

Oklahoma’s treatment of commuted sentences is well-established and straight-forward. As described above, commuting a sentence simply substitutes a lesser punishment in place of a greater one. *Hemphill v. State*, 1998 OK CR 7, ¶ 11, 954 P.2d 148, 151 (quoting *Ex parte Warren*, 1928 OK CR 125, 265 P. 656, 657). After commutation, Oklahoma law treats the original sentence like it never existed. *Id.* “[T]he sentence has the same legal effect . . . as though the sentence had originally been for the commuted term.” *Id.*

For a real-world example, in *Frazier v. State*, 1989 OK CR 78, 793 P.2d 1365, the Oklahoma Court of Criminal Appeals held that when an offender receives a split sentence—a period of incarceration followed by a period of probation—the commutation of the prison term causes the total length of the sentence to decrease accordingly. Thus, a term of imprisonment commuted on November 24, 1982, immediately started the clock on the offender’s one-year term of probation. That term expired on November 24, 1983, as if the original sentence had expired on that date.

¹ Indeed, the Oklahoma Supreme Court has explained the goal of the drug court program as “allowing successful participants to move on with their lives, and not have past charges, which were successfully dismissed, be used against them” *Okla. State Bureau of Investigation*, 2018 OK 102, ¶ 16, 433 P.3d at 733.

Turning back to the Election Code, a person convicted of a felony is eligible to register to vote “when they have *fully served* their sentence of court-mandated calendar days, *including any term of incarceration, parole or supervision*, or completed a period of probation ordered by any court” 26 O.S.2021, § 4-101(1) (emphasis added). The answer to when a sentence has been “fully served” after commutation depends on the terms of the commutation. In *Frazier*, for instance, the Governor commuted only the prison term, but not the suspended sentence. In that circumstance, the offender’s sentence is not fully served until the suspended sentence is completed. By contrast, if the Governor were to commute the entirety of an offender’s sentence(s) ordered by the court, the offender would be immediately eligible to register to vote. Accordingly, a felony offender’s eligibility to register to vote after commutation will depend on the terms of the commutation and what (if any) term of incarceration, parole or supervision remains after the commutation.

B. Participation in a drug court program does not affect the participant’s voter registration.

The limitation on a person’s eligibility to register to vote that has been discussed herein focuses on those who have been “convicted of a felony.” 26 O.S.2021, § 4-101(1). Mere participation in a drug court program will not stand in the way of the offender’s right to vote because, so long as the offender is in the program, there has been no conviction. *See Hagar v. State*, 1999 OK CR 35, ¶ 9, 990 P.2d 894, 897–98 (analogizing drug court participation to receiving a deferred sentence pending successful completion of probation); *Okla. State Bureau of Investigation*, 2018 OK 102, ¶ 18, 433 P.3d at 739 (Wyrick, J., dissenting). *See also* 22 O.S.2021, § 471.6(E) (“If admission into the drug court program is denied, the criminal case shall be returned to the traditional criminal docket and shall proceed as provided for any other criminal case.”). In addition, successful completion of a drug court program results in dismissal of criminal charges for first-time offenders. 22 O.S.2021, § 471.9(A)(1).² In this scenario too, there is no conviction that would inhibit the right to vote. This is consistent with the goals and mechanics of Oklahoma drug courts— “[i]t provides a motivation and incentive for completing the program.” *Okla. State Bureau of Investigation*, 2018 OK 102, ¶ 11, 433 P.3d at 732. And it “allow[s] successful participants to get on with their lives without dismissed past drug charges to be used against them.” *Id.* ¶ 17, 433 P.3d at 733.

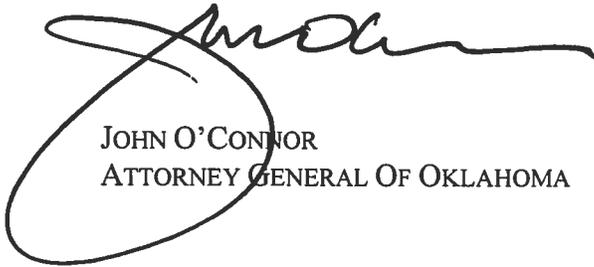
It is, therefore, the official Opinion of the Attorney General that:

- 1. Persons convicted of a felony are eligible to register to vote, in respect to that conviction, only after they have “fully served their sentence of court-mandated calendar days, including any term of incarceration, parole or supervision” 26 O.S.2021, § 4-101(1).**
- 2. A convicted felon whose sentence is commuted is eligible to register to vote so long as the commutation results in the sentence being “fully served.” Whether an offender’s sentence**

² As noted above, for offenders with prior felony convictions who successfully complete the drug court program, the charges are disposed of “as specified in the written plea agreement.” 22 O.S.2021, § 471.9(A)(2). Termination from the drug court program typically results in a criminal conviction, *see* 22 O.S.2021, § 471.7(E), in which case the offender’s eligibility to vote will be depend on the terms of the plea agreement. *See Looney v. State*, 2002 OK CR 27, ¶ 9, 49 P.3d 761, 763–64 (citing *Hagar*, 1999 OK CR 35, ¶ 11, 990 P.2d at 894).

is “fully served” after commutation will depend on the terms of the commutation. *See, e.g., Frazier v. State*, 1989 OK CR 78, 793 P.2d 1365.

3. Mere participation in a drug court program pursuant to 22 O.S.2021, §§ 471–471.11 does not affect the participant’s eligibility to register to vote. *Hagar v. State*, 1999 OK CR 35, 990 P.2d 894.
4. If an offender completes the drug court program and the criminal charges are dismissed, there is no effect on the offender’s eligibility to register to vote because there has been no conviction.



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