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STATE OF RHODE ISLAND

PROVIDENCE, SC. SUPERIOR COURT

HEARING 3/31/2022 AT 9:30 AM

JOAO NEVES v. STATE OF RHODE ISLAND	PM-2022-0259
PABLO ORTEGA v. STATE OF RHODE ISLAND	PM-2022-0260
KEITH NUNES v. STATE OF RHODE ISLAND	PM-2022-0901

REPLY MEMORANDUM OF LAW IN OBJECTION TO THE STATE'S MOTION FOR SUMMARY JUDGMENT AND IN SUPPORT OF PETITIONERS' MOTION FOR SUMMARY DISPOSITION

Petitioners Joao Neves, Pablo Ortega and Keith Nunes, by their undersigned counsel, hereby submit the within Reply Memorandum in support of their motion for summary disposition on their respective applications for post-conviction relief (PCR), pursuant to R.I.G.L. §10-9.1-6(c) and in opposition to the State's motion for summary disposition.

The State, in its Memorandum in support of its Cross-Motion for Summary Judgment, contends that the term "any offense" as set forth in the first sentence of the Youthful Offender Act, R.I.G.L. §13-8-13(e), enacted in 2021 and effective July 6, 2021, can only be understood to mean

"an offense" in the singular tense. The State grounds its argument on the belief that the legislature used the term "any offense" and not "any offenses" to signify that the legislature meant to limit the application of the Act to a single offense and that it would not apply to a youthful offender who committed "multiple" offenses before the age of twenty-two.

As support for its argument, the State points to different, but complementary, language employed in R.I.G.L. §13-8-14.2, hereinafter referred to as "the Juvenile Parole Act," enacted at the same time, where the legislature also mandated special consideration for juvenile offenders. Because the legislature used the phrase "an offense or offenses" to refer to the coverage of the Juvenile Parole Act, the State reasons that the phrase "any offense" in §13-8-13(e) must mean "an offense."

Respectfully, this is nonsense and nothing more than grasping at straws in an effort to provide a justification for the State's determination to simply ignore the mandate of a law passed in 2021.

At the risk of overkill, Petitioners will parse both provisions, as well as address the meaning of the term "any"—something that the State has simply failed to do.

Section 13-8-14.2 is both broader and narrower in its coverage than the Youthful Offenders Act, R.I.G.L. §13-8-13(e). We set each of them in full below.

The Youthful Offender Act, **R.I.G.L. §13-8-13(e),** provides:

> 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.

The Juvenile Parole Act, **R.I.G.L. §13-8-14.2,** provides:

> § 13-8-14.2. Special parole consideration for persons convicted as juveniles
>
> (a) When a person who is serving a sentence imposed as the result of *an offense or offenses committed when he or she was less than eighteen years of age* becomes eligible for parole pursuant to applicable provisions of law, the parole board shall ensure that he or she is provided a meaningful opportunity to obtain release and shall adopt rules and guidelines to do so, consistent with existing law.
>
> (b) During a parole hearing involving a person described in subsection (a) of this section, in addition to other factors required by law or under the parole guidelines set forth by the parole board, *the parole board shall also take into consideration the diminished culpability of juveniles as compared to that of adults and any subsequent growth and increased maturity of the prisoner during incarceration*. The board shall also consider the following:
>
> (1) A review of educational and court documents;
> (2) Participation in available rehabilitative and educational programs while in prison;
> (3) Age at the time of the offense;
> (4) Immaturity at the time of the offense;
> (5) Home and community environment at the time of the offense;
> (6) Efforts made toward rehabilitation;
> (7) Evidence of remorse; and
> (8) Any other factors or circumstances the board considers relevant.
>
> (c) The parole board shall have access to all relevant records and information in the possession of any state official or agency relating to the board's consideration of the factors detailed in the foregoing sections.

R.I.G.L. §13-8-14.2 (emphasis added).

We start with what the Youthful Offenders Act, R.I.G.L. §13-8-13(e) covers and does not cover in relation to §13-8-14.2 ("the Juvenile Parole Act"). Both acts mandate special consideration for those who committed offenses at a young age and may overlap in coverage in that respect, but they are not the same and do not use the same language.

The Youthful Offenders Act uses the phrase "sentenced" and applies only when someone is "sentenced for any offense" committed before the age of 22, *except* "a person serving life without parole." To get the benefit of the Youthful Offenders Act, the individual must first serve

a total of at least twenty years before they may appear before the parole board. It does not say the youthful offender must "serve twenty years on each sentence" or "serve twenty years on the first sentence" to be seen by the Parole Board.

In contrast, the Juvenile Parole Act applies to anyone "serving a sentence" for "an offense or offenses" committed before the age of 18, without regard to the length of the sentence or amount of time served. The State concedes that the Juvenile Parole Act is designed to apply to "every" offense committed by a person before the age of 18 years, regardless of the term of the sentence. Thus, while the Juvenile Parole Act uses the phrase "an offense or offenses," in context, as the State concedes, that language is intended to encompass "all" offenses.

Both statutes are designed and intended to require special favorable consideration to those who committed their crimes at a young age. Each can and should be interpreted broadly to fulfill that purpose. Interpreting the Juvenile Parole Act to apply to all juvenile offenders coming up for parole and interpreting the Youthful Offender Act to apply to all youthful offenders (except those serving life without parole) so as to reduce the initial parole eligibility consideration date to twenty years (unless it is already less) fulfills that purpose and is not inconsistent with the precise words set forth in each statute.

The two acts, though enacted at the same time, use different words to describe the eligible population. Giving the words used in the respective acts their ordinary meaning fulfills that purpose. The State disagrees and claims that the word "any" in the Youthful Offenders Act must be construed as "an" or "single" offense. It is not apparent why a phrase in one section should be construed to negate the ordinary meaning of words used in another section, particularly where they are not inconsistent.

The Youthful Offenders Act—the only statute under consideration in these applications for post-conviction relief—expressly applies to "any person" "sentenced" "for any offense committed" before the age of 22 *except* "a person serving life without parole." With that sole exception, "[a]ny person" "*shall be eligible for parole review.*"

The State claims that the word "an" as used in the Juvenile Parole Act connotes the use of the word in its singular form. In context, it is clear that the legislature, by stating "an offense or offenses," actually meant the opposite—to convey "all" or "every." This contextual argument fails.

Even if the State's Juvenile Parole Act argument had merit, the legislature did not cross-reference the acts or use the cited phrase or any portion of it in the Youthful Offenders Act. In the Youthful Offenders Act it used "any person" and "any offense." Thus, we look at the word "any" as it is used in the Youthful Offenders Act. We are guided by those legal principles that recognize dictionaries as "a useful starting point":

> When, as is the case here, a statute does not define a word, courts will often apply a common meaning as provided by a recognized dictionary. *See Defenders of Animals, Inc. v. Department of Environmental Management,* 553 A.2d 541, 543 (R.I.1989); *see also Chambers v. Ormiston,* 935 A.2d 956, 962 (R.I.2007) (scrutinizing dictionary definitions to determine the meaning of statutory language); 2A Norman J. Singer & J.D. Shambie Singer *Sutherland Statutes and Statutory Construction,* § 47.28 at 468–69 (7th ed. 2007) ("Dictionaries * * * provide a useful starting point to determine what statutory terms mean * * *.").

Planned Environments Mgmt. Corp. v. Robert, 966 A.2d 117, 123 (R.I. 2009).

Dictionary definitions of the word "any" include:

From Merriam-Webster online:

> Definition of *any*
> (Entry 1 of 3)
> 1: one or some indiscriminately of whatever kind:
> a: one or another taken at random
> Ask *any* man you meet.
> b: EVERY —used to indicate one selected without restriction
> *Any* child would know that.

2: one, some, or all indiscriminately of whatever quantity:
a: one or more —used to indicate an undetermined number or amount
Do you have *any* money?
b: ALL —used to indicate a maximum or whole
He needs *any* help he can get.
c: a or some without reference to quantity or extent
I'd be grateful for *any* favor at all.
3 a: unmeasured or unlimited in amount, number, or extent
any quantity you desire
b: appreciably large or extended
could not endure it *any* length of time

"any" *Merriam-Webster.com*. 2022. https://www.merriam-webster.com/dictionary/any, accessed 3/21/22.

From Oxford English/US Dictionary online:

DETERMINER
1 *usually with negative or in questions*
Used to refer to one or some of a thing or number of things, no matter how much or how many.
* * *
2 Used to express a lack of restriction in selecting one of a specified class.
* * *
PRONOUN
- 1 *usually with negative or in questions*
- One or some of a thing or number of things, no matter how much or how many.
* * *
- 2 Whichever of a specified class might be chosen.

"any" Lexico.com. 2022. https://www.lexico.com/en/definition/any, accessed 3/21/22.

From Dictionary.com online:

adjective
1 one, a, an, or some; one or more without specification or identification:
If you have any witnesses, produce them. Pick out any six you like.
2 whatever or whichever it may be:
cheap at any price.
3. in whatever quantity or number, great or small; some:
Do you have any butter?

"any" Dictionary.com. https://www.dictionary.com/browse/any; accessed 3/21/22

The hallmark of all of these definitions of the word "any" as a modifier is that it connotes "one or some of a thing or number of things, no matter how much or how many" and is not limited to "one" or a "singular" amount.

The State has not cited any case law or scholarly attribution for its distinctly unusual interpretation of the word "any" as actually restricted to a singular "an." Nor has counsel for Petitioners discovered a Rhode Island case focusing exclusively on the meaning of the word "any" in isolation—probably because it is such a basic building block of legal writing.

The Rhode Island Supreme Court has recognized that the term "any" dictates a broad scope, expressing the inclusion of all unless specifically excluded:

> This court has given the broadest scope to the "any person" language in *State v. Mann,* 119 R.I. 720, 382 A.2d 1319 (1978). The defendant in *Mann* was charged with violating the Controlled Substances Act, G.L.1956 (1968 Reenactment) § 21–28–4.01(c). That statute prohibits "*any person* knowingly or intentionally to possess a controlled substance" unless legally obtained. The defendant claimed that he was exempted from the act's language since he was a licensed osteopath. We rejected this claim. "The language is clear. It is well settled that, in the absence of ambiguity, words used in a statute must be given their plain and ordinary meaning unless a contrary intention appears on the face of the statute. *Andreozzi v. D'Antuono,* 113 R.I. 155, 158, 319 A.2d 16, 18 (1974). We conclude, therefore, that 'any person' * * * includes physicians." *State v. Mann,* 119 R.I. at 724, 382 A.2d at 1321.
>
> Given this precedent, we likewise conclude that the very breadth of the term "any person" defies the exclusion of any class of persons. That term is so broad as to require exclusion, not specific inclusion.

State v. Caprio, 477 A.2d 67, 71 (R.I. 1984) (emphasis in original).

Here, paraphrasing *Caprio,* "the very breadth of the term 'any person' defies the exclusion of any class of persons," excepting those persons serving life without parole. Similarly, "the very breadth of the term 'any [offense]' defies the exclusion of any class of [offense]," excepting one carrying a sentence of life without parole. Each "term is so broad as to require exclusion, not specific inclusion."

More recently, in *State v. LeFebvre*, 198 A.3d 521 (R.I. 2019), the Supreme Court considered the scope of the abrogation of privileged communications mandated by R.I.G.L. §40-11-11, which abrogated spousal and professional privilege (other than attorney-client) "in any judicial proceeding relating to child abuse or neglect." The Court had no hesitancy in concluding that the word "any" in that context meant "*any and all* judicial proceeding*s*"—even though there, as here, the legislature simply said, "any judicial proceeding," and not, as the State's argument here would seem to require, the phrase "any judicial proceeding or proceedings" in order to encompass every one of them. The Court stated:

> The plain meaning of the phrase "any judicial proceeding relating to child abuse or neglect" is indeed unambiguous, and it encompasses the full spectrum of matters that relate to the abuse or neglect of a child. Had the General Assembly intended to limit the application of § 40-11-11 to the narrow class of cases suggested by defendant, it surely would have done so explicitly, rather than employing what defendant refers to as a "shorthand phrase."
>
> * * *
>
> On the other hand, the first sentence, in sweeping language, does away with virtually all privileges in any and all judicial proceedings that involve the abuse or neglect of a child. This would include criminal proceedings.

State v. LeFebvre, 198 A.3d at 526-527 (footnote omitted)

Perhaps because "any" is such a commonplace term with clear meaning, undersigned counsel found few cases expressly focusing on the word "any" without the noun which it modifies. Nevertheless, the ordinary construction is clear. "'[A]ny'… means an indefinite number or quantity. Words in common use, when found in a statute, are to be taken in their ordinary sense." *New York Cty. Medical Ass'n v. City of New York*, 32 Misc. 116, 118, 65 N.Y.S. 531, 532 (N.Y. Sup. Ct. 1900). "'Any' means 'every,' 'each one of all.'" *Harrington v. Interstate Business Men's Acc. Ass'n of Des Moines, Iowa*, 210 Mich. 327, 330, 178 N.W. 19, 20 (1920). *See also State v. Gardner,* 2008-Ohio-2787, ¶ 33, 118 Ohio St. 3d 420, 425, 889 N.E.2d 995, 1003 (2008) ("Given the General Assembly's use of the term 'any' in the phrase 'any criminal offense,' we presume that

it intended to encompass 'every' and 'all' criminal offenses recognized by Ohio." Citations omitted); *Three D Departments, Inc. v. K Mart Corp*., 940 F.2d 666, 1991 WL 151903 at *2 (7th Cir. 1991) (table) ("numerous Michigan cases hold that 'any' means more than one and a number up to and including 'all' or 'every.'" Citations omitted).

The Youthful Offenders Act is just two sentences long. In the first sentence, the Act purports to require that "any person" who committed their offense before the age of 22, other than one serving life without parole, be seen once they have served 20 years, unless their parole eligibility date was less than 20 years. In the second sentence, the legislature provided that the provision would apply retrospectively as well as prospectively to *all* offenses, plural, occurring on or after January 1, 1991.

The State argues that "any offense" means "an offense" and that the Youthful Offender Act cannot apply to shorten the initial parole eligibility date where there are multiple offenses. What would acceptance of that construction mean? The State has taken the position that the Youthful Offender Act serves to shorten the initial parole eligibility date for a *first* sentence if it is longer than 20 years, but not any consecutive sentences. But that is not a literal interpretation of the State's argument. The State's literal argument, taken to its logical conclusion, would be that the Youthful Offender Act is not applicable—at all—to any person sentenced on multiple offenses, even those running concurrently, since that person has not been convicted of "an" offense, entitling them to the benefits of the Act. But the State has not taken that position. And rightly so, since it would lead to absurd results.

The Youthful Offender Act dictates that where any offense was committed before the age of 22, the initial parole eligibility date *must be* set at 20 years, unless it is already less than 20 years. The State's contrary interpretation of the Act defeats the Act's direct mandate.

Moreover, the State's contrary interpretation defeats the Act's purpose, which is to recognize and require that the Parole Board accord special consideration to youthful offenders not extended to adult offenders. This special consideration evinces the legislative intent that the Parole Board recognize, in evaluating whether a parole permit should issue, that young minds work differently than more mature persons, as articulated in the *Roper-Graham* line of cases. The State's argument that this line of cases is irrelevant because no one is facing the death penalty or mandatory life without parole misses that point. Respectfully, Petitioners did not cite that line of cases on the basis that they dictated a particular result, but rather for the growing recognition that young offenders *are* different from mature offenders. Indeed, the General Assembly explicitly articulated the same policy position in the Juvenile Parole Act, which mandates that "the parole board shall also take into consideration the diminished culpability of juveniles as compared to that of adults and any subsequent growth and increased maturity of the prisoner during incarceration." R.I.G.L. §13-8-14.2(b).

CONCLUSION

Wherefore, each Petitioner prays that the Court grant his respective motion for summary disposition, deny the State's cross-motion, and order that each Petitioner immediately be released from incarceration to parole upon such conditions as previously or hereinafter set by the Parole Board.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on March 23, 2022:

☑ I electronically filed and served this document through the electronic filing system.

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☑ I served a copy of the document by email upon all counsel of record:

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