SPP Guiding Case No. 196: Supervision Case on the Parole of Convict Yang Moumou

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Unofficial English translation prepared for reference only. The official Chinese text prevails.

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Keywords

Scope of prohibition of parole / proactive performance of duties / danger of re-offending / raising minor children

Holding

Where, in the course of daily supervision and performance of duties, the people's procuratorate discovers that an offender satisfies the statutory conditions for parole but has not been proposed for parole, it shall, in accordance with law, recommend that the penalty enforcement organ initiate the parole proposal procedure. The scope of offenders prohibited from parole shall be accurately grasped. For offenders of serious violent crimes such as intentional homicide, those who have not been sentenced to fixed-term imprisonment of ten years or more or life imprisonment and are not recidivists do not fall within the circumstances prohibiting the application of parole; on the basis of a comprehensive judgment of their subjective malignancy, actual performance during the sentence and other factors, parole opinions may be put forward in accordance with law for those who satisfy the conditions for parole. Attention shall be paid to implementing the criminal policy of combining leniency with strictness; for offenders who have minor children who truly need their care and whose spouse is serving a sentence and other special circumstances, a recommendation for lenient application of parole may be put forward in accordance with law.

Basic Facts

The offender, Yang Moumou, female, born in September 1984, with her registered residence in Mu'er Town, Yubei District, Chongqing.

Yang Moumou had an improper male-female relationship with the victim Zhou Mou, which was discovered by her husband Liu Mou. In order to break free of the relationship with Zhou Mou, Yang Moumou, knowing that Liu Mou and Liu Moujia and others intended to beat the victim Zhou Mou, invited Zhou Mou to her home, where Zhou Mou was intentionally killed by Liu Mou and Liu Moujia and others by striking with a kitchen knife, hammer and wooden stool. On November 27, 2014, Yang Moumou was sentenced by the First Intermediate People's Court of Chongqing to fixed-term imprisonment of seven years for the crime of intentional homicide, with the term ending on February 11, 2021. On December 23, 2014, Yang Moumou was delivered to Chongqing Women's Prison to serve her sentence. On March 30, 2017, the Fifth Intermediate People's Court of Chongqing ruled to reduce Yang Moumou's sentence by nine months, with the term ending on May 11, 2020.

Procuratorate Performance of Duties

Discovery of clues. In March 2018, in the course of daily performance of duties, a prosecutor of the procuratorial office stationed at Chongqing Women's Prison of the Fifth Branch of the Chongqing Municipal People's Procuratorate (hereinafter referred to as the "Fifth Branch of Chongqing") learned through conversations with offenders that Yang Moumou had two minor children at home who truly needed her care, and that she was worried about the life and schooling of the elderly and two young children at home, and hoped to obtain parole and be released early to assume the responsibilities of a mother and the family. It

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was learned that the prison had already grasped the situation that Yang Moumou hoped to be proposed for parole, but considering that Yang Moumou's crime of intentional homicide was a serious crime and it was not appropriate to propose parole for a serious-crime offender, it had not included her among the objects of parole proposal examination. The Fifth Branch of Chongqing carried out investigation and verification to ascertain whether Yang Moumou satisfied the conditions for parole.

Investigation and verification. The Fifth Branch of Chongqing carried out the following investigation and verification work focusing on whether Yang Moumou satisfied the conditions for parole: First, it studied and assessed Yang Moumou's illegal and criminal circumstances. Yang Moumou was not the initiator of the criminal intent and did not directly carry out the harmful act; she was sentenced to fixed-term imprisonment of seven years, and her subjective malignancy, personal danger and degree of social harm were clearly different from those of her spouse Liu Mou. At the same time, Yang Moumou made civil compensation to the victim's relatives and had obtained their forgiveness, and the property-related judgment items of this case had been fully performed. Second, it assessed Yang Moumou's actual performance during the sentence. Through inquiry of the offender and supervising police officers and review of score-based assessment materials, it was learned that Yang Moumou had admitted guilt and submitted to the law since serving her sentence, observed prison regulations, obeyed arrangements, helped care for sick offenders in the prison hospital, and had genuine repentance. Third, it investigated Yang Moumou's family economic situation. Yang Moumou's spouse Liu Mou and her father-in-law Liu Moujia were imprisoned for jointly committing the crime of intentional homicide; her two minor children were in primary school and were cared for solely by their elderly, weak and sickly grandmother; the family lacked sources of income, and the three people relied solely on subsistence allowance payments, with financial difficulties, and Yang Moumou was truly needed to assume the obligation of raising the minor children. Fourth, it assessed Yang Moumou's personal basic circumstances and psychological condition. Yang Moumou was in good health, and the prison's assessment report showed that her psychological condition was good; before imprisonment she had worked in sales and was the main source of family income, and she had a strong willingness to raise and educate her children and assume family responsibilities. Fifth, it assessed the supervision conditions after her parole. It recommended that the prison entrust the community correction institution at Yang Moumou's place of residence to carry out a community correction investigation and assessment. Upon investigation, the offender satisfied the conditions for community correction supervision and community correction could be applied. Upon comprehensive analysis and study of all the facts and evidence of the case, it was determined that Yang Moumou had low personal danger, no danger of re-offending, good actual performance during the sentence, could support herself after parole, and had the conditions for community supervision.

Supervision opinions. On April 6, 2018, the Fifth Branch of Chongqing recommended that Chongqing Women's Prison initiate the parole procedure for Yang Moumou in accordance with law. Chongqing Women's Prison adopted the procuratorial opinion and, on May 24 of the same year, proposed to the Fifth Intermediate People's Court of Chongqing that Yang Moumou be granted parole.

Supervision result. On June 29, 2018, the Fifth Intermediate People's Court of Chongqing ruled in accordance with law to grant Yang Moumou parole, with the parole supervision period ending on May 11, 2020. Through follow-up visits by the Fifth Branch of Chongqing, Yang Moumou observed the provisions of community correction during the community correction period, performed well, found a stable job with the help of the community correction institution, her family living conditions were greatly improved, and the effect of education and assistance was obvious; her daughter was admitted to a key middle school due to excellent academic performance.

Guiding Significance

(1) Where, in the course of daily procuratorial performance of duties, the people's procuratorate discovers an offender who satisfies the statutory conditions for parole but has not been proposed for parole, it shall recommend that the penalty enforcement organ propose parole in accordance with law. The people's

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procuratorate shall not only supervise whether the procedures and conditions of parole proposal cases comply with legal provisions, but also, in the course of daily procuratorial performance of duties, pay attention to discovering supervision clues through conversations with offenders, attending parole review committee meetings, reviewing meeting minutes and other means; for offenders who satisfy the conditions for parole but have not been proposed for parole, it shall recommend that the penalty enforcement organ propose parole, so as to promote the application of the parole system in accordance with law.

(2) Accurately grasp the scope of cases prohibited from parole under paragraph 2 of Article 81 of the Criminal Law, and comprehensively judge the “danger of re-offending” in combination with the offender’s subjective malignancy, performance during the sentence and other factors. Paragraph 2 of Article 81 of the Criminal Law of China provides: “Recidivists, and criminals sentenced to fixed-term imprisonment of ten years or more or life imprisonment for intentional homicide, rape, robbery, kidnapping, arson, explosion, spreading dangerous substances or organized violent crimes, shall not be granted parole.” When handling parole supervision cases, the people’s procuratorate shall accurately grasp the conditions and scope of the prohibition of parole. For offenders of serious violent crimes such as intentional homicide who have not been sentenced to fixed-term imprisonment of ten years or more or life imprisonment and are not recidivists, whether there is a danger of re-offending shall be comprehensively judged in combination with the offender’s subjective malignancy, the degree of harm of the criminal act, his role in the joint crime, actual performance during the sentence and community supervision conditions; for those who satisfy the conditions for parole, recommendations for the application of parole may be put forward in accordance with law.

(3) For offenders with special circumstances such as minor children who truly need their care, where the statutory conditions for parole are satisfied, the social effect of case handling shall be fully considered, and a recommendation for lenient application of parole shall be put forward in accordance with law. When supervising parole cases, the people’s procuratorate shall both strictly handle them in accordance with the conditions and procedures prescribed by law and implement the criminal policy of combining leniency with strictness; for offenders who satisfy the conditions for parole and have special circumstances such as a spouse serving a sentence and minor children who truly need their care, or parents who, due to illness or disability, are unable to care for themselves for a long time and truly need their care, a recommendation for lenient application of parole may be put forward in accordance with law. Through actively applying parole in accordance with law, offenders shall be reformed to genuinely repent, family and social harmony and stability shall be maintained, and the organic unity of the political, social and legal effects of parole case handling shall be realized.

Relevant Legal Provisions

Articles 81 and 82 of the Criminal Law of the People’s Republic of China.

Article 262 of the Criminal Procedure Law of the People’s Republic of China (2012 Amendment) (now Article 273 of the 2018 Amendment).

Articles 22, 23, 25 and 26 of the Provisions of the Supreme People’s Court on the Specific Application of Law in the Handling of Sentence Reduction and Parole Cases.

Article 9 of the Provisions of the People’s Procuratorates on Handling Sentence Reduction and Parole Cases.

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