SPP Guiding Case No. 198: Supervision Case on the Parole of Convict Zou Moumou (Pretrial Detention Offset Against the Sentence Term)

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

Decided at the 13th meeting of the 14th Procuratorial Committee of the Supreme People's Procuratorate on September 22, 2023; issued on October 16, 2023.

Keywords

Parole sentence term condition / serving one-half or more of the original sentence / pretrial detention / offsetting the sentence term

Holding

The people's procuratorate shall accurately grasp the sentence term condition for paroling an offender. The term of "serving one-half or more of the original sentence" for an offender sentenced to fixed-term imprisonment includes both the sentence term served in prison and the pretrial detention period before the judgment is executed. Attention shall be paid to promoting, through individual case handling, the timely adjustment by the judicial administrative organs of the relevant provisions that do not conform to legal provisions and the legislative intent, so as to safeguard the uniform and correct implementation of the law.

Basic Facts

The offender, Zou Moumou, male, born in July 1977, with his registered residence in Jiangyin City, Jiangsu Province.

While serving as sales manager, assistant general manager and deputy general manager of a Jiangsu investment limited company, Zou Moumou, through the business of selling and purchasing asphalt and other matters, illegally solicited or accepted customer commission fees of RMB 3,189,546.5; taking advantage of his position as deputy general manager of the investment company, by privately purchasing blank collection receipts and privately engraving the financial special seal of the investment company, he illegally appropriated cash of RMB 217,908 from the bank acceptance bill discount paid by a supplier company to the investment company. On March 29, 2017, Zou Moumou was criminally detained by the Wuxi Municipal Public Security Bureau of Jiangsu Province; on April 19, 2019, he was sentenced by the People's Court of Jiangyin City, Jiangsu Province to fixed-term imprisonment of six years and six months for the crimes of accepting bribes as a non-state functionary and embezzlement of official positions, with confiscation of property of RMB 300,000 and continued recovery of illegal gains of RMB 3,189,546.5, with the term ending on September 27, 2023. The offender appealed. On June 2, 2020, the Intermediate People's Court of Wuxi City, Jiangsu Province issued a criminal ruling dismissing the appeal and affirming the original judgment. Zou Moumou was subsequently delivered to Pukou Prison in Jiangsu Province to serve his sentence.

Procuratorate Performance of Duties

Discovery of clues. In May 2022, the People's Procuratorate of Zhongshan Area of Nanjing City, Jiangsu Province (hereinafter referred to as the "Zhongshan Area Procuratorate") discovered, when reviewing the case file materials on sentence reduction and parole of offenders submitted by Pukou Prison, that the prison's plan not to propose parole for the offender Zou Moumou had problems. Pukou Prison held that, according to the relevant provisions of the Jiangsu Provincial Prison Administration Bureau, when applying parole to offenders with a short original sentence term and a short period of actual service in prison, the parole supervision period should be strictly controlled, and the actual service time in prison should generally

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exceed one-half of the original sentence term. The offender Zou Moumou fell within the circumstances prescribed by that provision and did not satisfy the conditions for proposing parole. The Zhongshan Area Procuratorate held that Pukou Prison's refusal to propose parole for Zou Moumou based on that provision had problems and should be supervised and corrected.

Investigation and verification. Focusing on whether the offender Zou Moumou satisfied the conditions for parole, the Zhongshan Area Procuratorate carried out the following work: First, it retrieved original file materials such as the indictment, criminal judgment, criminal ruling, notice of execution of criminal case and offender case closing registration form. It confirmed that, before being delivered to Pukou Prison for execution, the offender Zou Moumou had been held in pretrial detention for three years and five months at a detention center in Wuxi City due to the complexity and difficulty of the case, and that, together with the one year and eight months served in Pukou Prison, he had served fixed-term imprisonment for a total of five years and one month, having served one-half or more of the original sentence term. Second, it verified the offender Zou Moumou's admission of guilt and repentance. Through review of materials such as the offender's reward approval form, cumulative score-based assessment ledger, offender review and appraisal form, reform summary and statement of admission of guilt and repentance, it determined that the offender, during his service in Pukou Prison, was able to observe prison regulations, receive education and reform, strive to complete labor tasks, had fully performed the property-related judgment items, and had genuine repentance. Based on materials such as the appraisal form of performance during the detention period issued by the detention center in Wuxi City, it determined that the offender was able to observe the relevant provisions during his detention and performed well. Third, it examined materials such as the offender's post-release danger assessment report and investigation assessment opinion, confirming that the offender's danger level of re-offending was low, that he had family supervision conditions, and that community correction could be applied.

Supervision opinions. After examination, the Zhongshan Area Procuratorate held that, according to Article 23 of the Provisions of the Supreme People's Court on the Specific Application of Law in the Handling of Sentence Reduction and Parole Cases, which provides that "when an offender sentenced to fixed-term imprisonment is paroled, the time of serving one-half of the original sentence term shall be calculated from the date of execution of the judgment; where the offender was held in pretrial detention before the execution of the judgment, one day of pretrial detention shall offset one day of the sentence term," the requirement of "serving one-half or more of the original sentence term" includes not only the sentence term actually served after delivery to prison, but also the pretrial detention period before the execution of the judgment. The relevant provisions of the Jiangsu Provincial Prison Administration Bureau did not conform to the law and judicial interpretations and should not be used as the basis for case handling. On May 31, 2022, the Zhongshan Area Procuratorate, comprehensively considering factors such as Zou Moumou's criminal circumstances, consistent performance during sentence execution and post-parole supervision conditions, submitted to Pukou Prison a procuratorial opinion proposing parole for him in accordance with law. Pukou Prison adopted the opinion of the Zhongshan Area Procuratorate and, on June 20, 2022, proposed to the Intermediate People's Court of Nanjing City that Zou Moumou be granted parole.

Supervision result. On August 5, 2022, the Intermediate People's Court of Nanjing City ruled to grant Zou Moumou parole, with the parole supervision period ending on September 27, 2023. After the ruling took effect, the Zhongshan Area Procuratorate actively communicated with the Jiangsu Provincial Prison Administration Bureau and recommended the revocation of the relevant provision concerning the sentence term for parole, and the provision was subsequently repealed.

Guiding Significance

(1) The term of "serving one-half or more of the original sentence term" required by the Criminal Law for the application of parole shall include both the sentence term served in prison and the pretrial detention period before the execution of the judgment. According to the Criminal Law, "serving one-half or more of the original

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sentence term" is the precondition for applying parole in accordance with law. In order to fully safeguard the lawful rights and interests of offenders, according to the provisions of the Criminal Law on offsetting the sentence term, "serving one-half or more of the original sentence term" shall include the offender's pretrial detention period. On the basis of the offender satisfying the sentence term condition of "serving one-half or more of the original sentence term," the procuratorial organ shall also comprehensively consider the offender's education and reform after delivery for sentence execution, admission of guilt and repentance, performance during the detention period, investigation and assessment opinions and other factors to judge the offender's "danger of re-offending," and put forward in accordance with law a procuratorial opinion on applying parole to the offender.

(2) In supervising parole cases, the people's procuratorate shall pay attention to promoting the uniform and standardized application of law through individual case handling. In handling parole supervision cases, the people's procuratorate shall strengthen the correct understanding and accurate application of laws and judicial interpretations, and realize fairness and justice in individual case handling in accordance with law. At the same time, it shall strengthen supervision over similar cases through individual case handling, and promote the timely adjustment and correction by the relevant organs of the relevant internal provisions and policy documents that may lead to deviations in judicial application due to differing understandings among law enforcement and judicial organs, so as to safeguard the uniform and correct implementation of the law.

Relevant Legal Provisions

Articles 47, 81 and 82 of the Criminal Law of the People's Republic of China.

Articles 23 and 40 of the Provisions of the Supreme People's Court on the Specific Application of Law in the Handling of Sentence Reduction and Parole Cases.

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