SPP Guiding Case No. 199: Supervision Case on the Parole of Convict Tang Mou (Drug Crime — False Supporting Materials)

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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

Drug crime / false supporting materials / repentance / inapplicability of parole

Holding

The people's procuratorate shall strengthen the examination and control of the conditions for the application of parole to offenders with a high danger of re-offending, such as drug crime offenders. It shall carry out in-depth investigation and verification, pay attention to substantive examination, and accurately determine whether a drug-related offender has genuine repentance and whether there is a danger of re-offending. Where an offender obtains false supporting materials by improper means in an attempt to obtain parole, it indicates that he has not genuinely repented subjectively, and he shall not be determined as having genuine repentance. Where, in the course of handling a parole supervision case, clues of violations of discipline or law are discovered, they shall be transferred to the relevant organs for handling in accordance with law, so as to extend the effect of supervision.

Basic Facts

The offender, Tang Mou, male, born in March 1988, with his registered residence in Jinlan Town, Hengyang County, Hunan Province.

On January 4, 2017, Tang Mou was sentenced by the People's Court of Hengyang County, Hunan Province to fixed-term imprisonment of ten years plus a fine of RMB 30,000 for the crime of selling drugs, with the term ending on November 19, 2024. Tang Mou appealed, and on June 7, 2017, the appeal was dismissed by the Intermediate People's Court of Hengyang City, Hunan Province, which affirmed the original judgment. Tang Mou was subsequently delivered to Yannan Prison in Hunan Province to serve his sentence.

Procuratorate Performance of Duties

Discovery of clues. In April 2022, Yannan Prison solicited the opinion of the procuratorial organ on its plan to propose parole for the offender Tang Mou. The People's Procuratorate of Huaxin Area of Hengyang City (hereinafter referred to as the "Huaxin Area Procuratorate") conducted an examination and discovered that the case file contained a supporting material issued on August 19, 2019 by a police station of the Hengyang County Public Security Bureau certifying that Tang Mou had no history of drug use. The case file also contained a Statement issued by that police station on September 29, 2021 declaring the above supporting material void. The Huaxin Area Procuratorate carried out investigation and verification in response to the two contradictory materials.

Investigation and verification. In order to ascertain the facts of the case and put forward precise supervision opinions, the Huaxin Area Procuratorate focused on carrying out the following work: First, it investigated and verified the authenticity and legality of the evidence for proposing parole for Tang Mou. By inquiring of the person in charge of the police station, public security police officers and relevant persons, and reviewing the legal documents of the original judgment, it determined that Tang Mou's older brother Tang Moujia, knowing that Tang Mou had a history of drug use, had gone to the public security police station to obtain a certificate that Tang Mou had no history of drug use in order to enable him to obtain parole. Second, it investigated and

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verified whether Tang Mou had genuine repentance. The investigation found that although Tang Mou was basically able to observe prison rules and discipline during his sentence, he knew that he had a history of drug use, yet communicated with and met his brother Tang Moujia on multiple occasions, requesting Tang Moujia to obtain a certificate of no history of drug use. Third, it investigated and verified whether Tang Mou had a danger of re-offending. Through investigation and visits to some villagers and village cadres of the village committee at Tang Mou's place of residence, it was learned that Tang Mou was unmarried and had no children, his sister had married away, and his brother Tang Moujia worked away from home all year round with a relatively good economic situation. In conversations with the offender Tang Mou, he clearly expressed that after release he would go out to work and live with Tang Moujia. Given that Tang Moujia had used improper means in this case to obtain false supporting documents from the police station and had previously been given a non-prosecution disposition by the procuratorial organ for the crime of causing traffic accidents, it was not appropriate for him to assume the responsibility of assisting in the supervision of Tang Mou. In addition, Tang Mou was the principal offender of the drug selling case, had a history of drug use, had a relatively high degree of social harm, and had a relatively high possibility of re-offending. Fourth, it investigated and verified the supporting materials issued by the police station of the Hengyang County Public Security Bureau. Through inquiries to the person in charge of the police station and relevant police officers and auxiliary police officers, and review of the relevant supporting documents issued by the public security organ, it was found that the police station had problems such as lax examination and control and non-standard use of official seals in issuing certificates.

Supervision opinions. On October 26, 2022, the Huaxin Area Procuratorate issued to Yannan Prison a procuratorial opinion disagreeing with proposing parole for the offender Tang Mou, and transferred the clues of suspected violations of discipline or law by the police station of the Hengyang County Public Security Bureau to the discipline inspection and supervision group stationed at the County Public Security Bureau by the Hengyang County Discipline Inspection and Supervision Commission.

Supervision result. On October 28, 2022, Yannan Prison adopted the opinion of the Huaxin Area Procuratorate disagreeing with proposing parole for the offender Tang Mou. After verifying the clues of suspected violations of discipline or law transferred by the procuratorial organ, the discipline inspection and supervision group stationed at the County Public Security Bureau by the Hengyang County Discipline Inspection and Supervision Commission imposed party and government discipline sanctions on the relevant personnel of the police station on May 16, 2023.

Guiding Significance

(1) The people's procuratorate shall strengthen the examination and control of the conditions for the application of parole to offenders with a high danger of re-offending, such as drug crime offenders. When handling parole supervision cases, the people's procuratorate shall both promote the application of the parole system in accordance with law, supervising the prison to propose parole in accordance with law for offenders who satisfy the conditions for parole but have not been proposed by the prison, and strictly control the matter, resolutely supervising and correcting in accordance with law where the prison improperly proposes parole for offenders who do not satisfy the conditions for parole. It shall take offenders with great difficulty of reform and high danger of re-offending as the focus of supervision. For drug crime offenders, and habitual or professional offenders in crimes such as gambling and theft, strict control shall be exercised in the application of parole, so as to improve the quality and efficiency of parole supervision case handling.

(2) When handling parole supervision cases, the people's procuratorate shall carry out in-depth investigation and verification and accurately determine whether a drug-related offender has genuine repentance and whether there is a danger of re-offending. It shall strictly examine the relevant evidence materials of parole cases of drug-related offenders. Where an offender obtains false supporting materials through relatives by improper means in an attempt to obtain parole, it indicates that he has not genuinely repented subjectively, and he shall not be determined as having genuine repentance. For a drug crime offender who has a history

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of drug use and whose family members do not have the conditions to assist the community correction institution in carrying out community correction work, and where there is a danger of re-offending, parole shall not be applied in accordance with law.

(3) Where, in the course of handling a parole supervision case, the people's procuratorate discovers clues of violations of discipline or law, it shall transfer them to the relevant organs for handling in accordance with law, so as to extend the effect of supervision. It shall pay attention to discovering the deep-seated problems behind improper performance of duties in parole case handling, strengthen the investigation and verification of problems such as issuing false supporting materials and falsifying community correction investigation and assessment, and where clues of violations of discipline or law or crimes are discovered, resolutely file and investigate those that fall within the jurisdiction of the procuratorial organ and constitute crimes such as the crime of parole through favoritism; those not within the jurisdiction of the procuratorial organ shall be transferred to the relevant organs for handling in accordance with law. It shall form a joint force with discipline inspection and supervision organs and public security organs to extend the effect of legal supervision.

Relevant Legal Provisions

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

Article 276 of the Criminal Procedure Law of the People's Republic of China (2018 Amendment).

Paragraph 2 of Article 3 and Article 22 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 3 of the Opinions of the Supreme People's Court, the Supreme People's Procuratorate, the Ministry of Public Security and the Ministry of Justice on Strengthening the Substantive Trial of Sentence Reduction and Parole Cases.

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