

**IN THE CIRCUIT COURT OF COLE COUNTY
STATE OF MISSOURI**

ROBERTA CARLENE BORDEN,)	
VICKY WILLIAMS, &)	
RUBY JAMESON,)	
)	Case No. 09AC-CC00077
Relators,)	
)	
v.)	
)	
THE MISSOURI BOARD OF)	
PROBATION AND PAROLE,)	
)	
Respondent.)	

ORDER IN MANDAMUS

Relators are three inmates confined in the Missouri Department of Corrections originally sentenced to life imprisonment without the possibility of parole, or to life imprisonment without the possibility of parole for fifty years. The Department of Corrections held parole hearings for each of the inmates under section 217.692, RSMo Supp 2008. In each case the Board issued substantially identical decisions denying parole.

Relators seek a writ ordering new parole hearings for the stated reason that the Board failed to consider the criteria set forth in section 217.692. The Court is unable at this time to fairly analyse the propriety of the parole denials, without individualized and detailed explanations of the Board's reasoning for the denials.

Section 217.692 is a special statute governing parole hearings for defendants with a history of having suffered from domestic violence. The Section explicitly requires the Board to provide the offender with a copy of a statement of the reasons for the parole decision. While no such requirement exists in the general parole

statute, this legislative mandate requires individualized findings on the criteria set forth in the statute in these few cases.

The Court having considered Relators' Petition in Mandamus and Suggestions in Support, and Respondent's Answer and Motion for Judgment on the Pleadings and Suggestions in Support, and oral argument by counsel for all parties, and being fully advised of the merits of this action, hereby issues the following Order in Mandamus to Respondent herein:

1. The written decisions of the Board denying parole to Roberta Borden, Vicky Williams, and Ruby Jameson are hereby vacated.
2. Within 90 days from this Order, the Respondent shall issue a new parole decision for each Relator and issue a new report of its decision to each Relator. At a minimum, this Report shall contain the following:
 - a. A detailed statement of the reasons for the parole decision, including particularized information regarding the facts and evidence in each case which support the reasons leading to the decision, and all the factors considered by the Board;
 - b. The standard(s) used in arriving at the decision, including a citation to the relevant statute or regulation from which that standard was derived;
 - c. A finding with respect to each of the mandatory factors and criteria set forth in section 217.692;
 - d. A finding as to whether or not there is a strong and reasonable probability that the person will or will not thereafter violate the law; and

- e. A statement as to whether the Board considered the seriousness of the offense as a factor in its parole decision.¹
3. If the Board has retained recordings of its previous hearings in these cases, and the Board members agree that they can make individualized decisions set forth by the criteria set forth above based on these recordings and the materials previously gathered by and submitted to the Board, it need not hold additional hearings. If the Board has not retained recordings of its previous hearings in these cases, or the Board members cannot agree that they can make their decision as set forth herein based on these recordings and the materials previously gathered by and submitted to the Board, the Board shall hold new parole hearings for Relators. This decision should be made individually for each relator.
4. If additional hearings are deemed necessary, they shall be held promptly so that the new decisions can issue within 90 days from this Order.

The Court acknowledges and accepts counsel for Respondent's agreement to accept service of this Order on behalf of Respondent, and to waive other formalities of a Preliminary Order in Mandamus as set forth in Rule 94 given that it has already filed an Answer, been given the opportunity to brief the issues herein, and has been allowed to present oral argument on the merits of this matter.

So Ordered this 23rd day of June, 2009.

Richard G. Callahan
Circuit Court Judge, Division II

¹ Whether this is a permissible consideration is open to question. Relators argue that the enactment of section 217.692 is akin to the executive commutation addressed in *State ex. Rel. Lute v Missouri Board of Probation and Parole*, 218 S.W.3d 431 (Mo. Banc 2007).