

For prisoners, a face-to-face appeal with Brown

Governor could commute dozens of sentences

By NOELLE CROMBIE
The Oregonian

Last month, a convicted felon about three years into an eight-year prison stint found himself face to face — via Zoom — with Gov. Kate Brown.

Brown was considering commuting Sean Pen's sentence for methamphetamine possession, allowing for his almost immediate release.

The governor impressed upon Pen, 33, that her decision would come with restrictions typical for anyone on probation. Violate them and he'd be back in prison to finish out his sentence, she warned.

In their brief conversation as Pen sat in an office at the Eastern Oregon Correctional Institution in Pendleton, the governor talked with Pen about his life, his time in prison, his plans for treatment and what he'd learned from his experience behind bars.

Pen will walk out of prison next week.

His commutation comes as Brown undertakes an extraordinary — and ongoing — effort to reduce the prison sentences of dozens of people in Oregon's prisons.

She announced in October, for instance, that she would review more than 200 juvenile cases for commutation, in some cases making longtime prisoners immediately eligible to pursue parole. Earlier this year, she granted conditional commutations to 41 incarcerated people who helped fight historic wildfires last year.

In the meantime, her staff confirmed last week that Brown has met quietly with 11 incarcerated people over the past two months, all of them by Zoom.

Leading advocates for rehabilitation, including Pen's lawyer Aliza Kaplan, have praised Brown and recommended prisoners for her consideration.

Some prosecutors and families of crime victims have expressed outrage at what they say is the lack of forewarning and consultation.

The video chat with Pen floored the Union County district attorney and a long-time probation officer familiar with Pen's case. Neither were invited to the Zoom call and both learned about Brown's decision after the fact.

Pushback from district attorneys

In a private meeting, about a dozen district attorneys questioned two of the governor's lawyers about what they view as a hasty approach to cutting short prison sentences.



Mark Graves/The Oregonian

Aides to Gov. Kate Brown have said the governor wants to emphasize crime prevention and rehabilitation over long and expensive prison sentences.

Brown's aides have said the governor wants to emphasize crime prevention and rehabilitation over long and expensive prison sentences. Commutations are one of the executive powers that rest exclusively with the governor and she has delivered far more than her predecessor, John Kitzhaber.

The purpose of meetings like the one with Pen is to explain that Brown is "interested in granting clemency only if they could agree to additional conditions on their commutation and release, in most cases related to receiving additional drug and alcohol treatment," said Charles Boyle, a Brown spokesman.

All commutations issued by Brown are conditional, he said in an email to The Oregonian. He noted that before the COVID-19 pandemic, Brown occasionally held face-to-face meetings with commutation candidates in her office.

She may opt to speak directly with a prisoner for a number of reasons, "including to ask questions that will help inform her decision, to emphasize the gravity of this action, or to allow the applicant the opportunity to agree to conditions of release," Boyle said.

It is not unheard of for governors to speak or even meet with a person behind bars. In one of his final acts as governor, Kitzhaber drove to Salem to meet with a 25-year-old man who was serving 12 1/2 years for attempted murder and granted him clemency.

But a look at Brown's packed daily calendar perhaps reflects the depth of her commitment.

The most recent spate of meetings with

incarcerated people came during a period when she also met with a bank executive, a top lobbyist in Washington, D.C., and her own executive team. Brown, head of a sprawling government bureaucracy, rarely meets with ordinary Oregonians one-on-one, making these conversations with prisoners all the more remarkable.

On the day she had a conference call with Pen, for instance, Brown's calendar shows she met with state House Republican Leader Christine Drazan, who was allocated the same 30-minute slot the governor's staff set aside for the clemency meeting.

The following day, her calendar shows another clemency meeting. It is unclear from her calendar whether she spoke with a prisoner at that time. That day, she also met with Washington Gov. Jay Inslee to discuss their states' vaccine mandates.

Friendly but firm

Kaplan, a Lewis & Clark Law School professor whose law clinic has represented many people seeking commutations, said Brown is friendly but firm in the sessions.

The governor, herself a graduate of Lewis & Clark Law School, stresses the stakes for the prisoner but also takes time to learn about them and their families, said Kaplan, who attended Pen's Zoom meeting and is often present during the conversations.

The prisoners are often "starstruck" in Brown's presence, Kaplan said.

"She spends a lot of time on each case in order to learn all there is to learn about the person and the past and the future and I

think having the meetings whether on Zoom now or prior is a way to let the person know how serious she is about them not following through on the rules," Kaplan said.

Union County District Attorney Kelsie McDaniel said she wishes Brown had shown her the same courtesy as Pen, who has a long record of drug and property crimes in La Grande.

McDaniel said she was among the prosecutors who met recently with Brown's general counsel Dustin Buehler and another Brown lawyer, Kevin Gleim.

She asked about the Oct. 11 meeting with Pen and why Brown had taken time to meet with Pen but not local authorities familiar with his case. She said she knew Brown was considering the commutation but learned only later that the governor had decided to grant it.

"Is this something we are doing now?" McDaniel said she asked. "Are you going to allow that for the victims and the DAs? I have never been interviewed about a commutation by the governor personally."

McDaniel said Brown's lawyers told her that the governor met with Pen to "personally impress" upon him the significance of her commutation "and the conditions that were coming with it."

"I asked what happens if he leaves treatment or is unsuccessful?" she said. "The answer I received was the governor has the option to rescind the commutation."

She said she asked Buehler and Gleim how they would monitor Pen's progress.

"They said the governor's office knows when these people are unsuccessful," McDaniel said.

Pen was convicted in 2018 of possession of methamphetamine.

He was originally charged with multiple drug felonies involving methamphetamine and oxycodone possession and delivery. Prosecutors said the case involved a dealer amount of methamphetamine.

Under his plea deal, he agreed to an eight-year sentence. Prosecutors agreed to suspend the sentence provided Pen got treatment and met other conditions. As part of the deal, he was allowed two minor probation violations, McDaniel said. The third violation would send him to prison for the full sentence, which is what ended up happening, she said.

The original indictment cites Pen's persistent involvement in similar crimes in Union County and notes that the latest allegations took place while he was already on probation.

"Future efforts to rehabilitate (Pen) will not be successful and there exists a need to ensure the security of the public," the indictment states.

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