

Pardons in NSW

Division 7, Crimes (Appeal & Review) Act (NSW) 2001

In my criminal law practice I have had the pleasure of seeing many criminal clients change their lives and become honest and respected members of the community. Sadly, many of these clients are haunted by criminal convictions and licence disqualifications that cause them hardship which is disproportionate to the mistakes they have made.

The Royal prerogative of mercy is essentially a broad discretion to dispense clemency. It can be used to reduce or remove a person's liability for a penalty - including a period of imprisonment, payment of a fine or a disqualification from driving.

The exercise of the Royal prerogative of mercy may take a number of forms, principally:

- a free pardon,
- commutation (a conditional pardon substituting a different form of punishment), and
- remission (reducing the amount of a sentence without changing its character).

One of the biggest benefits of a pardon is that it converts an unspent conviction into a spent conviction.

Spent Convictions

Our system of justice believes in rehabilitation – that every offender can turn their life around and become a productive law abiding citizen. Obviously, the system is intended to punish people but it also intends to encourage and enable rehabilitation. One way it does this is to provide that convictions become spent after a certain period of time.

Spent convictions are still on the offender's record but this becomes a secret between the police and the offender. The offender is not required to disclose spent convictions to any other person for any purpose.¹ Questions concerning the person's criminal history are taken to refer only to any convictions of the person which are not spent.² Furthermore, the police are not allowed to disclose them to anyone except the court if the offender reoffends.³

In NSW, convictions for non-sex offences which receive a sentence of less than six months imprisonment become spent after a crime free period of ten consecutive years.⁴ If the sentence is more than six month imprisonment, then the conviction never becomes spent unless the offender applies for and receives a pardon from the Governor. The pardon changes the unspent conviction to a spent conviction and the same rules apply.⁵

¹ s12(a) Criminal Records Act (NSW) 1991

² s12(b) Criminal Records Act (NSW) 1991

³ s13 Criminal Records Act (NSW) 1991

⁴ s9 Criminal Records Act (NSW) 1991

⁵ s19 Criminal Records Act (NSW) 1991

Examples

Examples of clients who would benefit from a pardon include:

- a 25 year old who was refused registration with a professional body on character grounds because he was convicted of selling MDMA as a teenager,
- a 30 year old who missed out on his dream job because of a pub fight eight years before, and
- a 45 year old family man who worked for the same firm for ten years, then was dismissed because a new client required criminal record checks which revealed an armed robbery conviction 20 years before,
- a 30 years old who committed multiple driving offences in his early 20s which lead to him being disqualified for 17 years.

The Petition

The application for a pardon is known as a petition for mercy. The Governor of NSW has a broad discretion to dispense clemency which he or she exercises on the advice of the Attorney General's Department. However, granting clemency to one offender does an injustice to every other offender who has to cop it sweet. So, it is up to the petitioner to demonstrate why the Governor should intervene instead of allowing the law to run its course.

There are no legal restrictions upon the sorts of matters that may be taken into account by the AG's Department when advising the Governor. But the petitioner needs to show:

- That their case is special,
- That the sentence is causing them extreme hardship, or
- That they deserve remission on compassionate grounds.

Petitioners should provide documents to support their claim of special circumstances or hardship. Petitions to the Governor under Division 2 should be posted to the Governor at:

Office of the Governor of New South Wales
Level 3, Chief Secretary's Building
121 Macquarie Street
Sydney NSW 2000

The Governor refers these petitions to the Attorney General who receives the advice of Crown law officers and makes a recommendation to the Governor in an Executive Council Minute.

Should you require assistance drafting a petition, I am available everyday after 4pm.

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