

PUBLISH

UNITED STATES COURT OF APPEALS  
FOR THE TENTH CIRCUIT

**FILED**  
United States Court of Appeals  
Tenth Circuit

FEB 22 1989

ROBERT L. HOECKER  
Clerk

ANDREW JAMES DEVINE,

Petitioner-Appellant,

V.

NEW MEXICO DEPARTMENT OF  
CORRECTIONS,

Respondent-Appellee.

No. 87-2456

Appeal from the United States District Court  
for the District of New Mexico  
(D.C. NO. CV-86-292-JB

## ORDER ON PETITION FOR REHEARING

Before HOLLOWAY, Chief Judge, SEYMOUR, and EBEL, Circuit Judges.

SEYMOUR, Circuit Judge.

This matter comes on for consideration of appellee's petition for rehearing filed in the captioned appeal.

Pursuant to appellee's petition for rehearing, the court hereby corrects page 21 of its opinion filed in this appeal on January 24, 1989. In all other respects, appellee's petition for rehearing is denied.

further provided that "[t]he effective date of the provisions of the Criminal Sentencing Act is July 1, 1979." Thus, sections 1-10 of chapter 216 were explicitly made effective July 1, 1979. The most straightforward inference to be drawn from this provision is that the remaining sections, including section 12, had no specific effective date.<sup>11</sup> Thus, even deemphasizing the effect of the rules governing compilation of statutes, the holding that the intent of the legislature was to make chapter 216, § 12 effective July 1, 1979, was not immediately foreseeable.

#### IV.

Because the decision of the New Mexico Supreme Court was unforeseeable and retroactively enhanced Devine's punishment, it violated the due process clause. Holding Devine without providing him a hearing on whether he should be granted parole on the date he would receive such a hearing in accordance with 1977 N.M. Sess. Laws ch. 217, § 3 would therefore be unconstitutional. Accordingly, the judgment below is reversed and remanded to the district court with instructions that the writ should issue, and Devine should be ordered released, unless he is provided a parole hearing after service of ten years imprisonment less any good time credit that may be applicable.

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<sup>11</sup> The New Mexico constitution indicates that laws passed without specific effective dates go into effect ninety days after the end of the legislative session.

United States Court of Appeals

TENTH CIRCUIT  
OFFICE OF THE CLERK  
C404 UNITED STATES COURTHOUSE  
DENVER, COLORADO 80294

ROBERT L. HOECKER  
CLERK

February 22, 1989

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TO: ALL RECIPIENTS OF THE CAPTIONED OPINION.

RE: No. 87-2456; Devine v. New Mexico Department of Corrections  
Opinion filed on January 24, 1989 by Honorable Stephanie  
K. Seymour.

Attached are a copy of the court's order of February 22,  
1989 and a copy of revised page 21 of the opinion entered in  
this appeal on January 24, 1989.

Very truly yours,

ROBERT L. HOECKER, Clerk

By

Deputy Clerk

RLH:kmh  
attachments