



STATE OF ARKANSAS
ATTORNEY GENERAL
LESLIE RUTLEDGE

Opinion No. 2022-010

May 24, 2022

Mr. Solomon Graves
Secretary, Ark. Dep't of Corrections
1302 Pike Ave, Suite C
North Little Rock, AR 72114

Dear Secretary Graves:

This is in response to your request for my opinion on the following question concerning Ark. Code Ann. § 16-93-609:

For purposes of parole eligibility under Ark. Code Ann. § 16-93-609, is a residential burglary committed before the effective date of Act [895] of 2015 (April [1], 2015) a prior ‘violent felony offense’ [so that] an offender with a current conviction for a violent felony offense [would be required] to serve 100% of his or her sentence?

RESPONSE

Yes, an offender previously convicted of residential burglary who committed an additional offense on or after April 1, 2015 is not eligible for parole.

DISCUSSION

Section 16-93-609 states in relevant part that any person who commits a violent felony after August 13, 2001, and who has previously been found guilty of a violent felony shall not be eligible for parole:

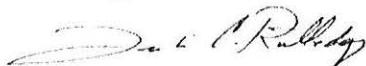
Any person who commits a violent felony offense ... subsequent to August 13, 2001, and who has previously been found guilty of or

pledged guilty or nolo contendere to any violent felony offense ... shall not be eligible for release on parole by the board.¹

A “violent felony offense” means those offenses listed in Ark. Code Ann. § 5-4-501(d)(2),² and “[r]esidential burglary” is among those offenses.³ Thus, subsection 16-93-609(b)’s parole ineligibility provision applies to a defendant “who has previously been found guilty of or pleaded guilty or nolo contendere to any violent felony offense,” including residential burglary.

Granted, residential burglary was not designated as a “felony involving violence” until 2015.⁴ But critically for your question, nothing in subsection 16-93-609(b) suggests that to render an offender ineligible for parole after the commission of another violent felony offense, the prior residential burglary must have occurred after 2015. Instead, to be ineligible for parole, an offender must only have committed his or her subsequent offense after the 2015 amendment’s effective date.⁵ Thus, as relevant here, if the offender in question committed the crime for which he or she is currently serving a sentence after April 1, 2015, a prior conviction for residential burglary would render the offender ineligible for parole.

Sincerely,



LESLIE RUTLEDGE
Attorney General

¹ Ark. Code Ann. § 16-93-609(b)(1) (Supp. 2021).

² *Id.* at § 16-93-609(b)(2) (“As used in this subsection, ‘a violent felony offense’ ... means those offenses listed in § 5-4-501(d)(2).”).

³ Ark. Code Ann. § 5-4-501(d)(2)(A)(xi) (Supp. 2021).

⁴ See Acts 2015, No. 895, § 3 (effective April 1, 2015, adding “residential burglary, § 5-39-201(a)” as a “felony involving violence” under Ark. Code Ann. § 5-4-501(d)(2)).

⁵ Nor for that matter would the application of the statute to offenders who committed an additional offense after April 1, 2015, present any constitutional issues since an offender would be sentenced pursuant to the statute in effect at the time of his or her offense. *See Handy v. State*, 2017 Ark. App. 74, *7–8, 510 S.W.3d 292, 297 (2017) (rejecting the argument that none of the offender’s pre-2015 felony residential burglaries should have counted toward his habitual-offender status under Ark. Code Ann. § 5-4-501(d)(1)).