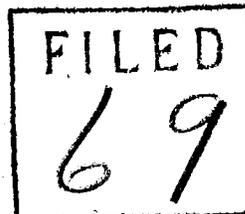


PENAL INSTITUTIONS: Where inmates of the Intermediate Reformatory at Alcoa have escaped and then sentenced to the Penitentiary, their sentences are concurrent.

August 24, 1945



Honorable W. C. Parker
Warden
Missouri State Penitentiary
Jefferson City, Missouri

Dear Mr. Parker:

We are in receipt of your letter of August 14, 1945, requesting an opinion of this department. Your letter reads as follows:

"We have several inmates in this penitentiary who have detainers on them from the Intermediate Reformatory at Alcoa, wanted there for escaping. It appears to us that the proper way of handling them would of been to have them serve the Alcoa sentence first, then serve the penitentiary.

"In the case of James E. Robbins, #44869, he was sentenced to the Intermediate Reformatory at Alcoa, for a term of 2 years on October 30, 1940. He escaped from that institution on October 9, 1941, and was received at the penitentiary on December 15, 1941, to serve a term of 9 years for the crime of assault with intent to kill. On January 2, 1942, the Superintendent of Alcoa Farms placed a detainer on this subject and it is still pending.

"Inasmuch as the time elapsed since being brought back is more than enough to complete the Alcoa sentence,

but was not credited that way, is it still legal to make him serve that Alcoa sentence when released on his penitentiary sentence?"

The question which you desire to be answered appears to be: "Inasmuch as the time elapsed since being brought back is more than enough to complete the Alcoa sentence, but was not credited that way, is it still legal to make him serve that Alcoa sentence when released on his penitentiary sentence?"

This presents the question of concurrent and consecutive or cumulated sentences. *Is cumulative?*

When an inmate of the Intermediate Reformatory has been paroled and commits another crime while out and is sentenced to the Penitentiary, unless the trial court takes this into consideration and makes his sentence cumulative or consecutive, then his sentences are concurrent and should be so credited.

This question has been fully considered and passed on in the case of Anthony v. Kaiser, 169 S. W. (2d) 47, 1. c. 49, 50, wherein the court said:

"Sentences in criminal cases should reveal with fair certainty the intent of the court and exclude any serious misapprehensions by those who must execute them.' * * * * * At the time of the second, the court either knew, or did not know, he was already under sentence, and, in its discretion, could have imposed either a cumulative or a concurrent sentence. If the court had such knowledge, and its sentence contained no direction that it be cumulative, an intention is thereby evinced that the sentences should be served concurrently. On the other hand, if the court had no such knowledge there would have been no occasion to even consider the question of imposing a successive term, and so the court could have had no intention other than its sentence should begin forthwith. Zorbst v. Lyman, supra. Therefore, with no applicable

statute making the two terms successive, and in the absence of a direction in the sentence or commitment to that effect, we think, under the rule stated in the Meininger case, supra, and from what has been said above, petitioner's terms were concurrent, and he is entitled to his discharge under the three-fourths rule. It is so ordered.

"All concur, except GANETT, J., absent."

Since the Supreme Court has ruled upon this in cases of a paroled inmate, it would follow that there should be no difference whether the inmate was on parole or whether he had escaped, for the legal effect of his sentences would be the same.

Therefore, when an inmate has escaped from the Intermediate Reformatory at Alcoa and has been tried and convicted for the commission of another crime and sentenced to the Penitentiary, unless the trial court indicates its intention of how such sentences are to be served, they should be credited as concurrent sentences and both be served at the same time.

The fact that the Superintendent has placed a detainer would not justify the returning of the prisoner to the Intermediate Reformatory to serve out his old sentence. Such detainer is of no legal effect and should be disregarded.

If the sentences had been made consecutive or cumulative by the trial court then such inmate should serve his old sentence first before starting on his new or subsequent sentence.

Conclusion

Therefore, it is the opinion of this Department that, without direction of the trial court, such sentences are concurrent and the detainer so filed should be disregarded and the prisoner discharged upon completion of his Penitentiary sentence.

Respectfully submitted,

APPROVED:

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GPW:EG