

PAROLES: Inmates of Missouri Training Schools may be paroled by the Board of Training Schools before serving penitentiary sentence.



September 12, 1946

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Honorable Leroy Munyon, Superintendent
Missouri Training School for Boys
Boonville, Missouri

Dear Mr. Munyon:

Your request of recent date for an opinion of this office relative to paroling inmates when their sentences are such that they might extend beyond their majority to a term in the penitentiary has been received, and reads as follows:

"On March 20, 1944, the above mentioned boy, Donald Ervin, was sentenced in the Circuit Court of Cass County, Judge Leslie A. Bruce, presiding, to serve twenty years in the Missouri State Penitentiary on a charge of Second Degree Murder. Due to the fact that on this date the defendant was a minor, fourteen years of age, the sentence was 'commuted to the Missouri Training School for Boys at Boonville, Missouri, on account of the age of said Defendant, who was fourteen (14) years of age June 16, 1943, and that the Sheriff of this County shall, without delay, remove and safely convey the said Defendant to the said Training School, there to be kept, confined and treated in the manner directed by law, and the superintendent of said Training School is required to receive and safely keep him, the said Defendant, in the Training School aforesaid, until the said Defendant becomes of age, at which time it is ordered that he then be committed to the Penitentiary of the State of Missouri, there to be kept, confined and treated in the manner directed by law, until the sentence of this Court be complied with, or until the said Defendant shall be otherwise discharged by due course of law.'

"Donald Ervine, 9925 was admitted to this school on April 6, 1944. He will reach his majority on June 16, 1950. According to our merit system, the number of merits required for eligibility for parole on a minority sentence are to be set by the Superintendent. As Superintendent of this school, on July 15, 1945, I set this boy's merits to be earned at 5000. As of August 1, 1946, Donald has earned a total of 7611 merits.

"Will you please advise me as to whether this boy is eligible for a parole or if it is required that he be kept here until he reaches his majority, June 16, 1950?"

Section 7, Article IV, Constitution of Missouri 1945,
provides:

"The governor shall have power to grant reprieves, commutations and pardons, after conviction, for all offenses except treason and cases of impeachment, upon such conditions and with such restrictions and limitations as he may deem proper, subject to provisions of law as to the manner of applying for pardons. The power to pardon shall not include the power to parole."

The Governor, by the Constitution, has the power to change or shorten a sentence imposed upon a person by a court of competent jurisdiction, even to a full pardon, which power is superior to that of a court.

The courts impose such sentences as are authorized and prescribed by the acts of the legislature, made into laws, and by the same token, the board of training schools has the right to make rules and regulations for the management and supervision of the institutions under its direction and to parole. This board likewise is a creature of the legislature, having been created by Section 8992.20, Laws of 1945. This section, 8992.20, Laws of 1945, Mo. R.S.A., June 1946, reads, in part, as follows:

"There is hereby created and established a state board of training schools which shall have charge and control of all training schools and industrial homes for boys and girls of this state: specifically, the training school for boys at Boonville; * *"

The court, in passing judgment and imposing a sentence upon a person, acts in a judiciary capacity, while the execution of that sentence is an administrative act to be performed through, and by, the executive department of our government. The Missouri Training School for Boys at Boonville, Missouri, is an administrative branch of the executive department and, under the authority vested in it by the laws of this state, is charged with the execution of the sentences imposed upon boys committed to its care.

Section 8992.34a, Laws of 1945, Mo. R.S.A., June 1946, p. 190, provides:

"The board of training schools is hereby authorized to release on parole juveniles committed to institutions under its control; to impose conditions upon which such paroles are granted; to revoke and terminate such parole; and to discharge from legal custody. Release on parole shall be in accordance with rules and regulations made a matter of record by said board. Said board is hereby authorized to call upon the state board of probation and parole for pre-parole investigations and for supervision of and assistance to juveniles after their release from training schools. Said board of probation and parole is hereby authorized and it shall be their duty to furnish when requested reasonable services of the character herein indicated."

Section 448, Vol. 15 Am. Jur., p. 108, reads as follows:

"The judgment, though pronounced by the judge, is not his determination, but that of the law, which depends not on the arbitrary opinion of the judge, but on settled and irreversible principles of justice.
* * * * *

In the case of The State of Florida v. Horne, 52 Fla. 125, l. c. 134-135, the court had this to say:

"Under the statute above quoted, that in all cases the court shall award the sentence and shall fix the punishment or penalty prescribed by law, the effective part of the sentence awarded and punishment fixed in the sentence set out above is that the petitioner 'be imprisoned in the State Prison at hard labor for the period of five years.' The period or cycle of time during which he would be required to be imprisoned for the length of time fixed by the court is to be determined by law. The power of the court extends to fixing the punishment, that is the length of time within the given maximum the petitioner shall be imprisoned.
* * * * *

Section 8999, R. S. No. 1939, provides, in part, as follows:

"The governor shall have power to commute the punishment of any male person under twenty-five years of age who may heretofore have been, or may hereafter be sentenced to the penitentiary, whom he may deem suitable to be sent to the Missouri intermediate reformatory, to commitment in said intermediate reformatory for such term as he may think proper, not exceeding the time for which said person may have been or may be sentenced to the penitentiary. * * * * *

This section is cited for the purpose of bringing out the thought that the court, in sentencing a person to one of the penal or correctional institutions in this state, can only name the place of punishment and the time, but the time may be altered by circumstances, under the authority of those who are charged with the execution of the punishment.

The Circuit Court of Cass County, in the instant case, rendered its judgment and sentenced the defendant to twenty years imprisonment. Because of the age of the defendant, this sentence was commuted to a term in the Missouri Training School for Boys at Boonville, Missouri, to be served until he was twenty-one years of age, at which time he was to be transferred to the penitentiary for the remainder of his sentence. Said sentence was to be served as directed "unless sooner discharged by due course of law." The board of training schools, by statute, Section 8992.34a, supra, has the authority to parole from the Missouri Training School for Boys at Boonville, Missouri, inmates committed to its care and to grant such parole upon conditions prescribed by it according to the rules and regulations of the institution.

The inmate in question, by the records, as outlined in your letter, apparently has complied with these requirements to the extent that he has earned this consideration.

That part of the sentence rendered by the court, "unless sooner discharged by due course of law," applies to both institutions named in the sentence and judgment of the court.

The court only fixes the time, and the place in which a sentence is to be served. That part of the sentence designating the penitentiary could only be effective in the event the inmate was still in custody upon arriving at his majority.

Conclusion

Therefore, it is the opinion of this department that a boy confined in the Missouri Training School for Boys at Boonville, Missouri, who has met the requirements of the institution for parole, is entitled to be considered for the same even though his sentence may be for such a term that he could be confined in the State Penitentiary.

Respectfully submitted,

APPROVED:

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