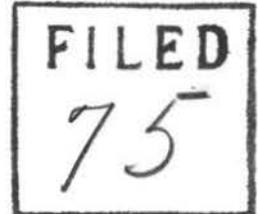


PENAL INSTITUTIONS:

MISSOURI TRAINING SCHOOL
FOR BOYS:

Sentences to said School are concurrent, unless ordered by court to be consecutive, and absent applicable statutory provisions to contrary. Board of Probation etc. has power to issue and revoke paroles from said School.

July 9, 1942



Mr. George A. Riley
Superintendent
Missouri Training School for Boys
Boonville, Missouri

Dear Sir:

This is in reply to your request for our opinion by your recent letter, which is in the following terms:

"We would like to have your opinion governing the case sighted below. I have consulted a number of lawyers on this question, and they disagree.

"A boy, Benny Arnce, Jasper County, born October 15, 1925, was committed from Jasper County as a delinquent child on the twelfth day of May, 1937, in the Juvenile Division of the Circuit Court by a Circuit Judge. He was adjudged to be a delinquent child, charged with burglary and larceny, and given a minority sentence. This sentence, then, would expire October 15, 1946. He was paroled February 18, 1942, and while on parole, committed a new offense, was brought into court on June 2, 1942, plead guilty to burglary and larceny, and was committed here by the same Judge of the Juvenile Court for one year. This term would expire June 2, 1943. The first commitment was not mentioned in the second one.

July 9, 1942

"My question is this: What shall we do with this boy on the completion of this one-year sentence, June 2, 1943? Shall we discharge him, or shall we hold him on the old sentence until October 15, 1946?"

Mr. Robert C. Edson, Director, Board of Probation and Parole, informed us on July 7, 1942, that the parole of Arnce was issued by that Board on February 18, 1942, and revoked by said Board on June 21, 1942.

Arnce was first convicted as a delinquent minor under the juvenile delinquent law, and later convicted of a felony under the general criminal law, by the same circuit court, and sentenced to imprisonment in the Missouri Training School for Boys. This may lawfully be done. Section 9700, R. S. Missouri, 1939. State ex rel. MacNish v. Landwehr, 60 S. W. (2d) 4, l. c. 8 (10), 332 Mo. 622; State ex rel. Wells v. Walker, 34 S. W. (2d) 124, l. c. 128, 129, 326 Mo. 1233; Section 8998, R. S. Missouri, 1939.

Copies of the commitments, which you have supplied, show that the second sentence contained no order as to whether it should run concurrently with or consecutively to the first one. The rule in that regard, applicable to persons convicted of felonies and sentenced to the penitentiary, was stated in the following terms, after an exhaustive review of the authorities, in State ex rel. Meininger v. Breuer, 264 S. W. 1, l. c. 2, 304 Mo. 406:

"***** The law then, as now, was settled beyond dispute that in the absence of a statute to the contrary, sentences were not cumulative, even where they might be made so, unless the sentencing court expressly made them so by directing that the subsequent one should commence at a future time determined or determinable with certainty. * * * * *"

July 9, 1942

That well-established rule of law is, of course, favorable to the prisoner, by permitting two separate sentences to the same institution to be served at the same time, unless the court orders otherwise, and absent the existence of applicable statutory provisions to the contrary. While this rule under present decisions of the courts is applicable only to sentences to the penitentiary, we believe that if the matter were presented to the courts, they would extend the same principle, by analogy, to boys who are inmates of the Training School.

One statute constituting an exception to this rule is by its express terms applicable only to sentences to the penitentiary. Section 9226, R. S. Missouri, 1939, refers to ". . . a convict sentenced to imprisonment in the penitentiary . . . any convict . . . any crime in the penitentiary, or . . . while under sentence." Another, Section 4849, R. S. Missouri, 1939, applies to ". . . any person . . . convicted of two or more offenses, before sentence shall have been pronounced upon him for either offense * * *." Other such statutes apply to persons convicted of the offense of escaping confinement. Sections 4306-4311, R. S. Missouri, 1939. None of these statutes apply to this case.

For the foregoing reasons, it is our opinion that the two sentences of Arnce run concurrently.

You ask whether you should hold Arnce under the original sentence, when the one-year sentence expires. This should be done, because it is your duty to keep inmates under custody so long as their sentences are outstanding, under the statutes applicable to the institution. Sections 8993-9008, R. S. Missouri, 1939. The original sentence now requires imprisonment, because the parole from it was revoked on June 21, 1942, by the Board of Probation and Parole.

Said Board was authorized by law to issue and to revoke the parole. While your letter does not expressly inquire as to the authority of said Board in that regard, it may be useful to trace that authority here, to clarify the confusing condition of the statutes.

In the Revised Statutes of Missouri, 1929, in Chapter 44, Article 2, applicable to the Training School for Boys, Section 8346, in part, provides:

"The state prison board shall have full control and management of said reformatory * * * * *."

The reference to the "board" was a reference to the Commissioners of the Department of Penal Institutions. Section 8316, R. S. Missouri, 1939; Section 8972, R. S. Missouri, 1939.

And, Section 8353, R. S. Missouri, 1939, provided:

"Said board shall have power to permit any person committed to said institution to return to his home and to release him temporarily from confinement in said institution, but not from its control and supervision; but such permit shall be conditioned upon his continued good conduct during the remainder of the term for which he was committed to such institution. Such person shall under rules adopted by said board report to said board from time to time during the term for which he was sent to said institution, and said board shall have power to cause the return of any person to serve the time for which he was committed whenever his conduct during his permit shall make it necessary or proper in the opinion of the board to do so. The superintendent or any other officer of the institution shall have authority to apprehend and return to said institution any person whom the board may direct to be so returned. No parole shall be granted by the court or judge thereof to any person committed by such court to such institution

after he shall have been received into the Missouri reformatory."

Thereafter, the authority to issue and revoke paroles from the Training School was transferred to the Board of Probation and Parole, by Laws of Missouri, 1937, p. 400, Section 2 (now Section 9157, R. S. Missouri, 1939), which provided:

"There is hereby created and established a Board of Probation and Parole. The powers and duties relative to paroles, commutations of sentence, pardons, and reprieves, now vested in the Commissioners of the Department of Penal Institutions and the Intermediate Reformatory Parole Board are hereby vested in the Board created and established by this Act. Said Board shall be deemed a continuation of the Department of Penal Institutions and the Intermediate Reformatory Board in so far as the Commissioners of that Department and the Intermediate Reformatory Parole Board are empowered to act in relation to investigations, paroles, commutations of sentence, and pardons, and all matters pending before such Commissioners and the Intermediate Reformatory Parole Board in connection with paroles, commutations of sentence, and pardons shall be carried on and completed by the Board created in this Act."

Section 8353, R. S. Missouri, 1929, above quoted, has never been repealed. Certain sections of the statutes, preceding and following said Section 8353, were repealed by Laws of Missouri, 1939, p.574, section 1. However, when the Revised Statutes of Missouri, 1939, were compiled, the above mentioned section 8353 was omitted. The sections preceding and following it in Revised Statutes of 1939, are Sections 9000 and 9001. This was obviously due to mere in-

Mr. George A. Riley

(6)

July 9, 1942

advertence. It does not affect the validity and existence of said Section 8353, R. S. Missouri, 1929. It was so ruled in State ex rel. Asotsky v. Hicks, 142 S. W. (2d) 472, l. c. 473, 346 Mo. 640, where the court said:

"The above sections are Secs. 101, 102 and 103 of Chapter 51, General Laws of Mo. 1877, supplement to the Wagner statutes of 1872. They do not appear in the revisions of 1879 and succeeding revisions. Even so, the omission from therevisions does not operate to repeal said sections. Meriweather v. Overly, 228 Mo. 218, 129 S. W. 1; Bird v. Sellers, 122 Mo. 23, 26 S. W. 668."

Accordingly, under existing statutes, the Board of Probation and Parole, is authorized to issue and to revoke paroles from the Training School for Boys.

CONCLUSION

Sentences to the Missouri Training School for Boys, run concurrently, unless the court orders them to run consecutively, and unless an exception to that rule is provided by an applicable statute. The Board of Probation and Parole is authorized to issue and to revoke paroles from imprisonment in said Training School by existing statutes. Benny Arnce should be imprisoned at the Training School, for the period of his sentences, unless he is again paroled by said Board.

Respectfully submitted,

APPROVED:

VANE C. THURLO
(Acting) Attorney-General

ERNEST HUBBELL
Assistant Attorney-General

EH/rv