

CRIMINAL LAW: Issuance of certified copy of judgment and sentence or "commitment" a mere ministerial act and errors therein may be corrected.

November 29, 1948

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Honorable Marvin C. Hopper
Prosecuting Attorney
Linn County
Brookfield, Missouri

12-2

Dear Sir:

Reference is made to your request of recent date for an official opinion of this office reading as follows:

"Richard Roe' was sentenced to the Missouri State Penitentiary from Linn County on the 11th day of June, 1947 for a term of six years for the crime of larceny of an automobile.

"In preparing the commitment papers, the Clerk of the Circuit Court or her Deputy made a mistake in designating the term as two years.

"About ten days ago 'Roe' received a discharge after having served 16 months of the six year term.

"Under these facts what, if anything, can be done to require 'Roe' to serve the balance of his term, and what procedure should be invoked."

It is assumed in this opinion that the judge's minute book and the judgment roll of the Circuit Court of Linn County correctly reflect a judgment entered in accordance with the verdict of the jury and the imposition of a sentence upon the person mentioned in your inquiry of a term of six years to be served in the state penitentiary. We have substituted the name "Richard Roe" for the true name of the person mentioned in your letter of inquiry.

Section 4106, R. S. Mo. 1939, provides as follows:

"Where any convict shall be sentenced to imprisonment in the penitentiary, the clerk of the court in which the sentence was passed shall forthwith deliver a certified copy thereof to the sheriff of the county, who shall, without delay, either in person or by a general and usual deputy, cause such convict to be transported to the penitentiary and delivered to the keeper thereof."

In construing this section and its effect upon the sentence to be served, the Supreme Court of Missouri, en banc, in Williford vs. Stewart, 198 S.W. (2d) 12, l.c. 14, said:

"With the case standing as it does the question is, shall the judgment shown in the commitment prevail over the judgment and minutes certified to us directly by the circuit clerk. We think the answer clearly is that we must accept the latter as authentic. As a matter of fact, the only commitment required by the statute is a certified copy of the judgment and sentence. Sec. 4106 provides that when any convict shall be sentenced to the penitentiary in a trial court, the clerk shall forthwith deliver to the sheriff of the county a certified copy of the sentence, which must, of course, show the date of its pronouncement, the identity of the convict, the crime of which he was convicted and the punishment imposed. And Sec. 9057 provides that when the convict is delivered to the Commission of the Department of Penal Institutions, the officer having him in charge shall deliver to the Commission the certified copy of the sentence previously received by such officer from the clerk of the court. This, of itself, is enough to show the judgment and sentence are controlling. A commitment is in the nature of a warrant, and its issuance by the clerk is a ministerial act. The authorities generally are to the above effect. 15 Am. Jur., p. 152, Sec. 502;

24 C.J.S., Criminal Law, Sec. 1608, p. 161; 7 Words & Phrases, Perm. Ed., 'Commitment,' p. 832; Reardon v. Frace, 344 Mo. 448, 451, 452, 126 S.W. 2d 1167, 1168; Ex parte Simpson (Mo. Sup. banc) 300 S.W. 491, 493 (2)."

(Underscoring ours.)

In Ex parte Simpson, 300 S.W. 491, 1.c. 493, referred to supra, the same court said:

" * * * The judgment entered on January 9, 1926, appropriately evidenced the right of the warden to imprison petitioner and authoritatively fixed the commencement and termination of his term of imprisonment, whether or not the warden ever heard of that judgment until this proceeding was instituted. * * * * *"

These cases clearly indicate that the imprisonment in all institutions is properly referable to the valid judgment and sentence found upon the record of the court without regard to errors which might occur in copying such record in the preparation of a commitment. This view is further borne out by the provisions of Section 4104, R. S. Mo. 1939, which reads as follows:

"Whenever a judgment upon a conviction shall be rendered in any court, the clerk of such court shall enter such judgment fully on the minutes, stating briefly the offense for which such conviction shall have been had, and the court shall inspect such entries and conform them to the facts; but the omission of this duty, either by the clerk or judge, shall in nowise affect or impair the validity of the judgment."

Comes then the question of the proper procedure to be followed in returning the person named in your letter of inquiry to the penitentiary. We do not find any cases precisely ruling this question, but we do believe that the principles set out in Williford vs. Stewart and Ex parte Simpson, cited

supra, indicate that it would be proper for the circuit clerk to issue a new certified copy of the judgment and sentence under the provisions of Section 4106, R. S. Mo. 1939. Such commitment could thereupon be delivered to the sheriff, who would be empowered to return the person named therein to the state penitentiary.

In Ex parte Simpson, an improper commitment had been issued by the clerk of the circuit court. The court held therein that such misprision on the part of the clerk could not effect the right of the warden of the penitentiary to retain custody of the defendant as long as there was found upon the record of the circuit court a valid judgment and sentence. To this effect, the court said, l.c. 493:

" * * * It is unimportant and entirely beside the question that the certified copy of the vacated judgment of January 8, 1926, in the burglary case, under which the warden naturally assumed that he was holding petitioner, did not specify that the term of imprisonment was to commence at the expiration of petitioner's imprisonment in the grand larceny case. The recitals of the judgment entered on January 2, 1926, and not those in the vacated judgment of the previous day, are controlling here."

(Underscoring ours.)

CONCLUSION

In the premises, we are of the opinion that the Circuit Clerk of Linn County, Missouri, may properly issue a certified copy of the judgment and sentence imposed upon the person mentioned in your letter of inquiry based upon the original record of the Circuit Court for said county.

We are further of the opinion that such certified copy of the judgment and sentence will be sufficient authority for the sheriff of said county to take such person into custody and deliver him to the warden of the Missouri State Penitentiary, there to finish serving the balance of the sentence originally imposed upon him.

APPROVED:

Respectfully submitted,

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