

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1945-1946

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If you will look on page 71 of Whitehouse & Hill you will find that in their form of indictment for burglary at common law they too not only set forth the intent but the actual consummation of the attempt.

In the forms that follow and which are the statutory crimes, they merely set out the intent to commit a felony, and of course that would sufficiently charge the offense, as burglary is the breaking and entering a dwelling-house or the other buildings described in the statute, with intent to commit a felony therein.

It would seem to me that, if the indictments in the case before you merely charge the breaking and entering and the actual commission of the larceny, following the form at the bottom of page 74, the crime charged is merely an aggravated or compound larceny. I think that is clear from the case of *State v. Savage*, 32 Maine 583, which was the case I found in my notes. My impression is that in Massachusetts house-breaking either was a separate offense or was another name for statutory burglary, because, as I recall it in their statute, the acts are set out which constitute the offense and then the punishment is fixed, without referring to it as burglary; but, however that may be, as I said before, I think that in *Commonwealth v. Hope* they held that the indictment there charged burglary in the forms which were in common use at that time.

ABRAHAM BREITBARD
Deputy Attorney General

May 24, 1945

To Harrison C. Greenleaf, Commissioner of Institutional Service

You request a ruling as to the right of arrest of a paroled prisoner from the State Prison who has committed a breach of the conditions of his parole, when his arrest cannot be accomplished until after the time when his sentence would normally have expired, had he observed the conditions of his parole.

The facts in the case under consideration, as you state them, are that the subject was received at the State Prison on January 20, 1942, to serve a sentence of two to four years for larceny. He was paroled August 27, 1943. He would have been entitled to a discharge, if he had fully observed the conditions of his parole, on April 21, 1945. In December of 1944 he was convicted in a federal court for the crime of larceny and sentenced to a year and a day in the federal penitentiary at Danbury, Conn. A parole violator's warrant was issued and filed with the proper authority of the penitentiary at Danbury. He is now serving his sentence at the penitentiary and has not as yet been released; and the question is whether upon his release he may be arrested and brought back to the State Prison to serve out the unexpired term of his sentence.

Under Chapter 136, Section 19, a prisoner who has been paroled is deemed, while on parole, to be still serving the sentence imposed upon him and entitled to good-time deductions the same as if he were confined in prison.

Under Section 20, every prisoner on parole remains under the control and legal custody of the warden and may be returned to the prison "for any reason that may be satisfactory to the warden" and full power to retake and return is expressly conferred on the warden, ". . . whose written order shall be a sufficient warrant authorizing all officers named therein to return such paroled prisoner to actual custody in the prison. . ."

In Section 22, it is provided:

"A prisoner violating the provisions of his parole, and for whose return a warrant has been issued by the warden, shall, after the issuance of such warrant, be treated as an escaped prisoner owing service to the state, and shall be liable, after arrest, to serve out the unexpired portion of his maximum sentence. The length of service owed the state in any such case shall be determined by deducting from the maximum sentence the time from date of commitment to the prison to date of violation of parole and such prisoner shall forfeit any deduction made from his sentence by reason of faithful observance of the rules and requirements of the prison prior to parole or while on parole. . ."

It is perfectly clear from this provision that a parolee who has broken his parole and for whom a warrant has been issued can no longer be said to be serving his sentence, when under this section he is to be treated as an escaped prisoner. One who has escaped from prison cannot be said to be serving his sentence. Consequently, in the case under consideration, in December of 1944, when the warden issued his warrant, the prisoner was no longer serving his sentence while on parole, but his parole came to an end and he was then to be treated as an escaped prisoner, liable after his arrest to serve the unexpired portion of his maximum sentence.

Section 24 provides that

"After a prisoner has faithfully performed all the obligations of his parole for the period of time fixed, and has regularly made his monthly reports as required by the rules providing for his parole, he shall be deemed to have fully served his entire sentence, and shall then receive a certificate of final discharge from the warden in whose custody he is. A copy of such final discharge shall be kept on file by the clerk of the parole board."

In order, then, for this prisoner to have earned his discharge, the full performance of all conditions of his parole was a prerequisite. This he did not do.

I therefore advise you that this prisoner is subject to arrest under the warden's warrant to serve the unexpired term of his original sentence, and extradition would be in order when he is to be released from the Danbury penitentiary.

ABRAHAM BREITBARD
Deputy Attorney General