

# MAINE STATE LEGISLATURE

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STATE OF MAINE

yes

Inter-Departmental Memorandum Date January 10, 1966

Allen L. Robbins, Warden

Dept. Maine State Prison

From Courtland D. Perry, Asst. Atty. Gen'l.

Dept. Mental Health and Corrections

Subject Disposition of State Prison Escapees Upon Recapture

FACTS:

Statutes relating to escape from the Maine State Prison in effect prior to December 1, 1965 provide in pertinent part as follows:

T., 34, M.R.S.A. 1964, §131

"The department shall take all proper measures for the apprehension and return of any prisoner or inmate of a state penal or correctional institution and may offer a reward of not more than \$100 for the apprehension and return of any such prisoner or inmate who has escaped from the control of the department. Upon satisfactory proof that the terms of the offer have been complied with, the reward shall be paid by the State. [Emphasis supplied]"

T., 34, M.R.S.A. 1964, §133.

".....It shall be the duty of any sheriff, deputy sheriff, constable, police officer or other person finding any fugitive from any of said institutions at large to apprehend them without a warrant and return said fugitive to the institution from which the escape was made or to any officer or agent of the department. Such officer shall be paid a reasonable compensation by the State for his services." [Emphasis supplied]"

T., 34, M.R.S.A. 1964, §710, amended P.L. 1965, c. 322, §1.

"If a convict, sentenced to the State Prison for life or for a limited term of years, or transferred thereto from the Reformatory for Men under section 808, or committed thereto for safekeeping under Title 15, section 453, assaults any officer or other person employed in the government thereof, or breaks or escapes therefrom, or forcibly attempts to do so, he may be punished by confinement to hard labor for any term of years, to commence after the completion of his former sentence, or upon termination of such sentence by the State Probation and Parole Board; said termination shall not take place sooner than the expiration of the parole eligibility hearing date applicable to his former sentence. The warden shall certify the fact of a violation of this section to the county attorney for the County of Knox, who shall prosecute such convict therefor."

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The practice has been under sections 131 and 133 to immediately return the escapee to the Maine State Prison upon apprehension, without taking such escapee first before a magistrate. The escaped prisoner once returned to the prison would continue in execution of his sentence, prosecuting authorities awaiting the next term of the Grand Jury for Knox County, before which the County Attorney would seek an indictment against the prisoner for the crime of escape under Title 34, M.R.S.A. §710.

Rule 5 a of the Maine Rules of Criminal Procedure effective December 1, 1965 provides:

"An officer making an arrest under a warrant issued upon complaint shall take the arrested person without unnecessary delay before a magistrate as commanded in the warrant; if the arrest is made at a place 100 miles or more from the place where the warrant was issued, the person arrested if bailable, shall, if he so demands, be taken before the nearest available magistrate within the division in which he was arrested, or before a bail commissioner, who may admit him to bail for appearance before the proper magistrate. Any person making an arrest without a warrant having been issued shall take the arrested person without unnecessary delay before the nearest available magistrate within the division which the arrest was made. When a person arrested without a warrant is brought before a magistrate the complaint shall be filed with that magistrate forthwith." [Emphasis supplied]

§ 4, M.R.S.A. 1964, §9 provides:

"The Supreme Judicial Court shall have the power and authority to prescribe, repeal, add to, amend or modify rules of pleading, practice and procedure with respect to any and all proceedings through final judgment, review and post-conviction remedy in criminal cases before complaint justices, District Courts, Superior Courts and the Supreme Judicial Court.

Such rules shall take effect on such date not less than 6 months after their promulgation as the Supreme Judicial Court may set. After their promulgation the Supreme Judicial Court may repeal, amend, modify or add to such rules from time to time without a waiting period. After the effective date of said rules as promulgated or amended, all laws in conflict therewith shall be of no further force or effect. [Emphasis supplied]

QUESTION:

Are sections 131 and 133 of Title 34 in conflict with Maine Rules of Criminal Procedure Rule 5 a; beginning on December 1, 1965 must all recaptured escapees from the Maine State Prison be brought before a magistrate without unnecessary delay, thus, abandoning the practice of immediate return of escapees to the prison?

ANSWER:

No.

OPINION:

The intent of Rule 5 a is concisely expressed in the Reporter's Notes following the Rule in the Boston Law Book Publication covering the Maine Rules of Criminal Procedure and District Court Criminal Rules as follows:

".....This rule is designed to assure that a defendant is not held in custody a substantial period of time without being brought before a magistrate and informed of his rights."

It is our opinion that the "arrested person" intended to be protected by Rule 5 a is the person arrested with or without a warrant, who at the time of arrest was at liberty, and for whom the arrest marked the commencement of the criminal process. Under Title 34, Section 133 the apprehension of an escaped prisoner is to be effected without a warrant, and does not deprive him of his liberty, since, under an original mittimus or certified copy of a judgment and commitment order he was at the time of escape lawfully confined at the Maine State Prison in execution of a sentence.

We are of the opinion that there is no conflict between sections 131 and 133 of Title 34 and Rule 5a, and that the apprehended escapee is not an "arrested person" to be protected by the Rule, and that the rights of the apprehended escapee are adequately protected upon arraignment after indictment, and at the subsequent trial, if any, for the crime of escape. We, therefore, conclude that the practice of returning the apprehended escapee to the Maine State Prison, there to continue in execution of the sentence being served at the time of escape, to await the next term of the Grand Jury for Knox County may be appropriately followed subsequent to December 1, 1965.

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Courtland D. Perry  
Assistant Attorney General