

MAINE STATE LEGISLATURE

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STATE OF MAINE

Inter-Departmental Memorandum Date April 12, 1967

To Allan L. Robbins, Warden, Maine State Prison Dept. Mental Health and Corrections

From Courtland D. Perry, Assistant Atty. Gen'l. Dept. Mental Health & Corrections

Subject Segregation of Prisoners Following Escape.

FACTS:

It has been a policy at the Maine State Prison to place all escapees in segregation after their apprehension to prevent them from arranging stories et cetera regarding their escape. They are kept away from the general population until they are taken to trial. They are accorded practically all privileges, except that of association with others.

QUESTION:

Would placement of such escapees in segregation be subject to a double jeopardy charge?

ANSWER:

No.

OPINION:

The following provisions are pertinent to the resolution of the question.

U.S. Const. Amend. V. ".....nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb."

Me. Const. art. 1, §8 "No person, for the same offence, shall be twice put in jeopardy of life or limb."

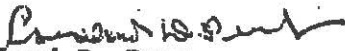
Title 34, M.R.S.A., 1964, §701. "Punishment in the State Prison by imprisonment shall be by confinement to hard labor and not by solitary imprisonment, except as a prison discipline for the government of the convicts."

"Double jeopardy" involves a 2nd prosecution after a first trial for the same offense, and may, construed broadly, exist in the judicial imposition of double punishment for a single offense.

"Jeopardy begins when a respondent is put upon trial before a court of competent jurisdiction, upon an indictment sufficient in form and substance to sustain a conviction; the jury having been impaneled and sworn. State v. Slorah 118 Me. 203, 106 A. 768 (1919)

Prison escapees are dealt with administratively following escape, but are brought to trial only once for the crime of escape and punished once judicially therefor; thus, are placed in jeopardy, in our opinion, as contemplated by the cited Constitutional Provisions only once.

Authority is found in §701 supra for the use of solitary confinement or segregation as a disciplinary measure, which authority under the facts cited is, in our opinion, reasonably exercised.


Courtland D. Perry
Assistant Attorney General