

MAINE STATE LEGISLATURE

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STATE OF MAINE

Inter-Departmental Memorandum Date August 15, 1967

To Allan L. Robbins, Warden

Dept. Maine State Prison

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

Dept. Mental Health and Corrections

Subject Running of Sentence for Crime Committed During Pendency of Appeal

FACTS:

The subject inmate is serving a 2 to 5 year sentence for Breaking, Entering and Larceny, for a crime committed at Waterville on 9/6/65. He was sentenced by Justice Thomas E. Delahanty from Kennebec County Superior Court on 3/9/66.

On 6/27/67, subject was taken to the Cumberland County Superior Court, by order of said court, to answer to charges of Breaking, Entering and Larceny in the night time (three counts). These crimes were committed by subject, at Brunswick on 1/22/67 while he was out on appeal. He was sentenced to serve 1 to 3 years (3 counts) by Justice Roberts.

The commitment papers do not state whether the latter sentence is to be served concurrently with, or consecutively to, the 2 to 5 year sentence first mentioned.

QUESTION:

Does the fact that in sentencing the subject inmate to 1-3 years for Breaking, Entering and Larceny, the Justice did not state that such sentence should run consecutively to the 2-5 year sentence of which subject was then in execution, under the provisions of Title 15, M.R.S.A., 1964, §1702 as amended, render the 1-3 year sentence a concurrent sentence with the 2-5 year sentence?

ANSWER:

Yes.

OPINION:

The pertinent portion of Title 15, §1702 drawn into question here is set forth below:

"...The court shall rule, and in appropriate cases shall state in the judgment that the terms of imprisonment shall be served concurrently or consecutively; or in the event of sentences by payment of a fine, that the commitment for the nonpayment thereof under section 1904 be served concurrently or consecutively. In the event the court fails so to rule or state, said sentences shall be served concurrently. This paragraph shall likewise apply to sentences by payment of a fine and sentences by imprisonment for separate offenses."
Amended P.L. 1965, c. 356, §55.

It is our opinion that the quoted provisions of §1702 operate with respect to the two sentences in question. By its terms the Statute is applicable to

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"sentences by imprisonment for separate offenses," and, although, preceding language would appear to limit the applicability of the Statute to multiple sentences imposed by one Court at one time, the last quoted language, in our view, expands the Statute's applicability and draws within its purview the separate offenses hereunder discussion.

The general rule applicable to the issue raised by the facts is expressed in 24-B, C.J.S. Criminal Law, §1996(2) p. 666 as follows:

".....it has been held that where one is already in execution of a former sentence and a second sentence does not state that the time is to commence at the expiration of the former, the sentences will run concurrently in the absence of statute providing for a different rule, that in the absence of direction to the contrary the sentences run concurrently even though imposed at different times, and that two or more sentences of imprisonment may run concurrently whether imposed by the same court or by different courts, at least where the sentences, although imposed by different courts and at different times, are imposed in the same jurisdiction, to be served at the same place or prison....."

See also: Dickerson vs. Perkins, 166 N.W. 293, Iowa (1918)

We find nothing in the language of §1702, which would place the sentences in question outside the coverage of the general rule.

We, therefore, conclude that as of the date upon which the subject inmate was received at the Maine State Prison following the imposition of the 1-3 year sentence for Breaking, Entering and Larceny in the nighttime, the Court having remained silent as to whether such sentence would run concurrently with, or consecutively to, the 2-5 year sentence then being served by the inmate, said inmate was in execution of the two sentences concurrently.



Courtland D. Perry
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