

MAINE STATE LEGISLATURE

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STATE OF MAINE

Inter-Departmental Memorandum Date October 17, 1968

To G. Raymond Nichols, Assistant Dir. Dept. Mental Health & Corrections
Probation and Parole

From John W. Benoit, Jr., Assistant Dept. Attorney General

Subject Robert H. Mottram - MSP 10869; status of parole re 1960 larceny conviction.

SYLLABUS:

A parolee who commits an offense while on parole and who receives a sentence which, by operation of law, commences at the expiration of the first sentence, is not eligible for parole on said first sentence.

FACTS:

On October 7, 1960, Robert H. Mottram was convicted of larceny in the Cumberland County Superior Court and was sentenced to serve not less than ten nor more than thirty years in the Maine State Prison. In 1963, the Governor and the Executive Council commuted said sentence so that at the present time, Mottram is serving a sentence of four years and two months to twenty years for the reference offense.

On November 15, 1963, Mr. Mottram was released on parole concerning the instant sentence. Later, a parole violator's arrest warrant issued against him based upon alleged violations of parole. The date of the issuance of the warrant was January 21, 1965. Service of the warrant was resisted by Mr. Mottram due to his having absconded. He was finally apprehended and returned to the Maine State Prison on February 15, 1965.

On July 7, 1965, Mottram was taken to the Lincoln County Superior Court where he was sentenced to a term of not less than three and one-half years and not more than seven years for commission of the offense of breaking, entering, and larceny in the nighttime; an offense committed by him while on parole. The 1965 conviction is captioned: State of Maine v. Robert Mottram, Criminal Docket No. 1395. The Superior Court docket entries concerning this latter criminal proceeding are extensive. Without repeating the plural docket entries in detail, they recite that Mottram was convicted after trial of the crime of breaking, entering, and larceny in the nighttime. He was then duly recommitted to the Maine State Prison to continue service of the sentence imposed in 1960. (NOTE: By law, the sentence imposed in 1965 is to be served after completion of the 1960 sentence.) Ever since July 7, 1965, the date when Mottram was sentenced for the 1965 offense, he has filed numerous documents in the Lincoln County Superior Court challenging the 1965 conviction; but it is clear that the 1965 conviction has not been declared invalid by either the Maine Supreme Judicial Court or by any Superior Court in any collateral post-conviction proceeding.

The State Probation and Parole Board, on October 18, 1968, is scheduled to review Mr. Mottram's 1965 larceny conviction re Mr. Mottram's status for parole regarding that offense.

QUESTIONS:

1. Whether or not the State Probation and Parole Board may legally parole Mr. Mottram regarding the 1960 conviction?
2. If the State Probation and Parole Board may legally parole Mr. Mottram concerning the 1960 conviction, what are the legal ramifications which may ensue from such a parole re the 1965 conviction for breaking, entering, and larceny in the night-time?

ANSWERS:

1. No.
2. The answer given to Question 1 makes the second question moot.

REASONS:

It is clear that Mottram is to commence service of the 1965 sentence (breaking, entering, and larceny in the night-time) at the termination of the sentence imposed in 1960 (larceny).

"Any parolee who commits an offense while on parole who is sentenced to the State Prison shall serve the 2nd sentence beginning on the date of termination of the first sentence, unless the first sentence is otherwise terminated by the Board." 34 M.R.S.A. § 1676.

The Maine case of Cressey v. State, 161 Me. 295, 211 A. 2d 572 makes it abundantly clear that a sentence imposed upon a parolee for an offense committed by him while on parole must be served following the completion of service of the sentence from which the parole was initially granted.

The provisions of 34 M.R.S.A. § 1678 authorize the Parole Board to determine whether a person on parole is in need of further supervision, and if the Board determines that the parolee is no longer in need of supervision, it may order the Warden of the Maine State Prison or the Superintendent of the institution from which the parolee was released, to issue a certificate of discharge to that parolee. (The statutory reference in section 1678 to persons serving a life sentence is not applicable here.) The companion provisions in 34 M.R.S.A. § 1677 authorize the Warden of the Prison or Superintendent of the applicable institution to issue a certificate of discharge to any parolee who faithfully performs all the conditions of parole and thereby completes his sentence. In this case, release of Mr. Mottram to parole relative to the 1960 larceny conviction would mean that even though he were to faithfully perform all the conditions of parole and to thereby complete the balance of the larceny sentence and receive a certificate of discharge, he would nevertheless be required to return to the Maine State Prison.

Problems may arise when one considers the possibilities of Mottram's parole on the 1960 conviction and his later incarceration concerning the 1965 sentence. In view of the fact that Mr. Mottram has prosecuted plural post-conviction petitions

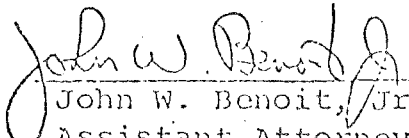
concerning his 1963 conviction for larceny, and in view of the record fact that Mr. Mottram is presently filing a multitude of pleadings, etc. in the Lincoln County Superior Court concerning the 1965 conviction, it is fair to indicate that any efforts made by prison officials or representatives of the Parole Board to apprehend Mr. Mottram after completion of his parole will likely be met with extensive long-term collateral attacks. Witness the record of the 1965 case in this regard.

We now direct your attention to applicable cases that have entertained the question presented in your memorandum. First, note the following material language taken from 67 C.J.S., Pardons, § 20, a

" * * * A person who is convicted of a felony committed while on parole and is required, under the statutes, to serve the remaining portion of the maximum term to which he was first sentenced is ineligible for further parole on the first sentence; and where, in such case, he is required by the statutes to serve his first term before beginning to serve his second term, the time at which he may become eligible for parole under the second sentence is correspondingly postponed."

Cases standing in support of the text material cited above are: Riccadi v. Wilson, 254 App. Div. 603, 2 N.Y.S.2d 816; Toliver v. State Board of Parole, 157 Pa. Super. 218, 42 A.2d 285; and Tsoukalas v. Hancock, 102 N.H. 417, 158 A.2d 296.

JWBJr./eh


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