STATE OF MAINE

Inter-Departmental Memorandum

Date August 30, 1973

To G. S. Mullaney, Warden — Dept. Maine State Prison

From Courtland D. Perry, Asst. Att'y General — Dept. Mental Health & Corrections

Subject Interpretation of P.L. 1973, c. 144, AN ACT Relating to Credit for Confinement within County Jail Prior to Sentencing. (T. 15 § 1701-A)

SYLLABUS:

P. L. 1973, chapter, 144, which authorizes the grant of credit for time spent in jail prior to commitment in execution of sentence, is considered to be remedial legislation and operates to affect persons in execution of sentence at the Maine State Prison whether such persons were committed in execution of sentence prior to or after the effective date of the Act.

FACTS:

You have requested the opinion of this office as to whether P.L. 1973, Chapter 144, on and after its effective date, October 3, 1973, will be applicable only to persons committed in execution of sentence after such date or will also be applicable to persons committed in execution of sentence prior to such date who are thereafter still in execution of sentence.

QUESTION:

Does P. L. 1973, chapter 144, authorize the grant of credit for time spent in jail prior to commitment in execution of sentence to persons committed in execution of sentence prior to its effective date who are in execution of sentence on and after such date as well as to persons committed in execution of sentence thereafter?

ANSWER:

Yes.

REASON:

P. L. 1973, chapter 144, AN ACT Relating to Credit for Confinement within County Jail Prior to Sentencing, provides:

> "Any person who is sentenced to the Maine State Prison, Men's Correctional Center, Women's Correctional Center, or to any county jail and is in execution thereof, shall be granted credit against the maximum term and minimum term, if applicable, of his sentence during which such person was confined in jail awaiting and during trail prior to the imposition of sentence, pending appeal, and not under any sentence of confinement. The clerk of the court sentencing any such person shall record in the judgment and order of commitment the number of days of such confinement and the credit provided for in this section shall be calculated on the basis of such information.
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> "If any such person shall be committed to jail or other place of detention to await transportation to the place at which his sentence is to be served, his sentence shall commence to run from the date on which he is received at such jail or other place of detention."

The statute in question authorizes the grant of credit for time spent in jail prior to commitment to the Maine State Prison and to other institutions in execution of sentence. Prior to the effective date of the Act, no such credit was allowable for time spent in jail prior to commitment in execution of sentence. (See 34 M.R.S.A. § 702).

The Law Court expressed the prior rule as follows:

> "This Court in a very recent opinion, State v. Blanchard, 156 Me. 30, 159 A.2d 304, 317, recognized the principle that a sentence does not begin until commitment of a prisoner to the institution wherein the sentence will be served." State v. Couture, 156 Me. 231, 241, 242, 163 A.2d 646, 653, 654 (1960). See generally 24B, C.J.S. Criminal Law § 1995, sub-section 2.

The effect of the new law in the case of persons confined in jail prior to commitment in execution of sentence is to accelerate parole time and discharge time by the inclusion of jail time in the computation of the term of the sentence.

It may be fairly said that the legislature's purpose in enacting the act in question was to eliminate the inequities existing in the criminal justice system in Maine caused by confinement in jail awaiting steps in the criminal process with no credit therefor; i.e. "dead time."

Because of this clearly perceived purpose of the legislature, this legislation falls within the classification--"remedial legislation;" rules of construction applicable thereto control in the resolution of the question.

The general principles are expressed in the following quotations:

> "Legislation which has been regarded as remedial in its nature includes statutes which abridge superfluities of former laws, remedying defects therein, or mischiefs thereof implying an intention to reform or extend existing rights, and having for their purpose the promotion of justice and the advancement of public welfare and of important and beneficial public objects, such as the protection of the health, morals, and safety of society, or of the public generally." 50 Am Jur, Statutes, § 15, p. 33.

> "A retrospective law, in the legal sense, is one which takes away or impairs vested rights acquired under existing laws, or creates a new obligation and imposes a new duty, or attaches a new disability, in respect of transactions or considerations already past. It may also be defined as one which changes or injuriously affects a present right by going behind it and giving efficacy to anterior circumstances to defeat it, which they had not when the right accrued.... However, a statute is not regarded as operating retroactively because of the mere fact that it relates to antecedent events, or draws upon antecedent facts for its operation." 50 Am Jur, Statutes, § 476, p. 492, 493.

> "[T]he rule that, unless the language of the statute so requires, the statute should not be given retrospective or retroactive operation has been held not to apply to purely remedial laws, unless an intent to the contrary is shown; and a remedial statute is to be construed to effect the purpose for which it was enacted, and, if the reason of the statute extends to past transactions as well as to those in the future, it will be so applied, although it does not, in terms, so direct, unless to do so would impair some vested right or violate some constitutional guaranty." 82 C.J.S. Statutes, § 416, p. 993.

The Supreme Court of North Carolina in a case involving a legislative enactment which increased the time within which applications for tax refunds might be filed, the time previously provided for such purpose having passed, stated:

> "Considering the relationship of the parties and the remedial nature of the statute, any deterring rule should be fortified by some consideration of public policy rather than merely based on the experience that most legislation is prospective.
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> "No material change has been made by the amendment except the extension of time for making application for the refund or the power of the Commission to make it on its own initiative. The whole statute is intended to give relief to a class whose equities continually arise in natural course regardless of changes in the law which might occur at any time. Such a statute could not be expected to make a clear break with the past--repeal the old law--and make no readjustment whereby those still equitably entitled to relief, or entitled under previously existing law, might be heard. The fact that no express provision was made in the amendment for them strongly leads to the conclusion that it was intended they should have the benefit of the extended time. Once this is conceded, the theory of exclusively prospective application breaks down and the statute operates retroactively; and it does not make any distinction or create any classes among those from which taxes have been erroneously collected prior to the enactment of the law when action is taken in time.
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> "Since, as we have said, the language employed is broad enough to express the retrospective intent and to be retroactively applied, we think the statute falls under the rule expressed in Byrd v. Johnson, 220 N.C. 184, 185, 16 S.E. 2d 843, 846, in which quoting from Gillespie v. Allison, 115 N.C. 542, 548, 20 S.E. 627, it is said: '"No vested right of property has been disturbed, and in our view, this is a remedial statute, enlarging rights instead of impairing them. 'Statutes are remedial and retrospective, in the absence of directions to the contrary, when they create new remedies for existing rights, remove penalties or forfeitures, extenuate or mitigate offenses, supply evidence, make that evidence which was not so before, abolish imprisonment for debt, enlarge exemption laws, enlarge the rights of persons under disability, and the like, unless in doing this we violate some contract obligation or divest some vested right.'" B-C Remedy Co. v. Unemployment Comp. Com'n., 36 S.E.2d 733, 736, 737 (N.C. 1946).

We find no pertinent Maine authority dealing with the application of the "remedial legislation" rule and consider that Maine cases setting forth the general rule regarding retrospective operation of statutes are inapposite here. Bowman v. Geyer, 127 Me. 351 (Me. 1928). See also, Attorney General's Report, 1959-60, p. 68.

The legislation in question does not create new obligations or duties, nor does it impair any vested rights as applicable to any prior transactions or events. In applying the statute to persons committed in execution of sentence prior to its effective date, it merely calls for the computation of jail time based upon the fact of such jail confinement at a time antecedent to the effective date of the Act.

We see nothing in the instant legislation indicating a legislative intent that credit for time spent in jail be given only to persons committed in execution of sentence on and after its effective date. Accepting the applicability of the rule relative to remedial legislation, we are of the opinion that the legislature intended the beneficial impact of the Act to be felt by all persons serving sentences, whether commitment in execution of sentence occurred before or after the effective date of the Act, and believe that such view does no violence to the general rule of nonretrospective operation of statutes, the legislative purpose being clear.