

# MAINE STATE LEGISLATURE

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DEPARTMENT OF THE ATTORNEY GENERAL



Memo From

COURTLAND D. PERRY  
ASSISTANT ATTORNEY GENERAL  
COUNSEL, MENTAL HEALTH & CORRECTIONS

Date: September 17, 1975

To: G. S. Mullaney, Warden, Maine State Prison, and State Parole Board Dept: Mental Health & Corrections

Subject: Work Release Escapee--Applicability of jail time credits; concurrent or consecutive sentence; date of commencement of sentence.

SYLLABUS:

The jail time credit provisions of 15 M.R.S.A. § 1701-A are inapplicable when the period of time to which they are sought to be applied was spent in execution of a sentence of confinement. Unless otherwise ordered by the sentencing court, a sentence imposed following conviction of escape from work release by an inmate of the Maine State Prison under 34 M.R.S.A. § 527, as amended by P.L. 1973, Chapter 381, is to be served concurrently with the sentence being served at the time of work release escape. The commencement date of a sentence to the Maine State Prison can not predate the date upon which the inmate is received at the Maine State Prison following imposition of such sentence (except as provided in 15 M.R.S.A. § 1701-A), and an order of the State Parole Board discharging an inmate of the Maine State Prison from one sentence to commence execution of another sentence on a date which predated the date of imposition of the latter sentence and receipt at the Maine State Prison is without operative effect as to the commencement date of such sentence.

FACTS:

An inmate of the Maine State Prison became eligible for consideration by the State Parole Board at the same time criminal proceedings were pending with respect to such inmate's escape from work release. The parole board elected to continue the parole case until after judicial disposition of the work release escape charge. The warden of the Maine State Prison recommended to the State Parole Board that, in the event of conviction and sentence with respect to the work release escape charge, the State Parole Board order the inmate discharged from the sentence being served at the time of work release escape to become effective July 1, 1975, and recommended to the Classifications Office at the Maine State Prison that the duration of the continuance ordered by the State Parole Board pending judicial disposition of the work release escape charge be considered jail time and that credit be accorded the inmate therefor against the sentence for work release escape, purportedly applying the jail time credit provisions of 15 M.R.S.A. § 1701-A.

The inmate was sentenced to the Maine State Prison on the work release escape charge on July 7, 1975, and was returned to the Maine State Prison on the same date following the court's imposition of sentence. The escape from work release took place on November 22, 1974. The indictment shows that the inmate was charged with work release escape under 34 M.R.S.A. § 527. The judgment and order of commitment shows that the inmate was convicted upon his plea of guilty of the offense of "escape from work release." On July 17, 1975, the State Parole Board heard the inmate's parole case relative to the sentence being served at the time of work release escape. The disposition ordered by the State Parole Board was that the inmate be paroled and discharged to the sentence imposed in the work release escape case to be effective June 1, 1975. In its order, the Board referred to the work release escape sentence as a "consecutive" sentence. The court did not order in the judgment and order of commitment that the sentence for work release escape was to be consecutive.

QUESTION 1:

May the jail time credit provisions of 15 M.R.S.A. § 1701-A be applied to permit credit for time spent at the Maine State Prison while in execution of sentence during a State Parole Board ordered continuance of parole consideration pending judicial disposition of a work release escape?

ANSWER: No.

QUESTION 2:

Is a sentence to the Maine State Prison upon conviction of the offense of escape from work release under 34 M.R.S.A. § 527, as amended by P.L. 1973, Chapter 381, a consecutive sentence by operation of law?

ANSWER: No.

QUESTION 3:

Can the commencement date of a sentence to the Maine State Prison pre-date the date upon which the inmate is received at the Maine State Prison following imposition of such sentence by the court when the State Parole Board orders parole and discharge from one sentence to commence execution of such first mentioned sentence?

ANSWER: No.

REASONS:

1. The period which spanned the State Parole Board ordered continuance beginning with the parole eligibility hearing date and ending with final dis-

position by parole and discharge was spent by the inmate in question in execution of a sentence at the Maine State Prison. 15 M.R.S.A. § 1701-A provides pertinently:

"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 trial 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."

The inmate in question never was in the county jail awaiting disposition of the work release escape charge but was, throughout the period in question, in execution of sentence. The language "not under any sentence of confinement" in § 1701-A precludes the applicability of the jail time credit provisions to the instant case and disposes of this question without the necessity of further discussion.

2. Since October 3, 1973, the substantive criminal offense of escape from work release has been provided for under 34 M.R.S.A. § 527 (P.L. 1973, c. 381). Prior to that time, as was determined by the Maine Law Court in State v. Holbrook, 318 A.2d 62 (1974), the substantive criminal offense of escape from work release was controlled by 34 M.R.S.A. § 710, which by operation of law was subject to a consecutive sentence.

Title 34, § 527, as it appeared prior to its amendment in 1973, contained a consecutive sentence provision, the operative effect of which was never determined by the Law Court. When § 527 was amended in 1973, the legislature, in correcting the escape provisions thereof to provide the necessary language to create a substantive criminal offense, omitted the previously existing language relative to consecutive sentence. We see in this omission the legislative intent to leave to the judiciary the determination as to whether an escape from a rehabilitative program authorized under § 527; e.g., work release, upon conviction should be subject to a concurrent or consecutive sentence. The consecutive sentence language of Title 34, § 710, in our opinion, does not operate as to sentence upon conviction of escape from a rehabilitative program or work assignment authorized under § 527, the latter category of escape now being a separate substantive criminal offense and § 710 no longer being the operative criminal statute in such cases.

Sans the statutory consecutive sentence language, a sentence for escape under § 527 is subject to the provisions of 15 M.R.S.A. § 1702 wherein a consecutive sentence arises only from specification of such sentence by the court.

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Absent such specification in the case of conviction and sentence of the crime of escape from work release under 34 M.R.S.A. § 527 as amended, such sentence would run concurrently with the sentence being served at the time of escape from work release.

As seen from the facts set forth above, the escape from work release occurred November 22, 1974. The inmate was charged with escape from work release and convicted thereof under 34 M.R.S.A. § 527 as amended. The court did not order the work release escape sentence to run consecutively to the sentence being served at the time of the offense. We are therefore of the opinion that the work release escape sentence in the case of the inmate in question is a concurrent sentence, the commencement date of which is not dependent upon termination or expiration of the sentence being served at the time of the offense. We conclude that the inmate in question began serving a concurrent sentence for the offense of work release escape upon his return to the Maine State Prison on July 7, 1975, immediately following the imposition of such sentence by the court. The commencement date in such instance is controlled by 34 M.R.S.A. § 702, which provides that a sentence begins upon the day that the person is received at the Maine State Prison. See State v. Couture, 156 Me. 231 (1960).

3. The State Parole Board disposed of the parole case of the inmate in question on July 17, 1975, by ordering parole and discharge from the sentence being served at the time of work release escape to commence execution of what it considered to be a consecutive sentence for work release escape, ordering such parole and discharge to be effective on June 1, 1975. We are of the opinion that the board's order for parole and discharge is without operative effect retrospectively prior to July 7, 1975. There was no subsequent sentence, consecutive or otherwise, operative on June 1, 1975. The concurrent sentence for work release escape began by operation of law on July 7, 1975; the State Parole Board is without power to alter the commencement date of such sentence.

N.B. The commencement date of any sentence to the Maine State Prison, whether it be concurrent or consecutive, can not pre-date the day upon which the convicted and sentenced person is received at the Maine State Prison (34 M.R.S.A. § 702) except in instances covered by the last sentence of 15 M.R.S.A. § 1701-A, which reads:

"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."



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