County Jails Good Time
Good Time & County Jails
17-A M.R.S.A. 1253(3)
34 M.R.S.A. 952

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Alton L. Howe
Sheriff, Oxford County
Sheriff's Office
South Paris, Maine 04281

Dear Sheriff Howe:

You have requested an opinion on the proper method of computing "good time" deductions for persons sentenced to county jails for terms of more than six months. The problem stems from the apparent applicability of two statutes which conflict in the amount of good time they would allow those inmates. 17-A M.R.S.A. §1253(3) provides for deductions of 10 days a month, whereas 34 M.R.S.A. §952 provides for deductions of 3 days a month.

It is the opinion of this Office that 17-A M.R.S.A. §1253(3) applies to persons sentenced to the county jail for terms of more than six months. Accordingly, those inmates are entitled to "good time" deductions of 10 days a month if they satisfy the other requirements of the statute. 34 M.R.S.A. §952 remains in effect for county jail inmates with sentences of six months or less.

The reasoning behind this opinion will be explained in the remaining portion of this letter.

The Statutes

17-A M.R.S.A. §1253(3) and 34 M.R.S.A. §952 are set out below.

§1253 Calculation of period of imprisonment

. . .

3. Each person sentenced to imprisonment for more than 6 months whose record of conduct shows that he has observed all the rules and requirements of the institution in which he has been imprisoned shall

be entitled to a deduction of 10 days a month from his sentence, commencing, in the case of all convicted persons, on the first day of his delivery into the custody of the department.

§952 Deductions from sentence

Each inmate, who, in the opinion of the sheriff, has faithfully observed all the rules and requirements of the jail, shall be entitled to a deduction of 3 days a month from the term of his sentence, commencing on the first day of his arrival at the jail. An additional 3 days a month may be deducted from the sentence of those inmates who are assigned duties outside the jail, or those inmates within the jail who are assigned to work deemed by the sheriff to be of sufficient importance and responsibility to warrant such deduction. Any portion of the time deducted from the sentence of any inmate for good behavior may be withdrawn by the sheriff for the violation of any law of the State. Such withdrawal of good time may be made at the discretion of the sheriff, who may restore any portion thereof if the inmate's later conduct and outstanding effort warrant such restoration. This section shall apply to the sentences of all inmates now or hereafter confined within the jail.

It seems beyond dispute that if these provisions are read independently of each other, they each appear to include county jail inmates serving sentences of more than six months. In addition to the statute's express reference to each inmate, the last sentence of 34 M.R.S.A. §952 leaves no room for doubt as to the legislative intent at the time the section was enacted. That sentence reads as follows: "This section shall apply to all inmates now or hereafter confined within the jail."

17-A M.R.S.A. §1253(3) is equally explicit on the subject of applicability. The section clearly states that it applies to "(e)ach person sentenced to imprisonment for more than 6 months. . ." Under the Criminal Code, imprisonment means incarceration in any penal or correctional institution. See 17-A M.R.S.A. §1252(1) (providing that the sentence of the Court shall specify the place of imprisonment). Thus, there is no basis for excluding county jail inmates from the language quoted above.

It might be argued that the phrase in §1253(3), "commencing, in the case of all convicted persons, on the first day of his delivery into the custody of the department," evidences a legislative intent that the section apply only to persons incarcerated in institutions under the authority of the Department of Mental Health and Corrections. Since a county jail is not such an institution, its inmates would not fall within §1253(3).

This argument does not withstand close scrutiny. The phrase which references the "custody of the department" deals with the method of computing the deductions and not with the issue of who is entitled to them. It is

unreasonable to conclude that a provision which sets forth when good time commences was intended to modify an express statutory declaration that the right to the good time extends to every person sentenced to imprisonment for more than 6 months. At most, it introduces an element of ambiguity into the meaning of the statute. This ambiguity is easily resolved, however, by the first sentence in the comment to §1253, which is the only relevant legislative history on the section.

> This section provides for the good time deductions in all cases where the sentence exceeds six months. (Emphasis added). [1]

Resolution of the Statutory Conflict

The question of whether these statutes can truly be reconciled need not be answered for purposes of this opinion. Whether or not they are reconcilable, the relevant rules of statutory construction militate in favor of the applicability of 17-A M.R.S.A. §1253(3).

Assuming arguendo that these provisions can be reconciled, the guiding principle is that the enactments should be read so as to produce a consistent legislative scheme.

> All statutes on one subject are to be viewed as one and such a construction should be made as will as nearly as possible make all the statutes dealing with one subject consistent and harmonious. Inhabitants of the Town of Turner v. City of Lewiston, 135 Me. 431, 433 (1938).

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1. There is a strong policy reason against deciding this question on the basis of the reference to the "custody of the department." During the past session, the Legislature enacted a new good time statute which makes no mention of the custody of the department. See P.L. 1977, c. 510, §81, which reads as follows:

> Sec. 81 17-A M.R.S.A. §1253, sub-§3-A is enacted to read:
> 3-A. Each person sentenced, on or after January 1, 1978, to imprisonment for more than 6 months shall earn a reduction of 10 days from his sentence for each month during which he has faithfully observed all the rules and requirements of the institution in which he has been imprisoned. Each month the supervising officer of each institution shall cause to be posted a list of all such persons who have earned reductions from their sentences during the previous month. If any such person does not earn all of his reduction from his sentence in any month, a notation of such action shall be entered on a cumulative record of such actions in the person's permanent file.

The enactment of this provision means that §1253(3) will have no applicability to persons sentenced on or after January 1, 1978. Accordingly, reliance on the reference to the "custody of the department" would require a reconsideration of this question within a few months.

The above mandate supports the proposition that §1253(3) should be controlling. To decide otherwise is to conclude that persons sentenced to the county jail for more than six months are to receive less good time than persons given identical sentences to other institutions. That would lead to an inherently inconsistent legislative scheme for which there is no discernible explanation.[2]

The interpretation most conducive to consistency, then, is that §1253(3) applies to all imprisonment sentences of more than six months, whereas §952 applies only to county jail imprisonment sentences of six months or less. This construction also comports with the Criminal Code's objective of eliminating irrational distinctions from criminal sentences. See Me.Rev.Stat.Ann. tit. 17-A, Introduction to the Proposed Code at XXIII (Supp. 1976).

It can be maintained with some plausibility that, in light of their explicit language, 17-A M.R.S.A. §1253(3) and 34 M.R.S.A. §952 are not amenable to a reasonable reconciliation. If that position were taken, the same conclusion would be reached, in light of the fact that §1253(3) is the later enactment.[3] As stated in a leading text on statutory construction, "if there is an irreconcilable conflict between the new provision and the prior statutes relating to the same subject matter, the new provision will control as it is the later expression of the legislature." 2A Sutherland, Statutory Construction, §51.02 (4th ed. 1973).

In resolving this conflict, it is impossible to ignore the fact that the interpretation given these statutes will affect the length of time that individuals will be deprived of their liberty. The United States Supreme Court has clearly articulated the significance of this factor.

> It may fairly be stated to be a presupposition of our law to resolve doubts in the enforcement of a penal code against the imposition of a harsher punishment. Bell v. United States, 349 U.S. 81, 83 (1955).

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2. Under prior law, differential treatment could have been justified on the grounds that county jail sentences were generally limited to terms of less than one year. However, the statute which placed this limit on county jail sentences (15 M.R.S.A. §1703) was repealed by the same legislation which enacted 17-A M.R.S.A. §1253(3). See P.L. 1975, c. 499, §2.

3. The present version of 34 M.R.S.A. §952 was originally enacted in 1961. P.L. 1961, c. 97. It was amended in 1974 to increase the amount of the deductions, P.L. 1973, c. 688, and again in 1975 to allow for withdrawal of the deductions. P.L. 1975, c. 187. Although 17-A M.R.S.A. §1253(3) was enacted in 1975, P.L. 1975, c. 499, §1, this occured after the last amendment to 34 M.R.S.A. §952. Thus, 17-A M.R.S.A. §1253(3) is the latest expression of the Legislature on the subject. In addition, the most recent amendment to §952 took effect on October 1, 1975, whereas §1253(3) did not become effective until May 1, 1976.

Given the direct conflict between the statutes and the dearth of legislative history, the approach followed by the Supreme Court is entitled to considerable weight. The result to which that approach leads, moreover, is that §1253(3) applies.

Sincerely,

JOSEPH E. BRENNAN
Attorney General

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