

MAINE STATE LEGISLATURE

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1 FIRST REGULAR SESSION
2

3 ONE HUNDRED AND ELEVENTH LEGISLATURE
4

5 Legislative Document

No. 1094

6
7 H.P. 844

House of Representatives, March 7, 1983

8 Referred to the Committee on Judiciary. Sent up for concurrence and
9 ordered printed.

10 EDWIN H. PERT, Clerk

Presented by Representative Carroll of Gray.

Cosponsor: Representative Cashman of Old Town.

11
12 STATE OF MAINE
13

14 IN THE YEAR OF OUR LORD
15 NINETEEN HUNDRED AND EIGHTY-THREE
16

17 AN ACT to Amend Certain Aspects of Post-
18 conviction Review.
19

20 Be it enacted by the People of the State of Maine as
21 follows:

22 Sec. 1. 15 MRSA §2121, sub-§2, as amended by PL
23 1981, c. 238, §1, is further amended to read:

24 2. Post-sentencing proceeding. "Post-sentencing
25 proceeding" means a court proceeding or administra-
26 tive action occurring during the course of and pur-
27 suant to the operation of a sentence which affects
28 whether there is incarceration or its length, includ-
29 ing revocation of parole or entrustment of a juve-
30 nile, failure to grant parole or an error of law in
31 the computation of a sentence and default in payment
32 of fines under Title 17-A, section 1304. It does not
33 include administrative disciplinary proceedings
34 resulting in a loss of time deductions under Title

1 17-A, section 1253, subsection 5, revocation of
2 probation or proceedings before the Appellate Division
3 of the Supreme Judicial Court pursuant to chapter
4 306.

5 Sec. 2. 15 MRSA §2121, sub-§3, as enacted by PL
6 1979, c. 701, §15, is repealed and the following
7 enacted in its place:

8 3. Sentence. "Sentence" means the punishment
9 imposed in a criminal proceeding or the disposition
10 imposed in a juvenile proceeding.

11 Sec. 3. 15 MRSA §2123, sub-§2, as enacted by PL
12 1979, c. 701, §15, is amended to read:

13 2. Venue. Venue shall be in the county in which
14 the ~~conviction~~ criminal judgment took place. Venue
15 may be transferred by the assigned justice at his
16 discretion.

17 Sec. 4. 15 MRSA §2124, first ¶, as enacted by PL
18 1979, c. 701, §15, is repealed and the following
19 enacted in its place:

20 An action for post-conviction review of a criminal
21 judgment of this State or of a post-sentencing
22 proceeding following the criminal judgment, may be
23 brought if the person seeking relief demonstrates
24 that the challenged criminal judgment or
25 post-sentencing proceeding is causing a present
26 restraint or other specified impediment as described
27 in subsections 1 to 3:

28 Sec. 5. 15 MRSA §2124, sub-§§1, 2 and 3, as
29 enacted by PL 1979, c. 701, §15, are amended to read:

30 1. Present restraint by criminal judgment.
31 Present restraint or impediment as a direct result of
32 the challenged criminal judgment; ~~including:~~

33 A. Incarceration pursuant to the sentence
34 imposed as a result of the criminal judgment
35 which is challenged;

36 B. Other restraint, including probation, parole,
37 other conditional release or a juvenile

1 ~~disposition~~ disposition other than incarceration
2 or probation, imposed as a result of the sentence
3 for the criminal judgment which is challenged;

4 C. A sentence of unconditional discharge result-
5 ing from a criminal judgment, for a period of 2
6 years following the date of sentence;

7 D. Incarceration, other restraint or an impedi-
8 ment specified in paragraphs A, B and C which is
9 to be served in the future, ~~although~~ although the
10 convicted or adjudicated person is not in execu-
11 tion of the sentence either because of release on
12 bail pending appeal of the criminal judgment or
13 because another sentence must be served first; or

14 E. A fine imposed by the challenged criminal
15 judgment which has not been paid;

16 2. Post-sentencing proceeding. Incarceration or
17 increased incarceration imposed pursuant to a
18 post-sentencing proceeding following a criminal judg-
19 ment, although the criminal judgment itself is not
20 challenged; or

21 3. Present indirect impediment. Present
22 restraint or impediment resulting indirectly from the
23 challenged criminal judgment of this State, ~~includ-~~
24 ing:

25 A. Incarceration imposed in this State, in
26 another state or in a Federal Court pursuant to a
27 sentence for a subsequent criminal judgment for a
28 crime punishable by a year or more, the length of
29 the incarceration being greater than it would
30 otherwise have been in the absence of the chal-
31 lenged criminal judgment of this State. The crim-
32 inal judgment which is challenged must be for a
33 crime punishable by a year or more. This require-
34 ment is not satisfied by a showing only that the
35 court imposing the present sentence was aware of
36 the challenged criminal judgment or if it appears
37 from the length or seriousness of the person's
38 total criminal record that the challenged crimi-
39 nal judgment, taking into account its seriousness
40 and date, could have little or no effect on the
41 length of incarceration under the subsequent sen-
42 tence;

1 B. A pending trial or incarceration pursuant to
2 a sentence following a criminal judgment in this
3 State, in another state or in a Federal Court for
4 a crime, the degree of which or the potential
5 penalty of which is increased as a result of the
6 challenged criminal judgment of this State. This
7 requirement is not satisfied unless:

8 (1) The subsequent crime, as enhanced, is,
9 in the case of a crime in this State, pun-
10 ishable by incarceration of one year or more
11 or, in the case of a crime in another juris-
12 diction, is a felony or an infamous crime;
13 and

14 (2) If a sentence for the subsequent crime
15 has been imposed, the length of that sen-
16 tence actually exceeds the amount of incar-
17 ceration which could have been imposed for
18 the subsequent crime had its potential pen-
19 alty not been enhanced by the challenged
20 criminal judgment; or

21 C. A pending trial or any of the restraints or
22 impediments specified in subsection 1 following a
23 criminal judgment in this State, another state or
24 in a Federal Court for a crime for which proof of
25 the criminal judgment of this State that is chal-
26 lenged constitutes an element of the subsequent
27 crime.

28 Sec. 6. 15 MRS.A §2128, as enacted by PL 1979, c.
29 701, §15, is amended by inserting before subsection 1
30 the following:

31 A person under restraint or impediment specified
32 in section 2124 shall demonstrate that relief is not
33 unavailable on the basis of waiver as described in
34 subsections 1 to 5.

35 STATEMENT OF FACT

36 Title 15, section 2121, subsection 2 is amended
37 in order to ensure that a proceeding respecting a de-
38 fault in payment of a fine, pursuant to Title 17-A,
39 section 1304, is included within the meaning of
40 "post-sentencing proceeding."

1 Title 15, section 2121, subsection 3 is redrafted
2 to dispel confusion created by the present language.
3 Standing alone, the present language can be read to
4 limit application of chapter 305-A to
5 "post-sentencing proceedings" involving solely pun-
6 ishments and dispositions imposed pursuant to the
7 present Maine Criminal Code and Juvenile Code. It
8 was never the intent of subsection 3 to exclude
9 precode punishments and dispositions from constitut-
10 ing a "sentence" for purposes of a "post-sentencing
11 proceeding." Fernald v. Maine State Parole Bd., 447
12 A.2d 1236 (Me. 1982).

13 Title 15, section 2123, subsection 2 is amended
14 to replace the word "conviction" with the proper term
15 pursuant to section 2121, subsection 1, namely "crim-
16 inal judgment."

17 The first and 2nd sentences of Title 15, section
18 2124 are amended to eliminate reference to Title 15,
19 section 2128. Inclusion of Title 15, section 2128 is
20 at best confusing and at worst erroneous. Title 15,
21 section 2124 is unique in that it is the sole provi-
22 sion which, if not satisfied, renders the court with-
23 out jurisdiction to entertain the petition. Title
24 15, section 2128, like Title 15, section 2126 and the
25 now repealed Title 15, section 2127, simply make
26 relief unavailable, leaving unaffected the jurisdic-
27 tion of the court to entertain the petition. Addi-
28 tionally, the word "including" is deleted from the
29 introductory sentences of section 2124, subsections
30 1 and 3 to eliminate any suggestion that subsection
31 1, paragraphs A to E and subsection 3, paragraphs A
32 to C are not inclusive. Furman v. State, No.
33 CR-82-296 (Me. Super., York. Cty., May 21, 1982).

34 The addition of an introductory sentence in Title
35 15, section 2128 is for the purpose of bringing its
36 form into conformity with Title 15, sections 2125 and
37 2126.

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