

Convicts:

Convicts released under Section
9086, R.S. Mo. 1939 - 9/12 service
of sentence.

August 30, 1945

9/5



Honorable Thos. E. Whitecotton
Director, Department of
Penal Institutions
Jefferson City, Missouri

Dear Sir:

This department is in receipt of your request for an opinion, based upon the following state of facts:

"I shall appreciate your help in clarifying a matter of records at this institution which is explained below:

"John Doe was sentenced to this institution to serve fifteen years and ten years consecutively. After the 9/12 expiration date of the 15-year sentence subject escaped. Our records indicate that he was discharged on the 15-year sentence and that the 10-year sentence was flattened, that is, for his escape he will be held to serve the full 10 years on the second sentence.

"This subject claims that under the old rule he would have been eligible for a 7/12 discharge on the 15-year sentence and that by serving the 9/12 he lost 30 months. Due to his escape and being held to serve the full 10-year sentence, he has lost an additional 30 months.

"I shall appreciate your opinion as to how in such cases we may determine whether this man should have

August 30, 1945

served the first 15 years 7/12 or 9/12. I realize that under the law he would be held to serve nine months on the year if there were no violations of the rules, but due to the prevailing practice before this year, many inmates were released by the Penal Board after serving seven months on the year. In some instances, the records indicate that in multiple sentences a man escaped and was required to serve full time on the total of the multiple sentence."

Section 9086, R.S. Mo. 1939, is the only statute covering the release of convicts on a so-called merit time. This statute provides:

"Any convict who is now or may hereafter be confined in the penitentiary, and who shall serve three-fourths of the time for which he or she may have been sentenced, in an orderly and peaceable manner, without having any infraction of the rules of the prison or laws of the same recorded against such convict, shall be discharged in the same manner as if said convict had served the full time for which sentenced, * * * *"

Your letter states that this convict escaped after the 9/12 expiration date and discharge of his first sentence. As a legal proposition the service of 9/12 time and discharge, as noted on your records, would fully comply with Section 9086, R.S. Mo. 1939, as to his first sentence. His escape, while serving the second sentence, would not entitle him to discharge under the 9/12 statute, thereby causing him to serve the full 10 years.

The fact that heretofore the Penal Board allowed convicts to be released on 7/12 service of their sentence was only a rule of the Penal Board, and was not authorized by statute.

The fact that your records show this convict was discharged on his first sentence, after he had served 9/12 thereof, would indicate that it was the intention of the Board not to release him under the 7/12 rule. The Board could, however, take this into consideration in granting a parole.

Honorable Thos. E. Whitecotton -3-

August 30, 1945

Conclusion.

It is the opinion of this department that, in determining the date of expiration of a sentence of a convict, the 9/12 rule should apply, unless released otherwise by parole or pardon.

Respectfully submitted,

W. BRADY DUNCAN
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

WBD:ml