

July 8, 1964



Honorable Don E. Burrell
Prosecuting Attorney
Greene County
Springfield, Missouri

Dear Mr. Burrell:

You have requested the opinion of this office with respect to two questions which have arisen as the result of the revocation of the parole of a defendant who had partially served his jail sentence.

Your first question is whether the expenses of the sheriff of Greene County in making a trip to Jefferson City to serve a capias warrant for the arrest of the defendant charged with violating the terms of his parole are recoverable as costs. Costs are purely statutory, and statutes in relation thereto are strictly construed. We are aware of no statute which makes such expenses as you mention part of the taxable costs of the case. Therefore, since no items may be taxed as costs in the absence of statutory authority, it is our opinion that such expenses may not be taxed as costs.

Your second question is whether a new commitment is necessary in order to authorize the sheriff to hold the defendant in jail after his parole has been set aside. We answer this question in the negative. When a defendant receives a jail sentence, the commitment is simply a transcript of the entry of the judgment of conviction and of the sentence thereupon, duly certified by the clerk. See Supreme Court Rule 27.12 and Section 546.600, RSMo, from which the rule was derived. A somewhat similar rule (27.13) relates to penitentiary sentences. With respect to the latter rule and the prior statute, our Supreme Court has expressly held

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that a commitment is simply a certified copy of a judgment and sentence. *State v. Harrison*, Mo. Sup., 276 SW2d 222, and *Williford v. Stewart*, 355 Mo. 715, 198 SW2d 12, 15.

Rule 27.12, which is applicable to your question, provides that the certified document therein provided for shall be sufficient authority to the sheriff to execute the sentence. When a parole is set aside, the original commitment is thereby restored and constitutes sufficient authority for the sheriff to hold the defendant in accordance therewith. Of course, the court has authority under Section 549.101, RSMo Cum. Supp. 1963, paragraph 1, to allow the defendant credit for all or part of the time the defendant was on parole.

Very truly yours,

THOMAS F. EAGLETON
Attorney General

JN:lt