

Revocation of commutation of  
penitentiary sentence restores  
original sentence to penitentiary.

Sec 8351 RS Mo 1929.

PENITENTIARY SENTENCE:

May 20, 1933. 5/27



Mr. George D. Bryant,  
Pardon and Parole Commissioner,  
Jefferson City, Missouri.

Dear Mr. Bryant:

This Department acknowledges receipt of your letter dated May 13, 1933, as follows:

"Will you kindly render us an opinion on the following question?

We have now confined in the Missouri State Penitentiary a young man who was originally sentenced by the Circuit Court of Jackson County, Missouri for the crime of robbery, first and his punishment assessed therefor, by the Court at imprisonment in the State Penitentiary for a term of twenty-five years from March 11, 1927; at the same term of Court for good cause shown, said sentence was by the Court commuted to ten years in the Missouri Reformatory for Boys at Boonville, Missouri, and said defendant committed to the Missouri Reformatory for Boys at Boonville, Missouri, March 17, 1927.

This young man escaped from the Reformatory November 18, 1927 and was apprehended and returned to the Reformatory July 1, 1931, at which time the commutation was revoked by the Governor, and by reason of the escape, he was transferred to the State Penitentiary to serve out the remainder of his sentence.

Question? Under the law is this to be treated as a twenty-five year or a ten year sentence?

The Board will appreciate it very much if you will let us have an opinion on this subject."

Section 8351, R. S. Mo. 1929, provides as follows:

"The Governor shall have power to commute the punish-

ment of any person under twenty-one years of age who may heretofore have been, or may hereafter be sentenced to the penitentiary, that he may deem suitable to be sent to the Missouri Reformatory, to commitment in said reformatory, for such term as he may think proper, not exceeding the time for which said person may have been or may be sentenced to the penitentiary. If any person between the ages of seventeen and twenty-one years who shall have been sentenced to confinement in the penitentiary, and whose punishment shall have been thereafter commuted by the governor, or by any court of criminal jurisdiction, as heretofore provided in this chapter, to confinement in the reformatory, shall be found to be incorrigible and not amenable to reformation by reason of the opportunities and advantages afforded him in such reformatory, the governor may annul, cancel and revoke the commutation granted such person and order and direct the said board to transfer such persons to the state penitentiary where the said board shall confine him until he shall have served the remainder of the sentence in accordance with the terms of the original judgment against him which had not been served upon the date of the commutation of said sentence to confinement in such reformatory."

This convict was sentenced to twenty-five years in the penitentiary and his sentence was commuted by the criminal court having jurisdiction over it to a ten year sentence in the Reformatory. Under the above Section, the governor may revoke the commutation made by the criminal court for the reasons named in the Section and when the commutation is revoked, according to said Section, the original judgment must be carried out.

It is, therefore, the opinion of this Department that after the revocation of the commutation by the governor, that the original judgment of twenty-five years in the penitentiary again became operative, and that this convict should be held in the penitentiary under the original judgment of twenty-five years. Under this Section of the Statutes when the governor revoked the commutation to the reformatory, the effect is the same as if the original judgment of twenty-five years in the penitentiary had not been commuted.

Very truly yours,

Assistant Attorney General.

APPROVED:

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Attorney General.

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