

PENAL INSTITUTIONS: Form of sentence of trial court in sentencing to Intermediate Reformatory.

Transfer of inmates to Intermediate Reformatory.

April 14, 1933

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So

Honorable J. M. Sanders  
Warden Missouri State Penitentiary  
Jefferson City, Missouri

Dear Mr. Sanders:

We acknowledge receipt of your letter dated April 12, 1933, as follows:

"In re: Harlan Johnson, #43573

The above named man was received at the Penitentiary March 13th, from Washington County to serve 3 years ( 2 and 2 concurrently) from January 26, 1933, for the offenses of burglary and larceny and is now incarcerated in the prison.

This morning we have received a copy of Court order commuting this young man's sentence to "Alcoa Farms." (Erroneous title, of course).

From correspondence had with the Circuit Clerk it is evident that an error was committed by not delivering to the Sheriff who brought Johnson to the Penitentiary the Court order commuting the sentence to the Intermediate Reformatory.

The question is: Can this inmate be delivered to the Intermediate Reformatory now under the authority of the Court order - the same to be corrected as to title of the institution?

Herewith copy of the sentence and judgment and order of commutation referred to."

Section 8474 Revised Statutes Missouri, 1929, provides that any person being between the ages of sixteen and twenty-five and convicted of felony for the first time and if not convicted of treason or murder in the first or second degree or any offense for which capital punishment is provided, the trial court may sentence the person so convicted to the custody of the officials of the Intermediate Reformatory, which Reformatory is provided for by Article VI, Chapter 44, Revised Statutes of Missouri, 1929.

Section 8479 of the above statutes requires the officer delivering the convicted person to the Superintendent of the Intermediate Reformatory to furnish such Superintendent a certified copy of the sentence received by such offender as furnished by the clerk of the court where the trial was had and the person so delivering such convict shall take from such Superintendent a certificate of the delivery of such convict and under the further provisions of Section 8474, supra, it becomes the duty of the officials in charge of the Intermediate Reformatory to receive such convicted person, but only upon the conditions above named.

In the case at hand Harlan Johnson was delivered to the warden of and at the penitentiary on March 13, 1933, we assume under a commitment to that institution. Attached to your letter is a certified copy of the original sentence and judgment of the trial court which contains no direction as to his being incarcerated in the Intermediate Reformatory. This sentence and judgment of the court was pronounced on the defendant on the 11th day of March, 1933. The order undertaking to commute the sentence seems to have been entered on the same day. The court of course had the right to sentence the defendant to the custody of the officials of the Intermediate Reformatory in the first instance, and that being true the court had the right to modify such sentence and judgment to comply with Section 8474. We think it was clearly the intention of the court to comply with said Section 8474.

Section 3811 Revised Statutes Missouri, 1929, prohibits the trial court from paroling any person after such person has been delivered to the warden of the penitentiary. If the action taken by the court had been entered of record after defendant had been delivered to the warden of the penitentiary, then the order would have had no effect and if the last order made by the court amounted to an attempt to parole

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or otherwise interfere with the jurisdiction over the convict acquired by the warden upon the delivery of the prisoner to him at the penitentiary, then such order would be void.

Section 8475 Revised Statutes Missouri, 1929, provides for the transfer of inmates from the penitentiary to the Intermediate Reformatory. If there is a proper order, nunc pro tunc, correcting the sentence and judgment of the court so as to direct the delivery of the defendant into the custody of the officials of the Intermediate Reformatory, then in our opinion the penal board would have authority to and should transfer the inmate to the Intermediate Reformatory where the trial court intended he should be confined.

I am returning you herewith certified copies of records inclosed with your letter.

Very truly yours,

GILBERT LAMB  
Assistant Attorney General.

APPROVED:

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Attorney General.

GL:LC

Inclosures