

DEPARTMENT OF PENAL INSTITUTIONS:

Right to re-number
convict on re-sentence

July 17, 1933

J. M. Saunders
Department of Penal Institutions
Jefferson City, Missouri



Gentlemen:

This office acknowledges receipt of your letter dated July 15, 1933, as follows:

"In Re: Ross Gregory, 41650.

This man was convicted in Stoddard County by a jury in Circuit Court and his sentence fixed at 12 years in the penitentiary. On September 14, 1932, the Court in vacation, as this office is informed, upon motion, reduced the sentence from 12 to 8 years, and in compliance with this order the prisoner was brought to the penitentiary to serve a term of 8 years beginning September 14, 1932. He was accepted by the Warden and entered upon his service as is evidenced by the sentence and judgment submitted herewith.

Later on it was determined that the action of the Court was illegal and the prisoner was taken out of the penitentiary on a writ of habeas corpus, issued by the Circuit Court of Stoddard County, directing the warden of the penitentiary to deliver the prisoner into the said court July 7, 1933. This writ was complied with.

On July 12, 1933, this Ross Gregory was returned to the penitentiary by the Sheriff of Stoddard County, to serve a sentence of 10 years from September 10, 1932. The sentence of the Court was based upon Cause No. 10143, which is the same cause that the first sentence was based upon.

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What this office would like to know is whether the prisoner should be re-entered under his original number and the records changed to conform with the order of the Court, made July 8, 1933 and fixing his sentence at 10 years instead of 8 years, or whether the prisoner should be entered under a new number and a new record made to conform to the order of July 8, 1933, it not being possible to carry the prisoner under two different sentences and two different numbers.

A written opinion from your office at as early a date as is convenient, will be appreciated."

By Section 8338 Revised Statutes Missouri 1929, the members of your board, subject to law, have the exclusive government, regulation and control of the Missouri State Penitentiary and you may make and enforce such rules and regulations as you from time to time deem necessary and proper in the management of the penitentiary and the persons now or hereafter legally committed therein, which would include the method or form in which your records are kept, so that the purposes of the law may be effectually carried out.

We think it is your duty to accept the judgment and direction of the Circuit Court referred to in your letter as a valid judgment, order and direction until the same is reversed or otherwise set aside.

You undoubtedly have the right to make such entries on your records or to change, alter or add to the same so as to make them speak the facts. As a practical matter, and about which you have a right to use your judgment, we would suggest that your record of the first entrance and acceptance of Gregory be amended by adding to same so as to show his subsequent re-sentence and change in term of sentence, and the first record could recite that the number appearing on that record is hereby canceled and that he is given a new number whatever it is and state where the same may be found on your records. You could then give Gregory another sheet of your records with new number and recite the same facts as we have suggested be recited on the old record, then you will have a complete record of the chain of events and all self-explanatory. The law gives you the power and authority to use your judgment in such details as you present and

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your only duty is to keep your records in such a way as is complete and most easily understood.

I am returning you your inclosures herewith.

Very truly yours,

GILBERT LAMB
Assistant Attorney General,

APPROVED:

ROY McKITTRICK
Attorney General.

GL:LC

Inclosures