

PENAL INSTITUTIONS:

Sentence required to be served  
after return of subject from  
insane hospital.

August 5, 1933

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FILED  
So

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

Dear Mr. Sanders:

This Department acknowledges receipt of your  
letter dated August 3, 1933, as follows:

"I beg to submit the following facts  
and ask for your opinion of the proper  
course for me to pursue:

Charles Williams, No. 23074, plead  
guilty to the crime of Grand Larceny  
before the Circuit Court of Randolph  
County at the June term, 1920. He  
was sentenced to serve three (3)  
years in this penitentiary from  
September 15, 1920, and was received  
here September 16, 1920.

On November 10, 1920, Williams was  
transferred by Gov. Gardner to State  
Hospital No. 1, at Fulton. From  
this latter institution he escaped  
on December 10, 1920.

Without knowledge of the authorities  
of the penitentiary he was captured  
and returned to Fulton and subsequently  
discharged from the Hospital there  
on August 31, 1921.

This same party, under the name of  
Dave Gentry, No. 34339, was again  
received at the penitentiary December  
30, 1928, from Jasper County, where  
he had plead guilty to the crime of  
Burglary and Larceny at the November,  
1928, term of the Jasper County  
Circuit Court. He was sentenced to

serve eight (8) years, four (4) years on each count, to be served consecutively.

The document ordering the Warden of the penitentiary to deliver Charles Williams to the Hospital at Fulton plainly states that if, or when, Williams is again sane the Superintendent of the Hospital shall notify the Warden of the Penitentiary. This was not done, Williams being discharged from the asylum directly and not returned to the penitentiary to complete his sentence.

His sentence should, I believe, be completed. It is usual in such cases for the subject to be transferred from asylums back to this institution by the Governor. Complications which have arisen due to the irregular manner of Williams's release from the Hospital raise a question of how best to arrange to hold him, legally, to serve out his time here."

Touching on the matter in hand Section 8659 Revised Statutes of Missouri 1929, provides as follows:

"If any person, after being convicted of any crime or misdemeanor, and before the execution, in whole or in part, of the sentence of the court, becomes insane, it shall be the duty of the governor of the state to inquire into the facts; and he may pardon such lunatic, or commute or suspend, for the time being, the execution in such manner and for such period as he may think proper, and may, by his warrant to the sheriff of the proper county or

August 5, 1933

warden of the state penitentiary, order such lunatic to be conveyed to a state hospital and there kept until restored to reason. If the sentence of such lunatic is suspended by the governor, the sentence of the court shall be executed upon him after such period of suspension has expired, unless otherwise directed by the governor."

Section 8660 provides that when a convict has served two-thirds of the sentence of the court and becomes insane and is sent to a state hospital, when such convict recovers his sanity the governor shall grant a complete discharge to the convict from the sentence of the court and the convict is not required to return to the penitentiary. Under your statement of facts Section 8660 has no application.

The warrant of the governor as to the part thereof important in determining the question at hand, reads as follows:

"NOW, THEREFORE, I, F. D. Gardner, Governor of the State of Missouri, by virtue of authority in me vested by law, do hereby suspend the execution of said sentence, and by these presents do order and direct the Warden of the Penitentiary to immediately convey said insane convict, Chas. Williams, to State Hospital for Insane No. 1, located at Fulton, Missouri, there to be detained until restored to reason.

And the Superintendent of State Hospital for Insane No. 1, is hereby directed to receive said Chas. Williams from said Warden and him safely keep confined in said Hospital, and treat for insanity until restored to reason; when he, the said Superintendent, shall give due notice thereof to the Warden of the Missouri Penitentiary, where he shall serve so much

August 5, 1933

of his sentence as now remains unserved, beginning on the date of his return to prison. And it is further directed that the expense of conveying the said Chas. Williams to the Hospital shall be audited and paid out of the fund appropriated for the payment of the criminal costs, and the expense at the hospital for his board and clothing shall be paid by Randolph Co. as provided by Sections 5355, and 1411, Revised Statutes of Missouri 1909."

It is true the subject was not returned to the state penitentiary by the warden upon the subject regaining his sanity, but he was returned to the penitentiary as effectively as if he had been brought from the state hospital to the penitentiary by the warden.

We are inclined to the view that when the subject was returned to the penitentiary under sentence by the circuit court of Jasper County that the serving of the latter sentence was automatically by operation of law suspended and the subject began service under the sentence of the Randolph County Circuit Court. Either that is true or upon a completion of the service of the sentence of the Jasper County Circuit Court the subject would be required to begin service of the sentence of the Randolph County Circuit Court unserved at the time the subject was taken from the penitentiary to the state hospital. Either conclusion reaches the same results.

In an opinion to your Department dated July 14, 1933, this office held that in certain instances and under certain circumstances different sentences imposed on the same subject would run concurrently, however, we are not willing to extend that rule to apply to sentences imposed by separate and different courts in this state and particularly, as is true in this case, where the subject was convicted of or pleads guilty to an offense under one name in one instance and is convicted of or pleads guilty to an offense under a different name in the other instance or instances. We think the question of concurrent sentences is controlled somewhat by the intention of the court and there is no reason to think that the Circuit Court of Jasper County knew of the sentence imposed on the subject by the

Honorable J. M. Sanders -5-

August 5, 1933

Circuit Court of Randolph County. Nor do we think the Circuit Court of Jasper County would have the right to impose a sentence depending in anywise on the sentence imposed by the Circuit Court of Randolph County.

We are of the opinion that the subject mentioned in your letter should be required to serve the full time imposed by the Circuit Court of Randolph County and the Circuit Court of Jasper County and until discharged according to law.

We are returning you your inclosures herewith.

Very truly yours,

GILBERT LAMB  
Assistant Attorney General.

APPROVED:

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ROY McKITTRICK  
Attorney General.

GL:LC

Inclosures