

✓
PENITENTIARY---WARDEN---CONVICT: Authority of law to imprison convicts.

November 9, 1933
11 B



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

Dear Warden:

Your request for an opinion dated November 6th, was as follows:

"At the February Term, 1931, of the Cole County Circuit Court one Charles Alberts, alias Jack Allen, plead guilty to the charge of taking away a minor female for the purpose of concubinage.

He was sentenced by the Court to serve a term of three (3) years in the Missouri State penitentiary. He was paroled by the Court on the day of sentence.

At the October, 1933, Term of the Cole County Circuit Court this sentence was revoked and the defendant, upon direction of the Court was apprehended by the Sheriff.

However, the copy of sentence and judgment of Court nowhere contains the instructions of the Court to the Sheriff to deliver the defendant to the penitentiary, nor any order directing the Warden of the Penitentiary to receive the defendant to serve out the punishment assessed.

I request your opinion regarding the procedure I should follow in this case. Should the defendant, Alberts, be refused by me, and made to remain in the custody of the Sheriff, or are the instructions of the Court to the Sheriff following the revocation of parole sufficient for me to accept?"

Section 3809 R. S. Mo. 1929, provides as follows:

"The circuit and criminal courts of this state, and the court of criminal correction of the city of St. Louis, shall have power,

as hereinafter provided, to parole persons convicted of a violation of the criminal laws of this state."

Section 3811 R. S. No. 1929 provides as follows:

"When any person of previous good character and who shall not have been previously convicted of a felony, shall be convicted of any felony except murder, rape (where the rape charged and the proof shows said rape to have been committed by means of force, violence or by putting the female in fear of immediate injury to her person), arson or robbery, and imprisonment in the penitentiary shall be assessed as the punishment therefor, and sentence shall have been pronounced, the court before whom the conviction was had, if satisfied that such person, if permitted to go at large, would not again violate the law, may in his discretion, by order of record, parole such person and permit him to go and remain at large until such parole be terminated as hereinafter provided: Provided, that the court shall have no power to parole any person after he has been delivered to the warden of the penitentiary."

Section 3812 R. S. No. 1929 provides as follows:

"When any person shall be paroled under the provisions of section 3811 of this article the court granting said parole or the judge thereof in vacation may terminate said parole at any time without notice to such person by merely directing the clerk of the court to make out and deliver to the sheriff or other proper officer a certified copy of the sentence, together with a certificate that such person has been paroled and his parole has been terminated, and it shall be the duty of such officer, upon receipt of such certified copy of sentence, to immediately arrest such person and transport and deliver him to the warden of the penitentiary in the same manner as if no parole had been granted, and the time such person shall have been at large upon parole shall not be counted

as a part of the term of his sentence, but the time of his sentence shall count from the date of his delivery to the warden of the penitentiary."

Section 8413 R. S. No. 1939 provides as follows:

"Whenever any convict shall be delivered to said board, the officer having such convict in charge shall deliver to the board the certified copy of the sentence received by such officer from the clerk of the court, and shall take from the board a certificate of the delivery of such convict."

Section 848 R. S. No. 1939, provides as follows:

"No person's body shall be imprisoned or restrained unless by authority of law."

In the instant case defendant was sentenced to three years in the State Penitentiary, but under the right conferred as provided under section 3809 and 3811 supra, the prisoner was paroled by the Court and the parole was terminated under the provisions of section 3812. It is to be noted that the Court followed the law in his procedure. The judgment and the sentence of the Court does not have to contain any instructions to the sheriff or directions to the warden. It is sufficient if the Court's records show that a commitment was ordered issued by the clerk of the Circuit Court, directed to the sheriff, which in this case was done as revealed in the Court's order immediately following the revocation of the parole. On delivery of a prisoner to the penitentiary, the law provides that a certified copy of the Court's orders sentencing the prisoner, accompany the prisoner as provided in section 8413 supra. This was done in the instant case and is sufficient authority of law for the Penal Board to accept the person convicted, and it would be their duty to make out a certificate of delivery for such convict.

It is to be noted that in the instant case the record shows that the parole was revoked and the clerk was ordered to issue a warrant of commitment, sentence having already been passed. It is usual that the warrant of commitment accompany the prisoner with the other necessary papers. No doubt if the Penal Board will take the matter up with the clerk of the Court,

Honorable J. M. Sanders, Warden

-4-

November 9, 1933.

the Board can obtain a certified copy of the warrant of commitment which the clerk issued as per the Court order. This copy is not required by law to be in your files but its absence is giving you some worry and no doubt it is of value in your Department on many occasions.

Respectfully submitted

WILLIAM ORR SAWYERS
Assistant Attorney General

APPROVED:

ROY McKITTRICK
Attorney General.

WOS:H