

PENAL INSTITUTIONS: Sentences imposed at different terms
of court run concurrently unless
otherwise directed by the court.

7-16
July 12, 1934.



Honorable George D. Bryant, Chairman
Pardon and Parole Board
JeffersonCity, Missouri

Dear Mr. Bryant:

Receipt of your letter dated June 30,
1934 is acknowledged. Your letter is as follows:

"An inmate of this Penitentiary has two sentences against him. He was first tried and convicted in the Circuit Court of Boone County, Missouri, for the crime of Transporting Intoxicating Liquor and his sentence was fixed by the jury at three years. The case was appealed to the Supreme Court and the sentence was approved by the Court on January 22, 1934.

After the trial in Boone County, Missouri, the defendant was charged with the crime of perjury in Pettis County, Missouri. He pleaded guilty and his sentence was fixed by the Court for a period of three years in the State Penitentiary beginning on January 15, 1934.

In neither sentence was any reference made to the other sentence. The question now is, whether the sentence of the Boone County Court and the sentence of the Pettis County Court are to run concurrently or consecutively."

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In an opinion dated July 14, 1933 and addressed to you and discussing the question of concurrent and consecutive sentences, we said:

"It seems to us to be impliedly recognized in all of the Missouri cases dealing with this subject, except the Meininger case which holds directly, that unless there is some order, direction or judgment making the sentences cumulative or unless the facts and record come within the statute above quoted, then where two sentences are imposed by a court on the same defendant at different times and where the defendant is incarcerated in the penitentiary under two commitments, the sentences would be served concurrently and this would seem to be necessarily true because if the defendant is in the penitentiary serving under two commitments it could not logically be said that he was serving under one commitment as distinctive from service under the other commitment without some authoritative direction to that effect."

And further, on the same page of the opinion:

"We are further of the opinion that the case presented by you is not controlled by Section 4456 Revised Statutes of Missouri 1929, because the record presented does not show that pleas of guilty were entered in each of the cases, prior to the sentence in either case. If the record did show such pleas of guilty to have been entered before sentence was passed in either case, then the sentences would run consecutively by virtue of Sec-

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tion 4456 and the court would have no authority to direct otherwise."

In the case submitted by you, the inmate was sentenced by courts in different circuits in this state and, of course, at different terms. There being nothing to the contrary in the sentences imposed upon this inmate, we are of the opinion that the sentences would run concurrently and not consecutively.

We are returning herewith brief attached to your letter.

Yours very truly,

GILBERT LAMB
Assistant Attorney General

APPROVED:

ROY MCKITTRICK
Attorney General

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