

CONVICTS--PARDON: Where one previously convicted of a crime is not suffering from civil disability, a pardon to remove civil disability is not necessary.

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May 10, 1935.



Honorable Owen C. Rawlings
Prosecuting Attorney
Marshall, Missouri

Dear Sir:

Your request for an opinion dated April 20, 1935, is as follows:

"Please advise my office as to whether at the expiration of a two year sentence for burglary, a defendant, who was at the date of conviction between the age of eighteen and nineteen years, and who has not been pardoned by the Governor of the State of Missouri, is possessed with all his civil rights; or is a pardon necessary for such restoration? The following section of the Revised Statutes of Missouri, 1929, might be applicable: Section 4172; Section 12968 and Section 12971.

Burglary in all of its degrees is a crime punishable under the provisions of Chapter 30, Article V, R. S. Mo. 1929. Of this same Chapter and Article, Section 4172 R. S. Mo. 1929, provides:

"Any person who shall be convicted of arson, burglary, robbery or larceny, in any degree, in this article specified, or who shall be sentenced to imprisonment in the penitentiary for any other crime punishable under the provisions of this article, shall be incompetent to serve as a juror in any cause, and shall be forever disqualified from voting at any election or holding any office of honor, trust or profit, within this state: Provided, that the provisions of this

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section shall not apply to any person who at the time of his conviction shall be under the age of twenty years; Provided further, that in all cases where persons have been convicted under this article the disqualifications provided may be removed by the pardon of the governor any time after one year from the date of conviction."

Under the facts of your letter the convicted person had already celebrated his eighteenth birthday at the time of his conviction and was going on nineteen years of age. He was within the nineteenth year of his life. At that state of one's life he is yet under the age of twenty years and the above Statute provides: "that the provisions of this section shall not apply to any person who at the time of his conviction shall be under the age of twenty years." Under the facts of your letter there is no provision of punishment in the above Chapter, Article or Section which can be applied to the convict described in your letter in determining the necessity of a pardon of his right to one. Since the Section does not apply, its provisions as to loss of citizenship do not apply for purposes of this opinion.

If the convict be punishable for a burglary under the Statutes by imposition of civil disabilities in addition to imprisonment to which he was sentenced, we must find where the Legislature so provided.

Article I, Chapter 91, R. S. Mo. 1929, deals with civil rights of convicts. Section 12968 of said article provides when any convict be civilly dead or when his civil rights be suspended when punished for any crime. Said Sections reads:

"A sentence of imprisonment in the penitentiary for a term less than life suspends all civil rights of the persons so sentenced during the term thereof, and forfeits all public offices and trust, authority and power; and the person sentenced to such imprisonment for life shall thereafter be deemed civilly dead."

Section 12970 of said Article provides:

"When any person shall be sentenced upon a conviction for any offense, and is thereby, according to the provisions of this article, disqualified to be sworn as a witness or juror in any cause, or to vote at any election, or to hold any office of honor, profit or trust within this state, such disabilities may be removed by a pardon by the governor, and not otherwise, except in the case in the next section mentioned."

Section 12971 of said Articles provides:

"If such convict shall have committed the offense while within the age of eighteen years, and such conviction shall be for a first offense, all civil disabilities incurred shall be removed and his competency restored at the expiration of the term of imprisonment to which he shall have been sentenced."

The Legislature has it within its power to provide punishment effecting the civil rights of those convicted of a crime but under the facts of your letter we have been unable to find any Statute relative to your inquiry than those above set out.

It is true that one convicted of a felony at common law suffered a loss of civil rights, in addition to punishment passed in the court's sentence. It is true that the common law is in force in Missouri except where it be repugnant to existing laws. Section 645 R. S. Mo. 1929, provides:

"The common law of England and all statutes and acts of parliament made prior to the fourth year of the reign of James the First, and which are of a general nature, not local to that kingdom, which common law and statutes

are not repugnant to or inconsistent with the Constitution of the United States, the Constitution of this state, or the statute laws in force for the time being, shall be the rule of action and decision of this state, any custom or usage to the contrary notwithstanding, but no act of the general assembly or law of this state shall be held to be invalid, or limited in its scope or effect by the courts of this state, for the reason that the same may be in derogation of, or in conflict with, such common law, or with such statutes or acts of parliament; but all such acts of the general assembly, or laws, shall be liberally construed, so as to effectuate the true intent and meaning thereof."

The common law as it affected a criminal's loss of civil rights is repugnant to existing law because our Legislature has provided the extent to which punishment at common law can be applied in Missouri. Section 646 R. S. Mo. 1929, provides:

"Punishment by virtue of the common law shall in nowise be other than by fine or imprisonment, or both, and such fine shall not exceed one hundred dollars, and the term of such imprisonment shall not exceed two months; nor shall any of the British statutes for the punishment of crimes and misdemeanors be in force in this state."

CONCLUSION.

Loss of civil rights as punishment for a crime must be found in the Statutes and the common law disability as to loss of civil rights has no place in Missouri, except as adopted by Section 646, supra.

We are of the opinion that, under the Statutes, the exconvict in the instant case suffered a suspension of his civil rights when he was sentenced to imprisonment in the penitentiary for a term of two years, and the

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suspension of civil rights continued during the period and term of the sentence unless pardoned during the interim of sentence. By the facts of your letter the exconvict cannot claim the benefits of Section 12971, supra, because none of the facts in your letter show that the conviction was for an offense committed while within the age of eighteen years and that such conviction was for a first offense.

However, since the facts do not show him to be a public officer or to come within other statutory provisions of law where civil disability attaches as punishment for crime, and since under the facts of your letter his whole punishment by way of disability in the exercise of civil rights is by virtue of Section 12968, supra, We are of the opinion that at the end of the term of sentence his suspension of civil rights, like any other convict who suffers suspension of civil rights by reason of no other section of law, ceased to exist.

Section 12970, supra, provides for a Governor's pardon where a person is sentenced and is suffering civil disability by virtue of Section 12968, supra. The Legislature intended that no pardon would be necessary where no civil disability is being suffered.

Respectfully submitted

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APPROVED:

ROY McKITTRICK
Attorney General.

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