

CONVICTS: Sentence to Boonville is not a bar to commitment to intermediate reformatory.

February 14, 1935. 2-16



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

Dear Sir:

Your request of February 8, 1935, for an opinion is as follows:

"On October 30, 1934, Dallas Arnell was received from Pettis County to serve 2 years at the Intermediate Reformatory at Algoa, from August 27, 1934, for the crime of Larceny of Automobile. His papers appear regular and the statement of fact of the Prosecuting Attorney accompanying his commitment recites that aside from minor offenses he was convicted of Possession of Stolen Property and sentenced to the Reformatory at Boonville, to serve two (2) years from December 7, 1929,

"We frequently have a condition of this kind and considerable confusion has been brought about in the minds of officials of this prison as well as officials of the Intermediate Reformatory concerning the status of offenders of this kind. Most of the officials have been of the opinion that convicts of this class are not eligible to be committed to the Intermediate Reformatory on account of the provisions of Section 8474 of the Revised Statutes of 1929. Some are of the opinion that the former sentence to Boonville is not a bar to his admission to the Intermediate Reformatory.

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"A written opinion from your office would go far to settle in the minds of the officials the uncertainty of their acts, and I would appreciate an opinion from you."

Section 8474 R. S. Mo. 1929, provides as follows:

"If any male person seventeen years of age and less than twenty-five years of age be convicted of a felony for the first time, and he be not guilty of treason or murder in the first or second degree, or any offense for which capital punishment is provided, the court trying such person may sentence him to the custody of the officials of the intermediate reformatory to be confined at said reformatory for the term prescribed by the statutes of this state and fixed by the court or jury as a punishment for such offense. It shall be the duty of the officials in charge of said reformatory to receive all such convicted persons."

Section 8475 R. S. Mo. 1929, provides under paragraph (a) as follows:

"a. As soon as the construction of the intermediate reformatory is to be undertaken, or as soon as its agricultural or industrial activities require laborers, the commissioners of the department of penal institutions shall have power, with the consent of the governor to transfer to the tract of land upon which the intermediate reformatory is to be located any or all inmates of the Missouri reformatory at Boonville

and of the Missouri penitentiary, who at the time of their last conviction were between the ages of seventeen (17) and twenty-five (25) years and who are serving their first sentence for conviction of a felony. The number of convicts thus to be transferred at any time is to be limited to the number that can be properly housed, guarded and cared for and that can be employed efficiently, and economically in the construction and operation or maintenance of the intermediate reformatory. In so far as practicable the construction of the intermediate reformatory shall be carried on by means of the labor of such offenders eligible to admission to it. In making such transfers as are herein authorized preference shall be given to those inmates of the Missouri reformatory at Boonville and who are eligible to transfer to the intermediate reformatory. In making the transfer of inmates of the Missouri penitentiary who are eligible to transfer to the intermediate reformatory preference shall be given to the younger ones and those who for good reason are most worthy or in need of such a transfer."

Section 8350, Laws of Missouri 1933, page 331, provide as follows:

"Any person under the age of seventeen years, convicted of a crime, the punishment of which, under the statutes of this state, when committed by persons over the age of seventeen years, is imprisonment in the penitentiary for a term of not less than ten years, may be punished in the same manner and to the same extent as provided by the statutes for the

punishment of persons over the age of seventeen, or, if a boy, he may be imprisoned in the penitentiary or committed to the Missouri Training School for Boys; and any boy under the age of seventeen years convicted of any other felony, either upon plea of guilty or upon trial, may be committed to the Missouri Training School for Boys. Any boy under the age of seventeen years convicted of a misdemeanor in any court of record, either upon the plea of guilty or upon trial, may, in the discretion of the court, be committed to the Missouri Training School for Boys. No boy under seventeen years of age convicted of a felony shall hereafter be committed to the county jail as a punishment for such offense. Any court having a criminal jurisdiction, in which any male person, between seventeen and twenty-five years of age, shall, upon a plea of guilty, or by the verdict of a jury, be convicted of a felony, and his punishment assessed at imprisonment in the penitentiary, may, in its discretion, at the same term at which such plea of guilty is entered or conviction occurs, and before such person is transferred to the penitentiary, commute the punishment to the confinement of the Missouri intermediate reformatory for such term as the court may deem proper, but not for a longer time than that fixed in the sentence to the penitentiary; but such court shall first ascertain and determine that said conviction or plea of guilty is the first conviction or plea of guilty of such person for a felony, and that the previous conduct, habits and associations of the person so convicted or pleading guilty warrant such commutation."

Section 8351, Laws of Missouri 1933, page 332, provide as follows:

"The governor shall have power to commute the punishment of any male person under twenty-five years of age who may heretofore have been, or may hereafter be sentenced to the penitentiary, whom he may deem suitable to be sent to the Missouri intermediate reformatory, to commitment in said intermediate reformatory for such term as he may think proper, not exceeding the time for which said person may have been or may be sentenced to the penitentiary. If any male person between the ages of seventeen and twenty-five years who shall have been sentenced to confinement in the penitentiary, upon his first conviction or plea of guilty of a felony, and whose punishment shall have been thereafter commuted by the governor, or by any court of criminal jurisdiction, as heretofore provided in this chapter, to confinement in the intermediate reformatory, shall be found to be incorrigible, and not amenable to reformation by the opportunities and advantages afforded him in such intermediate reformatory, the governor may annul, cancel and revoke the commutation granted such person and order and direct the said board to transfer such person to the state penitentiary where the said board shall confine him until he shall have served the remainder of the sentence, in accordance with the terms of the original judgment against him, which had not been served upon the date of the commutation of said sentence to confinement in such intermediate reformatory."

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There is nothing in Section 8474 that would prevent the court, in the case suggested in your letter, from sentencing said convict to the intermediate reformatory for Larceny of an Automobile. The fact that he had been previously convicted of possession of stolen property and sentenced to the reformatory at Boonville to serve two years does not mean necessarily that his conviction for larceny of an automobile was otherwise than a conviction of a felony for the first time."

Section 8475 gives the Governor power to transfer from the penitentiary to the intermediate reformatory, boys between the proper ages "who are serving their first sentence for a conviction of a felony." In such transfer the Legislature had in mind that Alcoa be for benefit of first offenders and also for those boys who have been previously convicted of a felony but never incarcerated for punishment on said previous conviction.

Section 8350, supra, provides that trial courts can commit to the intermediate reformatory boys between seventeen and twenty-five years of age, provided the court first ascertain that the conviction is the first conviction of said person for a felony. In spite of all facts of your letter it must be presumed by you as warden that said court performed its duty and that the commitment to the intermediate reformatory was issued only after the court determined that the conviction is the first conviction of said person for a felony. The court, no doubt, determined that the prior conviction and sentence to Boonville was not for a felony.

Section 8351, supra, provides for commutation of sentences to the penitentiary; to sentences to the intermediate reformatory; and the governor's right to commute need not be measured by any other yard stick than age limitations. With a Governor's commutation under Section 8351, the Governor does not have to consider former convictions of felonies as conditions precedent to his power to commute to a sentence to intermediate reformatory.

#### CONCLUSION.

From the facts submitted in your letter, it is the opinion of this office that Dallas Arnell is

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properly committed to the intermediate reformatory for the crime of Larceny of an Automobile, and that the statement of the prosecuting attorney as to a prior conviction and sentence to Boonville for two years for the crime of possession of stolen property does not in any way nullify the commitment of the trial court.

It was intended by the Legislature that Algoa be a penal institution for selected convicts who may be susceptible to reformation. Through the whole act it is evident that said reformatory was intended for others besides first offenders, where the facts and circumstances measured by the trial judge or the governor, in the exercise of discretion, wish to disregard a prior conviction. From the facts stated in your letter it is not for us to say that the trial court abused his discretion. Considering the purpose for which the intermediate reformatory was founded it may well be said that the trial court exercised good discretion when he sentenced Dallas Arnell to the intermediate reformatory.

Respectfully submitted

WM. ORR SAWYERS  
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APPROVED:

ROY McKIPTRICK.  
Attorney General.

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