

CRIMINAL LAW: A judgment and sentence cannot be modified or changed after a term of court has adjourned - only recourse for boy under 17 years of age receiving sentence to penitentiary or Alcoa Farms is pardon, parole, reprieve or commutation by the Governor or by writ of habeas corpus.

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Honorable J.T. Pinnell,
Prosecuting Attorney,
Pineville, Missouri.

Dear Sir:

This department is in receipt of your letter of September 24 relating to one Melvin Parks, a juvenile. Your letter is as follows:

"At the August term of the McDonald County Circuit Court, Melvin Parks, upon his plea of guilty to an information charging a felony, viz: Forgery, he was sentenced to serve two years in Alcoa.

"The Sheriff took him to the warden, who claimed he could not accept him for the reason that Parks told him he was only 15 years old. The Sheriff returned Parks to our county jail, where he is at this time.

"When arrested, Parks told me he was 20 years of age. At the trial, he told the Circuit Judge he was 17 years of age. He told the Warden he was 15 years of age. The sheriff here has a letter from the sheriff at Anadarko, Oklahoma, where Parks' mother lives stating that Parks' actual age is 15.

"As I understand it, our Circuit Judge lost jurisdiction of this matter at the adjournment of the Circuit Court after he sentenced Parks to Alcoa. In my opinion, the matter now should be properly brought to the attention of the Governor."

It appears that Parks' age has finally been definitely determined to be fifteen years. Under Section 8350, Laws of Missouri 1933, p. 331, Parks should have been sentenced to the Missouri Training School for Boys, but as he deceived you and the officers as to his correct age, stating he was twenty years of age, he was sentenced to the Intermediate Reformatory at Algoa under the same section which provides for the commitment of boys between the ages of seventeen and twenty-five years to that institution. The term of court having finally adjourned, we are of the opinion that the Judge of the Circuit Court cannot change or alter the sentence.

In the case of Ex parte Thornberry, 300 Mo. 661, the Court said:

"Jurisdiction of a court is exhausted by entry of final judgment and cannot be removed for any purpose which will modify or change the original sentence."

This is likewise the decision in the case of Ex parte Cornwall, 223 Mo. 259 and State v. Nistendirk, 204 S.W. 1111, or to like effect.

Under Section 8351, Laws of Mo. 1933, p. 332, the Governor has power to commute the punishment of any boy under twenty-five years of age who may have been sentenced to the penitentiary when he may deem it suitable to sentence the boy to the Intermediate Reformatory, but there is no provision for the Governor commuting the sentence of a boy to the Missouri Training School For Boys at Boonville. Therefore, as suggested in your letter, it becomes necessary to consult the general powers of the Governor with reference to commutations, pardons and paroles.

In 1933, the Legislature amended Section 8518, R.S. Mo. 1929, and it now reads as follows (Laws of Mo. 1933, p. 329) R35-608

"That hereafter all applications for reprieves, commutations, paroles and pardons shall be made by petition in writing to the governor, signed by the party under conviction, or other person in his behalf, which petition shall contain a brief history of the case and the reasons why such pardon should be granted; and

shall also be accompanied by a statement of facts in writing, made by the prosecuting attorney of the court in which the conviction was had, or satisfactory reasons shall be given to the governor why such statement of the prosecuting attorney does not accompany such petition; and it shall be the duty of the prosecuting attorney to give such statement when requested so to do. The governor is hereby authorized to grant commutations, paroles and pardons upon such terms and conditions as he may see fit to impose."

CONCLUSION

We are of the opinion that the only recourse now open, if it is desired to reprove, commute or parole the boy is to follow the terms of the statute. It is the duty of the Attorney General and the various prosecuting attorneys of the state to uphold sentences imposed by courts or juries, but under the facts as you present them and the view that you personally have in regard to the matter, we would suggest, by way of last resort, a proceeding in the nature of a habeas corpus.

Respectfully submitted,

OLLIVER W. NOLEN,
Assistant Attorney General.

APPROVED:

JOHN W. HOFFMAN, Jr.,
(Acting) Attorney General.