

PAROLE, AND TERMINATION)
THEREOF BY THE CIRCUIT)
COURT:)
When the Circuit Court grants a parole to
a convict who is a first offender and who
has been sentenced to the penitentiary, said
parole when terminated by order of Court
directing Circuit Clerk to place in hands of
Sheriff copy of the sentence and certificate
certifying that parole has been terminated,
parole is at an end and may not be revived
by any subsequent action of the Court.

May 25, 1949



Honorable R. G. Mayfield
Prosecuting Attorney
Laclede County
Lebanon, Missouri

Dear Sir:

This will acknowledge your letter in which you request an opinion of this department, your letter is as follows:

"On July 26, 1947, a defendant entered a plea of guilty in the Circuit Court of Laclede County to the charge of grand larceny. He was sentenced to three (3) years in Algoa and, on the same day he was paroled by the Court. From time to time thereafter, he was continued on parole until May 3rd, 1948, when the Circuit Court terminated his parole. This action was taken because the defendant had been convicted in April, 1948, of breaking and entering a United States Post Office, and sentenced by the Federal Court to a year and a day in the United States Reformatory in El Reno, Oklahoma. On the same day his parole was terminated, a copy of the commitment order revoking said parole was handed the Sheriff, and eventually was mailed to El Reno as a detainer upon the defendant.

"Does the Circuit Court have authority to set aside the order terminating the parole upon his release from El Reno, and permit the defendant to again be on parole status from our Court? Does the Court lose authority to set aside a termination of the parole after the term of Court in which the termination was ordered and before the defendant is delivered to the Superintendent of Algoa."

Supplementing the statement of facts in your letter with certain assumptions which we believe are warranted, we are convinced that the relevant facts to be considered are as follows:

1. The defendant, a first offender, was convicted of grand larceny, a felony, in the Circuit Court of your county on July 26, 1947, and sentenced on the same day to three years imprisonment at Algoa, which is a part of the penitentiary.

2. He was paroled by the Court on the same day that he was sentenced.

3. From time to time he was continued on parole until May 3, 1948.

4. In April, 1948, he was convicted by the Federal Court of breaking and entering a United States Post Office and sentenced to a term in a federal penitentiary in Oklahoma.

5. His parole was terminated by the Circuit Court of your county on May 3, 1948, a short time after his conviction in the Federal Court.

6. A copy of the commitment order revoking the parole was handed the sheriff and transmitted to the federal prison as a detainer.

We assume that this last act was done in conformity with the provisions of Section 4202, R.S. A. Mo. 1939, which section sets forth the procedure to be followed by the Circuit Court in the termination of paroles and which section also provides that the clerk should be ordered by the Court to make a certificate certifying the termination of the parole, and to deliver such certificate together with a copy of the sentence into the hands of the Sheriff.

With the above outlined facts in mind it occurs to us that the first question to consider is whether or not the Circuit Court even within the term has the power to set aside its termination of a parole after the certificate certifying the termination and a copy of the sentence has been placed in the hands of the Sheriff as provided by law. If this question be answered in the negative it disposes of the question as to whether the court can set aside its termination of the parole after the expiration of the term during which the termination was made.

In considering the authority of the court in such matters within term time we should have in mind the section of

the Statute vesting in the court the authority to grant a parole to such a convict as is involved in this statement of facts, and the section of the statute providing for the termination of such parole, if it shall be terminated, and prescribing the procedure for such termination.

Section 4201, R.S.A. Mo. 1939, is the section applicable to the granting of a parole to a convict of the class to which the man involved in your statement of facts belongs, or in other words, a convict who is a first offender sentenced to the penitentiary. Said section, with the immaterial portions thereof omitted is 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 * * *, and imprisonment in the penitentiary shall be assessed as 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."

The convict involved in your case was convicted of grand larceny and sentenced to three years at Algoa, and immediately paroled under the section above quoted. Section 4202, R.S.A. Mo. 1939, specifically prescribes how the circuit court shall terminate a parole granted under the provisions of section 4201, above mentioned, said section 4202, insofar as it is relevant to the matters involved in this opinion is as follows:

"When any person shall be paroled under the provisions of section 4201 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 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, * * *."

We call your attention to the fact that the circuit court derives its authority to parole a convict from the statute alone and that the applicable statutes relating to parole are as much a part of the judgment of conviction as if incorporated into the judgment. The following is a quotation from the opinion of Judge Gantt in *State ex rel. Gentry, Attorney General vs. John C. Montgomery*, Judge of 12th Judicial Circuit, 317 Missouri 811: "The parole law of this state is a part of the penal code, and as such becomes a part of every judgment of conviction in every criminal case, as much as if it were written into the judgment of the court."

We suggest the fact that since the parole procedure is purely statutory the provisions of the statutes must be strictly followed in procedural matters relating to parole.

We are therefore, of the opinion that the procedure in the matter of the termination of paroles must exactly conform to the provisions of section 4202 above quoted. This section sets forth the procedure in very definite terms when it provides in substance that the judge may terminate the parole by directing the clerk to make out and deliver to the sheriff a certified copy of the sentence and a certificate certifying that the person has been paroled and that his parole has been terminated.

We are of the opinion that when the judge of a circuit court enters an order of record directing the clerk to deliver a certified copy of the sentence and a certificate certifying that the person convicted has been paroled and that his parole has been terminated the parole is at an end and is no longer in existence by reason of the fact that the court procedure for the

termination thereof set forth in the above quoted section has been followed. We are of the opinion that said parole cannot be revived by any subsequent order of the court which undertakes to set aside the procedure theretofore completed, whether such order be made during the same term during which such procedure was completed, or at a time subsequent to the end of said term. We are of this opinion because while the court may by amending an order previously entered, change the course of events which have not yet transpired, it cannot by amendment of an order previously entered undo things which have been definitely accomplished and completed pursuant to the order before it was amended. We are of the opinion that it is obvious that when the parole was terminated it went out of existence forever and that the convict cannot be again on parole unless a new parole be granted, and we comment that the statute does not grant to the court the right to grant a second parole to such an offender.

CONCLUSION.

Referring again to your statement of facts, it is clearly apparent that the termination of the parole insofar as procedure by the circuit court is concerned was complete when the copy of the commitment order revoking the parole was placed in the hands of the sheriff, and we are therefore of the opinion that the procedure followed by the court in terminating the parole cannot be set at nought by any subsequent order of the court undertaking to set aside the said procedure whether such order be entered within term time, or after the expiration of the term. We are accordingly of the opinion that the parole in question has been effectively terminated and cannot be revived.

Respectfully submitted,

SAMUEL M. WATSON
Assistant Attorney General

APPROVED:

J. EL TAYLOR
Attorney General.