

PROBATION AND PAROLE: Section 216.355, RSMo 1959, provides for the
VOTER, QUALIFICATIONS: issuance of a certificate evincing the
JUROR, QUALIFICATIONS: restoration of all the rights of citizenship
CIVIL RIGHTS, by the Board of Probation and Parole to
RESTORATION: persons convicted of a first felony who are
finally discharged from parole. Said section
does not entitle any person convicted of more
than one felony to such a certificate whether
the felony for which he was previously
convicted was committed within or without the
State of Missouri.

October 31, 1962

Opinion No. 384 (1962)

Honorable George N. Elder
Chairman
Board of Probation and Parole
Jefferson Building
Jefferson City, Missouri

FILED
384

Dear Mr. Elder:

This is in response to your request for an opinion from this office relative to the restoration of civil rights to first offenders when they are discharged from parole.

More particularly, your request is stated as follows:

"Section 216.355, Paragraph 3, RS Mo 1959, deals with the automatic restoration of citizenship to all first offenders at the time of their discharge from parole. We have had the question raised as to whether or not a prior felony committed in another state or under Federal jurisdiction, when the offender was placed on probation, would count as a prior felony against a Missouri parolee at the time of his discharge from parole.

"As an example, we have a case of a man who was placed on probation on a Federal charge. After his discharge from this probation he became involved in another felony in the State of Missouri, and was sentenced to the Missouri penitentiary. He was subsequently paroled. He has had no other felony convictions. When his parole time expires and his final discharge is issued, will he be entitled to a certificate of restoration of citizenship under the provisions of Section 216.355, Paragraph 3, RS Mo 1959?"

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A complete review of the statutes of this state wherein civil rights are taken away from persons convicted of various crimes is not necessary here, but it is advisable to note that not all civil rights are taken away from persons convicted of all felonies. However, it must be noted that under Section 494.020, RSMo 1959, all convicted felons are prevented from serving on juries unless their civil rights are restored, and, under Section 111.060, RSMo 1959, no person convicted of a felony or of a misdemeanor connected with the exercise of the right of suffrage may be permitted to vote unless he has been granted a full pardon. (Suffrage may also be restored after discharge from parole as explained in *State vs. Hunt*, 247 S.W. 2d 969.) Invariably these two paramount rights of citizenship are mentioned in the multitudinous statutes setting out the various crimes for which conviction will constitute a forfeiture of certain civil rights. There are other civil rights which are also sometimes denied convicted felons, perhaps most typified in Section 560.610, RSMo 1959, wherein, in addition to the above, persons not under the age of twenty when convicted of certain crimes enumerated in Chapter 560 are prevented from holding any office of honor, trust or profit. In the past, but long since repealed and not applicable here, convicted felons were held incompetent to testify in court.

As stated in *State vs. Hunt*, supra, where a judicial parole statute was under consideration (now Section 549.170, RSMo 1959) wherein the said statute purporting to restore civil rights after discharge from parole was attacked as being an encroachment upon the Governor's power of pardon, the court stated that it was within the power of the legislature to grant such amnesty and the same was not an unconstitutional encroachment upon the pardoning powers of the Governor. There it was made clear that it was in the interest of society as a whole and the state in particular to encourage rehabilitation of convicted felons by holding out to them the promise of restoration of civil rights upon their continued good behavior. The court made this distinction: that the power of the Governor to pardon is the power of grace whereas the power to parole is one of public policy in providing an incentive to reformation and rehabilitation. Therefore, it would seem that a liberal interpretation of the statute with the idea in mind of granting the amnesty wherever possible would be desirable.

However, we are confronted with other equally compelling decisions of the Supreme Court of this state upon this issue which are directly in point and which indicate that the court

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deems convictions in other jurisdictions to be applicable in these instances. In the case of State vs. Hermann, 283 S.W. 2d 617, decided by our Supreme Court, en banc, in October of 1955, there was under consideration the qualification of a juror who had failed to disclose upon voir dire examination the fact that he had previously been convicted of a felony in the federal court. The court held that this constituted conviction of a felony within the meaning of the statutes of this state setting out the qualifications for jurors even though the conviction did not occur within this jurisdiction. We may only assume that the same principle would be applied to the statute here under consideration (Section 216.355, RSMo 1959), referring to the restoration of civil rights to first offenders upon their discharge from parole.

The same result was reached by our Supreme Court, en banc, in 1943 in the case State ex rel Barrett et al vs. Sartorius, 175 S.W. 2d 787, as regards the right to vote of a person convicted of a felony in the federal court, wherein the court stated with reference to the constitutional grant of power to the legislature to restrict the voting right:

"This is a broad grant of power in very general terms. There are no limitations in it which indicate an intention to require our General Assembly to restrict exclusion from the right of voting to those convicted of a felony under the laws of this state. * * *"

This last above quoted statement is particularly apt in the instant inquiry because it must be noted that the legislature in enacting Section 216.355, RSMo 1959, did not employ language restricting the application of the section to persons convicted of felonies in this state alone. Therefore, we deem the pertinent section to restrict the Board of Probation and Parole, in the issuance of its certificate of restoration of civil rights upon discharge from parole, to those persons who have only been convicted of one felony and such a certificate cannot be granted to any person who has been convicted of more than one felony regardless of where convicted.

CONCLUSION

Section 216.355, RSMo 1959, provides for the issuance of a certificate evincing the restoration of all the rights of citizenship by the Board of Probation and Parole to

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persons convicted of a first felony who are finally discharged from parole. Said section does not entitle any person convicted of more than one felony to such a certificate whether the felony for which he was previously convicted was committed within or without the State of Missouri.

The foregoing opinion, which I hereby approve, was prepared by my assistant Howard L. McFadden.

Very truly yours,

THOMAS F. EAGLETON
Attorney General

HLM:BJ