

June 22, 1964



Mr. James T. Riley
Prosecuting Attorney
Cole County
Jefferson City, Missouri

Dear Mr. Riley:

You have requested advice from this office concerning application of the provisions of Section 546.615, RSMo 1959, dealing with the allowance of "jail time" as credit upon criminal sentences.

Specifically, you ask three questions about a hypothetical felon committed to the Department of Corrections who has been awarded forty-five days credit upon a two year sentence.

- A. When is the time to be credited;
- B. Is the sentence to be considered one for one year ten and one-half months;
- C. Since the minimum sentence to the penitentiary is two years may jail time be credited on a two year sentence?

The pertinent statute, Section 546.615, RSMo 1959, contains both mandatory and discretionary "jail time" credit provisions, i.e., time spent in jail after sentencing and before delivery to the Department of Corrections must be credited upon the sentence; time spent in jail before sentencing may be credited upon the sentence in the discretion of the judge imposing the sentence.

The sheriff delivering a convict to the Department of Corrections is required to endorse upon the commitment papers, the number of days the convict spent in jail after sentencing. He must also endorse the number of days the convict spent in jail before sentencing if the sentencing court has so ordered, Section 546.615.3, RSMo 1959.

As explained in a prior opinion of this office (to The Honorable James D. Carter, May 6, 1960 - copy enclosed herewith), the actual crediting of the time is ministerial only and may be enforced by appropriate court action.

Nevertheless, because the exact number of days involved will not be known before the sheriff delivers the convict to the Department of Corrections, the crediting cannot take place until that time and, therefore, that is the time that it must be done.

The allowance of "jail time" is not a matter of grace (as is, for instance, time off for donating blood which is awarded under the Governor's power to commute), but is the product of a mandatory directive of the legislature as pertains to time spent in jail after sentencing and of the sentencing court (where it chooses to exercise its discretion), under authority of the legislature as pertains to time spent in jail before sentencing.

In any event, an institution of the Department of Corrections receiving a convict has no alternative but to credit the "jail time" properly awarded and endorsed by the sheriff delivering him into its custody. Moreover, it must be kept in mind that Section 546.615.2, RSMo 1959, directs that "jail time" credit is to be calculated in addition to any remission of sentence under Section 216.355, RSMo 1959, by virtue of serving three-fourths of the time assessed without infraction of institution rules.

Therefore, in answer to question A, "jail time" credit must be applied on receipt of the prisoner in custody and in calculating the prisoner's discharge date (either full time or under the "three-fourths rule"), he is, for all practical purposes, to be regarded, on the day of admission, as if he had already been in the custody of the Department of Corrections for the number of "jail time" days endorsed on the commitment papers by the sheriff.

The application of "jail time" credit by the very terms of the law which establishes it, does not constitute a reduction in the sentence. The statute directs that, where applicable, the time spent in jail ". . . shall be calculated as part of the sentence imposed." This indicates that "jail time" is to be regarded as time already spent serving the sentence and not as a reduction thereof.

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The answer to question B, then, is that a forty-five day credit for "jail time" does not have the effect of reducing a two year sentence to one of one year ten and one-half months.

It does not mean that a prisoner will serve less than a two year sentence merely because he will not have to spend twenty-four months in the actual custody of an institution of the Department of Corrections when "jail time" credit is applied to his sentence. What it does mean is that he serves part of his sentence in jail and part of his sentence in the custody of the Department of Corrections.

A two year sentence is a two year sentence whether "jail time" is credited or not and thus, in response to question C, the allowance thereof is not in conflict with the two year minimum provision of Section 546.490, RSMo 1959.

Our studied opinion is that an institution of the Department of Corrections must credit "jail time" to a prisoner's sentence at the time he is received in custody. "Jail time", properly awarded, must be applied to a two year sentence notwithstanding the minimum provision of Section 546.490, RSMo 1959.

Very truly yours,

THOMAS F. EAGLETON
Attorney General

HLM: kcd
Encl.