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OPINION NO. 334
Answered by letter-McFadden

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Honorable James S. Corcoran
Circuit Attorney, City of St. Louis
Municipal Courts Building
St. Louis, Missouri 63103

Dear Mr. Corcoran:

This is in response to your request for an opinion on the imposition of multiple sentences so that they may run concurrently.

Two statutes play an important role in the area of consecutive sentences. The first governs the sentencing of a convict for a crime committed after he was originally sentenced for another crime. RSMo 222.020 (1959) states:

" . . . and if any convict commits any crime in an institution of the department of corrections, or in any county of this state while under sentence, the court having jurisdiction of criminal offenses in the county shall have jurisdiction of the offense, and the convict may be charged, tried and convicted in like manner as other persons; and in case of conviction, the sentence of the convict shall not commence to run until the expiration of the sentence under which he is held. * * * "
(Emphasis added.)

This statute directs that service of a second sentence to the custody of the Department of Corrections cannot commence until expiration of a prior sentence thereto, if the second crime is committed at a time when the accused is already under sentence for another crime. The Missouri Supreme Court in State v. Campbell, 307 S.W.2d 486, 490 [3], recognized that it is the commission of

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the second offense with relation to the time of sentencing for the first offense which is controlling. If the second offense is committed after the accused has been sentenced for the first offense, then the statute dictates that the term of imprisonment for the second offense shall not commence to run until the expiration of the term of imprisonment for the first offense. (Attached is a prior opinion of this office, No. 65 dated 23 March 1964 on this subject.)

The other statute is RSMo 546.480. Section 546.480, RSMo 1959 states:

"When any person shall be convicted of two or more offenses, before sentence shall have been pronounced upon him for either offense, the imprisonment to which he shall be sentenced upon the second or other subsequent conviction shall commence at the termination of the term of imprisonment to which he shall be adjudged upon prior conviction."

It was recognized in State v. McClanahan, 418 S.W.2d 71 (1967), that Section 546.480 governs the imposition of sentences on any person convicted of two or more offenses before being sentenced on either and its provisions were found to be mandatory.

The recent case of King v. Swenson, 423 S.W.2d 699 (1968), elaborates further on both of the above statutes, particularly Section 546.480. To fully understand this decision, it is best to set out the fact situation which confronted the court.

"The essential chronology of King's criminal history then is that he was sentenced to a term of fifteen years imprisonment on November 17, 1955, and since then has been confined in the penitentiary. On October 9, 1962, he was found guilty by a jury's verdict of attempted escape and on January 16, 1963, of offering violence to a guard. On February 7, 1963, he was sentenced to a term of five years for offering violence and on February 20, 1963, to a term of four years for attempted escape. His fifteen-year term for first degree robbery was terminated October 28, 1965, by the governor's commutation. * * * " Supra at 704.

King contended that the four and five-year sentences ran concurrently with the 15-year term as commuted, thereby entitling him to be discharged. The Missouri Supreme Court disagreed and held that the sentences ran consecutively because of Section 546.480, RSMo 1959 and Section 222.020, RSMo 1959.

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After upholding the statutes, Sections 222.020 and 546.480, against any constitutional attack, the court stated that:

" * * * The Habitual Criminal Act authorizes the judge to impose such punishment as is 'provided by law'. Sections 222.020 and 546.480 are a part of the law provided and are binding on the judge. He is authorized to determine the length of the term within the limits provided by law, but he cannot provide concurrent sentences when §§ 222.020 and 546.480 are applicable. * * * " Supra at 708[18,19].

The court noted that:

" * * * Section 546.480 applies only when the person has been convicted of two or more offenses before he is sentenced for either offense. * * * " (Emphasis on original.) Supra at 708[20].

To have avoided this result the sentencing for the first conviction by the first court would have had to occur prior to the conviction for the second offense. In such a situation the second sentence could be concurrent with the previous one. Otherwise, it appears that a court cannot impose concurrent sentences whenever a person is convicted of two or more offenses. The court in King made it clear that:

" * * * Section 546.480 makes mandatory that which the courts had authority to do but sometimes omitted or left in doubt. The need of such legislative provision is even more appropriate where the sentences are imposed by different courts and the court imposing the later sentence may not know or be fully informed as to the previous sentence with the result that without the statute the later sentence might be construed as concurrent and in effect impose no punishment for the additional offense. * * * " Supra at 709.

Thus, if a trial court desires to make multiple sentences run concurrently, the procedure to be followed is for the court to receive the conviction for each offense separately and for the court to impose sentence for each offense separately and before sentences are imposed for other offenses.

An exception to Section 546.480 is RSMo 560.110(2). It requires a sentencing court to so order if sentences for burglary and stealing resulting from the same trial are to be consecutive. If no order is made, the statute directs that such sentences be concurrent.

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In order for a sentencing court to impose concurrent sentences on multiple convictions each sentence must be imposed before another conviction is received. Otherwise, when more than one conviction is received before sentence is imposed, Section 546.480, RSMo 1959, requires that the sentences be served consecutively.

Yours very truly,

NORMAN H. ANDERSON
Attorney General

Enclosure: Op. No. 65
3/23/64 - Burrell