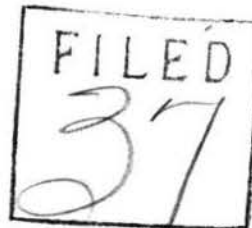


CONVICT: No loss of civil rights of citizenship prior to judgment and sentence.

May 5, 1938.

Honorable Frank G. Harris, Chairman
Board of Probation and Parole
Jefferson City, Missouri



Dear Sir:

We acknowledge your request for an opinion dated April 22, 1938, which reads as follows:

"Please, at your convenience, render us an opinion on the following question:

In the event a person having committed his first felony and being eligible for parole is put on probation by the trial judge without sentence being passed, under such circumstances is the defendant deprived of his citizenship?"

Article 8, Section 2 of the Missouri Constitution provides:

"** no person ** while confined in any public prison shall be entitled to vote, and persons convicted of felony, or crime connected with the exercise of the right of suffrage may be excluded by law from the right of voting."

Pursuant to the above constitutional provision, the Missouri Legislature has passed Section 10178, R. S. Mo. 1929, which provides:

"** no person ** while confined in any public prison, shall be entitled

to vote at any election under the laws of this state; nor shall any person convicted of felony or other infamous crime, or of a misdemeanor connected with the exercise of the right of suffrage, be permitted to vote at any election unless he shall have been granted a full pardon; and after a second conviction of felony or other infamous crime, or of a misdemeanor connected with the exercise of the right of suffrage, he shall be forever excluded from voting."

The phrase "convicted of" is not only used in the Constitution and statute above quoted as a basis for loss of citizenship and civil rights, by reason of conviction of a crime, but the same phrase, intended for the same purpose, appears in numerous other penal statutes (see Sections 3928, 4035, 4172, 4212, 8787, 3947, 4404 and 4462, R. S. Mo. 1929).

If one charged with a crime is to be punished by imposition of civil disabilities after verdict of a jury or a plea of guilty before judgment is rendered and sentence is passed, it is pursuant to construction of the phrase "convicted of" appearing in Missouri penal statutes. At just what stage of criminal procedure did the Legislature intend the penalties of civil disability to take inception so that a person may be said to be legally "convicted of" crime? When is a person reasonably to be considered a convict?

Article I, Chapter 91, R. S. Mo. 1929 deals with civil rights of persons convicted of a crime. Section 12968 of said Article provides:

"A sentence of imprisonment in the penitentiary for a term less than life suspends all civil rights of the persons so sentenced during the term thereof, and forfeits all public offices and trust, authority and power; and the person sentenced to such imprisonment for life shall thereafter be deemed civilly dead."

Section 12970, R. S. Mo. 1929, provides:

"When any person shall be sentenced upon a conviction for any offense, and is thereby, according to the provisions of this article, disqualified to be sworn as a witness or juror in any cause, or to vote at any election, or to hold any office of honor, profit or trust within this State, such disabilities may be removed by a pardon by the governor, and not otherwise, except in the case in the next section mentioned. "

Section 12971, R. S. Mo. 1929, provides:

"If such convict shall have committed the offense while within the age of eighteen years, and such conviction shall be for a first offense, all civil disabilities incurred shall be removed and his competency restored at the expiration of the term of imprisonment to which he shall have been sentenced."

The legislative power to provide punishment effecting the civil rights of those convicted of a crime cannot be disputed. The common law affecting loss of civil rights to a felon has no place in Missouri jurisprudence where same be repugnant to existing Missouri statutes, and Section 645, R. S. Mo. 1929 provides:

"The common law of England and all statutes and acts of parliament made prior to the fourth year of the reign of James the First, and which are of a general nature, not local to that kingdom, which common law and statutes are not repugnant to or inconsistent with the Constitution of the United States, the Constitution of this

state, or the statute laws in force for the time being, shall be the rule of action and decision in this state, any custom or usage to the contrary notwithstanding, but no act of the general assembly or law of this state shall be held to be invalid, or limited in its scope or effect by the courts of this state, for the reason that the same may be in derogation of, or in conflict with, such common law, or with such statutes or acts of parliament; but all such acts of the general assembly, or laws, shall be liberally construed, so as to effectuate the true intent and meaning thereof."

Even in those instances where a person may be charged and "convicted of" a common law crime, punishment incurring loss of civil rights cannot be imposed, and Section 646, R. S. Mo. 1929, provides:

"Punishment by virtue of the common law shall in nowise be other than by fine or imprisonment, or both, and such fine shall not exceed one hundred dollars, and the term of such imprisonment shall not exceed two months; nor shall any of the British statutes for the punishment of crimes and misdemeanors be in force in this state."

In the case of State vs. Townley, 147 Mo. 205, l.c. 208; 48 S. W. 833, the Supreme Court of Missouri construed the word "convicted", appearing in a Missouri statute, to mean that stage of criminal proceedings after judgment and sentence were rendered, and in that case the court approvingly said:

"In note 2, page 139, volume 4, American and English Encyclopedia of Law, it is said: 'It has generally been held that

the word "convicted" includes the final judgment, and that one who has been found guilty by the jury, but has not yet been sentenced, is not a "convicted" person.'

"In *Gallagher v. State*, 10 Tex. App. loc. cit. 472, it was said that the word 'convicted ... has a definite signification in law. It means that a judgment of final condemnation has been pronounced against the accused. Bouvier's Law Dictionary, under the word conviction. To say that a party had been "convicted" and then add, that he stood his trial, and that judgment final was rendered against him, would be tautology.'

"So in *Faunce v. The People*, 511 Ill. 311, it was held that a person can not be said to be convicted of a crime so as to render him incapable of giving testimony until judgment is rendered on a verdict of guilty, for not until then is he 'convicted' by law. The same rule was announced in *King v. Turner*, 15 East. 570.

"Under the statutes of New York, disqualifying any person as a witness who 'shall upon conviction be adjudged guilty of perjury,' it was held that a person is not rendered incompetent until by judgment, sentence has been pronounced upon him; that a verdict of guilty alone is not sufficient. The court said: 'We have lately, in civil cases, been called upon to construe statutes of similar import. We have held in them that there was no conviction merely upon the finding of the question in fact, and that there must also be a judgment of the court. Those cases arose under the acts

relating to dower, and the forfeiture of it by adultery. (Pitts v. Pitts, 52 N. Y. 593; Schiffer v. Pruden, 64 N. Y. 47.) We do not think that it is different under the criminal statutes involved in this case. In ordinary phrase the meaning of the word "conviction" is, the finding by the jury, of a verdict that the accused is guilty. But in legal parlance, it often denotes the final judgment of the court.' (Blaufus vs. People, 69 N. Y., loc. cit. 109.)

"So in Massachusetts a statute which provides that the conviction of any person of crime may be shown to affect the credibility of such person as a witness in any proceeding, civil or criminal, in a court, or before a person having authority to receive evidence, 'conviction' was held to imply a judgment of court."

CONCLUSION

Construing Sections 12968, 12970 and 12971, supra, with the Missouri Constitution and statutes containing the phrase "convicted of", it is self-evident that the Legislature intended the judgment and sentence of a court as a precedent to loss of civil rights of citizenship as punishment for crime in Missouri.

We are of the opinion that under the statutes of Missouri, a person charged with a crime, and before judgment and sentence, does not suffer a suspension of his civil rights of citizenship. We are of the opinion that

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suspension of civil rights of citizenship finds its inception as a punishment for crime upon judgment and sentence of the court. Where a person is placed on probation by the trial court without passing judgment and sentence, he has not been deprived of any civil rights of citizenship.

Respectfully submitted

WM. ORR SAWYERS
Assistant Attorney General

APPROVED:

J. E. TAYLOR
(Acting) Attorney General

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