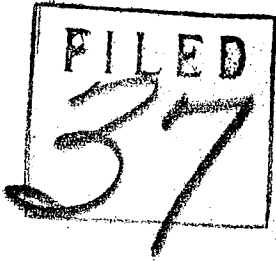


CONVICTS: Convict who escapes from Church Farm may be
deprived of three-fourths rule and required
PENITENTIARY: to serve full sentence.

December 19, 1955



Honorable C. D. Hamilton
Member, House of Representatives
New London, Missouri

Dear Mr. Hamilton:

This is in response to your request for opinion dated
November 19, 1955, which reads as follows:

"Everett Ayers, Register No. 59698 has
written to me about what the law declares
on 12/12ths time.

"He was received at the Missouri prison on
October 9, 1946 to serve two four year sen-
tences to run concurrently, charges Forgery
2nd (2 chgs.) He was paroled December 7,
1948 and was returned as a parole violator
March 23, 1954. Revocation of parole came
about because of commission of another felony.
On March 2, 1949 he was sentenced to serve
ten years for forgery in the State Penitentiary
at Ft. Madison, Iowa. He was released March
23, 1954 and returned here to complete the
sentence.

"On July 2, 1954 he appeared before the
Classification Committee and was approved
for Church Farm assignment. On July 18,
1954 he escaped and was not returned to the
custody of the prison until October 14, 1954.

"He is presently serving his sentence 12/12ths
and will remain on that status until pending
'Escape' charge is disposed of.

"What I want to know is: under the law is the
12/12ths time legal?"

Your question involves a construction of Section 216.355,
RSMo Cum. Supp. 1955, which reads in part as follows:

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"1. Any person who is now or may hereafter be confined in any institution within the division and who shall serve three-fourths of the time for which he was sentenced in an orderly and peaceable manner, without having any infraction of the rules or laws of the institution recorded against him, shall be discharged in the same manner as if he had served the full time for which sentenced. In such case no pardon from the governor shall be required."

In Ex parte Rody, 348 Mo. 1, 152 SW2d 657, the court construed Section 9086, R. S. Mo. 1939, which, as applicable to the problem under consideration, was the same as Section 216.355, supra. The facts of that case were as follows: The convict applying for habeas corpus was convicted of the offense of robbery on January 9, 1937, and sentenced to five years in the penitentiary. In October, 1938, while being transferred to a sawmill camp operated by the penitentiary in Callaway County, and under guard, petitioner fled and escaped apprehension for three days, said escape being recorded in the prison records. Petitioner contended that he was entitled to discharge under Section 9086, R.S. Mo. 1939 (Sec. 216.355, supra), but the warden contended that the escape from the prison sawmill deprived petitioner of the benefit of the three-fourths rule.

Section 4307, R.S. Mo. 1939 (Sec. 557.360, RSMo 1949), provided then, as now, that:

"If any person confined in the penitentiary for any term less than life shall escape from such prison, or, being out under guard, shall escape from the custody of the officers, he shall be liable to the punishment imposed for breaking prison."

This section was held applicable in that case.

On this point, the Rody case was cited in State v. Baker, 355 Mo. 1048, 199 SW2d 393, 395, where the court said:

"State prison farms are part and parcel of the penitentiary. The escape of a prisoner from a state prison farm is an offense prohibited by and punishable under the statute in question, Sec. 4307, R.S. Mo. 1939, Mo. R.S.A. State v. Betterton, 317 Mo. 307, 295 S.W. 545; Ex parte Rody, 348 Mo. 1, 152 S.W. 2d 657."

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In the Rody case the court considered the various contentions made by the petitioner and held in essence that Section 557.360, RSMo 1949 (Sec. 4307, R.S. Mo. 1939), is a law governing the inmates of the penitentiary within the meaning of Section 216.355, supra (Sec. 9086, R.S. Mo. 1939), that the conditions of the three-fourths rule which must be read into every judgment of conviction offer a reward in the form of diminished incarceration to every convict for obedience to the rules of the prison and the laws of the same. It was further held that the enforcement of these rules and laws, so far as they affect the reward of diminished incarceration, is administrative and not judicial. The court held that because of the escape petitioner was not entitled to the benefit of the three-fourths rule and ordered him remanded to the custody of the warden.

In short, the three-fourths rule provides a reduction in the amount of time which a prisoner must spend in the penitentiary, provided he serves three-fourths of his sentence in a peaceable manner, without having any infraction of the rules of the prison or law of the same recorded against him. Conversely, if any infraction of the rules of the prison or law of the same is recorded against him, he loses the benefit of the rule. Since the prisoner in question escaped from Church Farm, which has been held to be an infraction of a law of the prison, he has lost the benefit of the three-fourths rule and may be required by the proper administrative officials of the prison to serve the full time for which he was sentenced.

CONCLUSION

It is the opinion of this office that a prisoner in the Missouri State Penitentiary who is assigned to Church Farm and who escapes therefrom may be deprived of the benefit of the three-fourths rule and required to serve the full time for which he was sentenced.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, John W. English.

Yours very truly,

John M. Dalton
Attorney General

JWI:ml:hw