

Opinion No. 52-5537

May 20, 1952

BY: JOE L. MARTINEZ, Attorney General

TO: Mr. Gilbert Sanchez Record Clerk Penitentiary of New Mexico Santa Fe, New Mexico

Re: Silva, Pat N. Mex. Nos. 11435, 11951, 13590

OPINION

{*248} This is in reply to your letter of April 8th in which you request advice and an opinion as to the above prisoner who has applied for complete pardon and restoration of his citizenship. According to your letter this man has been in the penitentiary three times. Two of the times he was released on parole and twice violated his parole, but has served the three sentences. Section 42-1711 of the New Mexico Statutes Annotated, 1941 Compilation provides as follows:

{*249} "If any convict shall pass the entire period of his sentence without any violation of the rules and regulations of the penitentiary, he shall be entitled to a certificate thereof by the superintendent, endorsed by the board of penitentiary commissioners, and on presenting the same to the governor he may be granted a pardon and restored to citizenship, either at said time or subsequently, but the governor shall not be obliged to grant such pardon."

This statute is not mandatory and provides that if any convict shall pass the entire period of his sentence without any violation of the rules and regulations of the penitentiary he shall be entitled to a pardon and restored to citizenship either at said time or subsequently, but the Governor is not obliged to grant such pardon. The last part of this statute makes it discretionary with the Governor. Therefore, it is my opinion that since this man violated the terms of his parole twice he has violated Section 42-1711 and the Governor would be justified in denying him the restoration of his citizenship. However, the matter of the restoration of his citizenship and the granting of the pardon is discretionary with the Governor.

I trust that this fully answers your inquiry.