

Opinion No. 53-5853

December 1, 1953

BY: RICHARD H. ROBINSON, Attorney General

TO: Morris Abram, Warden New Mexico State Penitentiary P. O. Box 1059 Santa Fe. New Mexico

{*273} Receipt is acknowledged of your letter dated November 16, 1953 in which you request a written opinion from this office as to whether, first, a man who is transferred to your Institution from the New Mexico Industrial School as a juvenile is considered a felon and will thereby warrant the serving of a maximum sentence, if, since said transfer, he has served two sentences.

It appears from your letter that Augustine Gutierrez, New Mexico No. 13589, on June 11, 1946 was transferred to the New Mexico State Penitentiary from the Industrial School as a Juvenile Delinquent to serve until the age of 21, or until the further order of the Court. On December 20, 1948 he was discharged by a Court Order according to your letter.

Section 44-107, N.M.S.A., 1941 Compilation, Pocket Supplement, provides, in part, as follows:

"In no case shall any order, judgment or decree adjudging a person to be a juvenile delinquent or a ward of the court be deemed to be a conviction of a crime, nor shall such adjudication operate to impose any civil disability, nor shall any juvenile delinquent be deemed a criminal by reason thereof, for the reason that the entire proceedings and adjudication, if any, are to be had for the rehabilitation and best interest and welfare of the juvenile delinquent, but nothing in this act shall be construed to prevent any person of whatever age from being charged with the commission of a felony under the laws of this state and prosecuted therefor in the district courts of this state, and upon conviction may be sentenced to the state penitentiary in conformity with the criminal laws of this state in the same manner as any person."

The above quoted section is so plain that it needs no interpretation or explanation. These proceedings in Juvenile Court are strictly for the welfare and best interests of the juvenile and cannot in any manner be considered as penal.

The question of the nature of proceedings in Juvenile Court was before the Supreme Court of this State in the case of **In re Santillanes**, 47 N.M. 140, 138 P. 2d 503. There it is said:

{*274} "Our act specifically provides, if indeed the caution would be required, 'in no case shall an order adjudging a person to be a ward of the juvenile court be deemed to be a conviction of crime'. Sec. 107 of Chapter 44, supra. None of the reasons advanced by

petitioner, even though most of them might be applicable if this is to be treated as a criminal proceeding, can apply here. The case of *Wissenberg v. Bradley*, 209 Iowa 813, 229 N.W. 205, 207, 67 A.L.R. 1075, apparently a leading case on the question, deserves to be referred to more fully, but we quote only briefly from a portion of the opinion, authored by Mr. Justice Faville: 'Statutes of this general character have been characterized by the courts as progressive and humanitarian. * * * Some courts refer to them as paternal and benevolent. * * * Such statutes are **not criminal or penal**. They are not intended as a punishment, but are calculated to save the child from becoming a criminal. * * *' (Emphasis ours)

* * * these statutes, instead of attempting to punish juvenile offenders for misconduct, criminal or otherwise, try to remove them from the path of temptation, and by preventive and corrective means seek to direct them in the paths of rectitude."

The above quoted construction of § 44-107, N.M.S.A., 1941 Compilation, Pocket Supplement, clearly shows that the Supreme Court of the State of New Mexico has flatly decided that Juvenile Court proceedings are not criminal nor penal. The statutes and proceedings under which a juvenile is committed, not being criminal, it follows that if he is charged as a juvenile delinquent he is not guilty of any felony and cannot therefore be charged as a felon.

This brings us to your second question in which the same subject, Augustine Gutierrez, was on December 29, 1949 sentenced to serve 12 months to 18 months for possession of a stolen automobile under your register No. 13074, this being a felony. You further state that he was given a conditional release on November 11, 1950 under your same register No. 13074, and again subject was returned as a parole violator to serve the remainder of this sentence and also given another sentence to serve 15 to 20 years for armed robbery under register No. 13589, which sentence he is now serving. You specifically want to know in your second question whether Augustine Gutierrez is subject to a discharge or parole under the rules governing prior convictions.

For the first conviction as a juvenile delinquent, it is the opinion of this office in view of the above quoted authorities that he is not guilty of any crime and specifically of no felony. Therefore, you cannot, under your discharge or parole rules, consider this first sentence in which he was sentenced as a juvenile delinquent. It is further the opinion of this office that for the two other felonies, that of possession of a stolen automobile and armed robbery, he, Augustine Gutierrez, is subject to a discharge or parole under the rules governing one prior conviction.

Trusting that this fully answers your inquiries, I remain

By: Hilario Rubio

Assist. Attorney General