

Opinion No. 55-6170

May 23, 1955

BY: RICHARD H. ROBINSON, Attorney General

TO: Mr. E. B. Swope, Warden, New Mexico State Penitentiary, Santa Fe, New Mexico

We have received your request for an opinion in connection with provision of money, clothing, etc., under Section 41-17-8, N.M.S.A., 1953 Compilation, to Ernest Gerald Roberts, an inmate who was discharged on Order of the District Court of Santa Fe County, on May 14, 1955 in a Habeas Corpus Proceeding.

The above statute provides in part:

". . . the superintendent shall make the same provision for any prisoner discharged from the penitentiary by expiration of his maximum sentence, . . ."

This office is acquainted with the proceedings wherein the above discharged inmate secured his release. The reason for the Order of the Court was that this prisoner had served the maximum sentence for the crime committed. Under these circumstances it is the opinion of this office that this person is entitled to the items which the above quoted statute affords a prisoner upon expiration of his maximum sentence.

In this connection I would like to call your attention to Attorney General's Opinion No. 5621 rendered December 17, 1952, wherein it was held by this office that a prisoner discharged on a Writ of Habeas Corpus prior to service of his maximum sentence, was not eligible to receive the money and clothing provided by this statute. This opinion is not contrary to that one. In that particular case the prisoner was released but not because of service of his maximum sentence. The situation is different in this case, and in order to avoid any confusion that opinion is here distinguished.

I hope that this answers your inquiry satisfactorily.

By: Santiago E. Campos

Assistant Attorney General