

Opinion No. 59-31

April 6, 1959

BY: FRANK B. ZINN, Attorney General

TO: T. M. Woodruff, Warden Penitentiary of New Mexico P. O. Box 1059 Santa Fe, New Mexico

Inmates at the New Mexico State Penitentiary are not required to serve more than thirty days for fines or costs attached to sentences when the inmates are sentenced on two or more commitments.

OPINION

{*47} This is in answer to your recent inquiry in which you, in substance, ask the following question:

When an inmate is sentenced on two or more commitments and to each sentence is attached a given amount of costs or fine, or both, how much time must be served to satisfy the fines or costs attached to such sentences?

It is my opinion that the inmate is not required to serve more than thirty days to satisfy either the fines or costs.

Three sections of the New Mexico statutes bear directly on your inquiry. They are Sections 42-1-59, 42-1-60 and 42-2-9, N.M.S.A., 1953 Compilation. Section 42-1-59, *supra*, states:

"Whenever any convict shall have been committed under several convictions with separate sentences, they shall be construed as one continuous sentence for the full length of all the sentences combined."

Section 42-1-60 provides:

"All convicts sentenced to the state penitentiary who have a fine or costs or both attached to such sentence shall not be required to serve more than thirty days for such fine or costs."

The pertinent part of Section 42-2-9, *supra*, relates that whenever any prisoner shall be committed to prison for the non-payment of any fine or costs, or both, such imprisonment shall be reckoned at the rate of \$ 1.00 per day in the reduction of the fine.

Applying the foregoing sections to your inquiry, it is apparent that "fines", which are a form of pecuniary punishment and as a part of any sentence, must be viewed on a cumulative basis under Section 42-1-59, which requires that separate sentences be

construed as one continuous sentence. The practical effect of this section is to total all fines into one sum which must be satisfied before release.

The provisions of Section 42-1-60 are clear and unambiguous. This section states that convicts sentenced to the State Penitentiary, who have fines or costs, or both, attached to their commitments, shall not be required to serve more than thirty days for such fines or costs. Since under Section 42-2-9, anyone sentenced to prison receives a one dollar reduction in his costs for each day served, it is my view that if the fine is less than \$ 30.00, the inmate must serve one day for each dollar of his fine not to exceed a total of thirty days.

The costs attached to a sentence, unlike a fine, are not part of the sentence of the court and generally arise as the result of one trial although the defendant could be convicted on several counts and {*48} receive separate sentences to be served concurrently or consecutively. A thirty day time limit for which an inmate must serve to satisfy costs is required by Section 42-1-60. Hence, the inmate is not required to serve more than thirty days to satisfy costs.

In Opinion No. 3678, Opinions of the Attorney General, 1923-24, page 23, this office held that Section 42-1-60 makes the necessity for the payment of costs largely discretionary on the part of the prison board, except that no one is required to serve more than thirty days. This opinion points out that the prison board has the power to establish rules and regulations governing the payments of costs and that where the convict or his relatives are financially able to make this payment, the board should require that the costs be paid rather than having the inmate serve time to satisfy the costs. If such rules and regulations have not been established, I urge that this be done.

By way of conclusion, it is my belief that an inmate committed to serve one or more sentences in the New Mexico State Penitentiary can satisfy a fine by serving not more than thirty days. Court costs should be satisfied by payment if the inmate or his relatives have the necessary funds available. If it is necessary for the inmate to serve time in order to satisfy either a fine or costs, or both, such time served should not exceed thirty days.

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