

Convict, Good Time Of, Section 2969, Penal Code—Separate Sentence—Separate Convictions.

In cases of separate sentences to state prison, the good time granted to the convict under Section 2969, Penal Code, should be computed on the basis of each sentence, in the same manner as though no other sentence had been imposed.

Helena, Montana, July 12, 1905.

Honorable State Board of Prison Commissioners, Helena, Montana.

Gentlemen:—I beg to acknowledge receipt of your inquiry, in which you ask for an opinion from this office as to the proper method of computing good time allowed to a state convict in a case where two convictions have been secured and two sentences imposed.

In the particular case to which you refer, I understand the facts to be:

Two informations were filed against Fletcher Dailey, the first charging him with the crime of "injury of a public jail," and the second charging him with the crime of obtaining money under false pretences. On October 13, 1903, defendant pleaded guilty to both of these charges and was sentenced on October 14, 1903, to one year imprisonment in the state prison on each charge, the term fixed in the sentence on the second charge to commence at the close of the term fixed in the sentence on the first charge.

In computing the "good time" should the time named in the two sentences be regarded as one term for such purpose, or should the "good time" be computed on each term separately?

Under the provisions of Section 2969, Penal Code, the period of good time granted is graduated by the time named in the sentence. For the first year the convict is granted one month and for the second year two

months; hence, if the time named in the two sentences is regarded as one term for the purpose of computing the good time, the convict is entitled to an allowance of three months, but if the time is computed on each sentence separately he is entitled to only two months.

Section 1235, Penal Code, provides that "when any person has been convicted of two or more crimes before sentence has been pronounced upon him for either, the imprisonment to which he is sentenced upon the second or other subsequent conviction must commence at the termination of the first term of imprisonment," etc.

Under the provisions of this section the first term must be wholly terminated before the second term can be entered upon, and the convict is then held by virtue of the commitment issued upon the second judgment of conviction, the first having become, by its own limitation, *functus officio*.

In the case submitted this would occur at the end of eleven months from the date of the delivery of the defendant at the prison. The books are then balanced, and the former sentence having been wholly terminated cannot be permitted to operate either for or against the convict as to any subsequent sentence unless it is carried forward by express provision of law, and no such provision of law has been found.

Under Section 2969, Penal Code, the good time granted on a twelve year sentence is four years and nine months. If, therefore, a defendant were convicted of three crimes "before sentence has been pronounced" and sentenced to a four year term upon each conviction, and the three sentences are considered as comprising but one term for the purpose of computing the good time, it follows that time named in the third sentence would be terminated nine months prior to the time when it could commence, and yet this third sentence, which never became effective, would be considered in computing the good time granted. The third conviction would, therefore, be a nullity, except for the purpose of relieving the defendant from a part of the punishment imposed. This is putting a premium on crime.

Again, under the provisions of Section 2970, Penal Code, a convict who violates certain prison rules "forfeits all deductions of time earned by him for good conduct before" such violation. And in this case a violation of these rules by the convict, while serving the term under the second sentence, would thereby forfeit the time allowed for good conduct during the first term, if the time named in the two sentences is treated as one term. But, under the law, the first term must be wholly terminated, and the first judgment of imprisonment wholly satisfied, before imprisonment under the second judgment can commence, hence the only way of depriving the convict of the good time granted him during the time served under the first judgment would be to add to the time named in the second judgment the one month allowed him under the first judgment. No department of the state government has the authority to add to or in any manner extend the term of imprisonment named in the judgment.

The good time granted under Section 2969, Penal Code, should be

computed on the basis of each sentence, in the same manner as though no other sentence had been imposed.

It may be well, however, to observe that this is not intended to have any application to conviction under Section 1232, Penal Code, where the term of imprisonment is increased by reason of a prior conviction.

Respectfully submitted,

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