

Parole—Prisoners—Convictions—Sentences—State Board of Prison Commissioners.

Section 12264 (subdivision 1) R. C. M. 1921 is not repealed by section 12077 R. C. M. 1921 of the indeterminate sentence act, and therefore the state board of prison commissioners cannot parole a convict who has been previously convicted of a felony other than the one for which he is serving sentence.

L. J. Goodman, Esq.,

October 29, 1926.

Clerk, State Board of Examiners,
Helena, Montana.

My dear Mr. Goodman:

You have requested my opinion on the following question:

“Under section 12264, subdivision 1, R. C. M. 1921, is a prisoner who is convicted on three separate and distinct counts, each involving the commission of a felony, and who receives a sentence on each of the different counts, entitled to the same parole privileges as a convict who has never before been convicted of a felony?”

Section 12264 R. C. M. 1921, as far as applicable to this question, provides as follows:

“The governor may recommend and the state board of prison commissioners may parole any inmate of the state prison, under such reasonable conditions and regulations as may be deemed expedient, and adopted by such state board; provided, however,

“1. That no convict shall be paroled who has been previously convicted of a felony other than the one for which he is serving sentence, either in this state or elsewhere; * * *”

This statute was enacted as chapter 95, laws of 1907, and has never been repealed or amended unless it has been superseded and repealed by the indeterminate sentence act which was enacted as chapter 14, laws of 1915.

Sections 12076 and 12077 R. C. M. 1921 of this act provide as follows:

“12076. Any person receiving an indeterminate sentence as provided in this act may, in the discretion of the governor and state board of prison commissioners, be paroled at any time after he shall have served in such prison one-half of the minimum time specified in such judgment.”

“12077. This act shall not have the effect of repealing or amending the provisions of section 12078 to 12086 of this code, relating to suspending sentences, nor of amending existing laws relating to paroles except that any convict may be paroled after serving one-half of such minimum time in this act provided.”

On applying the general rule that “in the construction of a statute the intention of the legislature is to be pursued if possible” it would

appear clear that the intention of the legislature in enacting section 12076 of the indeterminate sentence act was to provide that no person shall be eligible for parole until he has served one-half of his minimum sentence; whereas, under the parole law the governor could recommend, and the state board of prison commissioners could parole any inmate of the state prison at any time; therefore, to this extent section 12264, supra, has been superseded and repealed by section 12076 of the indeterminate sentence act.

It necessarily follows that in enacting section 12077, supra, defining the effect of the indeterminate sentence act, and providing therein that the act should not have the effect of amending existing laws relating to paroles, that this exception had to be mentioned in order not to nullify the provisions of the preceding section, and therefore the provision "except that any convict may be paroled after serving one-half of such minimum time in this act provided" refers directly to the provision of section 12076.

It is, therefore, my opinion that subdivision 1 of section 12264 R. C. M. 1921 has not been superseded or repealed by the indeterminate sentence act but is still in full force and effect, and therefore that a prisoner who is convicted on three separate and distinct counts, each involving the commission of a felony, and who receives a sentence on each of the different counts is not eligible to parole.

Very truly yours,
L. A. FOOT,
Attorney General.