

Opinion No. 45**State Prison—Prisoners—Citizenship—Restoration of—Civil Rights,
Deprivation of—Governor—Pardons—Prison
Commissioners, State Board of**

- Held:**
- 1. Persons sentenced to the State Prison for a term less than life automatically regain their civil rights at the expiration of the sentence. In such cases the action of the Governor is not necessary to restore such persons to citizenship.**
 - 2. Persons sentenced to the State Prison for life and then pardoned by the Governor may at any time thereafter be restored to citizenship by the Governor.**
 - 3. Persons sentenced to the State Prison for life and then paroled may not be restored to citizenship by the Governor while the life imprisonment is still in effect.**

August 11th, 1949.

Mr. Lou C. Boedecker, Warden
Montana State Prison
Deer Lodge, Mont.

Dear Mr. Boedecker:

You have presented the following question to my office for an official opinion:

"I would appreciate it if you would advise me as to how long an inmate who is paroled or discharged from this institution must wait before he can be restored to citizenship, after he leaves the institution.

Sections 11600 and 11601, Revised Codes of Montana, 1935, provide for the deprivation of civil rights of persons sentenced to the State Prison.

Section 11600 is as follows:

"A sentence of imprisonment in the State Prison for any term less than life suspends all the civil rights of the person so sen-

tenced and forfeits all public offices and private trusts, authority, or power, during such imprisonment."

Section 11601 is as follows:

"A person sentenced to imprisonment in the State Prison for life is thereafter deemed civilly dead."

Section 12263, Revised Codes of Montana, 1935, granting to the Governor the power to restore persons to citizenship is as follows:

"The Governor has power to restore to citizenship any person convicted of any offense committed against the laws of the State, upon cause being shown, either after the expiration of sentence, of after pardon."

In order to clarify the conclusions reached in this opinion I shall answer your question in two parts, (1) restoration of citizenship under Section 11600, *supra*, and (2) restoration of citizenship under Section 11601, *supra*.

First of all it is to be noted that under Section 11600, *supra* it is not required that the Governor take positive action to restore civil rights to a person sentenced to prison for a term less than life. The act provides that the suspension of civil rights shall be temporary and only last for the duration of such imprisonment. Thus the expiration of the sentence automatically restores the civil rights of the prisoner and action by the Governor is not necessary. I believe that your question can be answered very simply under this first heading by a discussion of what constitutes the termination of imprisonment.

The placing of an inmate of the State Prison upon parole does not have the effect of terminating the sentence. Section 12265, Revised Codes of Montana, 1935, provides that paroled prisoners are still in legal custody and under the control of the State Board of Prison Commissioners and remain in this status until the expiration of their sentence. It follows that the civil rights of a person sentenced to the State Prison for a term less than life and subsequently paroled are not restored under Section 11600, *supra*, until the period of his sentence has passed.

A person who is convicted and then receives a suspended sentence is also deprived of his civil rights for the entire period of the sentence. Section 11600 makes the deprivation of civil rights contingent upon "sentence of imprisonment" and not upon actual imprisonment. Section 12080, Revised Codes of Montana, 1935, provides that the effect of a suspended sentence is to put the person in the same status as one paroled from the State Prison. Therefore what was said in the above paragraph with reference to parolees also applies to a person who receives a suspended sentence. The date of the final discharge issued by the State Board of Prison Commissioners under Section 12085, Re-

vised Codes of Montana, 1935, shall be the date when civil rights shall be restored.

Of course there is a possibility that a person sentenced to the State Prison for a term less than life could be granted an absolute pardon by the Governor before the expiration of his sentence. In that case I am of the opinion that the granting of the absolute pardon in and of itself restores the person to his civil rights and that further action by the Governor is unnecessary, since under Section 11600, *supra*, the termination of the sentence restores the civil rights. That an absolute pardon terminates the sentence cannot be disputed. 46 C. J. Pardons, Section 32, Page 1192 is as follows:

"When a full and absolute pardon is granted, it exempts the individual upon whom it is bestowed from the punishment which the law inflicts for the crime which he has committed. The crime is forgiven and remitted, and the individual is relieved from all of its legal consequences."

It is in the second category, under Section 11601, *supra*, that positive action by the Governor is necessary to restore a person to citizenship.

A person sentenced to the State Prison for life and thereafter pardoned by the Governor may at any time after pardon be restored to citizenship by the Governor under the provisions of Section 12263, *supra*.

Insofar as your question refers to the paroling of a person sentenced to a term of life imprisonment in the State Prison, I must conclude that such person cannot be restored to citizenship under Section 12263 while the sentence of life imprisonment stands. Section 12263 is explicit in allowing restoration to citizenship only after the expiration of sentence, or after pardon. Since a person sentenced to life imprisonment and then paroled cannot fit into either category, it follows that he is not eligible to be restored to citizenship.

I desire at this point to state that this opinion does not in any way refer to or encompass that part of Article IX, Section 2 of the Montana Constitution which reads as follows:

" . . . Provided, first, that no person convicted of felony shall have the right to vote unless he has been pardoned or restored to citizenship by the governor: . . . "

The effect of this provision upon civil rights has not been considered and is not a part of this opinion. This opinion is limited in its application to the effect of the provisions of Sections 11600 and 11601, *supra*.

It is my opinion that in the case of persons sentenced to the State Prison for a term less than life, such persons are automatically restored to citizenship after the expiration of their sentence. The sentence of

persons receiving a suspended sentences and of prisoners paroled from the State Prison does not expire until the time of the original sentence has elapsed. The sentence of a person receiving an absolute pardon expires with such pardon and civil rights are at that time restored. In the case of persons sentenced to life imprisonment in the State Prison, citizenship may be restored by act of the Governor at any time after pardon. Persons sentenced to life imprisonment in the State prison and then paroled may not be restored to citizenship by the Governor while the life sentence remains in effect.

Very truly yours,
ARNOLD H. OLSEN,
Attorney General.