

**Opinion No. 83****Prison—Parole—"Good Time"**

**Held:** When a parole violator who entered the prison on his present sentence prior to April 1, 1955, is returned to the prison for parole violation and loses all good time accumulated under Section 80-739, RCM, 1947, he begins accumulating good time from the date of his return to the prison on the unexpired portion of his sentence only.

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November 26, 1958

Mr. Floyd E. Powell  
Warden  
Montana State Penitentiary  
Deer Lodge, Montana

Dear Mr. Powell:

You have requested my opinion on the following question:

When a parole violator who entered prison on his present sentence prior to April 1, 1955, is returned to the prison and loses all good time accumulated under Section 80-739, RCM, 1947, does he begin accumulating good time from the date of his return on the unexpired portion of his sentence only, or is he entitled to

the total amount of good time allowable on his entire sentence under Section 80-739, *supra*, less the time lost?

You have given me the following facts in addition to those contained in your question.

Section 80-739, RCM, 1947, was repealed by Section 2, Chapter 117, Laws of 1955. Section 3 of Chapter 117, *supra*, provided that no person convicted and sentenced prior to the effective date of that act should have his rights reduced by the application of the act. Because of this saving clause those inmates of the state prison who were convicted and sentenced before April 1, 1955, are still entitled to earn good time under the provisions of Section 80-739, *supra*, even though that section has been repealed.

Section 80-739, *supra*, provided a table showing the exact amount of good time allowable for each year of a sentence and the length of time which must be served after all good time was deducted on any sentence of from one to twenty-five years. Under this schedule, the inmate could be awarded one month good time for the first year of his sentence, two months for the second year, and so on, reaching a maximum of six months for the sixth and each subsequent year. Additional requirements were stated as follows:

"The board is hereby authorized and required to grant to any convict confined in the state prison, who shall well behave himself and who shall perform regular labor during good health, either within or without the state prison inclosures, a credit of the time from his sentence as appears in the following table, for respective years of his sentence, and prorata for any part of a year when the sentence is for more or less than a year . . ."

Under present policies of the state board of prison commissioners, when an inmate's parole has been revoked, all good time previously credited to him is cancelled and he is allowed only such good time as he earns thereafter by complying with the requirements of Sec. 80-739 set out above.

The final question, then, is whether Section 80-739, *supra*, automatically grants a certain amount of good time from which may be deducted only such amounts of time as have been declared forfeited by the board of prison commissioners, or whether the section merely authorizes the board to grant a good time allowance to those inmates who comply with the requirements of the statute.

This question was before the Montana Supreme Court in the case of *Stephens v. Connelly*, 48 Mont. 352, 138 Pac. 189. In that case a former inmate of the state prison sued the warden for false imprisonment alleging that he had been held in the prison longer than the schedule shown in Section 80-739, *supra*, permitted. He contended that since the prison records did not show any revocation of good time allowance by the board of prison commissioners he was entitled by law to the full statutory good time allowance.

The defendant warden contended that the inmate must serve the full term of his sentence minus only such good time allowances as were affirmatively granted by the board of prison commissioners and that no such good time allowance had been granted to the inmate in question. The Montana Supreme Court decided the question in favor of the defendant warden. The Court pointed out that certain types of good time allowance statutes did grant inmates an allowance which accrued automatically unless revoked but that Section 80-739, *supra*, was not of this type. The Court said:

"In the second group are those statutes which determine in advance the amount of credits—computed in days and months—which certain prisoners may earn upon certain specified terms and conditions. The commutation is held out as a reward for good conduct or efficiency in prison labor. A statute of this character cannot enter into the sentence or form a part of it for the reward must first be earned before the prisoner is entitled to it . . . it is to be observed, in the first instance, that by the language of the statute any allowance for good conduct or efficient labor has its source in a grant from the prison board, and does not spring from the operation of the law itself. The section quoted implies that some investigation must be made by the board, and a judgment formed thereon. There must be a finding that the convict has well behaved himself, and that he has performed regular labor during good health. These are conditions precedent to his right to any credits."

The rule of the Conley case is even more pertinent here. To grant the full amount of good time shown in the table in Section 80-739, *supra*, minus only the amount of time forfeited for the parole violation would have the effect of granting a good time allowance for the period when the inmate was on parole. The statute clearly does not apply to inmates on parole since it allows good time only to "any convict confined in the state prison."

A further question is raised as to the method of computing good time under this statute when an inmate has been returned to the institution and his prior good time cancelled. Does he then begin accumulating good time as though beginning a totally new sentence, with one month for the first year and so on, or is he to be credited with the number of months equivalent to the number of years since his original judgment of conviction?

This problem was not contemplated in Section 80-739, *supra*, since the law did not allow paroles at the time it was passed. (Section 80-739, *supra*, was enacted in 1877; the first parole statute was Chapter 95, Laws of 1907.)

It has been the practice of the various state boards of prison commissioners and wardens of the state prison to treat the returned parole violator, for purposes of Section 80-739, *supra*, as though he were beginning a new sentence. He must then begin accumulating good time with one month the first year, two the second and so forth. The

interpretation of a statute by the department charged with its execution is entitled to great weight (*Murray Hospital vs. Angrove*, 92 Mont. 101, 10 Pac. (2d) 577), and where the Legislature, by failing to change the interpretation given by the executive department, has sanctioned that interpretation, it should not be disturbed (*Miller Insurance Agency vs. Porter*, 93 Mont. 567, 20 Pac. (2d) 643).

It is, therefore, my opinion that when a parole violator who entered the prison on his present sentence prior to April 1, 1955, is returned to the prison for parole violation and loses all good time accumulated under Section 80-739, RCM, 1947, he begins accumulating good time from the date of his return to the prison on the unexpired portion of his sentence only.

Very truly yours,  
FORREST H. ANDERSON  
Attorney General