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A PERSON COMMITTED TO THE OHIO STATE REFORMATORY AS JUVENILE DELINQUENT IS NOT SERVING A SENTENCE—THE PARDON AND PAROLE COMMISSION MAY CONSIDER THE RELEASE OF A PERSON FROM HIS COMMITMENT AS A JUVENILE DELINQUENT TO THE OHIO STATE REFORMATORY—§§2965.35, 2151.35, 5143.05, 2955.01 AND 5143.04 R.C.—OPINION 2704, O.A.G., 1961

SYLLABUS:

1. A person who is committed to the Ohio State Reformatory as a juvenile delinquent pursuant to Sections 2151.35 and 5143.04, Revised Code, is not serving a "sentence" within the meaning of the aggregate sentence provision of Section 2965.35, Revised Code.

2. The pardon and parole commission created pursuant to Section 2965.02, Revised Code, may consider, under Section 5143.04, Revised Code, the question of the release of a person from his commitment as a juvenile delinquent to the Ohio State Reformatory at the same time as such commission considers, under Sections 5143.05 and 2965.09 to 2965.18, inclusive, Revised Code, the question of the parole of such person from his sentence to such reformatory for a felony.

Columbus, Ohio, March 15, 1962

Hon. Joseph E. Doneghy, Chairman
Ohio Pardon and Parole Commission
1 South Fourth Street, Columbus 15, Ohio

Dear Sir:

Your request for my opinion reads as follows:

"Your opinion is respectfully requested based on the following facts:

"J. K., an inmate of the Ohio State Reformatory, was admitted to that institution on April 30, 1958 as a juvenile delinquent to serve from 1 year to age 21. At the time of admission he was 16 years of age and would attain the age of 21 years on October 9, 1962.

"On February 17, 1959, J. K. became involved in an altercation with another inmate which resulted in the death of this other inmate. He was removed to the Common Pleas Court of Richland County for trial on an indictment charging him with manslaughter, first degree. He was convicted and sentenced to the Ohio State Reformatory to serve not less than one nor more than twenty years. The judgment entry was silent as to whether his sentence should be served concurrently with or consecutive to the previous commitment.

"Attention is invited to your Opinion number 1451, OAG 1960, which deals with a similar problem but does not consider the matter of a felony sentence superimposed on a commitment as a juvenile delinquent from one year to age 21 years.

"QUERY: (1) Do these two sentences come under the aggregate sentence provision of Section 2965.35 of the Revised Code so that the aggregate minimum is two years and the maximum to expire on that date which is twenty years after the inmate's twenty-first birthday?

"(2) When would J. K. be eligible for parole consideration under the manslaughter sentence?"

Section 2965.35, Revised Code, provides as follows:

"A person serving several indeterminate sentences consecutively shall become eligible for parole upon the expiration of the aggregate of the minimum terms of his several sentences less the diminution of minimum sentence provided for in section 2965.31 of the Revised Code. Where the aggregate of the mini-

num terms is longer than fifteen years, eligibility for parole shall be determined in accordance with section 2965.23 of the Revised Code. For the purpose of this section, a person is serving consecutive sentences whenever a court specified that any sentence begin at the completion of another sentence, whether or not any such sentences are to be served in a reformatory or a penitentiary or both."

In order for Section 2965.35, *supra*, to apply to a given situation, a person must be serving several indeterminate "sentences." The first question, therefore, is whether J. K. is serving several sentences.

According to the facts as given, J. K. is serving one sentence in the Ohio State Reformatory for manslaughter. He was also "committed" to the reformatory as a juvenile delinquent. Is a "commitment" as a juvenile delinquent the same as a "sentence," so that it can be said that J. K. is serving several sentences?

Neither the legislature nor the courts of Ohio have defined the words "commitment" or "sentence." The supreme court of Illinois, however, has defined a "sentence" as "the final determination of a criminal court." *Featherstone v. People*, 194 Ill., 325, 62 N.E. 684 (1901); for similar definitions see 38 Words and Phrases, 597. In *People v. La Sasso*, 44 N.Y.S. 2d, 93, 182 Misc., 538 (Kings Co. Ct.—1943), the court stated as follows:

"The words 'commitment' and 'sentence' are synonymous when they denote imprisonment as punishment for crime after judicial declaration of guilt." (Emphasis added)

The commitment of a person to the Ohio State Reformatory as a juvenile delinquent is not imprisonment as punishment for a crime. In this regard, Section 2151.35, Revised Code, provides in part as follows:

"The judgment rendered by the court under this section shall not impose any of the civil disabilities ordinarily imposed by conviction, in that the child is not a criminal by reason of such adjudication, nor shall any child be charged or convicted of a crime in any court, except as provided in section 2151.26 of the Revised Code. The disposition of a child under the judgment rendered or any evidence given in the court shall not be admissible as evidence against the child in any other case or proceeding in any other court, except that the judgment rendered and the disposition of such child may be considered by any court only as to the matter of sentence or to the granting of probation. Such

disposition or evidence shall not operate to disqualify a child in any future civil service examination, appointment, or application."

Headnotes 2 and 4 in the case of *The State of Ohio v. Shardell*, 107 Ohio App., 338 (Cuyahoga Co., 1958) read as follows:

"2. Proceedings in a Juvenile Court are civil in nature, the customary rules of evidence governing civil actions must be followed, and hearsay evidence is not admissible; and a mere preponderance of the evidence is sufficient to warrant a determination that a minor is a delinquent, even though such determination involves a finding that a criminal statute has been violated by such minor.

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"4. Proceedings in a Juvenile Court are not criminal in nature, and a minor charged with delinquency in a Juvenile Court is not prosecuted for a criminal offense; and the constitutional rights of such minor with respect to self-incrimination are not invaded by compelling such minor to testify."

See also *In re Januszewski*, 196 Fed., 123 10 O.L.R., 151 (U. S. Dist. Ct. So. Ohio—1911).

I must conclude, therefore, that the aggregate sentence provision of Section 2965.35, *supra*, does not apply to the situation where a felony sentence is superimposed on a commitment as a juvenile delinquent.

Regarding your second query, your attention is directed to Section 5143.05, Revised Code, reading as follows:

"Courts imposing sentences to the reformatory shall make them general, and not fixed or limited in their duration. The term of imprisonment shall be terminated by the pardon and parole commission, as authorized by sections 2965.09 to 2965.18, inclusive, of the Revised Code, but the term of such imprisonment shall not exceed the maximum term, nor be less than the minimum term provided for such felony."

It is apparent that J. K. will not be eligible for parole consideration under the manslaughter sentence until he has served the minimum term provided for in the sentence, i.e. one year, unless the minimum sentence is diminished for good behavior as provided for in Section 2965.31, Revised Code.

Assuming that J. K. serves the minimum time provided by law and becomes eligible for parole, then the question arises can he be paroled in view of his commitment as a juvenile delinquent?

Section 2965.01, Revised Code, provides *inter alia* as follows:

“As used in sections 2965.01 to 2965.37, inclusive, of the Revised Code:

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“(E) ‘Parole’ means the release from confinement in any state penal or reformatory institution by the pardon and parole commission upon such terms and for such period of time as shall be prescribed by the pardon and parole commission in its published rules and official minutes. A parolee so released shall be supervised by the bureau of probation and parole. Legal custody of a parolee shall remain in the department of mental hygiene and correction until granted a final release by the pardon and parole commission.”

It is obvious that J. K. cannot be paroled on the manslaughter charge while still being confined in the reformatory pursuant to his commitment as a juvenile delinquent, because “parole” means release from confinement. The next question then is, can the pardon and parole commission release J. K. from his confinement as a juvenile delinquent at the same time it paroles him on the manslaughter charge?

Section 5143.04, Revised Code, provides as follows:

“A male child over sixteen years of age committed by a juvenile court to the reformatory shall be received by the superintendent of the reformatory. After a child so committed has been received, sole control over such child shall be in the reformatory and the jurisdiction of the juvenile court over such child shall cease. The superintendent shall provide for the education of such child in such branches of industry, agricultural or otherwise, as he shall determine, having in view his reformation and preparation for usefulness. Such child shall be committed until he arrives at the age of twenty-one years *unless sooner released for satisfactory behavior and progress in training.* (Emphasis added)

One of my predecessors in Opinion No. 1544, Opinions of the Attorney General for 1939, Vol. III, page 2274, concluded that the pardon and parole commission has exclusive jurisdiction over parole of persons committed to the reformatory as juvenile delinquents. In this regard, I stated in Opinion No. 2704, Opinions of the Attorney General for 1961, issued December 22, 1961, as follows:

“Although no specific method of determining the right to parole of a committed delinquent child has been found, it seems

reasonable to assume that in such a case, the superintendent of the reformatory would use the state agency created for the express purpose of determining eligibility to parole, that is, the pardon and parole commission. * * *

I can find nothing in the law which would prevent the pardon and parole commission from considering the question of the release of a person from his commitment as a juvenile delinquent at the same time as it considers the question of such person's parole from his sentence for manslaughter.

It is my opinion, therefore, and you are accordingly advised:

1. A person who is committed to the Ohio State Reformatory as a juvenile delinquent pursuant to Sections 2151.35 and 5143.04, Revised Code, is not serving a "sentence" within the meaning of the aggregate sentence provision of Section 2965.35, Revised Code.

2. The pardon and parole commission created pursuant to section 2965.02, Revised Code, may consider, under Section 5143.04, Revised Code, the question of the release of a person from his commitment as a juvenile delinquent to the Ohio State Reformatory at the same time as such commission considers, under Sections 5143.05 and 2965.09 to 2965.18, inclusive, Revised Code, the question of the parole of such person from his sentence to such reformatory for a felony.

Respectfully,

MARK McELROY

Attorney General