

COURT-MARTIAL:

Conviction by court-martial does not affect civil rights, except in case of desertion.

January 25, 1949



Mr. George M. Reed
State Service Officer
State Office Building
Jefferson City, Missouri

Dear Sir:

We have received your request for an opinion of this department, which request is as follows:

"Is a veteran who was convicted by a general court martial while in service, sentenced to and served time in disciplinary barracks, and dishonorably discharged entitled to citizenship status and legal rights, and allowed to vote, in the State of Missouri?"

"By the ancient common law, when sentence was pronounced for treason or other felony the offender was, by operation of law, placed in a state attainder. The principal incidents consequent on such attainder were forfeiture of estate, corruption of blood, and an extinction of civil rights, more or less complete, which was denominated civil death. * * *

"The incident of civil death attended every attainder of treason or other felony, disqualifying the attainted person from being a witness, bringing any action, or performing any legal function, and, in short, causing him to be regarded as dead in law. * * *

"In accordance with the modern policy of a more humane administration of the criminal law, the early doctrines of the common law in regard to attainder, forfeiture, and corruption of blood with respect to convicts have, under statutory or constitutional provisions, been either entirely swept away or greatly modified." 18 C.J.S., "Convicts," Section 2 and 3, pages 101, 102.

The statutes of Missouri contain numerous provisions relating to the effect of conviction for a crime upon various rights of the person convicted. Several such provisions are found in Chapter 31 of R. S. Mo. 1939, relating to crimes and punishments. These provisions are (R. S. Mo. 1939):

- Section 4427, dealing with offenses affecting lives and persons;
- Section 4561, dealing with offenses against property;
- Section 4601, dealing with offenses against records, currency, etc.;
- Section 4322, dealing with offenses against the administration of justice;
- Section 4357, dealing with offenses by persons in office, and
- Section 4796, dealing with other offenses.

These sections provide disqualification from voting, from holding office and from being a juror upon conviction of all felonies described in the particular article in which the section is found, as well as certain misdemeanors. Practically every felony described in the Criminal Code is, by these provisions, made a ground for disqualification from voting, holding office and being a juror. However, these provisions deal only with offenses for which conviction has been had under the particular article specified in the Missouri Criminal Code and would, therefore, be inapplicable to convictions by courts-martial, although the offense for which conviction by a court-martial had been obtained might be one punishable as a felony under the Missouri Criminal Code. State ex rel. Barrett v. Sartorius, 351 Mo. 1237, 175 S. W. (2d) 787, 149 A. L. R. 1067.

There are also several general statutes relating to the effect of conviction for a crime, none of which, however, by their terms expressly include conviction by a court-martial. For example, Section 9225, R. S. Mo. 1939, provides:

"A sentence of imprisonment in the penitentiary for a term less than life suspends all civil rights of the persons so sentenced during the term thereof, and forfeits all public offices and

trust, authority and power; and the person sentenced to such imprisonment for life shall thereafter be deemed civilly dead."

This section has been held not to apply to persons imprisoned under sentence of Federal court (Presbury v. Hull, 34 Mo. 29; Fidelity & Deposit Co. of Maryland v. Boundy, 236 Mo. App. 656, 158 S. W. (2d) 243), and such holdings would probably be sufficient authority for refusing to apply the section to persons convicted by courts-martial.

Section 813.10, Mo. R. S. A., Laws 1945, page 815, Section 11, provides that no one who has been convicted of a felony shall be permitted to serve as a juror.

Section 2 of Article VIII of the Constitution, 1945, provides that persons convicted of felony, or crime connected with the exercise of the right of suffrage, may be excluded by law from voting.

The Legislature has provided (Section 11469, R. S. Mo. 1939, amended Laws of 1943, page 555) that no person "convicted of a felony or other infamous crime, or of a misdemeanor connected with the exercise of the right of suffrage, (shall) be permitted to vote at any election unless he shall have been granted a full pardon; and after a second conviction of felony or other infamous crime, or of a misdemeanor connected with the exercise of the right of suffrage, he shall be forever excluded from voting." No limitation is contained in these provisions restricting convictions which will result in the disqualifications prescribed to convictions obtained in the courts of this state.

In the case of State ex rel. Barrett v. Sartorius, supra, the Supreme Court held that the provision relating to disfranchisement (Section 11469, R. S. Mo. 1939) included convictions in the Federal courts. The court further held that the constitutional provision (Section 2, Article VIII, Constitution of 1875, which is practically identical with Section 2, Article VIII, Constitution of 1945) referred to any felony under the laws of another jurisdiction, regardless of whether or not the same act would be a felony or any crime at all if committed in Missouri. Three judges disagreed with the holding of the court in the latter regard. Thus, the question of whether or not a conviction by court-martial, followed by a sentence to confinement in disciplinary barracks and dishonorable discharge, would result in disqualification from serving as a juror and from voting depends upon whether

or not such conviction by court-martial may be regarded as conviction of felony within the meaning of these sections.

"The law governing courts-martial is found in the statutory enactments of Congress, particularly the Articles of War in the Army Regulations and in the Customary Military Law." Carter v. McClaughry, 183 U. S. 365, 386, 46 L. Ed. 236, 22 Sup. Ct. 181. The Articles of War (Title 10, U. S. C. A., Sections 1471-1593) provide the composition, appointment, jurisdiction and procedure of courts-martial. They also prescribe the offenses for which punishment may be had by courts-martial and either prescribe the maximum punishment or authorize the President to fix such punishment. Many of the offenses are peculiar to military service and are not regarded as offenses in civil law. For example, the 54th Article of War relates to the offenses of fraudulent enlistments; the 56th to making a false muster; the 58th to desertion; the 63rd to disrespect towards a superior officer.

However, courts-martial are also given jurisdiction of offenses cognizable at civil law. The 92nd Article of War provides:

"Any person subject to military law who commits murder or rape shall suffer death or imprisonment for life, as a court-martial may direct; but no person shall be tried by court-martial for murder or rape committed within the geographical limits of the States of the Union and the District of Columbia in time of peace."

The 93rd Article of War provides:

"Any person subject to military law who commits manslaughter, mayhem, arson, burglary, housebreaking, robbery, larceny, embezzlement, perjury, forgery, sodomy, assault with intent to commit any felony, assault with intent to do bodily harm with a dangerous weapon, instrument, or other thing, or assault with intent to do bodily harm, shall be punished as a court-martial may direct."

These offenses are generally felonies under the law of the State of Missouri.

The 96th Article of War, which is a general cover-all section, provides:

"Though not mentioned in these articles, all disorders and neglects to the prejudice of good order and military discipline, all conduct of a nature to bring discredit upon the military service, and all crimes or offenses not capital, of which persons subject to military law may be guilty, shall be taken cognizance of by a general or special or summary court-martial, according to the nature and degree of the offense, and punished at the discretion of such court."

Some Articles of War, such as the 92nd, prescribe the punishment to be fixed upon conviction. Most of the Articles of War, however, provide that the punishment shall be such as the court-martial may direct. The punishment in such cases is limited by the Table of Maximum Punishments (Manual for Courts-martial, U. S. Army, 1928, pages 97 to 101). Punishment may include dishonorable discharge, confinement at hard labor not to exceed a specified time, and forfeiture of pay. Under the 42nd Article of War punishment may be by confinement in the penitentiary where the period of confinement exceeds more than one year, provided that the sentence was imposed by way of commutation of a death sentence or which is wholly or partly based on one of the following offenses: Desertion in time of war, repeated desertions in time of peace, mutiny, or an offense involving an act recognized as an offense of a civil nature and made punishable by penitentiary confinement of more than one year by some statute of the United States of general application within the continental United States, excepting Section 289, Penal Code of the United States, 1910, or by the statutory or common law of the District of Columbia.

The 42nd Article of War further provides "that persons sentenced to dishonorable discharge and to confinement in the penitentiary shall be confined in the United States Disciplinary Barracks, or elsewhere, as the Secretary of the War or the reviewing authority may direct, but not in the penitentiary."

Many of the offenses for which dishonorable discharge and confinement are authorized by the Table of Maximum Punishments are, of course, strictly of a military character and are not cognizable at civil law. Fraudulent enlistment (A. W. 54),

disobedience of lawful order of commanding officer (A. W. 64), suffering through neglect, military property of value of more than \$50.00 to be damaged or lost (A. W. 83), are examples of such offenses,

The Table of Maximum Punishments fixes the maximum punishments for the offenses described in Article of War 93 at dishonorable discharge and confinement at hard labor ranging from six months to twenty years for the various offenses.

We find no cases in this state dealing with the question of whether or not a conviction by court-martial is regarded as a conviction of a felony within the meaning of the statutory provisions under discussion.

In the case of Getz v. Getz, 75 N. E. (2d) 530, the appellate court of Illinois considered the question of whether a wife whose husband had been convicted of desertion from the United States Army and sentenced to twenty-five years at hard labor in a United States Disciplinary Barracks was entitled to a divorce under a statute which provided for the granting of a divorce where "either party has been convicted of a felony or other infamous crime." (Illinois R. S. 1945, Chapter 40, paragraph 1.) The court held that the conviction by court-martial was not a conviction of a felony or other infamous crime within the meaning of the statute involved. In the course of the opinion the court said (75 N. E. (2d) l.c. 532):

"It should also be noted that 'Courts-martial, while resembling the civil courts in some respects, are yet entirely distinct in their nature from the civil tribunals; the power vested in the military courts is not a part of the judicial power of the United States within the meaning of the constitution, and such courts are not included in the judicial department of the government.' 6 C.J.S., Army and Navy, Sec. 51. See also 36 Am. Jur. 244.

"A court-martial differs from a civil court in that pleading before a court-martial depends upon military usage (6 C.J.S., Army and Navy, Sec. 56); that the verdict of a court-martial is handed down by secret vote of the members of

the court itself (6 C.J.S., Army and Navy, Sec. 57); that except for conviction and sentence of death the vote need not be unanimous (ibid); that a court-martial may be composed of commissioned officers only (6 C.J.S., Army and Navy, Sec. 52); and that the accused should not be tried by a court-martial composed of officers of rank inferior to that of the accused (6 C.J.S., Army and Navy, Sec. 54).

"In view of these facts, we are of the opinion that the Legislature, in enacting that conviction of a felony or other infamous crime constitutes ground for divorce, contemplated that such conviction be the result of a criminal prosecution wherein the accused, as 'in all criminal prosecutions,' might perfect his right, guaranteed by Article II, Section 9, of the Illinois Constitution, Smith-Hurd Stats. to 'public trial by an impartial jury of the county or district in which the offense is alleged to have been committed.' Such right of the accused to jury trial in all criminal cases, clearly including prosecution for felony, or other infamous crime, is absolute. * * *"

In the case of Clark v. Clark, 94 N. H. 398, 54 Atl. (2d) 156, a different result was reached under a slightly different statute. In that case the husband had been convicted by general court-martial of the Navy for being absent without leave and sentenced to imprisonment for three and three-fourths years. The wife was held entitled to divorce under a statute providing that a divorce could be decreed upon "conviction of either party in any State or Federal district of a crime punishable with imprisonment for more than one year and actual imprisonment under such conviction." R. L. c. 339, 6, IV. It will be noted that the statute in that case referred to "conviction of * * * a crime punishable with imprisonment" rather than a "conviction of a felony." The court considered the military offense of AWOL a crime, but based its opinion more on the fact that the person convicted was actually in confinement.

In the Illinois case the court pointed out that it is not the policy of the law to favor divorce and, therefore, the

divorce statutes are given a strict rather than a liberal construction. By the same token, limitations upon the right of suffrage are strictly construed in order to effectuate the policy of the law in avoiding disfranchisement. Application of Lawrence, 353 Mo. 1028, 185 S. W. (2d) 818. In view of the nature of courts-martial, their method of procedure and the type of the offenses punishable by them, we feel that the Legislature did not intend to include convictions by courts-martial as convictions for felony within Sections 11469, R. S. Mo. 1939, and 813.10, Mo. R. S. A.

However, there is one offense for which conviction by court-martial will result in depriving the person convicted of such rights as are dependent upon citizenship in the United States. Title 8, U. S. C. A., Section 801, provides:

"A person who is a national of the United States, whether by birth or naturalization, shall lose his nationality by:

* * * * *

"(g) Deserting the military or naval forces of the United States in time of war, provided he is convicted thereof by court martial and as the result of such conviction is dismissed or dishonorably discharged from the service of such military or naval forces: Provided, That notwithstanding loss of nationality or citizenship or civil or political rights under the terms of this or previous laws by reason of desertion committed in time of war, restoration to active duty with such military or naval forces in time of war or the re-enlistment or induction of such a person in time of war with permission of competent military or naval authority, prior or subsequent to January 20, 1944, shall be deemed to have the immediate effect of restoring such nationality or citizenship and all civil and political rights heretofore or hereafter so lost and of removing all civil and political disabilities resulting therefrom; * * *"

By Section 20, Article VIII of the Constitution of 1945, citizenship in the United States is a qualification for voting in Missouri.

By Section 8 of Article VII of the Constitution, 1945, no person may be elected or appointed to any civil or military office in this state who is not a citizen of the United States.

Inasmuch as these rights are dependent upon citizenship in the United States, the loss of such citizenship would deprive a person of such rights, regardless of the manner in which the citizenship was lost. See *Huber v. Reiley*, 53 Pa. 112.

Conclusion.

Therefore, this department is of the opinion that a conviction by court-martial, followed by sentence to confinement in disciplinary barracks and dishonorable discharge, does not affect the civil rights of the person convicted, except in case of conviction for desertion in time of war, conviction for such offense having the effect of forfeiting citizenship in the United States of the person convicted and thereby depriving him of such rights as are dependent upon such citizenship, including, in Missouri, the right to vote and the right to be appointed or elected to any civil or military office in this state.

Respectfully submitted,

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APPROVED:

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