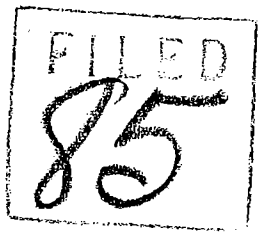
PRISONS:
SENTENCES:
CUMULATIVE SENTENCES:
JUDGMENTS:

A prisoner sentenced subject to Section 222.020 serves a cumulative sentence. He serves his first sentence completely, then starts on his second sentence. Prison authorities are powerless to change the order in which the sentences are served.




February 10, 1959

Hon. Ben B. Stewart, Member
Board of Probation and Parole
Jefferson Building
Jefferson City, Missouri

Dear Sir:

You recently requested an opinion from this office as follows:

> "Confirming our conversation of January 8, and receipt of your letter of January 9, regarding the Board's request for our opinion on deferred sentences, at which time it was decided to withdraw the request, and that you would place it in your hold file until you heard from us.
>
> "We do request an opinion on the difference between a deferred sentence and a consecutive sentence. It is noted that many times an individual is sentenced to serve several sentences consecutively. For example, an individual is charged with three counts of Robbery and is sentenced to serve five years on each count, and each count is to run consecutively, making a total of fifteen years. This is called a consecutive sentence.
>
> "A deferred sentence is one which the individual receives after another conviction, and is ordered not to begin until the expiration of the sentence he is now serving. For example, an individual is serving a sentence in the penitentiary, and is convicted of another crime. Under Section 222.020 MoRS 1949, it states, in part,

> '...the sentence of such convict shall not commence to run until the expiration of the sentence under which he may be held;...'
>
> "Is this, in effect, a consecutive sentence, or does the first sentence have to be served before the second begins?
>
> "We would appreciate an opinion on the difference between a consecutive sentence and a so-called deferred sentence."

Section 222.020 reads as follows:

> "The person of a convict sentenced to imprisonment in the penitentiary is and shall be under the protection of the law and any injury to his person, not authorized by law, shall be punishable in the same manner as if he were not under conviction and sentence; and if any convict shall commit any crime in the penitentiary, or in any county of this state while under sentence, the court having jurisdiction of criminal offenses in such county shall have jurisdiction of such offense, and such convict may be charged, tried and convicted in like manner as other persons; and in case of conviction, the sentence of such convict shall not commence to run until the expiration of the sentence under which he may be held; provided, that if such convict shall be sentenced to death, such sentence shall be executed without regard to the sentence under which said convict may be held in the penitentiary."

Your question concerns the difference, if any, between a cumulative sentence made so by order of court and the sentence meted out in compliance with Section 222.020. It is my understanding from your letter and from discussions on the subject with you that the Prison Records Department classifies all sentences given under Section 222.020 as deferred sentences.

This writer found no instance in which a court referred to a deferred sentence. The court generally refers to only two classes of sentences--concurrent and consecutive. The court in Williford v. Stewart, 198 S.W. 2d 12, in discussing this matter, states in paragraph 2, page 14, as follows:

> "* * * The rule is that where the later judgment is silent on the point the sentences run concurrently. To make them consecutive there ordinarily must be some provision in the judgment or a statutory requirement to that effect. * * *"

A sentence under Section 222.020, we feel, is a cumulative sentence made so by statute. It differs in some respects, however, from the cumulative sentence which is pronounced by the court. The statute, Section 222.020, makes it mandatory that the prisoner serve the sentence under which he is first held before starting the service of the sentence later imposed. In Ex parte Green, 17 S.W. 2d 939, the court passed on the order in which sentences should be served under this section. Green was convicted of highway robbery in 1921 in St. Charles County, was sentenced to prison and paroled in 1923. In January, 1925, while on parole, Green committed a burglary in Lafayette County and his parole was revoked. He was convicted in March of 1925 in Lafayette County and returned to prison. He filed a writ of habeas corpus and the warden's return to the writ stated that Green was held under the St. Charles County conviction and that the prisoner had completed service of the time under the Lafayette County conviction. The court said, local citation 940, as follows:

> "When the petitioner was returned to the penitentiary, he was there under commitments from the circuit courts of both St. Charles and Lafayette counties. The warden and other officials were without authority to determine the order in which the sentences should be served. That question is determined by section 2292, R.S. 1919, as follows:
>
> ' * * * And if any convict shall commit any crime in the penitentiary, or in any county in this state while under sentence, the court having jurisdiction of criminal offenses in such county shall have jurisdiction of such offense, and such convict may be charged, tried and convicted in like manner as other persons; and in case of conviction, the sentence of such convict shall not commence to run until the expiration of the sentence under which he may be held.'

> "It follows the petition is remanded to the custody of the Warden to serve the sentences imposed in accordance with the views herein expressed."

The court more recently in the case of Herring v. Scott, 142 S.W. 2d 670, approved the above doctrine, saying at page 672:

> "* * * Furthermore, the Lee case was decided by Division 2 of this court in 1921, and the question was reconsidered by the court en banc in 1929, Ex parte Green, 322 Mo. 857, 17 S.W. 2d 939. There the court held unanimously (without mentioning the Lee case, it is true) that the prison officials were without authority to determine the order in which the sentences should be served, and that the requirement of the statute is controlling.
>
> "While the motive of the legislators in passing the statute partly may have been to prevent such sentences from running concurrently, still they must have meant more than that. They were not dealing with offenses having some relation to each other, such as those of kindred nature or committed or tried about the same time, where the idea of concurrent execution would more naturally occur. They were contemplating a situation where a convict under sentence for one felony commits another perhaps of a different kind and at a remotely later time. They saw fit to require that in event of conviction of the latter, the sentence therefor should not commence to run until the convict had fully paid his debt to the State for the first. Having so declared in a solemn legislative act, we are not at liberty to amend it by construction. The Green case so rules the question directly."

## CONCLUSION

Therefore, we feel that a prisoner sentenced subject to

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Section 222.020 serves a cumulative sentence. He serves his first sentence completely, then starts on his second sentence. Prison authorities are powerless to change the order in which the sentences are served.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, James E. Conway.

Yours very truly,

JOHN M. DALTON
Attorney General

JEC:mc