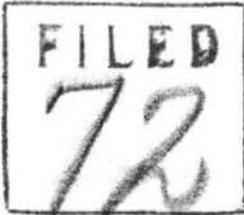


PROBATION:

The time spent by a person who has plead guilty, or been found guilty of a crime, and who has been released by the court without imprisonment, subject to the supervision of the court or parole or probation service is time on probation, and such time does not apply under Section 549.275, RSMo 1949, towards final discharge of the prisoner.



April 25, 1958

Board of Probation and Parole  
State of Missouri  
Jefferson City, Missouri

Gentlemen:

On April 2, 1958, this office received a request for an opinion from Mr. Lewis M. Means, which request reads as follows:

"There is a case in point upon which a decision is requested. On December 5, 1956, one Walter Davis, Docket No. 8882, Jasper County, Missouri, was sentenced by Circuit Judge Woodson Oldham to a sentence of two years, and was immediately placed on probation (termed parole on our copy of docket order). On September 5, 1957, the subject was called before Judge Oldham, and upon evidence of violation of probation, subject's probation was revoked, and he was ordered committed to the institution. He was received at the Missouri State Penitentiary on September 18, 1957, to serve a sentence of two years.

"Under that entry date, his flat time was set at September 17, 1959, and his 9/12ths time March 17, 1959.

"The subject has claimed the right of credit for service of nine months and six days on probation as credit on his sentence. This claim is based upon the basic references above.

"Heretofore the Board has considered that this provision applies only to a person who is on parole, and, therefore, because this subject was on probation and not parole, we believe that he

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is not entitled to the credit. In view of the third reference, a ruling is desired as to whether or not the second reference applies to persons on probation."

For the purpose of this opinion we assume that the prisoner in question was found guilty, or plead guilty to a felony charge, and was released by the court without imprisonment, subject to supervision of a probation or parole service. We assume further that the terms of such supervision were violated, that said probation or parole was revoked, and said prisoner then committed to your institution.

For the purpose of clarity of this opinion we set out the provisions of Section 549.201, RSMo Cum. Supp. 1957:

"(1) 'Board' means the state board of probation and parole.

"(2) 'Parole' means the release of a prisoner to the community by the state board of probation and parole prior to the expiration of his term, subject to conditions imposed by the board and to its supervision.

"(3) 'Probation' means a procedure under which a defendant, found guilty of a crime upon verdict or plea, is released by the court without imprisonment, subject to conditions imposed by the court and subject to the supervision of a probation service."

The provisions of Section 549.275, RSMo Cum. Supp. 1957, are also set out:

"1. The period served on parole shall be deemed service of the term of imprisonment and, subject to the provisions of section 549.265 relating to a prisoner who is or has been a fugitive from justice, the total time served may not exceed the maximum term or sentence.

"2. When a prisoner on parole, before the expiration of the term for which he was sentenced, has performed the obligations of his parole for such time as satisfies the board that his final release is not incompatible

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with the best interest of society and the welfare of the individual, the board, subject to the approval of the governor, may make a final order of discharge and issue a certificate of discharge to the prisoner. No such order of discharge shall be made in any case less than one year after the date on which the prisoner was paroled except where the sentence expires earlier."

The terms of Section 549.201, supra, are clear. A prisoner who is released by the court without imprisonment subject to the court's supervision is on probation. A prisoner must have been on parole before he can claim the time spent, according to the provisions of Section 549.275, supra, as applying to his term of imprisonment. According to Section 549.201, supra, parole under this chapter means a release by the State Board of Probation and Parole, prior to the expiration of the prisoner's term subject to the board's supervision. The prisoner in question was released without imprisonment, subject to parole or probation supervision, and thus was on probation prior to his commitment to your institution. Therefore, it is our opinion that time so spent does not apply under Section 549.275, supra, towards final discharge.

### CONCLUSION

It is, therefore, the opinion of this Department that the time spent by a person who has plead guilty, or been found guilty of a crime, and who has been released by the court without imprisonment, subject to the supervision of the court or parole or probation service, is time on probation and such time does not apply under Section 549.275, RSMo Cum. Supp. 1957, towards the final discharge of the prisoner.

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

Yours very truly,

John M. Dalton  
Attorney General

JEC:om;mw