



STATE OF KANSAS

*Office of the Attorney General*

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CURT T. SCHNEIDER  
*Attorney General*

March 4, 1975

Opinion No. 75-95

Robert R. Raines  
Secretary of Corrections  
5th Floor, KPL Towers  
818 Kansas Avenue  
Topeka, Kansas

Dear Mr. Raines:

Your letter raises a number of questions concerning the sentencing process and I will respond to them in the order presented.

Initially, you query whether an offender who has been sentenced by the state court to a sentence to be served concurrently with a pre-existing or soon to be imposed federal sentence and who has been accordingly released into the custody of the federal authorities under K.S.A. 21-4608 (5) may be returned to the custody of the Secretary of Corrections after either the completion of his federal sentence or the receipt of parole upon the remainder thereof.

K.S.A. 21-4608 (5) provides as follows:

"When a defendant is sentenced in a state court and is also under sentence from a federal court or is subject to sentence in a federal court for an offense committed prior to his sentence in state court, the court may direct that custody of the defendant may be relinquished to federal authorities and that such state sentences as are imposed may run concurrently with any federal sentence imposed."

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In the opinion of the Attorney General, the statute does not constitute a total delegation of state custodial authority to the federal government and therefore does not preclude the Secretary of Corrections from obtaining custody of the offender after his release by federal authorities. The statute reflects principles of federal-state comity by providing the federal authorities with the initial custodial opportunity over a particular offender. However, sound statutory construction negates a conclusion that in relinquishing the offender to the federal government, the legislature intended that the length of a state sentence depends entirely upon the fortuitous actions of federal correctional authorities. It strains reason to believe for example, that a person sentenced in the state to a concurrent twenty year term with his federal sentence could be totally relieved of his state penal obligation if the federal authorities shortly thereafter decided to pardon or parole his federal sentence.

The statute merely provides that the state sentences imposed shall commence upon the offender's entrance into federal custody and nowhere declares either explicitly or implicitly, that the state sentence terminate simultaneously with the federal. Such an interpretation would eradicate the accepted meaning of the word concurrently, which merges sentences only insofar as they overlap.

Turning to a different area of inquiry, your second and third questions in combination ask whether the Department of Corrections loses jurisdiction to confine an offender if it fails to receive the journal entry, order, and commitment papers from the sentencing court, especially after the 120 day period that allows the trial court to modify its sentence has already elapsed. In other words, your query raises the question whether the failure to receive the papers is jurisdictional, or a mere procedural defect that may be later corrected by requesting the documents from the sentencing court.

In our opinion, the defect is merely procedural and the fact that the 120 day period specified by K.S.A. 21-4603 (2) (e) may have elapsed is inconsequential. The validity of a sentence and commitment depends not upon whether

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certain papers have been received by the Department but rather upon the jurisdiction and regularity of the trial court judgment and sentencing proceedings. If the processes leading to the court's sentencing and commitment were in accordance with law, the mere failure to deliver the attendant papers does not void the entire procedure or deprive the Department of jurisdiction to confine the offender. Moreover, the 120 day period mentioned only deprives the court of its authority to modify a sentence imposed. It in no manner operates to wrest jurisdiction from the Department to commence confinement of an offender already sentenced.

Very truly yours,

A handwritten signature in cursive script that reads "Curt Schneider".

CURT T. SCHNEIDER  
Attorney General

CTS:en