

83-DD190

OFFICE OF THE ATTORNEY GENERAL



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Honorable Freddie V. Smith
Commissioner
Department of Corrections
101 South Union Street
Montgomery, AL 36130

Prisons and Prisoners - Sentences

A concurrent sentence may not begin before the date of arrest on that charge.

Dear Commissioner Smith:

The Attorney General is in receipt of your request for an opinion dated January 26, 1983, wherein you pose the following question:

...the inmate was originally convicted on March 22, 1978 and subsequently received an additional fifteen-year concurrent sentence on November 23, 1982. The judge ordered that the latter case begin on March 22, 1978. In determining an inmate's release date, request that an opinion be furnished as to whether the latter case may begin prior to date of arrest and date of sentencing.

The example provided in your request for an opinion contains the following facts:

1. The inmate was sentenced on March 22, 1978, to a term of ten years.
2. On June 30, 1981, the inmate was arrested for possession of a forged instrument in the second degree.

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3. On November 23, 1982, the inmate was sentenced on the charge for which he was arrested on June 30, 1981.
4. The Court ordered that the November 23, 1982, sentence be retroactive to the sentence date of March 22, 1978.

It is the opinion of the Attorney General that a concurrent sentence may not be ordered to begin prior to the date of arrest on that charge. In the example above the inmate has in effect been ordered to begin service on a sentence three years prior to the commission of the act forming the basis of that sentence. In an opinion dated June 9, 1981 addressed to Commissioner Robert Britton the Attorney General discussed the proper calculation of sentences.

In the example in your request for an opinion a sentence calculation consistent with the formula in the June 9, 1981 opinion would produce the following result:

Sentence date (11/23/82) plus sentence imposed (10 years) minus jail credit minus good time equals release date.

Your request for an opinion and the attached documents do not include any reflection of jail credit earned on that charge. Therefore the inmate would be due to be released on November 23, 1992 minus the applicable good time.

It is the opinion of the Attorney General that to allow a concurrent sentence to begin prior to the date of arrest is totally without a basis in Alabama law. Sentence calculation for concurrent sentences should be consistent with the opinion addressed to Commissioner Britton on June 9, 1981.

We hope that we have answered your question fully and completely and if we may be of further service to you, please feel free to call upon this office at any time.

Sincerely yours,

CHARLES A. GRADDICK
Attorney General

By:



RICHARD N. MEADOWS
Assistant Attorney General

CAG/RNM/pm