

Opinion No. 54-5980

June 23, 1954

BY: RICHARD H. ROBINSON, Attorney General

TO: Mr. Morris Abram Warden New Mexico State Penitentiary Santa Fe, New Mexico

Re: Florentino Rodriguez -- N.M. No. 14184

OPINION

{*438} We are in receipt of your letter of May 26th in regard to the above named prisoner. You state that he was sentenced to serve a term of eighteen (18) months to two (2) years and upon that sentence was assigned No. 14184. He previously had No. 13564 from a conviction in Grant County. He was required to serve out the remaining time and complete the maximum sentence under No. 13564 before beginning the sentence from De Baca County under No. 14184. You ask whether the time for beginning sentence No. 14184 should date from the time of sentence August 12, 1952 or from the date of completion of the prior sentence (No. 13564) which was February 28, 1953.

Section 42-1709 reads as follows:

"If any prisoner shall violate the conditions of his parole or release as fixed by the prison board, he shall be declared a delinquent, and shall thereafter be treated as an escaped prisoner owing service to the state and shall be liable, when arrested, to serve out the unexpired term of his maximum, possible imprisonment, and the time from the date of his declared delinquency to the date of his arrest shall not be counted as any portion or part of the time served. **And any prisoner at large upon parole or conditional release who shall commit a fresh crime, and upon conviction thereof shall be sentenced anew to the penitentiary, shall be subject to serve the second sentence after the first is served or annulled; said second sentence to commence from the termination of his liability upon the first or former sentence.**" --

(Emphasis ours.)

You will note that the second sentence shall commence at the termination of his liability upon the first or former sentence. The termination of the liability on the former sentence of the above named prisoner would be February 28, 1953, or the completion date of his sentence under No. 13564.

You further state that you desire the information so that you may determine when parole violators will become eligible for restoration to citizenship. I call your attention to § 42-1711 which reads as follows:

"If any convict **shall pass the entire period of his sentence without any violation of the rules and regulations of the penitentiary**, he shall be entitled to a certificate thereof by the superintendent, endorsed by the board of penitentiary commissioners, and on presenting the same to the governor he may be granted a pardon and restored to citizenship, either at said time or subsequently, but the governor shall not be obliged to grant such pardon." (Emphasis ours.)

You will note that the restoration of citizenship is dependent upon the will of the governor and then only upon satisfactory completion of the entire sentence without any violation of the regulations. You must certify to the governor before a persons' rights are reinstated that he has passed his entire sentence without violating the rules and regulations of the penitentiary.

I sincerely hope that the above answers your inquiry.

By: Fred M. Standley

Assist. Attorney General