Opinion No. 55-6292

September 27, 1955

BY: RICHARD H. ROBINSON, Attorney General

TO: Mr. C. C. Chase, Jr., District Attorney, Third Judicial District, Las Cruces, New Mexico

Your request for opinion, dated September 19, 1955, has been received. You inquire whether or not the 1955 amendment to § 41-17-1, N.M.S.A., 1953, supersedes or repeals the habitual criminal statutes -- §§ 41-16-1, 41-16-2, 41-16-3 and 41-16-4, N.M.S.A., 1953.

Prior to the 1953 amendment to § 41-17-1, this section had been construed by our Supreme Court to invest the District Courts with the discretion to impose sentences with minimums and maximums different than those prescribed by the penalty sections of the statutes defining particular crimes, so long as the minimum and maximum imposed were within the limits prescribed in each statute. For example, where the penalty prescribed for a particular crime was one to three years, the Court, under § 41-17-1, before amendment, could sentence for a period of from one to two years, two to three years, or even not less than three nor more than three years, or any other combination between one and three years. State v. Davisson, 28 N.M. 653, 217 P. 240.

The change wrought by the 1955 amendment, as this office views it, makes it mandatory that the Court sentence for the period provided for in the penalty provision of the particular statute, that is, the minimum must be the minimum prescribed and no other, and the maximum must be the maximum prescribed and no other. In other words, the discretion of the sentencing courts was taken away from them.

It is noticed that two of the statutes on habitual criminals, §§ 41-16-1 and 41-16-2, provide for the imposition of a minimum and a maximum sentence. The third, 41-16-3, provides for life imprisonment. Thus, the sentences which may be imposed in these cases are no different than those which may be imposed in other cases where a minimum and maximum is provided for, or where, for example, as in murder in the first degree, absent the penalty of death, life imprisonment is imposed.

We see, therefore, no necessary incompatibility between § 41-17-1 and the habitual criminal statutes above. The only difference in their administration is that the discretion previously vested in the District Court to sentence within the limits prescribed in these statutes is no longer there and the Courts now must sentence for the minimum and the maximum provided in the statutes. Your inquiry, therefore, is answered in the negative.

I trust the above answers your question satisfactorily.

By Santiago E. Campos

Assistant Attorney General