

## Opinion No. 68-57

June 3, 1968

**BY:** OPINION OF BOSTON E. WITT, Attorney General

**TO:** Honorable David F. Cargo Governor of New Mexico State Capitol Santa Fe, New Mexico

### QUESTION

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Prior to 1967, various inmates in the State Penitentiary lost credit for time served while they appealed their convictions. May the Governor extend executive clemency by executive order under Article V, Section 6 of the New Mexico State Constitution and give those inmates credit for time served while they appealed their convictions?

#### CONCLUSION

No.

### OPINION

#### {\*95} ANALYSIS.

The state legislature acted upon the problem of credit for time served while appealing in 1967, Section 40A-29-24, N.M.S.A., 1953 Compilation (P.S.). That statute reads:

"A person convicted of a felony in the district court and held in official confinement while awaiting the outcome of an appeal, writ of error to, or writ of certiorari from, a state or federal appellate court, or prior to his release as a result of post-conviction proceedings or habeas corpus, shall be given credit for the period spent in confinement against any sentence finally imposed for that offense."

This section applies prospectively only, **State v. Sedillo**, New Mexico Supreme Court No. 8492, issued April 1, 1968.

The Governor now wishes, effectively to apply the benefits of this section retroactively by executive order.

Article V, Section 6 of the Constitution of the State of New Mexico reads:

"Subject to such regulations as prescribed by law the Governor shall have power to grant reprieves and pardons, after conviction for all offenses except treason and in case of impeachment."

For purposes of this opinion, this office assumes none of the inmates involved was convicted of treason.

A pardon is a declaration by the chief executive of a state that the person named is relieved from the legal consequences of a specific crime, **Biddle v. Perovich**, 274 U.S. 480, 71 L. Ed. 1161, 47 S. Ct. 664. A pardon blots out the existence of the recipient's guilt, **Ex Parte Anderson**, 191 Or. 409. 229 P.2d 633.

A reprieve is the withdrawing of the execution of the sentence for an interval of time. That interval of time terminates on a definite date in the future. 39 Am. Jur. Pardon, Reprieve and Amnesty, § 7, page 524.

The Governor intends to give credit for time served to a person convicted while that person's appeal is processed to a final decision. It is the opinion of this office that this action falls within the scope of neither a pardon nor a reprieve. Therefore, the proposed action by the Governor does not have a constitutional basis.

By: Donald W. Miller

Assistant Attorney General