

Opinion No. 19-2257

May 13, 1919

BY: N. D. MEYER, Assistant Attorney General

TO: Mr. Fidel Ortiz, Superintendent Penitentiary, Santa Fe, New Mexico.

Minimum and Maximum and Indeterminate Sentences to Penitentiary.

OPINION

Answering your request for an opinion from this office as to the interpretation of the indeterminate sentence law (Sec. 5075) 1915 Code, where the committing magistrate does not fix a minimum and maximum term but as an illustration gives the maximum sentence allowed by law, we beg to state:

That upon examination of similar statutes of other states, it appears that where the law itself fixes a maximum and minimum term for the particular offense for which it applies that that law will govern in the case irrespective of any erroneous sentence of the committing magistrate, for instance if the sentencing judge should prescribe only a maximum sentence or a sentence even in excess of the maximum allowed by law, the judgment would not be void, but the statute prescribing the minimum and the maximum would apply and govern. It has been held also that where the statute under which a defendant is convicted fixed the maximum and the minimum punishment, that it was not necessary, under the indeterminate sentence law, for the court to specify in the sentence such maximum and minimum punishment, since it is supplied by the statute.

Hence it is the opinion of this office that where a committing magistrate fails to prescribe a minimum and maximum according to law, and the law under which the prisoner is convicted prescribes a minimum and a maximum, then this maximum and minimum so prescribed by law shall be deemed the indeterminate sentence imposed upon such convict.