

Opinion No. 25-3834

June 9, 1925

BY: JAMES N. BUJAC, Assistant Attorney General

TO: Requested by: Hon. John B. McManus, Superintendent, New Mexico State Penitentiary, Santa Fe, New Mexico, June 8, 1925.

Prisoners sentenced to a term in the Penitentiary but after-wards committed to insane asylum and later discharged as cured and returned to the Penitentiary should be allowed credit on sentence for time spent in the asylum.

OPINION

Your request is as follows:

"Will you kindly furnish us with your opinion as to whether or not a prisoner sentenced to serve a term in this institution and who is committed by the District Court of Santa Fe County, to the Asylum at Las Vegas, and who is discharged as a cure from that institution and returned here, should receive credit on his sentence for time spent at the Asylum?"

Section 5098, New Mexico Statutes (Annotated) Codification of 1915, with reference to insane convicts provides:

"Insane convicts must be received into the asylum and returned to the State Penitentiary upon their recovering, unless their sentence has expired."

The language of the law above quoted, especially the phrase, "unless their sentence has expired," would seem to indicate that a prisoner, who, after being sentenced to a term in the penitentiary, was committed to the Insane Asylum but later discharged therefrom as cured, should be allowed credit on his sentence for the time spent in the asylum, and it is accordingly my opinion that such credit should be allowed.