

September 4, 1946

Mr. J. P. Francis, Sheriff
Coconino County
Flagstaff, Arizona

LAW LIBRARY
ARIZONA ATTORNEY GENERAL

Dear Mr. Francis:

Receipt is acknowledged of your letter of August 24, 1946, asking this office for an opinion on the following:

"Reference is made to your communication of the 12th regarding an opinion.

Wish to state that it is the contention of the local authorities that the Clerk of the Superior Court cannot deliver the commitment papers before the statement of facts are completed and accompany the commitments. A set up of this kind leaves this office without anything to hold the prisoners on, and necessitates holding them here several days before they can be taken to the penitentiary. Is there no way that this situation can be hastened?

Thanking you for past courtesies and an early reply advising, I am" ..

In answering your question, we direct your attention to Sec. 44-2301, A.C.A.1939, which reads, as far as pertinent to your question, as follows:

"Upon pronouncement of a sentence imposing a penalty other than a fine only or death the court shall, unless the execution of the sentence is suspended or stayed, and, in such case, upon revocation of the suspension or termination of the stay, forthwith commit the defendant to the custody of the sheriff together with a certified copy of the sentence. * * * * *

In the case of Moore vs. State, 55 Ariz. Page 43, the Supreme Court had this to say:

"All that is required is that the court pronounce judgment orally in the manner provided by statute, and when this has been done, it becomes the duty of the clerk to enter judgment in the minutes ...Sec. 44-2235, A.C.A.1939, and

Mr. J. P. Francis
Page 2
September 4, 1946

to furnish forthwith a certified copy of the entry except in death cases, to the officer whose duty it is to execute the judgment."

Your attention is directed to Sec. 47-119, A.C.A. 1939, which reads as follows:

"47-119. Statement by county attorney and judge.-- When a prisoner is sentenced the trial court and county attorney shall attach to the mittimus an official statement of the facts and circumstances constituting the crime whereof the prisoner was convicted, together with all other information accessible to them in regard to the career of the prisoner prior to the time of the commission of the crime of which he was convicted, relative to the habits, associates, disposition, reputation, and any other facts and circumstances which may aid in determining the capability of such prisoner to become a law-abiding citizen."

The above section provides that the judge and county attorney shall attach to the commitment or mittimus an official statement of the facts and circumstances constituting the crime whereof the prisoner was convicted, etc..

It is our opinion that the clerk of the court is required to deliver to the sheriff forthwith the commitment or mittimus together with a certified copy of the sentence so that the sheriff may have authority to hold the defendant.

Trusting the above answers your question satisfactorily, we are,

Very truly yours,

JOHN L. SULLIVAN, Attorney General

MAURICE BARTH, Assistant Attorney
General