

*Yours truly
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February 27, 1953

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Honorable T. J. Mahoney
Pinal County Attorney
Court House
Florence, Arizona

RE: State v. Bell

Dear Mr. Mahoney:

Enclosed herewith is our opinion as to whether prisoner Bell may be charged with the crime of escape. The conclusion we reached is that he may be charged with this crime.

You asked whether it would be necessary or wise to request the Legislature to amend the escape statute. In my research I found that most states do have a more specific statute than ours, and they spell out the various situations. I have discussed this matter briefly with Warden Walters and he may contact you in regard to this matter.

Yours very truly,

IC:GC

IRWIN CANTOR
Assistant to the
Attorney General

February 27, 1953
Opinion No. 53-46

TO: Honorable T. J. Mahoney
Pinal County Attorney
Court House
Florence, Arizona

RE: Escape of prisoner from Educational
Rehabilitation Institution

QUESTION: Can a prisoner who escapes from the
Educational Rehabilitation Insti-
tution be charged with the crime of
escape under Section 43-5003, A.C.A.
1939?

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Section 43-5003, A.C.A. 1939, sets forth the crime of escape. Said section states as follows:

"43-5003. Escape or attempt to escape by prisoner.-- Every prisoner confined in the state prison for a term less than for life, who escapes or attempts to escape from such prison, is guilty of a felony, and, upon conviction, his term of imprisonment shall commence at the time when he would otherwise have been discharged from said prison. Any person who, being confined in any county jail in this state, escapes from such jail, is guilty of a felony, if such confinement is upon a charge, arrest, commitment or conviction for a felony, and of a misdemeanor, if such confinement is upon a charge, arrest, commitment or conviction for a misdemeanor." (Emphasis supplied)

The particular question involved here is, Can a prisoner who has been transferred to the Educational Rehabilitation Institution, an annex to the state prison, and who escapes, be considered as being confined in the state prison?

In Arizona we do not have the strict common-law rule of interpretation of criminal statutes. Our Legislature intended the penal code to be construed according to the fair import of its terms, with a view to effect its objects and to promote justice. Section 43-102, A.C.A. 1939, sets forth this rule of statutory construction. Said section provides as follows:

"43-102. How construed.-- The provisions of this Code, so far as they are substantially the same as existing statutes, shall be construed as continuations thereof, and not as new enactments.

The rule of the common law that penal statutes are to be strictly construed, has no application to this Code; its provisions are to be construed according to the fair import of their terms, with a view to effect its object and to promote justice. No part of this Code is retroactive, unless expressly so declared." (Emphasis supplied)

Therefore, the particular point in question is, Is an inmate of the Educational Rehabilitation Institution to be considered constructively to be confined in the state prison?

Our Supreme Court has not ruled on this question and, therefore, we must look to the decisions of other states to see how they have interpreted similar statutes.

In the case of CAMPBELL ET AL v. DAVISON ET AL (Ga. 1936) 133 S.E. 468, the Supreme Court stated in part as follows, i.e. 468:

"BECK, P. J. 1. A felony convict working in a county of the state upon the public works and roads, under an allotment made to the county by the Act of 1908 (Ga. L. 1908, p. 1119), is 'confined in the penitentiary,' and if he escapes from such confinement his escape is from the penitentiary. And the superior court of the county in which the convict makes his escape has jurisdiction to try him for the offense. * * *"

In the case of STATE v. MEAD (Conn. 1943) 32 A. 2d 273, the Supreme Court stated in part as follows, i.e. 275:

"The defendant makes the further claim that his escape was not from the state prison, being from the prison farm. General Statutes, § 6173, relating to escape, provides that 'any person legally confined in the State Prison, who shall escape * * * from said prison, shall be imprisoned * * *'
* * * * *

Prisoners may be transferred to the farm and, when so transferred, may earn a greater commutation of sentence than when confined at Wethersfield. General Statutes, Cum. Sup. 1935, § 783c. They are there housed in a building surrounded by a high wire fence, the gates of which are locked in the night season, when the plaintiff escaped. No claim was made on the trial, so far as the record discloses, that this was not an escape from the state prison within the meaning of the statute, and as the record stands it appears that the prison farm is a department and integral part of the institution known as the state prison, so that an escape from the farm was in fact one from the prison."
(Emphasis Supplied)

In the case of STATE v. BAKER (Mo. 1947) 199 S.W. 2d 393, the Supreme Court stated in part as follows, l.c. 396:

" * * * Authorities could be multiplied. Under the facts here when appellant was on that portion of the prison farm whereon, with the permission and favor of the guard, appellant was allowed to take a short and unaccompanied walk during his rest hour he was in contemplation of law in custody and under guard. But when appellant went away from the limited place he had been permitted by the guard to walk, with an intent to escape and without authority of law, it was in direct violation of the statute under which he was charged and convicted. * * *"

In this case the court distinguished an older case, GENKS v. STATE, 63 Ark. 319, 39 S.W. 361, in that the prosecution was brought under the wrong escape statute and therefore was not valid.

In the case of BRADFORD v. GLENN (Cal. 1922) 205 P. 449, the Supreme Court stated in part as follows, l.c. 449:

"We are of the opinion that a person serving a sentence of imprisonment in a state prison is, in contemplation of law, a prisoner therein, as well when at work outside under the surveillance of prison guards as when confined within its walls, so that if he escapes when outside he escapes from a prison, within the meaning of section 787." (Emphasis Supplied)

In the case of STATE v. RARDON (Ind. 1943) 46 N.E. 2d 605, the Supreme Court of Indiana stated in part as follows, l.c. 608:

"The right to transfer inmates from one penal institution to another is given to the State Welfare Board by statute, and as the record comes to us we have no right to assume that the appellees in the instant case were not moved from Michigan City to the farm in Porter County without an order from the proper authority. When a person is ordered confined to a given prison that order of confinement does not mean that that person must be kept within a given four walls but it does mean that that person is confined for restraint upon his freedom by the authorities of that institution, and if the proper authorities determine that he may

leave the four walls of the institution for the purpose of performing some duty or accomplishing some task given him, and while outside the institution walls he escapes, he is guilty of escape from the correctional institution to which he was committed * * *

Reasoning from the above quoted cases, it appears that those states that have construed the phrase "confined in a state prison" as meaning that when a prisoner is sentenced to a state prison, he is constructively confined in that prison even though he may be temporarily elsewhere, i.e., trustee, working on a road gang, or an inmate of a different institution.

Therefore, it is our opinion that an inmate of the Arizona State Prison who escapes from the Educational Rehabilitation Institution may be charged with the crime of escape under Section 43-5003, supra.

ROSS F. JONES
The Attorney General

IRWIN CANTOR
Assistant to the
Attorney General