



STATE OF WEST VIRGINIA  
OFFICE OF THE ATTORNEY GENERAL  
CHARLESTON 25305

CHARLIE BROWN  
ATTORNEY GENERAL

July 8, 1986

The Honorable Jack Alsop  
Prosecuting Attorney for  
Webster County  
112B Bell Street  
Webster Springs, West Virginia 26288

Dear Mr. Alsop:

We are in receipt of your letter dated May 13, 1986, requesting an opinion as to the applicability of West Virginia Code § 7-8-11 to the following factual situation:

"An inmate in the Webster County Jail, pursuant to a plea agreement with the State of West Virginia, plead guilty to driving under the influence of alcohol for a second time and was sentenced pursuant to the plea agreement as follows: 'It is accordingly the judgment and order of this Court that the defendant be, and he is hereby sentenced to the Webster County Jail for a period of one year, but the execution of all but six months of said sentence is suspended on the following conditions: That the defendant make himself available to perform public service work for the Town of Addison during the period of incarceration in the Webster County Jail.'

"It is the position of the Sheriff of Webster County that the defendant is entitled to the provisions of Chapter 7, Article 8, Section 11 of the West Virginia Code, and that the Sheriff may give the defendant good time of five days from each month of his sentence.

"It is the position of this office, representing the State of West Virginia in the matter, that the provisions of Chapter 7, Article 8, Section 11 of the West Virginia Code are inapplicable, in that the defendant was not placed in the Webster County Jail for a term exceeding six months, in that six months of the sentence were suspended on the basis

of the performance of public service work, which the defendant has actually engaged in."

Code 7-8-11 reads, in relevant part, as follows:

"Every prisoner sentenced to the county jail for a term exceeding six months who, in the judgment of the sheriff, shall faithfully comply with all rules and regulations of said county jail during his term of confinement shall be entitled to a deduction of five days from each month of his sentence."

The key phrase here is "sentenced to the county jail for a term exceeding six months \* \* \*." In a memorandum opinion and Order entered by the Honorable Arthur M. Recht in Crain, et al. v. Bordenkircher, et al., Civil Action No. 81-C-320R (Marshall County Cir. Ct., August 17, 1983), the Court considered two good-time issues. One issue involved a determination of whether a deduction under Code 28-5-27 (since repealed) was predicated upon the length of the sentence itself or upon the actual service of that sentence. The court determined that a deduction under Code 28-5-27 must be based on "a calculation on the length of the sentence itself, rather than the actual service of that sentence. The statute does not say, e.g., 'upon the serving of the sentence of ten years or more, ten days from each month (shall be deducted)' instead the statute states that 'upon a sentence of ten years or more, ten days for each month (shall be deducted).'" (Emphasis supplied). Although not binding, this argument is persuasive.

The factual situation outlined in your letter can also be compared with West Virginia's statute granting probation. Code 62-12-3 provides that the court "may suspend the imposition or execution of sentence and release the offender on probation \* \* \*." (Emphasis added.) In those cases where the execution of sentence has been suspended, one could not say that an actual sentence had not been imposed. For example, a convicted felon receives a sentence of one to ten years. However, since the convict is eligible for probation, the court suspends the execution of the sentence and places him on probation pursuant to Code 62-12-3 for a period of two years. The sentence still remains one to ten years. The sentence has simply been suspended and may be discharged by faithfully serving the two years' probation.

In the facts you have presented, the inmate was sentenced to one year in the Webster County Jail. However, six months of the sentence was suspended upon the condition that the inmate make himself available to perform public service work for the Town of Addison during the period of time he was incarcerated in the county jail. The suspension of six months of the sentence was dependent upon compliance with the terms of that suspension. Therefore, the sentence remained one year, but with faithful performance, the last six months would be considered discharged.

In conclusion, it is my opinion that the inmate to whom you refer has received a sentence exceeding six months and therefore is eligible to receive a deduction from his sentence pursuant to Code 7-8-11.

Very truly yours,

CHARLES G. BROWN  
ATTORNEY GENERAL

By

  
DANA D. DAVIS

Assistant