

**N.D.A.G. Letter to Marion (Nov. 12, 1985)**

November 12, 1985

Mr. James L. Marion  
Chief Parole Officer  
North Dakota Department of  
Parole and Probation  
P. O. Box 5521  
Bismarck, North Dakota 58502-5521

RE: N.D.C.C. §§ 12.1-32-02(1)(c)(1) and 12.1-32-02(2), (9)

Dear Mr. Marion:

Thank you for your letter of October 25, 1985.

You have requested an interpretation of N.D.C.C. §§ 12.1-32-02(1)(c)(1) and 12.1-32-02(2) and (9), as to whether or not actual commitment of a sentenced defendant must occur prior to the reduction of a felony offense to a misdemeanor, and whether or not the court has the discretion, by virtue of these statutes, to sentence a defendant for a year or less and then suspend the actual execution of sentence thereby placing such person under supervised probation.

As you know, N.D.C.C. § 12-51-07 was amended by the 1981 Legislature by deleting the provision that a "person committed to the state farm shall not be deemed to have been convicted of a felony but shall be deemed to have been convicted of a misdemeanor." In its place, the North Dakota Legislature adopted N.D.C.C. § 12.1-32-02(9) stating:

A person convicted of a felony who is sentenced to imprisonment for not more than one year shall be deemed to have been convicted of a misdemeanor upon successful completion of the term of imprisonment.

As in the case of N.D.C.C. § 12-51-07 existing prior to July 1, 1981, the key to whether or not a felony will be reduced to a misdemeanor will be dependent upon the sentence imposed by the court. Prior to July 1, 1981, any sentence imposed pursuant to N.D.C.C. § 12-51-07 upon a conviction for a felony would be automatically deemed to be a misdemeanor. However, after July 1, 1981, such a reclassification of the offense as a misdemeanor requires that the court impose a sentence of one year or less and the defendant must successfully complete the term of imprisonment. This reclassification of the offense is not automatic but will occur only upon compliance with the conditions of that statutory section.

Therefore, the initial sentence imposed by the court will determine whether or not N.D.C.C. § 12.1-32-02(9) will apply. If a defendant receives a sentence of greater than

one year but, because of the application of credit for time spent in custody as required by N.D.C.C. § 12.1-32-02(2) which results in an actual confinement of less than one year, such defendant will not be able to take advantage of the provisions of N.D.C.C. 12.1-32-02(9) since the sentence of imprisonment imposed by the court is greater than one year.

Once a defendant who has been sentenced to no more than one year imprisonment has successfully completed his term of imprisonment, such felony offense shall be deemed to be a misdemeanor. There is no requirement that the North Dakota Department of Parole and Probation issue any documentation to the defendant advising him or her that the sentence reduction has occurred upon successful completion of the term of imprisonment. Even though this is not a statutory requirement, you may, as a matter of practice, advise the defendant of the effect of this provision upon the successful completion of the term of imprisonment. This reduction occurs as a matter of law and not as a result of an act of the North Dakota Department of Parole and Probation.

You further inquire as to whether or not a court possesses discretion by virtue of these statutes to suspend the sentence of one year or less and to place the defendant on supervised probation. You have also inquired as to whether or not the reduction from a felony to a misdemeanor as authorized by N.D.C.C. § 12.1-32-02(9) occurs automatically at the time that the court imposes a probationary sentence.

The court continues to possess authority to suspend all sentences pursuant to N.D.C.C. Ch. 12-53. The adoption of N.D.C.C. § 12.1-32-02(9) in 1981 has not diminished the court's power to suspend a sentence.

A similar question arose pertaining to the provisions of N.D.C.C. § 12-51-07. In 1981 N.D. Op. Att'y Gen. 99, dated April 2, 1981, to Thomas H. Falck, Jr., Grand Forks County Assistant State's Attorney, this office stated that, to the extent that it does not conflict with the sentencing court's intentions, a defendant who has been sentenced to a period of incarceration at the State Farm for conviction of a felony but whose sentence has been suspended is deemed to have been convicted of a misdemeanor pursuant to N.D.C.C. § 12-51-07. Based upon that opinion, it was clear that actual incarceration was not required to permit a reduction of a felony sentence to a misdemeanor when a defendant received a sentence to the North Dakota State Farm. I have enclosed a copy of 1981 N.D. Op. Att'y Gen. 99 with this response.

It is clear from the specific language of N.D.C.C. § 12.132-02(9) that the North Dakota Legislature intended that the reclassification of an offense from a felony to a misdemeanor in situations involving a sentence of imprisonment of one year or less would occur only after the successful completion of the term of imprisonment and not automatically at the time of sentencing. Based upon the specific intent and the fact that a sentencing court retains the power to suspend sentences, it necessarily follows that the reclassification of the offense from a felony to a misdemeanor will occur upon successful completion of the probationary period imposed as a result of the suspension of the one year or less sentence.

An interpretation other than this could lead to absurd results. If a defendant sentenced for a felony offense could not receive the benefits of N.D.C.C. § 12.1-32-02(9) if such sentence was suspended, a defendant would request that he or she receive a jail sentence to serve rather than a supervised probation under a suspended sentence. The intent of the Legislature appears to be that a reduction of class of offense occurs upon successful completion of the sentence imposed by the court. I can find no intention that the Legislature desired to restrict the court's statutory option to suspend a sentence for an offense classified as a felony.

There is no statutory requirement that your department furnish the defendant with some type of documentation indicating that the reduction of sentence has occurred upon successful completion of the probationary period. As stated previously, this reduction occurs as a matter of law and not the result of any acts of the North Dakota Department of Parole and Probation. However, it should again be stated that you may wish to institute a practice of informing the defendants of this reduction should they be confronted with questions in the future concerning whether or not they had been convicted of a felony offense. In addition, I am sure that it is your practice at this time to make a notation in the defendant's file pertaining to the successful completion of probation.

I hope that this response has adequately answered your inquiries. Should you desire to discuss this matter further or request further clarification of this response, please do not hesitate to contact me at your convenience.

Sincerely,

Nicholas J. Spaeth

pg  
Enclosure