

Date Issued: March 27, 1981 (AGO 81-33)

Requested by: John P. Van Grinsven III  
Ward County Assistant State's Attorney

- QUESTION PRESENTED -

Whether a person convicted of a felony who has been lawfully sentenced to a period of incarceration at the State Farm in Bismarck, but who has been ordered to serve the sentence in a county jail facility, is deemed to have been convicted of a misdemeanor pursuant to section 12-51-07 of the North Dakota Century Code.

- ATTORNEY GENERAL'S OPINION -

It is my opinion, to the extent it does not conflict with the sentencing court's intentions, that a defendant who has been sentenced to a period of incarceration at the State Farm for conviction of a felony, but who has been ordered to serve that sentence in a county jail facility, is deemed to have been convicted of a misdemeanor pursuant to section 12-51-07, N.D.C.C.

- ANALYSIS -

Opinions of the Attorney General are not controlling upon the judiciary. In addition, we do not express opinions in matters which are before the judiciary or have been judicially decided.

Section 12-51-07, N.D.C.C., states as follows:

12-51-07. PRISONERS ELIGIBLE FOR COMMITMENT TO STATE FARM - COMMITMENT THERETO DEEMED A CONVICTION OF MISDEMEANOR. The judges of the district courts, and of the county courts with increased jurisdiction, may commit to the state farm, so far as the capacity of the farm shall permit, all male persons who otherwise would be committed to the county jail or to the penitentiary for violation of any criminal law of this state, where the sentence is not less than thirty days nor more than one year provided that no person shall be committed to the state farm who:

1. Has at any time been convicted of a sexual offense;
2. Has served a sentence or portion thereof in a penitentiary upon conviction of a felony; or
3. Has a history of moral or sexual degeneration.

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. (Emphasis supplied).

How does this section affect a defendant convicted of a felony who was sentenced to the State Farm, but served his sentence (pursuant to court order) at a county jail facility? The question is whether the statute in question contemplates a requirement that only those persons who are, by court sentence, physically confined within the State Farm may take advantage of the applicable crime classification reduction provision quoted above.

It is the trial court that has the discretion, in the first instance, to determine the initial place of imprisonment. State, ex rel. Olson v. Maxwell, 259 N.W.2d. 621 (N.D. 1977). Trial courts in the State of North Dakota are empowered to impose sentences in criminal cases pursuant to Rule 32(a) of the North Dakota Rules of Criminal Procedure and pursuant to chapter 12.1-32, N.D.C.C., State v. Rudolph, 260 N.W.2d. 13 (N.D. 1977). Our state's trial courts are granted wide discretion in determining the length of sentences which they may impose by law. State v. Rudolph, supra; State v. Smith, 238 N.W. 2d 662 (N.D. 1976); State v. Ankney, 195 N.W.2d. 547 (N.D. 1972). In addition, the law contemplates that the sentencing judge alone has the discretion and the authority to determine the initial place of confinement. State, ex rel. Olson v. Maxwell, supra.

The trial court has the statutory authority to commit the defendant to a county jail facility for conviction of a felony. Subsections (1)(c)(1) and (1)(h) of section 12.1-32-02, N.D.C.C., reads as follows:

12.1-32-02. SENTENCING ALTERNATIVES - CREDIT FOR TIME IN CUSTODY - DIAGNOSTIC TESTING.

1. Every person convicted of an offense who is sentenced by the court shall be sentenced to one or a combination of the following alternatives, unless the sentencing alternatives are otherwise specifically provided in the statute defining the offense:

\* \* \*

- c. A term of imprisonment, including intermittent imprisonment:

- 1) In the penitentiary or a regional detention facility approved by the director of institutions, or in the state farm in accordance with section 12-51-07, if convicted of a felony.

\* \* \*

- h. Commitment to any other facility or program deemed appropriate for the treatment of the individual offender, including available community-based programs. (Emphasis supplied).

In construing statutes, section 1-02-01, N.D.C.C., directs that statutes ". . . are to be construed liberally, with a view to effecting its objects and to promoting justice." In addition, Rule 2 of the North Dakota Rules of Criminal Procedure, states as follows:

#### RULE 2. PURPOSE AND CONSTRUCTION.

These Rules are intended to provide for the just determination of every criminal proceeding. They shall be construed to secure simplicity in procedure, fairness in administration, and the elimination of unjustifiable expense and delay.

It would be a restrictive and unfair construction of the law to hold that merely because the defendant was never physically "confined" at the State Farm, that the provisions of section 12-51-07, N.D.C.C., do not apply even if that was the sentencing court's intention.

The terms "commit" or "committed", as found in section 12-51-07, N.D.C.C., are likewise subject to the "liberal" and "fair" interpretation provisions of section 1-02-01, N.D.C.C., and Rule 2, N.D.R. Crim. P. The term "commit" generally means to place a person in the charge of a jailer or to imprison. "Committed" may also refer the authority one possesses through judicial process for holding in a jail or a prison facility a person convicted of a crime. See Words and Phrases Volume 7A Commit; and Black's Law Dictionary Fourth Edition.

While a defendant may not be actually physically confined at the State Farm, he may still be deemed to have been "committed" there by virtue of the court's imposition of the sentence to that facility. Whether the court subsequently directed that the sentence should be served at a county jail facility should not affect the sentence reduction provision of section 12-51-07, N.D.C.C., as long as it was the court's intention to utilize that provision of law. Section 12.1-32-04(5), N.D.C.C., requires the sentencing court to set out in writing its reasons for imposing a particular sentence.

The first part of section 12-51-07, N.D.C.C., which states that a defendant may only be sentenced to the State Farm ". . . so far as the capacity of the farm shall permit . . ." initially limits the number of persons which may be physically housed therein. That limitation may well have been intended only to prevent overcrowding. However, where a court utilizes sentencing alternatives, such as requiring the sentence to be served in a county jail, the sentencing reduction provisions of section 12-51-07, N.D.C.C., should control, unless the court's sentencing intentions were expressed to the contrary. The sentencing intentions of the court must prevail.

Your attention is also directed to House Bill No. 1085, a copy of which is attached, which has passed the Forty-seventh Legislative Assembly and has been signed by the Governor. This legislation will become law on July 1, 1981, and will have an effect upon future court sentences to the State Farm. It also may resolve some of the issues reviewed herein.

- EFFECT -

This opinion is issued pursuant to section 54-12-01, N.D.C.C. It governs the actions of public officials until such time as the question presented is decided by the courts.

ROBERT O. WEFALD  
Attorney General

Prepared by: Calvin N. Rolfson  
Deputy Attorney General