

Date Issued: April 2, 1981 (AGO 81-34)

Requested by: Thomas H. Falck, Jr.
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- 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 whose sentence has been suspended by the court, is deemed to have been convicted of a misdemeanor pursuant to section 12-51-07, N.D.C.C.

- 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 whose sentence has been suspended, is deemed to have been convicted of a misdemeanor pursuant to section 12-51-07, N.D.C.C.

- ANALYSIS -

We have previously answered a somewhat similar question in our Opinion 81-33 issued on the twenty-seventh day of March 1981. In that opinion, we held that a person who is convicted of a felony and sentenced to the State Farm, but whose sentence was ordered served in the county jail, was considered to have been convicted of a misdemeanor pursuant to section 12-51-07, N.D.C.C. That same analysis is applicable to the question answered in this opinion. The same cautionary remarks apply. Opinions of the Attorney General are not controlling upon the judiciary. Additionally, to the extent it is relevant to this particular question, we do not express opinions in matters which are before the judiciary or which have been judicially decided.

Under section 12-53-01, N.D.C.C., the court may suspend a sentence. The nature of the sentence imposed, but suspended, however, and the court's intention is what controls as to the characterization of a felony conviction as a misdemeanor under section 12-51-07, N.D.C.C. The court's intention with respect to the treatment of a felony sentence as a misdemeanor should be set out in the court's reasons for imposing a particular sentence under section 12.1-32-04(5), N.D.C.C. Unless the court has indicated an intention to the contrary, the sentencing to the State Farm of an individual who has been convicted of a felony and whose sentence has been suspended shall be considered as having been convicted of a misdemeanor under section 12-51-07, N.D.C.C. Any other interpretation without a contrary intention being expressed by the sentencing court, would be a restrictive and unfair construction of the law.

- 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