

LETTER OPINION
97-L-192

November 20, 1997

Mr. Tim Schuetzle
Warden
ND State Penitentiary
PO Box 5521
Bismarck, ND 58506-5521

Dear Mr. Schuetzle:

Thank you for your letter concerning the application of North Dakota Century Code (N.D.C.C.) § 12-54.1-01, one of North Dakota's inmate sentence reduction statutes. Specifically, you ask whether the pre- or post-July 1, 1991, version of N.D.C.C. § 12-54.1-01 should apply to a certain inmate who is currently serving a ten-year sentence, with four years of that sentence suspended.

Under North Dakota law, an inmate's sentence reduction for good time is purely statutory. Smith v. Satran, 295 N.W.2d 118, 120 (N.D. 1980). Before July 1, 1991, N.D.C.C. § 12-54.1-01 provided, in relevant part, that sentences may be reduced at a rate of "[t]en days per month on a sentence of ten years or more." See 1991 N.D. Sess. Laws ch. 118, § 1. After amendment in 1991, N.D.C.C. § 12-54.1-01 provided for performance-based sentence reductions in which an inmate was eligible to "earn five days [of] good time per month." Id.

Deciding whether to apply the pre- or post-1991 versions of N.D.C.C. § 12-54.1-01 in this case turns on the factual determination of when the crimes occurred for which the inmate was sentenced. See Weaver v. Graham, 450 U.S. 24 (1981) (retrospective application of inmate sentence reduction statutes violates the ex post facto clause of the United States Constitution). If the crimes for which the inmate was sentenced occurred before July, 1991, then N.D.C.C. § 12-54.1-01, as it was in effect at that time, would apply. However, if the crimes for which the inmate was sentenced occurred after July, 1991, then N.D.C.C. § 12-54.1-01 as amended in that year would apply.

I understand that the inmate pled guilty to two charges of gross sexual imposition in violation of N.D.C.C. § 12.1-20-03(2) as stated in separate criminal informations. Both criminal informations, albeit one information was amended, state that the crimes occurred on or about 1992. Additionally, the transcript of the pretrial conference notes that the crime for which he is serving his current sentence occurred during the year of 1992. Nonetheless, based on

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information outlined in the presentence investigation report, the State Penitentiary determined that the crimes had occurred from January, 1990 up to November, 1993 and thus believed that the pre-1991 version of N.D.C.C. § 12-54.1-01 applied. It is important to note, however, that the State Penitentiary did not have the advantage of having the criminal informations nor the transcript of the pretrial conference available when it made its determination. Now that this information is available, it is my opinion that, in factual conflicts, the State Penitentiary must use the date stated in the criminal information in which the inmate was charged and to which he pled guilty in determining when the crime occurred and, therefore, which version of N.D.C.C. § 12-54.1-01 applies. Because the crimes to which the inmate pled guilty and for which he was sentenced occurred during 1992, it is my further opinion that N.D.C.C. § 12-54.1-01 as amended in 1991 applies and that the inmate is eligible to receive five days of good time per month.

Sincerely,

Heidi Heitkamp
ATTORNEY GENERAL

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