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March 4, 2008

Opinion No. 08-43

Effect of statutes of limitation and/or estoppel on the enforcement of incomplete sentences

QUESTIONS

1. Does a statute of limitation limit the State's ability to impose the remainder of a sentence upon a convicted prisoner released by mistake, due to inadvertence or oversight?

2. Does the doctrine of estoppel limit the State's ability to impose the remainder of a sentence upon a convicted prisoner released by mistake, due to inadvertence or oversight?

OPINIONS

1. No. Statutes of limitation, in the criminal law context, apply to limit the time within which a criminal prosecution may be commenced. *See* Tenn. Code Ann. §§40-2-101 to -106. A criminal prosecution ends with a conviction. The execution of sentence does not affect the validity of the judgment of conviction.

2. No. While the doctrine of estoppel has been invoked in other jurisdictions to prevent reincarceration of prematurely released prisoners, more than mere negligence in the calculation of sentence credits must be presented.

ANALYSIS[1]

1. The Department of Correction calculates the release eligibility date and expiration date of a sentence based upon the judgment documents forwarded by the clerk of the convicting court. *See* Tenn. Code Ann. § 40-35-501(r) (Supp. 2008.) The calculation therefore is an administrative function of the Department that includes in its consideration the behavior of the inmate while so incarcerated. *See* Tenn. Code Ann. § 40-35-501(m) (Supp. 2008.) In no case can the calculation's result exceed the full sentence originally imposed by the court. If, as the questions suggest, the Department fails, through inadvertance or oversight, to calculate properly the defendant's release eligibility date or sentence expiration date, that failure would have no effect on the original judgment of conviction, which reflects on its face the maximum sentence to be served. Tenn. Code Ann. §40-

[1]The questions posed contemplate a premature release due to "inadvertence or oversight." The analysis assumes that the premature release is due to a miscalculation of release eligibility. *See* Tenn. Code Ann. § 40-35-501 (Supp. 2008).

20-107 (2006).

The statutes of limitation bar the initiation of a criminal prosecution. *See, e.g.,* Tenn. Code Ann. 40-2-101(b) (Repl. 2006.) (Prosecution for a class A felony shall begin within 15 years of the commission of the offense.) *See also State v. Henry,* 834 S.W.2d 273, 276 (Tenn. 1992). The purpose of the statutes is to limit a defendant's criminal exposure and protect him or her from having to defend against stale accusations where evidence may have been lost as a result of the passage of time. *See Toussie v. United States,* 397 U.S. 112, 114-15, 256 L.Ed.2d 156 (1970). The statutes, therefore, would have no effect on the administrative action on the part of the Department of Correction to calculate a release date or, in the event of some miscalculation, efforts by the State to recapture and reincarcerate the defendant.

2. Estoppel has been used in other jurisdictions to prevent the incarcerating authority from enforcing an otherwise unexpired sentence. *See Johnson v. Williford,* 682 F.2d 868, 873 (9th Cir. 1982); *Green v. Christiansen,* 732 F.2d 1397, 1399-1400 (9th Cir. 1984); *Vega v. U.S.* 493 F.3d 310, 315-16 (3rd Cir. 2007). Decisions in these jurisdictions, however, have recognized that the equitable doctrine of estoppel is not generally applicable against the government acting in its sovereign capacity. *Federal Crop Insurance v. Merrill,* 332 U.S. 380, 381 (1947). (A government cannot be estopped by an unauthorized act of its agent.) Any exception to this general rule, therefore, must involve more than "ministerial missteps." *Green,* 732 F. 2d at 1399; *cf Green,* 732 F. 2d at 1400, *Johnson,* 682 F.2d at 873. The Tennessee Court of Criminal Appeals recognized the necessity of the doctrine only where required by "fundamental fairness and due process." *State v. Chapman*, 977 S.W.2d 122, 126 (Tenn. Crim. App. 1997) (app. denied 1998). The *Chapman* court held that, for the doctrine to bar the State's enforcement of the remainder of a prisoner's sentence, a prisoner would have to show these elements: "(1) the party to be estopped must know the facts; (2) he must intend that his conduct shall be acted upon or must act so that the party asserting the estoppel has a right to believe it is so intended; (3) the party asserting the estoppel must be ignorant of the facts; and (4) that party must rely on the former's conduct to his injury." *Chapman,* 977 S.W.2d at 126. Applying these elements to a situation in which a county sheriff had inadvertently released a pregnant inmate so that she might receive emergency treatment, the court held that equitable estoppel did not preclude the enforcement of the prisoner's sentence. The court went on to discuss the applicability of detrimental reliance on the part of a formerly incarcerated prisoner, but this analysis was confined to the "due process waiver doctrine:"

> [C]ourts began examining the totality of the circumstances surrounding the nonservice of the sentence to determine whether reincarceration is fundamentally fair. *See Johnson v. Williford,* 682 F.2d 868, 873 (9th Cir.1982). As a result, the due process waiver doctrine was used to prevent recommitment when the government has waived the right to recommit "when its agents' actions are so affirmatively improper or grossly negligent that it would be unequivocally inconsistent with 'fundamental principles of liberty and justice' to require a legal sentence to be served in its aftermath." *Green v. Christiansen*, 732 F.2d 1397, 1399 (9th Cir.1984). However, more than a mistake by someone in a ministerial capacity is needed to excuse a

> convicted person from serving his sentence under this doctrine. There must be no fault by the defendant, there must be more than simple negligence by the government, and the defendant's reincarceration must be "unequivocally inconsistent with 'fundamental principles of liberty and justice.' " *United States v. Merritt,* 478 F.Supp. 804, 807 (D.D.C.1979).
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> In other words, when reincarceration is fundamentally unfair, a due process violation occurs. As for the present case, though, we do not believe that the facts support a due process violation. The defendant was released from custody because of premature labor. The sheriff's actions in releasing the defendant to receive necessary medical attention, unavailable in his county, is not "so affirmatively wrong ... that it would be unequivocally inconsistent with 'fundamental principles of liberty and justice' to require" the defendant to complete her sentence. *Walker,* 905 S.W.2d at 557 (*quoting Mobley v. Dugger,* 823 F.2d 1495, 1496-97 (11th Cir.1987)).

State v. Chapman 977 S.W.2d at126. The court held that the inmate had not suffered any injury in reliance on the sheriff's administrative misstep.

Accordingly, it is the opinion of this office that the doctrine of estoppel will not work to limit the State's ability to reincarcerate an offender released prematurely due to mere inadvertence or oversight.

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