

073-433—November 26, 1973

CRIMINAL LAW

PRISON SENTENCE MAY NOT RUN CONCURRENTLY WITH  
SENTENCE IN OTHER JURISDICTION

To: L. L. Wainwright, Director, Division of Corrections, Tallahassee

Prepared by: Reeves Bowen, Assistant Attorney General

QUESTION:

Does a Florida court imposing a state prison sentence upon a defendant have any legal authority to direct that such sentence run concurrently with a sentence being served by the defendant in the prison of another state or in a federal prison and, if not, what steps should the Division of Corrections take when a commitment based on such a "concurrent" sentence is transmitted to it for a defendant who is serving a sentence in the prison of another state or of the United States?

SUMMARY:

After imposing a state prison sentence, a Florida court is without legal authority to order that it be served concurrently with a sentence being served by the defendant in a prison of another state or of the United States.

If a commitment based upon such a concurrent sentence is received by the Division of Corrections for a defendant confined in the prison of another state or of the United States, a detainer should be lodged with the prison authorities of such other jurisdiction and all necessary steps should be taken to subject him to the service of his Florida sentence, by resorting to extradition if necessary, when he is released from the prison of the other state or of the United States.

What does it mean for sentences to run concurrently? [At] 24B C.J.S. *Criminal Law* §1996(1), p. 660, it says in this regard that "[t]he fact that sentences run concurrently means merely that the convict is given *each day the privilege of serving a part of each sentence.*" (Emphasis supplied.) Therefore, to order that a Florida sentence run concurrently with a sentence being served in another state's prison or in a United States prison is to order that it be *served* in such other prison; it is to the same effect as if the Florida court had sentenced the defendant to such other prison. Such is legally impermissible.

The only prison sentences for noncapital felonies are found in §775.082, F. S., as amended by Ch. 72-724, Laws of Florida, prescribing "imprisonment *in the state prison*" (meaning the state prison of Florida) and §775.084, F. S., requiring that a sentence imposed thereunder be "*to the state penitentiary*" (meaning the Florida state penitentiary and being the same thing as the Florida state prison).

And, as is aptly stated in 21 Am. Jur.2d *Criminal Law* §547, p. 524:

Sentences to different institutions appear, in the very nature of things, to be cumulative and not concurrent, for *two or more prison sentences cannot be served concurrently at different places of confinement.* (Emphasis supplied.)

Consequently, it is not possible for a man to serve a Florida state prison sentence while he is confined in the prison of another state or of the United States, and a Florida court is without legal authority to order that a Florida sentence imposed by it run concurrently with a sentence imposed by a court of another state or of the United States.

As to what should be done in the event that the Division of Corrections receives

a commitment based on such a "concurrent" sentence without receiving the defendant, I think that the division should lodge a detainer with the prison authorities of the state or the United States, as the case may be, whose sentence is being served by the defendant and take all necessary steps to subject him to service of his Florida sentence, by resorting to extradition if necessary, when he is released from the prison in which he is confined.

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## INDIANS

### HUNTING AND FISHING RIGHTS

To: O. E. Frye, Jr., Director, Florida Game and Fresh Water Fish Commission,  
Tallahassee

Prepared by: Kenneth F. Hoffman, Assistant Attorney General

#### QUESTIONS:

1. Can a member of the Seminole Indian Tribe take wild game and fish at any time within the confines of the Seminole Indian Reservation pursuant to Ch. 29908, 1955, Laws of Florida, and Ch. 285, F. S.?
2. Is any other license or permit required?
3. Can wildlife or fish be taken on reservation lands for other than food purposes?
4. Can a Seminole Indian hunt and fish on other lands within the State of Florida, including a wildlife management area, under the provisions of a permit issued pursuant to Ch. 29908, 1955, Laws of Florida, without any other license or permit being required?

#### SUMMARY:

A member of the Seminole Tribe may take wild game and fish at any time within the confines of the Seminole Indian Reservation without any permit whatsoever. The taking of wild game and fish must be for food purposes only. Finally, Seminole Indians can hunt and fish on other lands within the state, including wildlife management areas, without any permit other than a valid identification card issued by the Game and Fresh Water Fish Commission. This authority to hunt and fish must be for the purpose of obtaining food, and be within the confines of the rules and regulations of the Game and Fresh Water Fish Commission concerning seasons, bag limits, and sizes, and is effective only until June 15, 1980.

Chapter 29908, 1955, Laws of Florida, was codified at Ch. 285, F. S. The provisions of these laws are identical. Section 285.09 [§3, Ch. 29908], provides:

It shall be lawful for Indians to take wild game and fish at any time within the boundaries of the reservation, provided that game may be taken only for food for the Indians themselves.

No permit is required of any kind. Therefore the answers to your first and second questions are simply that members of the Seminole Indian Tribe can take wild game and fish at any time within the confines of the Seminole Indian Reservation, so long as it is for food purposes, without any permits.

Section 285.10, F. S. [§4, Ch. 29908, 1955, Laws of Florida], provides in pertinent part:

For a period of twenty-five years from the effective date of this law,