

Office of the Attorney General
State of North Dakota

Opinion No. 85-44

Date Issued: December 3, 1985

Requested by: James L. Marion
Chief Parole Officer

--QUESTION PRESENTED--

Whether a pardon acts to remove the punishment resulting from a criminal conviction, but does not act to remove the fact of guilt and other circumstances surrounding the commission of the crime.

--ATTORNEY GENERAL'S OPINION--

It is my opinion that a pardon acts to remove the punishment resulting from a criminal conviction, but does not act to remove the fact of guilt and other circumstances surrounding the commission of the crime.

--ANALYSIS--

The authority in North Dakota to grant pardons is found in Article V, § 6 of the North Dakota Constitution which states, in part, as follows:

Section 6. The governor shall have power in conjunction with the board of pardon of which the governor shall be ex officio a member and the other members of which shall consist of the attorney general of the state of North Dakota, the chief justice of the supreme court of the state of North Dakota, and two qualified electors who shall be appointed by the governor, to remit fines and forfeitures, to grant reprieves, commutations and pardons after conviction for all offenses except treason and cases of impeachment; but the legislative assembly may by law regulate the manner in which the remission of fines, pardons, commutations and reprieves may be applied for.

The statutory provisions concerning pardons are found in N.D.C.C. Ch. 12-55. Specifically, N.D.C.C. § 12-55-05 provides exclusive and sole authority with the Board of Pardons to remit fines and forfeitures and to grant reprieves, commutations, and pardons after conviction for all offenses except treason or in cases of impeachment. Furthermore, N.D.C.C. § 12-55-12 authorizes the Board of Pardons to grant an absolute or conditional pardon in carrying out its statutory authority.

Neither in the Constitution nor in the statutes of this state is the term 'pardon' defined. N.D.C.C. § 1-02-02 provides that words used in statutes unless specifically defined are to be understood in their ordinary sense. An ordinary sense definition of the term 'perdon' is as follows:

The exemption of a convicted person from the penalties of an offense or crime, by the power of the executor of the laws. American Heritage Dictionary (1981) at 952.

A more specific definition of this term as provided by several courts of law is provided by 59 Am. Jur.2d Pardon and Parole § 3 at 6 (1971):

A definition which has been designated by the courts is probably the most accurate and comprehensive, and as best expressing the legal signification of the word, is that a pardon is a declaration on record by the chief magistrate of a state or country that a person named is relieved from the legal consequences of a specific crime. Another definition commonly given is that a pardon is an act of grace proceeding from the power entrusted with the execution of laws, which exempts the individual on whom it is bestowed from the punishment the law inflicts for a crime he has committed.

These various definitions assist us in determining the fact that a pardon is an act of grace proceeding from the power entrusted with the execution of the laws exempting the individual on whom it is bestowed from the punishment that the law inflicts for a crime he has committed. However, these definitions do not assist us in determining the precise legal effects resulting from the granting of a pardon. Specifically, the issue is the effect of the pardon upon a person's conviction and upon the person's guilt.

The courts which have considered this issue have arrived at two views as to the effect of a pardon upon a person's conviction and guilt. Annot., 58 A.L.R.3d 1191 (1974). The first view concludes that a pardon eliminates both the punishment resulting from the criminal conviction as well as the guilt resulting from the commission of that crime. Under this view, the courts have concluded that the granting of a pardon makes the offender as innocent as if he had never committed the crime. Id. at § 4. In other words, view number one concludes that a pardon places a person in the position as if he or she had not committed the offense in the first place. In State ex rel., Cloud v. Election Board of State, 36 P.2d 20 (Okla. 1934), the Oklahoma Supreme Court adopted this particular view and concluded that a pardon works to make an offender a new man.

The second view as to the effect of a pardon concludes that the pardon removes the punishment resulting from the conviction, but it does not remove the fact of guilt resulting from the commission of

the crime. Annot., 58 A.L.R.3d 1191, § 5 (1974). Under this view, the courts conclude that although the conviction is obliterated by the granting of the pardon, the guilt remains. Noting that the word 'pardon' connotes guilt, the court in Commissioner of Metropolitan Dist. Com. v. Director of Civil Service, 203 N.E.2d 95 (Mass. 1964), explained that even if a pardon remits all penal consequences of a criminal conviction, it cannot obliterate the acts which constituted a crime.

In Guastello v. Department of Liquor Control, 536 S.W.2d 21 (Mo. 1976), the court concluded that the fact of conviction was obliterated by the granting of the pardon, but not the fact of guilt. Guastello, supra, went on to state that an offender's conviction (pertaining to guilt as opposed to the mere conviction) could be considered and used in future determinations involving the offender.

The Supreme Court of the state of North Dakota has yet to express its views as to which view should be adopted by this state. Furthermore, there is no other statutory or constitutional guidance as to which view should be given as to the effect of a pardon. However, in the absence of guidance on this question, I have reviewed the arguments as to both views concerning the effect of a pardon.

I believe that the second view, which concludes that a pardon acts to remove the fact of conviction, but does not affect the fact of guilt for the crime, is the appropriate view to be adopted at this time. I find the reasoning of the Missouri Supreme Court in Guastello, supra, to be persuasive and logical. I thus concur with the Missouri Supreme Court that a pardon was not intended to cause an incident to be removed from all records as if it never occurred.

By the conclusion in this opinion, those persons who have successfully completed a criminal sentence following a criminal conviction and who further desire a pardon to place them in a position as if the criminal act never occurred (usually for occupational or professional reasons) will not achieve those desired results. Instead, a pardon acts solely to remove any punishment or legal inhibitions which occur as a result of the conviction.

--EFFECT--

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

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