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Consecutive and Concurrent Sentences—A Comment

J. ALEXANDER CREASEY*

Petitioner was indicted and entered guilty pleas in the Circuit Court of Mineral County, West Virginia, for the offense of (1) forgery; (2) worthless checks; (3) worthless checks; and (4) forgery. The court sentenced the petitioner on each of the indictments as follows: (1) forgery, two to ten years; (2) worthless checks, one to five years; (3) worthless checks, one to five years; and (4) forgery, two to ten years. The court, however suspended execution of the sentences and placed the petitioner upon probation for a period of three years. Petitioner violated the terms and conditions of his probation. The court revoked his probation and committed him to the state penitentiary, in accordance with the terms of the confinement originally set forth, but suspended. The date of conviction was October 20, 1956, and, the date of revocation of probation was July 29, 1957. Petitioner filed a writ of habeas corpus, contending that (1) the order of the court of July 29, 1957, placed petitioner twice in jeopardy for the same offenses; and, (2) it imposed a new and increased sentence from former valid sentences and judgment imposed by the same court. The West Virginia Supreme Court of Appeals held that,

“When any person is convicted by the same court of two or more offenses before such person is sentenced for either, and thereafter is sentenced to confinement for each such offense, such sentences shall run consecutively unless the court expressly orders them to run concurrently . . . ; and, where such convicted person is placed on probation and such probation is subsequently revoked, the orders revoking such probation and imposing the original sentences and specifying that sentence on the first case shall begin on a certain date and the sentence in each of the other cases shall begin upon the completion of the serving of the sentence imposed in the preceding case, do not increase the total period or impose a different sentence.”¹

The Supreme Court of Appeals of West Virginia has reaffirmed the principle of law as stated in the case of *State ex rel.*

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¹ *State ex rel. Kuhn v. Adams*, 143 W. Va. 551, 103 S.E.2d 530 (1958).

*Medley v. Skeen*² decided in June, 1953. However, in spite of the clear mandate of the *Medley* case there remained some confusion with respect to whether a series of sentences received by a convicted felon ran concurrently or consecutively. The decision in the *Kuhn* case seems to establish more firmly the principle of law, based upon the interpretation of the provision of chapter 61, article 11, section 21 of the West Virginia Code. The statute reads as follows:

“When any person is convicted of two or more offenses, before sentence is pronounced for either, the confinement to which he may be sentenced upon the second, or any subsequent conviction, shall commence at the termination of the previous term or terms of confinement, unless, in the discretion of the trial court, the second or any subsequent conviction is ordered by the court to run concurrently with the first term of imprisonment imposed.”

The statute, as interpreted by the court in the *Kuhn* case, which is a reaffirmation of the principle of law involved in the *Medley* case, clarifies how a series of sentences run. In other words, the principle involved is to the effect that if a convicted person receives one or more sentences, those sentences run consecutively unless it is expressly specified by the trial court that such sentences shall run concurrently.

A convicted person with two or more sentences, who is committed to the state penitentiary at Moundsville, has always presented some confusion at the institution. This is especially true in those instances where the commitment orders are silent as to whether the sentences run concurrently. The decision of the *Kuhn* case definitely establishes that if an inmate has two or more sentences and the order of commitment is silent as to how those sentences shall run, then under the provision of chapter 61, article 11 and section 21 of the Code of West Virginia, such sentences run consecutively. The problem, now is as to whether the institution has the authority to classify the person, based on the sentences received, when it is not expressly stated in the commitment order that the sentences shall run concurrently. The *Kuhn* case seems clearly to have given the warden authority with respect to commitment orders that are silent as to the running of sentences concur-

² 138 W. Va. 409, 76 S.E.2d 146 (1953).

rently. Thus, it may now be stated and, correctly so, that if an inmate is received at the penitentiary with a series of sentences and the commitment order is silent as to how the sentences shall run, it becomes the duty of the warden to make the sentences run consecutively, as provided in code provision herein referred to.

The *Kuhn* and *Medley* opinions are leading cases in this state. They should be familiar to judges, prosecuting attorneys and all persons connected with or who work in the field of correction. The force and effect of these cases and, particularly, the *Kuhn* case will make an indelible imprint upon the confinement phase of correction for many years to come. The decision is sound and has established, once and for all, how group sentences must be classified when a person is committed to the state penitentiary. There are other points involved in the decision which are not now material to comment on. It is sufficient to say that the instant case established *Kuhn* as having a six to thirty year term.