

N.D.A.G. Letter to Wold (Jan. 23, 1990)

January 23, 1990

Mr. James W. Wold
Griggs County State's Attorney
P.O. Box 541
Cooperstown, ND 58425

Dear Mr. Wold:

Thank you for sending your January 10, 1990, letter in which you ask whether a defendant convicted of two class A misdemeanors can be sentenced to serve consecutive one year sentences at the state penitentiary and whether the crimes remain classified as misdemeanors if more than one Year is served.

N.D.C.C. § 12.1-32-02(1)(c) provides as follows:

12.1-32-02. Sentencing alternatives - Credit for time in custody -
Diagnostic testing.

1. Every person convicted of an offense who is sentenced by the court must be sentenced to one or a combination of the following alternatives, unless the sentencing alternatives are otherwise specifically provided in the statute defining the offense or sentencing is deferred under subsection 4:

. . . .

- c. A term of imprisonment, including intermittent imprisonment;

- (1) In a state correctional facility, a regional corrections center, a county jail, or in the state farm in accordance with section 12-51-07, if convicted of a felony or a class A misdemeanor.

N.D.C.C. § 12.1-32-11(3) provides as follows:

12.1-32-11. Merger of sentence - Sentencing of multiple offenses.

. . . .

3. When sentenced only for misdemeanors, a defendant may not be consecutively sentenced to more than one year, except that a defendant being sentenced for two or more class A

misdemeanors may be subject to an aggregate maximum not exceeding that authorized by section 12.1-32-01 for a class C felony if each class A misdemeanor was committed as part of a different course of conduct or each involved a substantially different criminal objective.

Your letter did not include information which would establish whether each misdemeanor was committed as a part of a different course of conduct or whether each misdemeanor involved a substantially different criminal objective. This information is crucial for determining whether a defendant can be sentenced to consecutive sentences which entail more than one year of imprisonment. If one of the conditions specified in the statute is met, a defendant could be consecutively sentenced to more than one year's imprisonment. Under N.D.C.C. § 12.1-32-02(1)(c), a defendant convicted of a class A misdemeanor can be sentenced to a term of imprisonment at the state farm or at a state correctional facility.

N.D.C.C. § 12.1-32-02(10) allows for the reduction of the effect of a felony conviction if the sentence does not exceed one year. However, North Dakota law does not provide for a reclassification of misdemeanors as felonies in the event the aggregate consecutive sentences for the misdemeanors involve more than one year of imprisonment.

I trust that I have answered your questions. Thank you for allowing this office to assist you.

Sincerely,

Nicholas J. Spaeth

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