

to the county board of revision, by appeal to the Tax Commission of Ohio, and by petition in error to the Common Pleas Court of the county. *Hammond, Treasurer, vs. Winder*, 112 O. S., 158.

Respectfully,  
GILBERT BETTMAN,  
*Attorney General.*

1871.

PRISONER—SENTENCED BY COURT TO SERVE A MINIMUM TERM WHICH IS THE STATUTORY MAXIMUM FOR HIS CRIME—ENTITLED TO DIMINUTION OF SENTENCE FOR GOOD BEHAVIOUR, BUT NOT TO PAROLE.

**SYLLABUS:**

*Under the decision of the Supreme Court of Ohio in the case of Reeves vs. Thomas, decided March 5, 1930, a prisoner, who is sentenced to the Ohio Penitentiary under a sentence fixing the minimum period of duration the same as the maximum fixed by the statute, is entitled to diminution of sentence for good behavior, but the Ohio Board of Clemency has no authority to parole such prisoner after the minimum period of time fixed by the statute.*

COLUMBUS, OHIO, May 17, 1930.

HON. HAL H. GRISWOLD, *Director of Public Welfare, Columbus, Ohio.*

DEAR SIR:—I am in receipt of your letter of recent date which is as follows:

“On March 5, 1930 the Supreme Court decided the case of *Frank Reeves vs. P. E. Thomas, Warden of the Ohio Penitentiary*. In this opinion, the Supreme Court holds that the old determinate law is still effective and that if a prisoner is sentenced to a minimum term which is equal to the maximum this determinate sentence law becomes operative and the prisoner is entitled to deduction for good time.

Under the old determinate sentence law, the paroling authority had the power to parole the prisoner after the expiration of the minimum term prescribed by statute for that offense but before the expiration of the determinate term as set by the sentencing court.

Please advise whether in those cases where the minimum set by the court is equal to the maximum set by statute this power of the Board of Clemency still exists to grant parole before the termination of the minimum sentence fixed by the Court.”

In the case of *Frank Reeves vs. P. E. Thomas, as Warden of the Ohio Penitentiary*, decided by the Supreme Court of Ohio, March 5, 1930, the court had under consideration a case wherein the trial court imposed a sentence “for a period of seven years” upon a defendant convicted of the crime of grand larceny. The term of imprisonment fixed by the court was the same as the maximum penalty provided by the statute defining the offense of grand larceny. The precise question before the court was whether or not the prisoner under such a sentence, that is, where the minimum term fixed by the court is the same as the maximum fixed by the statute defining the offense, is entitled to a diminution of sentence for good behavior. The court held that such a sentence is a definite one and that the defendant was entitled to a diminution of sentence as provided in Section 2163 of the General Code. In arriving at

this conclusion, the court considered the authority of the Ohio Board of Clemency to lessen the sentence fixed by the court. In the course of the opinion the court said:

"We can not take the view that the board has the power to reduce the minimum fixed by the trial judge. Such would be a violation of the plain letter of Section 2166, wherein it is provided 'no such terms shall exceed the maximum term provided by law for the felony of which the prisoner was convicted, nor be less than the minimum term fixed by the court for such felony.'

As heretofore stated, the sentence provided for in the criminal code for the offense of grand larceny (Section 12447, General Code) is one year of a minimum and seven years of a maximum. The trial court, having power to fix a minimum sentence in Reeves' case, fixed the period of seven years, which is also the maximum period. So that, while the Board of Clemency has authority to terminate all terms of imprisonment of persons in the Ohio Penitentiary, the same may not be terminated at a less period of time than the minimum term fixed by the court for such felony. This period fixed in the instant case was seven years. By law it could not exceed seven years, and by the action of the trial court it could not be less than seven years."

It is apparent from a reading of this decision that the Supreme Court of Ohio is of the view that where a prisoner is sentenced to the Ohio Penitentiary and the court imposes a sentence fixing the minimum period of duration the same as the maximum fixed by the statute defining the offense, in such case the Ohio Board of Clemency has no authority to lessen the term fixed by the trial court. In other words, the Ohio Board of Clemency has no authority to parole a prisoner sentenced to the Ohio Penitentiary unless he has served the minimum fixed by the court, regardless of the fact that the minimum so fixed is the same as the maximum provided by the statute defining the offense for violation of which the prisoner was sentenced.

I may say that the conclusion reached by the court is at variance with my own views as heretofore expressed and as urged before the court in the Reeves case. In my Opinion No. 1298, dated December 16, 1929, and found in Vol. III, page 1924, of the Opinions of the Attorney General for the year 1929, I held as follows:

"Where a person is convicted of the crime of robbery and the court sentences such person to serve a minimum term of twenty-five years in the Ohio Penitentiary, which term is the same as the maximum term provided by statute defining the offense, such prisoner is eligible to parole after he serves ten years which is the minimum term fixed by the statute defining the offense of robbery."

I still believe that the conclusion which I then expressed is more in consonance with the intention of the Legislature and with modern theories of penology than the one reached by the court, since it restricts the old definite sentence law and substitutes—where an inadvertence results in a definite sentence—a general sentence, making the prisoner subject to parole at the expiration of the minimum sentence prescribed by law.

The views expressed by the Supreme Court in the Reeves case, however, foreclose any other views that I have in this matter, and I am therefore compelled to advise you in specific answer to your inquiry that where a prisoner is sentenced to the Ohio Penitentiary and the court imposes a sentence fixing the minimum period of duration of such sentence the same as the maximum fixed by the statute defining the offense for violation of which the prisoner was sentenced, in such case the Ohio Board of Clemency has no authority to parole such prisoner.

Respectfully,  
GILBERT BETTMAN,  
*Attorney General.*