



# THE ATTORNEY GENERAL OF TEXAS

AUSTIN, TEXAS 78711

March 27, 1973

JOHN L. HILL  
ATTORNEY GENERAL

Honorable John Henry Tatum  
County Attorney, Angelina County  
P. O. Box 582  
Lufkin, Texas 75901

Opinion No. H-21

Re: Whether sentence of person  
convicted of felony may be  
reduced by time that he has  
spent in county jail awaiting  
determination of his appeal.

Dear Mr. Tatum:

In your request for the opinion of this office you state that a man in the county jail was convicted of armed robbery, was sentenced to fourteen years in the Texas Department of Corrections, and has been in jail for thirty months. His conviction was recently affirmed by the Court of Criminal Appeals. Because of the length of time he has been in jail and because he has apparently reformed and will make a good citizen, you ask whether a district judge has authority to reduce his sentence.

It is our opinion that the court has no jurisdiction, except for the application of Article 42.03, Vernon's Texas Code of Criminal Procedure, to enter any order affecting the judgment and sentence. State v. Klein, 224 S.W.2d 250, (Tex. Crim. 1949). Therefore, the district judge may not reduce the overall sentence to a term less than fourteen years.

On the other hand, Article 42.03 does provide that the judge of the court in which the defendant was convicted may, within his discretion, give the defendant credit for time spent in jail.

In Ex parte Freeman, 486 S.W.2d 556 (Tex. Crim. 1972), the court held that, under Article 42.03, the trial judge had complete discretion as to credit on a sentence for time spent in jail but that, pursuant to N. Carolina v. Pearce, 395 U.S. 711, 23 L. Ed. 2d 656, 89 S. Ct. 2072 (1969), and Robinson v. Beto, 426 F.2d 797 (5th Cir. 1970), the defendant is constitutionally entitled to credit for the time from conviction until determination of his appeal.

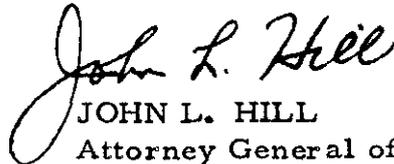
Honorable John Henry Tatum, page 2 (H-21)

To answer your question specifically, we would state that the district judge has no authority to reduce the defendant's sentence from fourteen years to some lesser term. He does have discretion, however, to grant credit for pre-trial time spent in jail between arrest and final conviction, and must give credit for time spent in jail awaiting determination of appeal.

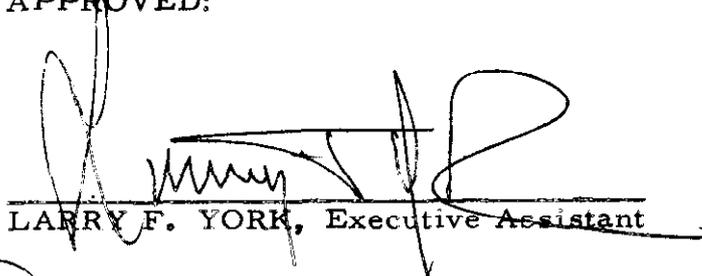
S U M M A R Y

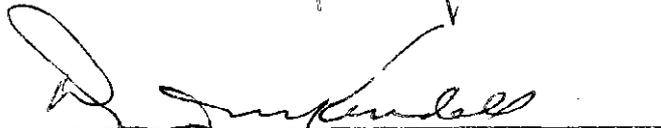
After appeal to the Court of Criminal Appeals and affirmation by that court, the trial court lacks jurisdiction to reduce a sentence but does have jurisdiction and discretion to grant credit for time spent in jail prior to final conviction and must give credit for time spent in jail pending appeal.

Very truly yours,

  
JOHN L. HILL  
Attorney General of Texas

APPROVED:

  
LARRY F. YORK, Executive Assistant

  
DAVID M. KENDALL, Chairman  
Opinion Committee