SPP Guiding Case No. 244: Supervision case on the calculation of Xu Moumou's probation period

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Decided at the 64th and 66th meetings of the 14th Procuratorial Committee of the Supreme People's Procuratorate on December 5 and December 19, 2025, respectively; issued on December 30, 2025.

Keywords

Supervision of the execution of punishment / same criminal facts / probation declared / changed judgment upon retrial / deduction of the probation period

Holding

Where an offender who has been declared to be on probation is again declared to be on probation upon retrial based on the same criminal facts, the probation period already elapsed shall be counted within the probation period determined by the retrial judgment. Where a people's procuratorate discovers that the "Notice of Execution" delivered by a people's court to a community correction institution has not deducted the probation period already elapsed before the date of determination of the retrial judgment, it shall supervise and correct the matter in accordance with law.

Basic Facts

The offender, Xu Moumou, male, born in 1969, was the operator of an engineering machinery rental company in Panshi City, Jilin Province.

On June 5, 2020, the Panshi People's Court, Jilin Province, sentenced Xu Moumou to a fixed-term imprisonment of three years, suspended for four years, for the crime of intentional injury, with the probation period running from June 16, 2020, to June 15, 2024. Xu Moumou did not appeal, and the judgment took legal effect. On June 16, 2020, Xu Moumou began receiving community correction at a judicial office in Panshi City. On October 9, 2020, the People's Procuratorate of Jilin City filed a protest with the Jilin Intermediate People's Court on the ground that the original judgment had inaccurately characterized Xu Moumou's crime of intentional injury and imposed an improper sentence. On October 26, 2020, the Jilin Intermediate People's Court rendered a retrial decision, ordering the Panshi People's Court to retry the case. On April 2, 2021, the Panshi People's Court revoked the original judgment and changed the judgment to a fixed-term imprisonment of two years, suspended for three years, for the crime of negligently causing serious injury, and issued a "Notice of Execution," with the probation period running from April 14, 2021, to April 13, 2024.

Procuratorate Performance of Duties

Discovery of clues. On April 21, 2021, the People's Procuratorate of Panshi City, while visiting the community correction subject Xu Moumou, was informed by him that he had begun receiving community correction on June 16, 2020, and that the court had later changed the judgment upon retrial and issued a "Notice of Execution" without deducting the probation period already elapsed before the retrial judgment.

Investigation and verification. After discovering the clue for supervision, the procuratorial organ carried out the following investigation and verification: first, it reviewed Xu Moumou's community correction file and examined his judgment and notice of execution. It found that after the first-instance judgment took effect, Xu Moumou had begun receiving community correction on June 16, 2020. Upon the procuratorate's protest, the court changed the judgment upon retrial, and the probation period recorded in the "Notice of Execution" ran from April 14, 2021, to April 13, 2024. By April 14, 2021, Xu Moumou had already received community

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correction for 9 months and 29 days. Second, it questioned staff of the community correction institution. It found that the community correction institution implemented graded correction based on risk assessment and routine assessment management. Because Xu Moumou had performed well, his risk level had been reduced from high to low, and his correction level had also been adjusted. Third, it asked the Panshi People's Court about the relevant circumstances of the recalculation of the probation period. The court held that Article 73(3) of the Criminal Law provided that the probation period shall be calculated from the date of determination of the judgment. Since the original judgment had been revoked in accordance with law, the probation period should be calculated from the date of determination of the retrial judgment. The Criminal Law had no provision on the deduction of the probation period in retrial cases. Therefore, the retrial court rendered the retrial judgment and issued the "Notice of Execution" in accordance with Article 73(3) of the Criminal Law, without considering whether the probation period should be deducted.

Supervision opinions. After examination, the People's Procuratorate of Panshi City held that the probation period already elapsed after the first-instance judgment of Xu Moumou took effect should be deducted from the probation period determined by the retrial judgment. First, the two effective judgments declaring probation both concerned the same criminal facts; the retrial judgment changed the crime of intentional injury in the original effective judgment to the crime of negligently causing serious injury, and the fixed-term imprisonment and the probation period declared were correspondingly shortened; if the elapsed probation period were not deducted, it would be equivalent to extending the probation period in disguise. Second, Xu Moumou had already received community correction for 9 months and 29 days before the retrial judgment was pronounced; if the probation period were recalculated, it would be unfavorable to encouraging community correction subjects to receive education and reform. Third, although there was no express legal provision on whether the probation period could be deducted in cases where probation was still declared upon retrial, the calculation of the probation period concerned restrictions on citizens' personal liberty, and the principle of proportionality between crime, responsibility, and punishment should be implemented, so as to make an interpretation consistent with the purpose of the Criminal Law and favorable to the offender's acceptance of correction. On April 21, 2021, the People's Procuratorate of Panshi City submitted written supervision opinions to the Panshi People's Court, suggesting that the "Notice of Execution" be corrected to count the probation period already elapsed by Xu Moumou within the probation period determined by the retrial judgment.

Outcome of supervision. On April 28, 2021, the Panshi People's Court replied to the People's Procuratorate of Panshi City that it had corrected the "Notice of Execution" and deducted the probation period of 9 months and 29 days already elapsed by Xu Moumou before the retrial judgment was rendered when executing the retrial judgment. On June 15, 2023, the community correction institution publicly announced the expiration of Xu Moumou's probation period, that the punishment in the original judgment would no longer be executed, and that community correction was lawfully terminated.

Guiding Significance

Where an offender declared to be on probation is again declared to be on probation upon retrial based on the same criminal facts, the probation period already elapsed before the date of determination of the retrial judgment shall be counted within the probation period determined by the retrial judgment. Article 73(3) of the Criminal Law provides that the probation period shall be calculated from the date of determination of the judgment. For an offender who is still declared to be on probation after a changed judgment upon retrial, because the original effective judgment has been revoked, his or her probation period should be calculated from the date of determination of the retrial judgment. The provisions of the Criminal Law on the probation period shall be accurately applied under the guidance of the principle and spirit of the rule of law. The principle of proportionality between crime, responsibility, and punishment is a basic principle of the Criminal Law and runs through the entire process of sentencing and execution of punishment. If the probation period already elapsed before the retrial judgment is not deducted, the offender's probation period would actually be

extended, which does not conform to the principle of proportionality between crime, responsibility, and punishment. For an offender who is still declared to be on probation after retrial, counting the probation period already elapsed before the date of determination of the retrial judgment within the probation period determined by the retrial judgment conforms to the purpose of the Criminal Law in establishing the probation system and is conducive to prompting the offender to reform, to comply with the relevant supervision and administration provisions during the remaining probation period, and to consciously accept community correction. Where a people's procuratorate discovers that the "Notice of Execution" has not deducted the probation period already elapsed before the date of determination of the retrial judgment, it shall supervise and correct the matter in accordance with law.

Relevant Legal Provisions

Articles 5 and 73(3) of the Criminal Law of the People's Republic of China.

Article 8(2) and Article 34 of the Community Correction Law of the People's Republic of China.

Article 625 of the Criminal Procedure Rules of the People's Procuratorates (Gao Jian Fa Shi Zi [2019] No. 4).

Article 6 of the Implementation Measures for the Community Correction Law of the People's Republic of China of the Supreme People's Court, the Supreme People's Procuratorate, the Ministry of Public Security, and the Ministry of Justice (Si Fa Tong [2020] No. 59).

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