



7105 Liberty

The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

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Dear Mr. King:

Your letter of February 26, 2001 was referred to me for response. Your correspondence raised questions regarding the sentencing authority of municipal court judges. Specifically, you posited the following:

[M]ay a municipal court judge sentence a defendant to only a monetary fine with no confinement and then order confinement until the fine is paid? Further, if a fine is ordered and the defendant released, and the fine not paid, can the defendant be picked up on a bench warrant and confined, or does there have to be a new hearing holding the defendant in contempt?

Pursuant to S.C. Code Ann. § 14-25-45, municipal court judges “. . . shall . . . have all such powers, duties and jurisdiction in criminal cases made under state law and conferred upon magistrates.” Under S.C. Code Ann. § 22-3-800, a magistrate, “may suspend the imposition or execution of a sentence upon terms and conditions the magistrate considers appropriate. . . .” Therefore, a municipal court judge may suspend a sentence upon the payment of a fine, and then order confinement as part of the suspended sentence when the fine has not been paid. Such authority can also be found in S.C. Code Ann. § 14-25-75 which allows a municipal judge to “suspend sentences imposed by him upon such terms and conditions as he deems proper. . . .” However, municipal court judges do not have the authority to place anyone on probation. See S.C. Code Ann. §§ 14-25-45, 22-3-800.

S.C. Code Ann. § 17-25-360 allows someone who has been sentenced in the alternative, by fine or imprisonment, to “pay such part of the fine as shall be in proportion to the balance of the time to be served under the sentence.” This section further provides that “upon the payment of such proportionate part of the fine, the clerk, judge, magistrate, mayor or intendant shall release and

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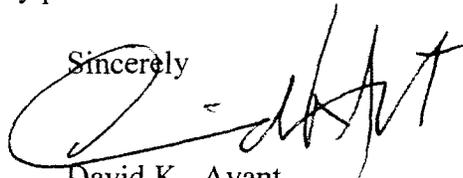
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discharge the person in behalf of whom the fine is so paid from further custody.” Therefore, if the defendant is sentenced in the alternative, he may be confined until the fine is paid, but if the defendant should pay the fine, the time in which he has served in jail must be taken into consideration in determining how much of the fine is left to be paid. Additionally, S.C. Code Ann. § 17-25-350 allows magistrates to structure payment schedules for the satisfaction of fines if a defendant is indigent. This section also states that “[f]ailure to comply with the payment schedule shall constitute contempt of court; however, imprisonment for contempt may not exceed the amount of time of the original sentence, and where part of the fine has been paid the imprisonment cannot exceed the remaining pro rata portion of the sentence.” These sections illustrate instances where a defendant may pay part of the fine and serve part of the jail term. A person sentenced in the alternative must either pay the entire fine or serve the entire sentence, unless the situation is one in which § 17-25-350 or § 17-25-360 is appropriate. See Op. Atty. Gen., December 29, 1982. An individual, however, who has made reasonable efforts to pay his fine, but is financially unable to pay, may not be imprisoned for that reason alone. See Op. Atty. Gen., November 30, 1987.

Where a defendant willfully fails or refuses to pay a fine or otherwise comply with a sentence, a bench warrant is the appropriate form of process to bring the defendant back into court to comply with the imposed sentence. South Carolina Bench Book for Magistrates and Municipal Court Judges, III-17 (2nd Edition, 2000). Furthermore, the failure to pay money in compliance with an order of the court may also constitute contempt of court. See Op. Atty. Gen., April 21, 1995. The bench warrant is not an “arrest warrant per se,” Op. Atty. Gen., October 31, 1978, but is rather used as a form of process to “bring a defendant back on a particular charge for a specific purpose after the court has acquired jurisdiction over the defendant on that particular charge. . . .” Bench Book at III-16. Therefore, a bench warrant would be appropriate to bring the defendant before the court for purposes of a contempt hearing on the underlying charge. Any term of imprisonment imposed by the municipal judge in such an instance, could not be imposed absent such a hearing.

I hope the information provided herein proves helpful. This letter is an informal opinion only. It has been written by a designated Assistant Attorney General and represents the position of the undersigned attorney as to the specific question asked. It has not, however, been personally scrutinized by the Attorney General, nor officially published in the manner of a formal opinion.

Sincerely



David K. Avant
Assistant Attorney General