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Opinion No 86-81
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July 21, 1986

J. Stephen Schmutz, Esquire
Deputy Solicitor
Ninth Judicial Circuit
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Charleston, South Carolina 29402

Dear Mr. Schmutz:

In a letter to this Office you raised a question regarding the sentencing authority of circuit and municipal court judges. You particularly questioned whether a circuit or municipal court judge could require a defendant sentenced to a term of probation to make, as a part of the sentence imposed by the court, a contribution to "Crime Stoppers" or to reimburse "Crime Stoppers" for funds expended by such organization in association with the defendant's case.

A previous opinion of this Office dated October 4, 1984 dealt with the question as to whether a circuit judge was authorized to imposed monetary contributions to the public defender fund in lieu of a fine when sentencing defendants for certain violations. The particular sentencing practice referenced in the opinion involved the imposition of a sentence of a fine or term of imprisonment which was suspended upon payment of a designated amount to a public defender fund.

The opinion noted that pursuant to Section 24-23-110 of the Code "... judges of the court of general sessions may suspend the imposition or the execution of a sentence and may impose a fine and a restitution without requiring probation." The opinion also cited a previous opinion of this Office, 1978 Op. Atty. Gen. No. 78-110 p. 140 which concluded that a municipal court judge could authorize a convicted indigent defendant to reimburse costs of his representation by a public defender. The 1978 opinion referenced former Sections 14-25-810, 14-25-980,

Mr. Schmutz
Page 2
July 21, 1986

and 14-25-990 of the Code as authorizing municipal court judges to "... suspend sentences imposed by them in such cases as come within their jurisdiction upon such terms as in their discretion may seem fit and proper." The 1978 opinion particularly stated

(s)ince the Defense of Indigents Act ... does not prohibit the municipal court from ordering reimbursement as a condition of suspended sentences and since such orders are not generally unconstitutional or improper, it is the opinion of this Office that certain municipal courts may order as a condition of a suspended sentence, a convicted indigent defendant to reimburse the Judicial Department for the costs of his representation by a public defender

Referencing such prior opinion, it was concluded in the October 4, 1984 opinion that the same reasoning was applicable to sentencing by a general sessions court judge and, therefore, a judge of such court was authorized to suspend a sentence of a fine or term of imprisonment upon the payment of a designated amount to a public defender fund.

Additionally, this Office in an opinion dated May 18, 1984 dealt with the question of whether a circuit judge was authorized to impose public service as a condition of probation. The opinion referenced Section 24-21-430 of the Code which formerly authorized a circuit court judge to include as a part of a sentence of probation any of eight enumerated conditions "or any other." ^{1/} The opinion also noted the decision by the State Supreme Court in State v. Wilson, 274 S.C. 352, 264 S.E.2d 414 (1980), where the Court, while noting that payment of reparations was not included in a list of conditions of probation, construed the phrase "or any other" in Section 24-21-430 as authorizing a judge to impose reparations to a victim of crime as a condition of probation. The May, 1984 opinion concluded that since a condition of public service would serve the objective of probation, such a condition could properly be imposed.

^{1/} Such provision was recently amended as part of the Omnibus Crime Bill, R.513. While increasing the number of statutorily recognized conditions of probation, the statute still retains similar language that in sentencing to a term of probation a judge may include any of such specified conditions of probation "... or any other condition not herein prohibited."

Mr. Schmutz
Page 3
July 21, 1986

Additionally, in State v. Brown, 284 S.C. 407, 326 S.E.2d 410 (1985) the State Supreme Court dealt with the question of the validity of a sentence which imposed castration as a condition to the suspension of a sentence and a term of probation. In its decision, the Court construed Section 24-21-410 of the Code which states:

(a)fter conviction or plea for any offense, except a crime punishable by death or life imprisonment, the judge of any court of record with criminal jurisdiction at the time of sentence may suspend the imposition or execution of a sentence and place the defendant on probation or may impose a fine and also place the defendant on probation.

The Court construed such provision as authorizing trial judges to suspend sentences upon the conditions they deem fit and proper. The Court noted that

... (t)hey are allowed a wide, but not unlimited, discretion in imposing conditions of suspension or probation and they cannot impose conditions which are illegal and void as against public policy. 326 S.E.2d at 411.

Noting that the public policy in this State is derived from the law of this State as provided by the Constitution, statutes, and judicial decisions, the Court particularly found the castration sentence before it to be violative of the constitutional provision prohibiting cruel and unusual punishment and, thus, void. See also: Henry v. State, 276 S.C. 515, 280 S.E.2d 536 (1981) (trial judge without authority to impose banishment from the State as a condition of probation inasmuch as such sentence violates public policy.)

Referencing the above constructions of the sentencing authority of a circuit court judge, in the opinion of this Office, such a judge could sentence a defendant to a term of probation and as a condition of such sentence, require the defendant to make a contribution to "Crime Stoppers" or to reimburse "Crime Stoppers" for funds expended by such organization in association with a defendant's case.

As noted, you also raised a question dealing with the authority of a municipal court judge to require a defendant

Mr. Schmutz
Page 4
July 21, 1986

sentenced to a term of probation to similarly make a contribution to or reimburse "Crime Stoppers". I am interpreting your request as questioning whether a municipal court judge could impose such a requirement as a term of a suspended sentence inasmuch as I am unaware of any authority for such a judge to impose a sentence of a term of probation. Generally, pursuant to Section 14-25-45 of the Code, municipal court judges "... shall have all such powers, duties and jurisdiction in criminal cases made under state law and conferred upon magistrates." Pursuant to Section 22-3-800 of the Code, magistrates may "... suspend the imposition or execution of a sentence upon such terms and conditions as he may deem appropriate...." However, such section further specifies that magistrates are not authorized to place any person on probation. Such suspension authority of a magistrate is similar to that of a municipal court judge who pursuant to Section 14-25-75 "... may suspend sentences imposed by him upon such terms and conditions as he deems proper including, without limitation, restitution or public service employment."

While a municipal court judge would not be authorized to require a contribution or reimbursement to "Crime Stoppers" as a condition of probation, consistent with the authority referenced above, it appears that a municipal court judge could suspend a sentence upon the payment of a contribution or reimbursement to "Crime Stoppers". Such sentencing authority would be consistent with that noted in the prior opinions of this Office referenced above and particularly, the 1978 opinion dealing with reimbursement by a defendant for representation by the public defender.

If there is anything further, please advise.

Sincerely,



Charles H. Richardson
Assistant Attorney General

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REVIEWED AND APPROVED BY:



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