

1982 S.C. Op. Atty. Gen. 73 (S.C.A.G.), 1982 S.C. Op. Atty. Gen. No. 82-74, 1982 WL 155043

Office of the Attorney General

State of South Carolina

Opinion No. 82-74

December 29, 1982

***1 SUBJECT: Corrections—Sentences in the Alternative—Proration of Fines and Jail Sentences.**

(1) When one is sentenced in the alternative, he must either pay the entire fine or serve the entire sentence, unless he falls within the provisions of § 17-25-360.

(2) Section 17-25-360 and § 17-25-360 indicate that either the judge or the clerk of court would be responsible for prorating a sentence.

TO: Larry Batson, Esquire
Legal Advisor
South Carolina Department of Corrections

You have asked this Office for an Opinion on who should be responsible for the prorating of an inmate's sentence when a portion of his fine has been paid. This situation arises when a sentence has been imposed in the alternative and an inmate has begun service of his jail sentence, but wishes later to pay the fine and be released in accordance with [§ 17-25-360, Code of Laws of South Carolina \(1976\)](#).

[Section 17-25-360](#) allows one who has been sentenced in the alternative, and who has begun service of his jail sentence, to pay an apportioned amount of the fine and be released. In this instance, the clerk of court or the judge who imposed the fine is charged with the duty of apportioning the fine. This is the only circumstance where one would be allowed to serve part of the jail term and pay part of the fine, except perhaps in the instance where, under [§ 17-25-350](#), one has agreed to pay the fine according to a schedule of payments, and fails to pay, resulting in his being held in contempt of court. Of course, when one is held in contempt, the judge would determine the sentence to be served.

Thus, [§ 17-25-350](#) and [§ 17-25-360](#) provide the only circumstances in which one convicted of a crime and sentenced in the alternative may pay part of the fine and serve part of the jail sentence. To allow one to decide to pay part of the fine and serve part of the sentence would allow him to write his own sentence. It would, in effect, change the terms of the sentence imposed by the court. A sentencing judge is vested with broad discretion to mete out the sentence he thinks appropriate after all the facts are before him. [State v. Sidell, 262 S.C. 397, 205 S.E.2d 2 \(1974\)](#). Of course, a sentencing judge may change the terms of the sentence before the expiration of the term of court. [State v. Best, 257 S.C. 361, 186 S.E.2d 272 \(1972\)](#). Unless the sentencing judge changes the sentence to allow payment of part of the fine and service of part of the jail sentence before the term of court is ended, there is no question as to who would prorate the sentence because as previously stated it would fall under either [§ 17-25-350](#) (contempt of court) or [§ 17-25-360](#) (jail sentence already begun and fine paid later).

There is absolutely no statutory authority which would enable the South Carolina Department of Corrections to prorate the sentence when an alternative sentence has been imposed. The statutes ([§ 17-25-350](#) and [§ 17-25-360](#)) clearly indicate that either the judge or the clerk of court would be responsible for prorating the sentence.

***2** Sally M. Rentiers
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