

1975 S.C. Op. Atty. Gen. 263 (S.C.A.G.), 1975 S.C. Op. Atty. Gen. No. 4223, 1975 WL 22520

Office of the Attorney General

State of South Carolina

Opinion No. 4223

December 29, 1975

*1 Section 17–574.1 is mandatory on judges and magistrates, entitles a defendant a schedule of payment for multiple offenses; and contempt on a previous charge cannot prohibit the application of the statute.

TO: Honorable John M. Young
Richland County Public Defender
Columbia, South Carolina 29201

QUESTIONS PRESENTED:

The following questions were presented to our Office in reference to Code Section 17–574.1:

1. Does the judge have any discretion in allowing a defendant to pay a fine in installments in lieu of remaining in jail?
2. Does the provision entitle the defendant to a schedule of payment for multiple offenses?
3. Does contempt on a previous charge prohibit the defendant from being entitled to a schedule of payment under this statute for the latter charge?

AUTHORITIES:

Section 17–574.1, Code of Laws of South Carolina; Statutory Construction, Sutherland, Section 25.04.

DISCUSSION:

In response to question No. 1, it is our opinion that the statute is mandatory, and therefore no discretion should be allowed by the judge. Section 17–574.1 provides explicitly that ‘in any offense carrying a fine or imprisonment, the judge or magistrate hearing the case shall, upon a decision of guilty of the accused being determined, and it being established that he is indigent at that time, set up a reasonable payment schedule for the payment of such fine, taking into consideration the income, dependents and necessities of life of the individual.’ Sutherland in Statutory Construction states that:

‘Certain forms and types of statutes are generally considered mandatory. Unless the context otherwise indicates the use of word ‘shall’ (except in its future tense) indicates mandatory intent.’ Section 25.04.

Accepting this interpretation, we find Section 17–574.1 mandatory on judges and magistrates, and they have no discretion.

In response to question No. 2, it is our opinion that in the absence of language in act re: schedules for multiple offenses, the judge may, in exercise of his discretion, set up one or several schedules.

In response finally to question No. 3, it is our opinion that despite imprisonment for contempt, a person is still entitled to and the judge required to set up a schedule for the separate offense. This decision is based on the wording 'In any offense . . .', which implies that the judge is not permitted to limit this provision to specific crimes of his choosing. Therefore, we believe that the provision is mandatory in any offense.

CONCLUSION:

In conclusion, we find Section 17-574.1 mandatory on judges and magistrates, and they have no discretion. In regard to multiple offenses, we find the judge may, in exercise of his discretion, set up one or several schedules. Finally, we conclude that contempt on a previous charge does not prohibit the defendant from being entitled to a schedule of payments

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