



ALAN WILSON
ATTORNEY GENERAL

March 2, 2020

The Honorable Renee N. Elvis
Horry County Clerk of Court
P.O. Box 677
Conway, South Carolina 29526

Dear Ms. Elvis:

We received your letter requesting an opinion of this Office concerning a clerk of court's ability to lift a bench warrant. In your letter, you describe the following situation:

We had a situation here in Horry where an individual was sentenced to 90 days or \$700 fine. The fine was to be paid in full by 12:00 noon on 04-12-19. The defendant failed to pay the fine nor did he report to do the time. The Clerk of Court issued a bench warrant on 05-01-2019.

On or about 1-21-2020 the subject was picked up in another county in the state on that bench warrant. At that time, Momma drove to Horry and paid that fine in order to have him released.

Based on this scenario, you ask "[i]f the Clerk of Court signs a Bench Warrant, can that same Clerk of Court sign a Bench Warrant Lift on that Bench Warrant?"

Law/Analysis

Section 38-53-70 of the South Carolina Code (2015) gives authority to courts to issue bench warrants. This provision states: "If a defendant fails to appear at a court proceeding to which he has been summoned, the court shall issue a bench warrant for the defendant." S.C. Code Ann. § 38-53-70. Section 14-17-260 of the South Carolina Code (2017), pertaining to the powers and duties placed on clerks of court, provides the clerk shall "issue every execution, bench warrant or other process issuable or directed to be issued by the courts of sessions, in the name of the Attorney General or solicitor of the circuit" Rule 30 of the South Carolina Rules of Criminal Procedure (2020) governs bench warrants and provides the Office of Court Administration shall establish the rules and procedures for processing and maintaining bench warrants. This rule further provides that bench warrants require "either the signature of the trial judge or the signature of the respective clerk of court at the direction of the trial judge." SCRCP, Rule 30.

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It is our understanding from your letter that you posed your question to Court Administration and Court Administration responded with an opinion of this Office issued in 1966. The 1966 opinion states “[o]nce a prisoner has complied with the penalty that has been imposed upon him for the violation of a criminal offense, he is entitled to be discharged in the absence of any legal justification for his further detention.” Op. Att’y Gen., 1966 WL 8585 (S.C.A.G. Aug. 12, 1966). Further we opined “[i]nasmuch as the Clerk of Court is the one responsible for the receipt and accounting of fines, . . ., such an officer, in our view, may discharge a defendant upon the payment of the fine which has been imposed upon him irrespective of whether the fine is paid either at the time of sentencing or at a later date.” Id.

According to section 38-53-70 of the South Carolina Code, courts are charged with issuing bench warrants when a defendant has been summonsed and fails to appear. Section 14-17-260 requires clerks of court to issue a bench warrant when directed to do so by a court. Furthermore, Rule 30 indicates that clerks of court may only issue bench warrants at the direction of the trial judge. We continue to believe as we opined in our 1966 opinion that the clerk of court may accept the fine and discharge the defendant upon payment of the fine. However, because a clerk of court may not on his or her own issue a bench warrant without direction from a judge, we believe a clerk of court cannot lift the bench warrant without such direction.

In numerous opinions, this Office referenced an order from former Chief Justice Woodrow Lewis dated November 14, 1980, in which Justice Lewis discussed endorsements of bench warrants for service in foreign counties. Ops. Att’y Gen., 1990 WL 482452 (S.C.A.G. Nov. 16, 1990); 2007 WL 1302773 (S.C.A.G. Apr. 23, 2007). In his order, Justice Lewis stated: “Upon endorsement such bench warrants are not to be used for the purpose of initiating criminal action, but are to be used only for the purpose of bringing a defendant before a court which has already gained jurisdiction over that defendant by means of a valid charging paper.” Id. In both our 1990 and 2007 opinions, we determined a bench warrant is used to bring a defendant back to the court in which he was originally tried. Id. In our 2007 opinion, we determined the defendant must “be brought back before the original judge in order to either pay the fine or have a sentence or imprisonment imposed.” Op. Att’y Gen., 2007 WL 1302773 (S.C.A.G. Apr. 23, 2007). Accordingly, if the bench warrant in question was solely based on a defendant’s failure to pay a fine and that fine is satisfied, the court no longer has a reason to bring the defendant back to court. Accordingly, we believe the same court issuing the bench warrant or directing the clerk of court to issue the bench warrant, must lift or direct the clerk of court to lift the bench warrant.

Conclusion

We continue to believe in accordance with our 1966 opinion that a clerk of court can discharge a defendant upon payment of the fine imposed on him or her. However, because the issuance of a bench warrant by a clerk of court requires express direction from a court, we do not believe a clerk of court can lift the bench warrant without direction from the court. Court rules allow for a clerk of court to sign a bench warrant at the direction of the court. Therefore, we believe a clerk of court could sign a Bench Warrant Lift if directed to do so by the issuing court.

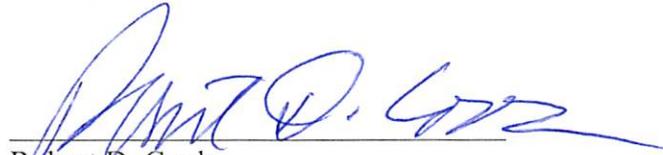
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Sincerely,



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REVIEWED AND APPROVED BY:



Robert D. Cook
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