



ALAN WILSON
ATTORNEY GENERAL

October 16, 2023

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

Dear Ms. Elvis:

Attorney General Alan Wilson has referred your letter to the Opinions section. Your letter states the following:

I respectfully request an opinion from your Office on the collection of court fines and fees. Judges impose certain court costs when issuing sentences on those convicted of crimes, and include those costs on the sentencing sheets. I am aware that a court can convert unpaid restitution, criminal fines, surcharges, assessments, costs, and fees into a civil judgment according to South Carolina Code Section 17-25-323, and that that judgment may thereafter be enforced as a civil judgment. I am aware that Section 15-39-30 imposes a ten-year time limit on the execution of such a judgment, as was stated in your Office's opinion dated March 14, 2002. Your Office stated in that opinion that the underlying debt is not extinguished upon the expiration of the civil judgment and that government officials should explore all possibilities for the collection of those debts.

My questions are as follows.

First, other than the execution of such a civil judgment, what are the methods that can be used to collect court fines or fees from one upon whom they were imposed as part of his or her criminal conviction?

Second, after the conversion to a civil judgment, could any unpaid balance be collected through the use of the Setoff Debt Collection Act?

Third, is the enforcement method provided by Section 17-25-325 in addition to the conversion to a civil judgment or is that section rendered unavailable once the conversion takes place?

Fourth, could the unpaid fines and fees be enforced through a criminal court's contempt powers?

Finally, do any of your answers change if a civil judgment authorized under Section 17-25-323 has expired?

Law/Analysis

This Office's opinions have repeatedly concluded that "no time limit exists on the collection of fines, fees and restitution imposed by the Court of General Sessions." Op. S.C. Att'y Gen., 2002 WL 735346 (March 14, 2002); see also Op. S.C. Att'y Gen., 1995 WL 803377, at 10 (April 21, 1995); 1994 S.C. Op. Att'y Gen. 29 (1994). This Office's January 18, 1994, opinion to Betty Williams, Georgetown County Clerk of Court, addressed the issue of time limitations stating:

Collection of the fine does not appear to be limited in time in the absence of a statute. The statutory limitations on civil actions do not apply to fines assessed as a sentence in a criminal proceeding. Section 17-25-330 provides for executions for fines ". . . in the same manner as property is sold under execution in civil cases" Whether this reference would incorporate 10-year limits on liens on real property due to civil judgments need not be addressed herein unless you have such a situation now. § 15-35-810. No other time limit appears to be applicable to fines.

The above authority demonstrates that no time limit exists on the collection of fines imposed by the Court of General Sessions. This authority appears to support the same conclusion as to fees and restitution. Whether the 10-year real estate lien limitation would apply will not be addressed now unless you need such information. No time limitation on any of these matters appears in the Setoff Debt Collection Act. Of course, schedules for payment of fines by indigents may apply if set up by the Court.

Id. (internal citations omitted). In that opinion, we noted, but did not address the ten-year limitation imposed under S.C. Code § 15-35-810.

Your letter notes a separate statute codified at S.C. Code § 15-39-30 which similarly limits execution upon final judgments in civil matters to ten years from the date of entry.

Executions may issue upon final judgments or decrees at any time within ten years from the date of the original entry thereof and shall have active energy during such period, without any renewal or renewals thereof, and this whether any return may or may not have been made during such period on such executions.

Id. (emphasis added). In Gordon v. Lancaster, 425 S.C. 386, 823 S.E.2d 173 (2018), the South Carolina Supreme Court discussed why this statute’s legislative history compelled the conclusion that the ten-year effective period for a civil judgment could not be renewed.

As the Court in Hardee explained, “Our statutes...*and without reference to the repealing statute of 1946*—clearly evince the legislative purpose to nullify the effective force of a judgement after ten years, unless revived, or suit thereon be brought before the expiration of the period allowed by law.” Id. at 14, 46 S.E.2d at 182 (emphasis added). However, the General Assembly subsequently removed the ability to extend the life of a judgment, as the court noted: “[The amended statute] embodies the substantive law of the state. It provides no limitation period, but completely destroys any right of action upon judgments. The logical result...was to utterly extinguish a judgment after the expiration of ten years from the date of entry.” Id. at 17, 46 S.E.2d at 183.

Id. at 391–92, 823 S.E.2d at 176. The Court concluded that because section 15-39-30 “is clearly a statute of repose ... we decline to judicially adopt an exception to the bright-line rule that a judgment expires after ten years from its enrollment.” Id. at 393, 823 S.E.2d at 176.

To the extent that section 15-39-30 is applicable to restitution, criminal fines, surcharges, assessments, costs, or fees, the Gordon decision counsels that their effective force as a civil judgment is nullified ten years after the date of entry and is unable to be revived. Our state courts have recognized that sentencing orders, particularly orders for restitution, serve different purposes from civil judgements. In State v. Gullede, 326 S.C. 220, 487 S.E.2d 590 (1997), the South Carolina Supreme Court explained that restitution is part of the sentencing proceeding and is not intended to be a civil action.

The restitution hearing is part of the sentencing proceeding. See S.C. Code Ann. § 17–25–322 (Supp.1996) (“in addition to any other sentence which it may impose, the court shall order the defendant make restitution ...”); S.C. Code Ann. § 16–3–1530(D)(3) (Supp.1996) (“[t]he judge shall order restitution at every sentencing for a crime against person or property ... unless the court finds a substantial and compelling reason not to order restitution”); S.C. Code Ann. § 17–25–125 (1976); see also United States v. Anglian, 784 F.2d 765 (6th Cir.), *cert. denied*, 479 U.S. 841, 107 S.Ct. 148, 93 L.Ed.2d 89 (1986) (a restitution order is in the nature of a sentence, and the district court is vested with wide discretion in determining the appropriate sentence for a convicted defendant). Therefore,

during the restitution hearing, the rules governing sentencing proceedings should apply. See Harris v. Alabama, 542 So.2d 1312 (Ala.Crim.Ct.App.1989) (because restitution is not intended to be a civil action, a restitution hearing shall be governed by the same rules as a sentencing hearing; therefore, any evidence the court deems to have probative value may be received regardless of its admissibility under the rules of evidence); see also, 24 C.J.S., Criminal Law § 1780 (1989) (the trial court is not bound by strict rules of evidence during restitution hearings); Notes, Victim Restitution in the Criminal Process: A Procedural Analysis, 97 Harv.L.Rev. 931, 941–46 (1984) (suggesting imposition of a restitution order requires no greater procedural protection than those normally employed in sentencing; therefore, a convicted defendant is only entitled to notice and an informal hearing in which the rules of evidence do not apply).

Id. at 229–30, 487 S.E.2d at 594–95; see also State v. Morgan, 417 S.C. 338, 344, 790 S.E.2d 27, 30 (Ct. App. 2016) (“[W]e agree with the Kirby court's reasoning that the constructs of restitution and civil damages are separate and distinct.”); Fanning v. Hicks, 284 S.C. 456, 327 S.E.2d 342 (1985) (criminal restitution order did not entitle defendant to defense of accord and satisfaction in related civil action); S.C. Code § 16-3-1110 (“Restitution orders do not limit any civil claims a crime victim may file.”). This Office has not found support for the proposition that section 15-39-30 impacts sentences and judgments apart from limiting the time in which they are enforceable by execution against property of a defendant. To the contrary, there is authority stating that section 15-39-30 does not apply to extinguish certain Family Court orders. The Court of Appeals held in Holland v. Holland, 438 S.C. 69, 881 S.E.2d 766 (Ct. App. 2022), that child support orders are not subject to the statute of repose in section 15-39-30.

Nowhere in this robust statutory scheme [the Children’s Code] is there an explicit time limit for the enforcement of child support arrearages. Had the General Assembly meant to create a ten-year mechanism to allow parents to escape their obligation to pay child support, it would have specifically done so.

As mentioned by Mother, because section 15-39-30 is a statute of repose, it applies almost without exception. Therefore, were we to conclude that section 15-39-30 applies to child support orders, a defaulting parent could presumably avoid detection for ten years and his child support liability would extinguish as a matter of law.

Furthermore, South Carolina case law states that orders awarding support and maintenance do not have an expiration date. See Strickland v. Strickland, 375 S.C. 76, 84, 650 S.E.2d 465, 470 (2007) (finding laches is not a defense in actions to enforce claims for past due alimony in a case where the wife initiated an action to enforce the alimony obligation almost seven years after the husband's last

payment); *id.* at 83–84, 650 S.E.2d at 470 (“Because court orders awarding support and maintenance do not have an expiration date, allowing a party to avoid compliance based solely on the oblique notion of delay only serves to undermine the authority of the court.” (emphasis added)); Accordingly, we find the family court erred by applying section 15-39-30 to this action to enforce a child support order.

Id. at 74–76, 881 S.E.2d at 769–70 (citations omitted).¹ Given that the ten-year statute of repose in section 15-39-30 was found inapplicable to a child support order in part due to the lack of expiration date, and this Office’s 1994 opinion similarly concluded the collection of criminal fines, fees and restitution orders does not have a time limit, our state courts may well find section 15-39-30 does not impact these sentencing orders except for their enforceability by execution against property. See 1994 S.C. Op. Att’y Gen. 29 (1994).

I. Possibilities for enforcement.

Our March 14, 2002, opinion to Senator Yancy McGill addressed the continued validity of an order to pay restitution, fines, surcharges, assessments, costs, and fees resulting from a criminal conviction after the ten-year effective period has expired. Op. S.C. Att’y Gen., 2002 WL 735346 (March 14, 2002). Therein, we stated:

Section 17-25-325 provides that the judgment in a criminal case “... may be enforced in the same manner by execution against the property of the defendant as is provided by law for enforcing the judgments of the courts of common pleas in civil actions.” Section 17-25-323 involves the entry of a judgment in favor of the State for any unpaid balance of fines, costs, fees, surcharges, or assessments imposed and/or judgment in favor of a victim for the unpaid balance if any restitution ordered. Section 17-25-323(D) provides that “[a] judgment issued pursuant to [§ 17-25-323] has the force and effect of a final judgment and may be enforced by the judgment creditor in the same manner as any other civil judgment with enforcement to take place in court of common pleas.” In essence, judgments entered pursuant to these Sections of the Code are the equivalent of any other civil judgment entered in favor of a judgment creditor against a judgment debtor.

...

¹ Where the General Assembly statutorily imposes expiration of a specific type of lien, statutes may describe what impact expiration is intended to have. For instance, section 63-17-2730 directs that liens for the child support arrears expire after six years unless extended by recording further notice of the lien. Even though the statute allows a lien to expire, “[e]xpiration of the lien does not terminate the underlying order or judgment of child support.” *Id.*

The expiration of the judgment, however, does not necessarily extinguish the underlying debt upon which the judgment is based. When, as part of a criminal conviction, the defendant is ordered to pay fines, costs, fees, surcharges, or assessments to the State or county, or restitution to a victim, the State, county and/or victim becomes a creditor of the defendant. In a prior opinion, this Office determined that no time limit exists on the collection of fines, fees and restitution imposed by the Court of General Sessions. See Op. Atty. Gen. (Dated January 18, 1994). Given this determination, this Office has also stated that “all possibilities should be explored, and perseverance maintained” in attempting to collect such debts. See Op. Atty. Gen. (Dated April 21, 1995).

Id. While the opinion did not expand on what other “possibilities” should be explored in attempting to collect, it referenced an opinion issued on April 21, 1995. That opinion discussed how courts are authorized to establish fee payment schedules.

The Court maintains jurisdiction to monitor the progress of payment, and based upon all the facts and circumstances could modify the schedule See, Op. Atty. Gen., July 30, 1981, or, if necessary, where the defendant failed to pay pursuant to the schedule, contempt of court would be a remedy, just as it is with Section 17-25-350.

Op. S.C. Att’y Gen., 1995 WL 803377, at 11 (April 21, 1995). Additionally, a February 15, 2008, opinion addressed to the Honorable D.W. Cannon, Judge, Honea Path Municipal Court, suggested the Set Off Debt Collection Act may be used to ensure compliance with a court ordered fine.

Reference may be had to S.C. Code Ann. §§ 12-56-10 *et seq.* which provides for the “Setoff Debt Collection Act” as a means of collecting such fine and assessment. As stated in an opinion of this office dated August 3, 2001, pursuant to this act, the South Carolina Department of Revenue is authorized to setoff any funds, notably tax refunds, due to a taxpayer against a delinquent debt of the taxpayer owed to a claimant agency. For purposes of that provision, Section 12-56-20(4) defines a “delinquent debt” as

...a sum due and owing a claimant agency, including collection costs, court costs, fines, penalties and interest which have accrued through contract, subrogation, tort, operation of law, or other legal theory regardless of whether there is an outstanding judgment for that sum which is legally collectible and for which a collection effort has been or is being made... “Delinquent debt” also includes any fine, penalty, cost, fee, assessment, surcharge, service charge, restitution, or other amount imposed by a court....

Op. S.C. Att’y Gen., 2008 WL 608959 (February 15, 2008) (emphasis in original).

II. Enforcement utilizing S.C. Code §§ 17-25-323 and -325.

Finally, you ask if “the enforcement method provided by [s]ection 17-25-325 [is] in addition to the conversion to a civil judgment or is that section rendered unavailable once the conversion takes place?” Stated another way, the concern is generally whether the provisions of section 17-25-325, which allow the Court of General Sessions to enforce a sentence and judgment by execution against the property of the defendant, can be invoked after using the procedure in section 17-25-323, which allows a court to treat a default as a civil judgment and a judgment lien attached. It is this Office’s opinion that both sections 17-25-323 and 17-25-325 should be construed as part of a cohesive statutory scheme by which sentences and judgments in criminal cases may be enforced against the property of a defendant in the same manner as a civil judgement. Further, it is this Office’s opinion that a court would likely hold it is improper to use either statute to revive an extinguished lien after section 15-39-30’s ten-year statute of repose.

Both sections 17-25-323 and 17-25-325 were enacted by 1993 Act No. 140. These statutes deal with the same subject matter, and it is, therefore, well established that they “are in *pari materia* and must be construed together, if possible, to produce a single, harmonious result.” Penman v. City of Columbia, 387 S.C. 131, 138,691 S.E.2d 465.468 (2010); see also Op. S.C. Atty. Gen., 2000 WL 1347162 (Aug. 25, 2000) (The meaning of related statutes and their effect must be determined with reference to each other so as to “construe them together into one integrated system of law.”). The title of Act Number 140 suggests the circumstances under which the two statutes were intended to apply.

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTIONS 17-25-322 THROUGH 17-25-326, SO AS TO PROVIDE ... THAT THE COURT MUST RETAIN JURISDICTION OF THE CASE FOR THE PURPOSE OF MODIFYING THE ORDER UNTIL PAID IN FULL OR UNTIL THE DEFENDANT'S SENTENCE AND PROBATION AND SENTENCE, IF ANY, EXPIRES, PROVIDES THAT WHEN A DEFENDANT HAS BEEN PLACED ON PROBATION AND IS IN DEFAULT OF ANY FINES, SURCHARGES, ASSESSMENTS, COSTS, AND FEES ORDERED, THE COURT, ON MOTION OF THE VICTIM, THE SOLICITOR, OR A PROBATION AND PAROLE AGENT, OR UPON ITS OWN MOTION, MUST HOLD A HEARING FOR THE DEFENDANT TO SHOW CAUSE AS TO WHY HIS DEFAULT WOULD NOT BE TREATED AS A CIVIL JUDGMENT AND A JUDGMENT LIEN ATTACHED, PROVIDE THAT THE COURT MUST ENTER JUDGMENT IN FAVOR OF THE STATE AND IN FAVOR OF THE VICTIM FOR ANY FINES, COSTS, FEES, AND RESTITUTION FOR THE

UNPAID BALANCE, PROVIDE THAT JUDGMENTS MAY BE ENFORCED AS ANY CIVIL JUDGMENT IN THE COURT OF COMMON PLEAS, REQUIRE THAT THE CLERK OF COURT ENTER ANY JUDGMENT ISSUED PURSUANT TO THE PROVISIONS OF SECTION 17-25-323 IN THE CIVIL JUDGMENT RECORDS OF THE COURT, PROVIDE THAT NO JUDGMENT IS EFFECTIVE UNTIL ENTRY IS MADE AND THAT THE JUDGMENT CREDITOR IS REQUIRED TO RECORD SATISFACTION OF THE JUDGMENT; PROVIDE A JUDGMENT AND SENTENCE OF A COURT OF GENERAL SESSIONS IN A CRIMINAL CASE AGAINST AN INDIVIDUAL MAY BE ENFORCED AS A JUDGMENT IS ENFORCED IN THE COURT OF COMMON PLEAS IN CIVIL ACTIONS; ...

1993 Act No. 140 (emphasis added).

Section 1 of the Act requires a court to “hold a hearing to determine the amount of restitution due the victim or victims of the defendant’s criminal acts.” S.C. Code § 17-25-322.

Section 2 of the Act codified section 17-25-323 which requires “the trial court [to retain] jurisdiction of the case for purpose of modifying the manner in which court–ordered payments are made until paid in full, or until the defendant’s active sentence and probation or parole, if any, expires.” S.C. Code § 17-25-323(A). Subsection (B) permits the “victim or the victim’s legal representative, the Attorney General, the solicitor, or a probation and parole agent,” or the trial court itself to move for a hearing “to require the defendant to show cause why his default should not be treated as a civil judgment and a judgment lien attached.” S.C. Code § 17-25-323(A) (2014). Subsection (B) only applies, however, when a defendant is (1) placed on probation by the court or parole by the Board of Probation, Parole and Pardon Services, (2) is in default on “any installment or any criminal fines, surcharges, assessments, costs, and fees ordered,” and (3) “before the defendant completes his period of probation or parole.” *Id.* Subsection (B) states that this default may be “enforced as a civil judgment and a judgment lien attached.” 1993 Act No. 140, § 2. Subsection (C) clarified that “[t]he judgments may be enforced as any civil judgment.” *Id.* Subsection (D) also stated “[a] judgment issued pursuant to this section has all the force and effect of a final judgment and, as such, may be enforced by the judgment creditor in the same manner as any other civil judgment.” *Id.* (emphasis added).²

² As originally enacted, section 17-25-323 did not include any version of the words “convert” or “conversion,” nor did any other portion of the Act. 1993 Act No. 140. We emphasize this distinction in verbiage to further develop why this Office’s prior opinions concluded the expiration of a judgement that is enforceable as any civil judgment “does not necessarily extinguish the underlying debt upon which the judgment is based.” *Op. S.C. Att’y Gen.*, 2002 WL 735346 (March 14, 2002). Simply because these criminal fines, surcharges, assessments, costs, fees, and restitution orders are enforceable in the same manner as a civil judgment and a lien recorded does not change that they were imposed by a court in a criminal proceeding. It was not until 2013 that the language “convert”, and “conversion” were added by 2013 Act No. 82, § 4. Even then, that wording is only used in the current version of subsection (C) which concerns restitution orders issued by a magistrate or municipal court. *See* S.C. Code § 17-25-323(C) (2014).

Section 3 of the Act codified section 17-25-325 and included the heading, “Enforcement of judgment.” 1993 Act No. 140, § 3. Section 17-25-325 states:

The sentence and judgment of the court of general sessions in a criminal case against an individual may be enforced in the same manner by execution against the property of the defendant as is provided by law for enforcing the judgments of the courts of common pleas in civil actions. Before a general sessions court may enter a judgment against a defendant's property as authorized by this section, the judge must make findings of fact as to the amount of the judgment to be entered against the defendant. These findings must be supported by the preponderance of the relevant evidence as is offered by the parties.

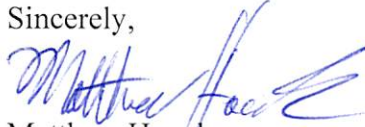
S.C. Code § 17-25-325 (emphasis added). Section 17-25-325 ultimately permits the Court of General Sessions to enter judgment against a defendant’s property and to directly enforce the judgment “by execution against the property of the defendant.” 1993 Act No. 140, § 3.

Finally, section 4 of the Act codified section 17-25-326 which explicitly states the orders issued “pursuant to the provisions of this article may be altered, modified, or rescinded upon the filing of a petition.” 1993 Act No. 140, § 4.

It is this Office’s opinion that section 17-25-325 should be interpreted in sequence with the other statutes enacted by 1993 Act No. 140. To summarize, first, section 17-25-322 requires a court to hold a hearing to determine the amount of restitution due to a victim or victims. Second, section 17-25-323(A) states the trial court retains jurisdiction “for purposes of modifying the manner in which court-ordered payments are made.” Then, if a defendant is in default on making these court-ordered payments, including the restitution order required by section 17-25-322, the statute allows the court to “modify” the criminal sentence to treat it as a civil judgment and attach a judgment lien. *Id.* Third, section 17-25-325 allows the court to enforce these judgments by “execution against the property of the defendant.” When read in isolation, the plain language of section 17-25-325 may be read to allow the Court of General Sessions to execute against the property of a defendant, even without a default. When read in context with the surrounding statutes, however, a court is likely to construe this enforcement mechanism is only available to enforce those judgments entered pursuant to the provisions of 1993 Act No. 140, namely the judgment liens entered according to section 17-25-323. *See Penman, supra.* This interpretation is further supported by the final statute enacted by the Act, section 17-25-326, which allows alterations of orders issued “pursuant to the provisions of this article.” It is, therefore, this Office’s opinion that the enforcement method in section 17-25-325 is only available after a judgment lien is attached according to the provisions in section 17-25-323.

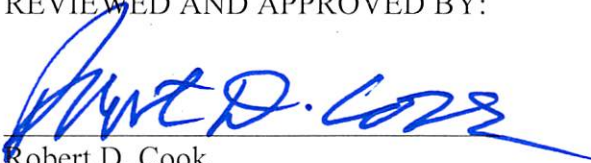
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Sincerely,



Matthew Houck
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General