

The State of South Carolina



Office of the Attorney General

T. TRAVIS MEDLOCK
ATTORNEY GENERAL

REMBERT C. DENNIS BUILDING
POST OFFICE BOX 11549
COLUMBIA, S.C. 29211
TELEPHONE 803-734-3970

November 30, 1987

The Honorable Allen T. Holmes
Orangeburg County Magistrate
Post Office Box 489
North, South Carolina 29112

Dear Judge Holmes:

In a letter to this Office you questioned whether in a situation where a schedule of payments of a fine has been established for an indigent pursuant to Section 17-25-350 of the Code and the indigent fails to comply with the payment schedule, is a magistrate authorized to charge the defendant a fine in addition to the sentence of a fine which was originally imposed. You indicated that you had interpreted Section 17-25-350 as authorizing only the remainder of the sentence imposed on the defendant to be carried out.

Section 17-25-350 states that as to any offense involving an indigent punishable by a fine or imprisonment, a schedule for the payment of the fine imposed is to be established. The statute further provides that

(f) failure to comply with the payment schedule shall constitute contempt of court; however, imprisonment for contempt may not exceed the amount of time of the original sentence, and where part of the fine has been paid the imprisonment cannot exceed the remaining pro rata portion of the sentence. No person found to be indigent shall be imprisoned because of inability to pay the fine in full at the time of conviction.

As stated, such provision mandates that the failure of an indigent defendant to comply with the schedule of payments set up in his behalf constitutes contempt of court. Such statute further

2763 Library

Opinion No 8795

Pg 25E

The Honorable Allen T. Holmes
Page 2
November 30, 1987

provides for imprisonment of the defendant in such circumstances. Section 17-25-350 does not specifically provide for the imposition of a fine upon the finding of contempt.

In Bearden v. Georgia, 461 U.S. 660 at 672 (1983), the United States Supreme Court stated:

... in revocation proceedings for failure to pay a fine or restitution, a sentencing court must inquire into the reasons for the failure to pay. If the probationer willfully refused to pay or failed to make sufficient bona fide efforts legally to acquire the resources to pay, the court may revoke probation and sentence the defendant to imprisonment within the authorized range of its sentencing authority.

Of course, as referenced by the court in Bearden, an individual who has made all reasonable efforts to pay his fine but is financially unable to do so may not be imprisoned for that reason alone.

Referencing the above, in the circumstances where an indigent fails to comply with the schedule of payments established by the court and the court determines that the indigent has wilfully refused to pay or failed to make bona fide efforts to pay, the court is authorized to imprison the defendant for contempt. As provided in Section 17-25-350, where part of the fine has been paid, the imprisonment cannot exceed the remaining pro rata portion of the sentence. I am unaware of any basis for a court to impose a fine in addition to the sentence originally imposed.

If there is anything further, please advise.

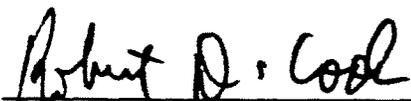
Sincerely,



Charles H. Richardson
Assistant Attorney General

CHR/an

REVIEWED AND APPROVED BY:



Robert D. Cook
Executive Assistant for Opinions