

1972 WL 25366 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

June 26, 1972

**\*1 Re: Argersinger v. Hamlin 40 Law Week 4679**

Mr. A. Ray Godshall  
Attorney at Law  
415 ½ North Limestone Street  
Gaffney, South Carolina 29340

Dear Mr. Godshall:

You have requested that this office advise you as to the effect of the above-referenced Supreme Court decision upon the furnishing of attorneys for indigent defendants in city recorder's court.

This recent decision holds that an indigent defendant must be supplied with the services of a lawyer in magistrate's court or municipal court in any case in which a jail sentence of any kind is imposed, unless the defendant understandingly waives that right. Argersinger v. Hamlin (supra.). As only indigents are entitled to free services of a lawyer, the Judge must make inquiry of the defendant to determine if, in fact, he is indigent. If the Judge, after questioning, decides that the defendant can afford to pay a lawyer, the case may proceed even though no lawyer is present. This new rule applies in all cases in which the defendant is tried or pleads guilty. It does not apply in bond forfeiture cases. Forfeiture cases may be handled as in the past, without regard to whether the defendant is indigent or not. The same thing applies to trial in absence cases; if the defendant, after proper notice, does not appear for trial, the Judge has no way of determining indigency and the handling of the case should proceed with no requirement that a lawyer be appointed to represent the absent defendant.

This new ruling can apparently be avoided only by the Judge before trial begins or a plea is taken, announcing that only a fine will be imposed . . . no jail sentence even as an alternative. It is only in this manner can a necessity for a lawyer at trial or upon plea of guilty be avoided when the defendant is, in fact, indigent. As a practical matter, when a fine only is imposed, with no alternative jail sentence, enforced collection of the fine will be a practical impossibility, but South Carolina magistrates and municipal judges are empowered under the law to impose straight sentences, that is, jail only or fine only. In traffic cases, the sentence of fine only carries the same penalty against the driver's license as an alternative sentence.

In any event, where a jail sentence is involved, trial or plea of guilty in the case of an indigent defendant, the case cannot proceed until a free lawyer is furnished.

I have enclosed a copy of the above-referenced Supreme Court decision for your review. I trust this opinion will be of some assistance to you.

Very truly yours,

Timothy G. Quinn  
Assistant Attorney General

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