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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

HENRY MCMASTER
ATTORNEY GENERAL

May 19, 2004

The Honorable Robert F. Williams, Jr.
Magistrate, Fairfield County
115-B S. Congress Street
Winnsboro, South Carolina 29180

Dear Magistrate Williams:

In a letter to this office you referenced that you have perceived a problem relating to how local detention facilities are upholding sentences issued by the courts. Specifically you allege that these local detention facilities are releasing convicted persons without lawful authority and without the consent or knowledge of the courts that imposed the sentences.

Relating to such, you have questioned the computation of "good time" for the purpose of reduction of sentences and early release of offenders.

As stated in a prior opinion of this office dated February 12, 2001,

> There is no constitutional right to good time credits...Any right to good time credits arises out of and is controlled by state statute.

See also: Op. Atty. Gen. dated April 30, 1985 ("the matter of allowing good behavior credits is purely statutory.").

S.C. Code Ann. Section 24-13-210 (Supp. 2003) provides for credit for offenders for good behavior. As to offenders sentenced to a local correctional facility[1], subsection (C) provides:

> A prisoner convicted of an offense against this State and sentenced to a local correctional facility, or upon the public works of any county in this State, whose record of conduct shows that he has faithfully observed all the rules of the institution

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[1] S.C. Code Ann. Section 24-3-20 (Supp. 2003) provides that "a person convicted of an offense against this State and sentenced to imprisonment for more than three months is in the custody of the South Carolina Department of Corrections and that department shall designate the place of confinement where the sentence must be served."

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> where he is confined, and has not been subjected to punishment for misbehavior, is entitled to a deduction from the term of his sentence beginning with the day on which the service of his sentence commences to run, computed at the rate of one day for every two days served. When two or more consecutive sentences are to be served, the aggregate of the several sentences is the basis upon which good conduct credits must be computed.

Subsection (E) states that:

> Any person who has served the term of imprisonment for which he has been sentenced less deductions allowed therefrom for good conduct is considered upon release to have served the entire term for which he was sentenced unless the person is required to complete a community supervision program pursuant to Section 24-21-560. If the person is required to complete a community supervision program, he must complete his sentence as provided in Section 24-21-560 prior to discharge from the criminal justice system.

You also raised several questions relating to the situation where an offender is sentenced to both a term of imprisonment and a fine and does not pay the fine. You particularly referenced a repeat criminal domestic violence offender such as that established by S.C. Code Ann. Section 16-25-20(c) (Supp. 2003) which provides that

> A person who violates subsection (A) and who has been convicted of a violation of that subsection or of Section 16-25-65 within the previous ten years is guilty of a misdemeanor and, upon conviction, must be fined not more than five hundred dollars and imprisoned not more than thirty days. The court may suspend the imposition or execution of all or part of the sentence conditioned upon the offender completing, to the satisfaction of the court, a program designed to treat batterers.

As to a situation where the offender is not eligible for a time payment plan or a suspended sentence pursuant to such provision, you asked whether the offender is eligible for a reduction in time served if the fine is not paid. You asked what mechanism is available to compel an offender to comply with the sentence of a fine. You also asked whether a detention center has the authority to release a prisoner before the fine is paid, without the court's consent. You asked additionally if the prisoner claims he is indigent and does not pay the fine, what recourse does the court have to such situation.

Of course, pursuant to S.C. Code Ann. Section 17-25-350 (2003), a magistrate is to structure a payment schedule for the payment of fines if the offender is indigent. Such provision states 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...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.

Such is consistent with the finding of the United States Supreme Court in Williams v. Illinois, 399 U.S. 235 (1970) where the Court held that the continued incarceration of a defendant for nonpayment of a fine violates the Equal Protection Clause of the United States Constitution if the defendant's failure to pay the fine is involuntary. Therefore, a prisoner may not be imprisoned beyond the maximum duration set by statute because he is financially unable to pay a fine.

Section 24-23-210 relating to credit for good behavior is silent as to situations where a fine is imposed but not paid. Therefore, as to a situation where an offender is not eligible for a time payment plan or a suspended sentence pursuant to Section 16-25-20, it appears that an offender would still be entitled to good time credits regardless of whether the fine is paid or not and therefore could be released absent some further finding by the court regarding the nonpayment of a fine, such as a finding of contempt, as set forth below.

As to the mechanism to compel an offender to comply with the sentence of a fine, this office stated in an opinion dated June 5, 2001 that

> Where a defendant wilfully fails or refuses to pay a fine or otherwise comply with a sentence, a bench warrant is the appropriate form of process to bring the defendant back into court to comply with the imposed sentence...The failure to pay money in compliance with an order of the court may also constitute contempt of court.

Such is consistent with the referenced language in Section 17-25-350 regarding contempt for failure to pay a fine pursuant to a payment schedule.

As to a magistrate's authority to make a finding of contempt, in Curlee v. Howle, 277 S.C. 377, 382, 287 S.E.2d 115 (1982), the State Supreme Court stated that "(t)he power to punish for contempt is inherent in all courts. Its existence is essential to the preservation of order in judicial proceedings and to the enforcement of the judgments, orders and writs of the courts, and consequently to the due administration of justice."[2] Moreover, in an opinion of this office dated

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[2]An argument exists that a magistrate would not share the authority to make a finding of contempt for failure to pay a fine outside of a situation such as that addressed by Section 17-25-350

(continued...)

April 21, 1995 this office indicated that "(t)he general rule is that where a defendant fails to pay a fine or otherwise comply with a sentence, a bench warrant is issue for his arrest and he is brought back before the court to comply with the sentence...In addition, it is well-recognized that the failure to pay money in compliance with an order of the court may constitute contempt of court." Therefore, an argument exists supporting a finding of contempt for failure to pay a fine. In such circumstances, it does not appear that a magistrate would have the authority to sentence an individual beyond thirty days in such circumstances. The thirty day limitation would be consistent with a magistrate's authority generally to impose a sentence not exceeding thirty days. S.C. Code Ann. Section 22-3-550 (1989). However, consistent with such, absent a finding of contempt for failure to pay a fine or any other finding requiring continued incarceration, a detention center would be authorized to release a prisoner who has completed service of his sentence as imposed but who has not paid his fine.

As to your question of whether a commitment for contempt is eligible for any reduction of term by "good time" credits, this office in an opinion dated July 29, 1998 indicated where the

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[2](...continued)
which specifically authorizes a finding of contempt for failing to comply with a payment schedule. A magistrate's general statutory contempt authority is provided by S.C. Code Ann. Section 22-3-950 (Supp. 2003) which states that

> Every magistrate shall have power to enforce the observance of decorum in his court while holding the same and for that purpose he may punish for contempt any person who, in the presence of the court, shall offer an insult to the magistrate or a juror or who is wilfully guilty of an undue disturbance of the proceedings before the magistrate while sitting officially. A magistrate shall have the power to punish for contempt of court by imposition of sentences up to the limits imposed on magistrates' courts in Section 22-3-550.

In State v. Harper, 297 S.C. 257, 259, 376 S.E.2d 272 (1989), the State Supreme Court determined that "(c)ontempt is an extreme measure and the power to adjudge in contempt is not to be lightly asserted." The Court cited Section 22-3-950 as a magistrate's authority to punish for contempt. See also: Dean v. Shirer, 547 F.2d 227 (4th Cir. 1976) (The Court cited Section 22-3-950 as the contempt authority for magistrate's courts and stated that "(t)he contempt power under the South Carolina statute is thus limited to instances where the contempt is committed in the presence of the court, or where the party is wilfully guilty of an undue disturbance of the proceedings before the magistrate while sitting officially."). Therefore, an argument exists as to whether a magistrate may cite an offender who fails to pay the fine imposed with contempt in an attempt to get the offender to pay the fine outside of the situation specifically provided for by Section 17-25-350 which specifically authorizes a finding of contempt by the magistrate for failure to comply with the payment schedule for a fine.

contempt is civil, good time credits, such as those authorized by Section 24-13-210 are not applicable. The opinion defined civil contempt in the following explanation:

> In civil contempt cases, the sanctions are conditioned on compliance with the court's order..."The conditional nature of the punishment renders the relief civil in nature because the contemnor 'can end the sentence and discharge himself at any moment by doing what he had previously refused to do.'"...Civil contempt includes situations where...the contemnor is given a jail sentence to be served until he agrees to comply with the prior court order.

Such would appear to be applicable to a situation such as that addressed by you where the offender fails to pay the fine originally imposed.

One means of dealing with the failure to pay a fine was addressed in an opinion of this office dated June 24, 1970. Reference was made in such opinion to two statutory provisions, S.C. Code Ann. Sections 17-25-330 and 17-25-340 which state

> When any fine shall be imposed by or recovered for the use of the State in any court or before a magistrate, if the party incurring such fine...shall fail to pay it down, with the costs of prosecution, then a writ in the nature of an execution shall issue, by virtue of which the sheriff or his deputy shall sell in the same manner as property is sold under execution in civil cases so much of such offender's estate, real or personal, as may be necessary to satisfy the fine or forfeiture, the cost of prosecution, and the reasonable charges of taking, keeping and selling such property, returning the overplus, if any, to the offender, together with a bill of the fine or forfeiture, with costs and charges, if he requires it.
> If the sheriff or his deputy return on oath that such offender refused to pay or has not any property or not sufficient whereon to levy, then a writ of capias ad satisfaciendum shall issue whereby he shall be committed to the common jail, until the forfeiture, costs and charges shall be satisfied. Such offender shall be entitled, however, to the privilege of insolvent debtors.

The opinion stated that

> The South Carolina Supreme Court in considering the predecessors of the above statutes has recognized the evils of indeterminate sentences and has liberally construed those provisions to the benefit and protection of insolvent accused...(In State v. Brewer, 38 S.C. 263 (1892))...the Court recognized that the statute there which is the predecessor of Section 17-25-340 required that the defendant's property be first executed against and such returned unsatisfied in whole or in part before he can then be arrested. There the Court said:

> But imprisonment as a punishment for crime, and imprisonment under writ of capias ad satisfaciendum, from which a party may at once relieve himself by exercising the privilege accorded to him by the statute, are two very different things. One is resorted to as a means of punishing an offense, while the other is for no such purpose, but simply for the purpose of compelling the party arrested under a ca. sa. to apply his property to the payment of the penalty imposed upon him for the breach of the criminal law...

In view of the legislature's express direction to seek satisfaction of a fine or forfeiture through the process of an execution coupled with the absence of any statutory authority allowing the continued confinement of one already imprisoned and under fine at the expiration of his term of imprisonment because of the nonpayment of said fine, it is the opinion of this office that the legislature has intended that any imprisonment for failure to pay a fine must be in accordance with Sections 17-25-330 and 17-25-340 and that, therefore, the defendant in question must be released from imprisonment at the expiration of his original term of confinement with any and all credit earned being given.

If an execution shall thereafter issue and the defendant's obligation under the fine not be satisfied, then a writ of capias ad satisfaciendum may issue committing him to the common jail with the defendant retaining such privileges as insolvent debtors may have under the laws of this State.

You also asked what recourse does a court have as to a director of a detention center or even a county council who directs for economic purposes that the detention center reduce sentences inconsistent with State law. As to situations in which offenders are released prematurely and not in compliance with statutory provisions, while it is questionable as to whether such release would constitute contempt of court, an opinion of this office dated October 27, 1982 determined that

> ...premature release could subject the custodial officers to potential criminal liability (Section 24-3-910) or civil liability to potential victims of the prematurely released inmate.

An opinion of this office dated July 14, 1978 determined that

> (a) reduction of sentence for good behavior is a creature of statute, and the statute must be followed in determining how the deduction is to be computed...At common law it was a misdemeanor for an individual having lawful charge of a prisoner to voluntarily or negligently permit him to depart from his custody however short the departure might be.

As to your question as to whether a local government has the authority to supercede statutory authority, generally, local governments cannot supersede State law or authority. Op. Atty. Gen. dated October 18, 1988. For instance, an ordinance cannot conflict with the Constitution or general law of this State. Ops. Atty. Gen. dated October 28, 1997 and October 15, 1996. Therefore, a local government cannot provide for the release of offenders in a manner inconsistent with State law.

As to your question as to how local directors of detention facilities resolve perceived inconsistencies between orders handed down by the courts and the directions handed down by local governments, as indicated above, local authorities may not authorize practices inconsistent with State law. State law controls as to good time treatment afforded offenders and attempts should be made to remind local authorities of such provisions.

Hopefully the above is responsive to your inquiry. If there are any questions, please advise.

With kind regards, I am,

Very truly yours,

Charles H. Richardson
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:

Robert D. Cook
Assistant Deputy Attorney General