

February 15, 2008

The Honorable D. W. Cannon
Judge, Honea Path Municipal Court
204 South Main Street
Honea Path, South Carolina 29654

Dear Judge Cannon:

In a letter to this office you referenced that a defendant on August 14, 2007 pled guilty to driving under suspension, 3rd or subsequent offense. He was sentenced to a fine of \$2100.00 plus ninety days in jail. The defendant completed his jail time but was released by the detention center without paying the \$2100.00 fine. You have questioned whether this defendant has successfully completed the entire sentence of the court when he did not pay the \$2100.00 fine. If not, you have questioned what would be the proper procedure to ensure that the defendant complies with the entire sentence.

S.C. Code Ann. § 56-1-460(A)(1) states that as to a defendant who drives a motor vehicle when his license to drive is canceled or suspended, upon conviction for a third or subsequent offense, he is to be punished by a fine of one thousand dollars and imprisoned for not less than ninety days nor more than six months, no portion of which may be suspended. I assume that the \$2100.00 fine imposed in your case includes the various assessments imposed on a convicted criminal defendant. See, e.g., S.C. Code Ann. § 14-1-208. Notwithstanding the typical limits of a magistrate's or municipal court's jurisdiction as set forth in S.C. Code Ann. § 22-3-550, an offense punishable under Section 56-1-460 "may be tried in magistrate's court." Pursuant to S.C. Code Ann. § 14-25-45, a municipal court has the same jurisdiction conferred upon magistrates' courts in criminal cases made under state law.

As to the failure of the defendant to pay, I assume that there was no structured payment schedule for the payment of fines such as where the defendant is indigent as is permitted by S.C. Code Ann. § 17-25-350. In such instance, the failure to comply with the payment schedule constitutes contempt of court and this office in an opinion dated May 19, 2004 indicated that in such

instance, a bench warrant could be issued to bring the defendant back to court in order to comply with the sentence.

In this instance, it appears that the defendant simply did not pay the fine and assessments imposed by the court. The May 19, 2004 opinion suggested one means of dealing with such a situation is set out in S.C. Code Ann. §§ 17-25-330 and 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.

[i]f 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.

Another prior opinion of this office dated June 24, 1970 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...

That opinion concluded that

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.

However, aside from these noted statutes, other provisions have since been enacted which may be a means of proceeding to collect on the fine and assessment due. 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.... (emphasis added).

As to proceeding pursuant to this provision, I have been informed that Ms. Gail Hampton with the State Municipal Association is a contact person for proceeding under the referenced act. You may contact her at 803-933-1213.

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With kind regards, I am,

Very truly yours,

Henry McMaster
Attorney General

By: Charles H. Richardson
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:

Robert D. Cook
Assistant Deputy Attorney General