

April 23, 2007

The Honorable B. Lee Miller
Municipal Court Judge
Post Office Box 40
Greenwood, South Carolina 29648

Dear Judge Miller:

In a letter to this office you referenced a situation where an individual is tried in his absence for a particular violation. After the trial, the judge imposes a sentence of a fine or ten day term of imprisonment. A bench warrant is then issued and the individual is arrested.

Referencing such, you indicated that in the situation prompting your question, the individual is arrested on a Friday evening after normal working hours. You questioned whether the municipal judge on weekend duty can handle the matter and allow the defendant to pay the fine and be released or must the defendant wait until he can be brought before the judge that actually imposed the sentence.

You also questioned whether in the situation addressed above, if the sentencing judge is not available for reasons such as a vacation, illness or personal leave, must the defendant also wait until the sentencing judge returns in order to be brought back before the sentencing judge.

Prior opinions of this office have referenced that a bench warrant is utilized "...to bring the defendant back into court to comply with the imposed sentence." See: Op. Atty. Gen. dated May 19, 2004. An opinion dated April 21, 1995 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 issued for his arrest and he is brought back before the court to comply with the sentence....

The *South Carolina Bench Book for Magistrates and Municipal Court Judges* similarly states that a bench warrant is

...a form of process to be used to bring a defendant back before a particular court on a particular charge for a specific purpose after the court has acquired jurisdiction over

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the defendant on that particular charge by virtue of a previously served proper charging paper. (emphasis added).

Section III, p. 16. Also set forth in the *Bench Book* is an order from former Chief Justice Woodrow Lewis dated November 14, 1980 which states

IT IS ORDERED that bench warrants shall be endorsed for service in foreign counties in the same manner as numbered arrest warrants...Upon endorsement such bench warrants are not to be used for the purpose of initiating criminal action, but are to be used only for the purpose of bringing a defendant before a court which has already gained jurisdiction over that defendant by means of a valid charging paper. (emphasis added).

An opinion of this office dated November 16, 1990 dealt with the endorsement of bench warrants for service in foreign counties in the same manner as arrest warrants. The opinion stated that a bench warrant is

...to be used only for the purpose of bringing a defendant before a court which has already gained jurisdiction over that defendant by means of a valid charging paper. Therefore, a bench warrant is used to bring a defendant back to the court which originally tried the defendant. Absent the enactment of a statute or adoption of a court rule authorizing the payment of the fine to the magistrate in the county of arrest, I am unable to conclude that release following such a payment would be authorized. (emphasis added).

Therefore, that opinion states that where a bench warrant is countersigned for service in another county, payment of a fine to the magistrate in the other county would not be authorized. Instead, the individual must be returned to the original court whereby the fine or term of imprisonment would be imposed.

In the situation you addressed, the individual is arrested pursuant to a bench warrant on a Friday evening after normal working hours. You questioned whether the municipal judge on weekend duty can handle the matter and allow the defendant to pay the fine and be released or must the defendant wait until he can be brought before the judge that actually imposed the sentence. Consistent with the above, it appears that the defendant would have to be brought back before the original judge in order to either pay the fine or have a sentence of imprisonment imposed. Similarly, if the sentencing judge is not available for reasons such as a vacation, illness or personal leave, it appears that the defendant would have to wait until that judge returns in order to be brought back before the sentencing judge either to pay the fine or have a sentence of imprisonment imposed. Again, I am unaware of any court rule or order that provides that a judge other than the judge that issues a bench warrant may handle cases for the judge that issues the bench warrant. However, this may be a situation where in particular circumstances an additional order may be sought which would authorize another judge to consider such a case, especially where the original sentencing judge is

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unavailable for an extended period of time. You may wish to contact the State Court Administration office with regard to such question.

Sincerely,

Henry McMaster
Attorney General

By: Charles H. Richardson
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:

Robert D. Cook
Assistant Deputy Attorney General

cc: Robert L. McCurdy, Esquire
South Carolina Court Administration