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Perry R. Eichor, Director
Department of Community Services
County of Greenville
20 McGee Street
Greenville, South Carolina 29601

Dear Mr. Eichor:

You seek clarification of a recent amendment to Section 22-3-550 of S.C. Code Ann. (1976 as amended). Section 28 of Part II of the 1994-95 Appropriations Act provides as follows:

Section 28

TO AMEND SECTION 22-3-550 AS AMENDED, OF THE 1976 CODE, RELATING TO A MAGISTRATE'S JURISDICTION OVER MINOR CRIMINAL OFFENSES, SO AS TO PROVIDE A LIMITATION ON A MAGISTRATE'S POWER TO IMPOSE CONSECUTIVE TERMS OF IMPRISONMENT.

Section 22-3-550 of the 1976 Code, as last amended by Act 184 of 1993, is further amended to read:

Section 22-3-550. Magistrates have jurisdiction of all offenses which may be subject to the penalties of a fine or forfeiture not exceeding five hundred dollars or imprisonment not exceeding thirty days and may impose any sentence within those limits, singly or in the alternative. In addition, a magistrate may order restitution he considers appropriate.

Request Letter

> However, a magistrate shall not have the power to sentence any person to consecutive terms of imprisonment totaling more than ninety days. The provisions of this paragraph do not effect the transfer of criminal matters from the general sessions court made pursuant to Section 22-3-545. (emphasis added).

Your questions regarding this recent amendment are as follows:

1. Must the consecutive total of sentences from multiple magistrates be limited to 90 days or are they excluded from the provision of this law because they are separate sentences?

2. Does this amended statute apply to municipal judges as well as magistrates?

3. How should release dates be computed on sentences which exceed the mandated 90-day limit wherein the sentencing magistrate has imposed a sentence in excess of 90 days? Should they be computed on:

   (a) the total number of days or
   (b) limited to just 90 days.

As Director of the Greenville Department of Community Services, you are currently holding several inmates whose sentences "exceed" the 90-day limit. Further, you make the following observation:

> While this section of the Code may benefit the South Carolina Department of Corrections, it certainly has an adverse impact on local jails. The Department of Corrections is not accepting inmates sentenced in excess of 90 days when the sentence is issued by a magistrate. This leaves the local jail in a position of having to hold the inmate more than 90 days in order to comply with the magistrate sentence and/or the municipal court sentence.

Law/Analysis

We note that a number of principles of statutory construction are relevant to interpreting the foregoing amendment. First, in construing any statute, legislative intent is always paramount. Therefore, the primary function of the court is to ascertain the intention of the General Assembly. State v. Martin, 293 S.C. 46, 358 S.E.2d 697 (1987). Further, the statute must be read as a whole in order to garner its intent. City of Cola. v. Niagara Fire Ins. Co., 249 S.C. 388, 154 S.E.2d 674 (1967). In addition, a reasonable and practical construction consistent with the purpose and policy expressed therein should be given. First South Sav. Bank, Inc. v. Gold Coast Associates, 301 S.C. 158, 390 S.E.2d 486 (Ct. App. 1990). It is beyond question that any statute must be construed with common sense to avoid absurd consequences or unreasonable results. U.S. v.Rippetoe, 178 F.2d 735 (4th Cir. 1950).

Other fundamental rules of construction are relevant as well. Words used in a statute are to be given their ordinary and popular significance, Hay v. S.C. Tax Commission, 273 S.C. 269, 255 S.E.2d 837 (1979), and where terms therein are clear and unambiguous, the court must apply them according to their literal import. First South Sav. Bank, supra. Pertinent here also is the canon that where a statute is being construed, it is proper to consider legislation dealing with the same subject matter. Fidelity and Cas. Ins. Co. of N.Y. v. Nationwide Ins. Co., 278 S.C. 332, 295 S.E.2d 783 (1982).

Section 22-3-550, as amended, plainly states that "... a magistrate shall not have power to sentence any person to consecutive terms of imprisonment totaling more than ninety days." (emphasis added). Our Court has observed that the word "a" may mean "one" or it may connote "any" depending upon the context. Brown v. Sikes, 188 S.C. 288, 198 S.E.2d 854 (1938). By comparison, however, it is seen elsewhere in Section 22-3-550 that the plural "[m]agistrates" appears ["Magistrates have jurisdiction of all offenses ..."], and in the last sentence of the first paragraph of the Section, the words "a magistrate" are written in conjunction with the phrase "may order restitution he considers appropriate." (emphasis added). Thus, when the Section is read in its entirety, the words "a magistrate" as employed in the newly-enacted portion of Section 22-3-550, appear to be used in the context of a single magistrate.

Moreover, the amendment provides that a magistrate shall not have the power "to sentence" any "person" to consecutive "terms of imprisonment" totaling more than 90 days. Here, the words "to sentence" appear written in the context of a single act of sentencing by the magistrate. Ordinarily "a sentence" is synonymous with "a judgment" and denotes an action of the court of criminal jurisdiction formally declaring to the defendant the legal consequences of guilt to which he has confessed or been convicted.

State v. Royse, 252 Kan. 394, 845 P.2d 44, 47, (1993). We usually think of a "sentence" in a criminal case as an order of the judge required to be made in the presence of the defendant and pronouncing punishment. Ex Parte Gibson, 137 Tex. Cr. R. 72, 128 S.W.2d 396 (1939). Further, the word "totaling" modifies the phrase "consecutive terms of imprisonment" which, in turn refers back to the power of "a" magistrate "to sentence" to no more than 90 days consecutively. The placement of these words in this sequence removes the likelihood that reference was to be had to any other judicial sentence either previously or subsequently rendered in calculating the 90 day total.

It is also to be noted that the title of the amendment to Section 22-3-550 states the intent of the Legislature "TO PROVIDE A LIMITATION ON A MAGISTRATE'S POWER TO IMPOSE CONSECUTIVE TERMS OF IMPRISONMENT." (emphasis added). In the context of criminal proceedings, a judge "imposes" a sentence at that point in time when the court "pronounces" the sentence. State v. Liliopoulous, 165 Wash. 197, 5 P.2d 319, 324 (1931). The judge's imposition of sentence is the actual act of sentencing the defendant, Kribel v. U.S., 10 F.2d 762, 769 (7th Cir. 1926), and occurs when the court orally announces its judgment in court. U.S. v. DeVito, 99 F.R.D. 113, 115, (D. Conn. 1983).

Thus, construing all parts of Section 22-3-550 together, we read the 90-day requirement now contained therein as limited to a single magistrate who, at one time or at a single sitting, sentences an individual to consecutive terms of imprisonment. If the Legislature had desired to impose a cumulative limitation upon a magistrate or magistrates beyond a single act of sentencing the defendant to consecutive terms of imprisonment, it would have been a simple matter to have written the limitation in terms of "the total number of consecutive sentences imposed upon a person by one or more magistrates," or language similar thereto. But it did not. Moreover, common sense dictates that the Legislature did not intend such a result. Otherwise, taken to its logical conclusion, no matter how many additional magistrate's court offenses an individual may commit, no matter when that individual again comes before the court for a separate sentencing, or regardless of whether that individual subsequently comes before a different magistrate or the same, the most jail time the defendant could receive would be 90 days, total, if sentenced consecutively. We do not read the statute in so irrational a fashion.

General law in this area supports our conclusion. We have noted in an earlier opinion:

> ... a magistrate has the authority to impose sentences of imprisonment to run concurrently or consecutively .... [I]f the magistrate makes no indication of how such sentences should

> run, they would run concurrently [side by side, with the prisoner serving the longest of the sentences]. However, ... if the decision of the magistrate is that sentences of imprisonment should run consecutively [back to back, beginning the second term when the first is served], a statement of such intent would result in consecutive sentences of imprisonment.

Op. Atty. Gen., March 8, 1979.

The case of Polk v. Manning, 224 S.C. 467, 79 S.E.2d 718 (1954), is instructive. There, the Court considered the situation where a single judge on the same day and at one sitting, sentenced an individual to three consecutive terms of imprisonment. Another judge in another county on a subsequent day, sentenced that same individual for a different offense to a sentence to run consecutively to the three earlier offenses. The Court treated each of the four offenses as separate and distinct, holding that service for the fourth offense could not begin until each of the first three offenses had been served in consecutive order. Clearly, the Court deemed the sentence by the second judge as a separate sentencing. See also Op. Atty. Gen., No. 2269, p. 80 (May 1, 1967) [Generally, consecutive sentences are considered independent of each other.] Moreover, while the Polk Court treated each of the four consecutive terms of imprisonment as separate from each other for purposes of the prisoner's service of time, it observed as well that the imposition of "two or more consecutive sentences at the same time by the same judge would ordinarily be considered as a single 'sentence' ..." or, more properly, act of sentencing by that judge. 224 S.C. at 472-473 (emphasis added).

While it is evident, therefore, that the Legislature intended to limit to ninety days the prison time for "consecutive terms of imprisonment" to which an individual magistrate at one sitting can sentence a person, we believe that is all the provision intended to do. We decline to read Section 22-3-550's 90-day limit so broadly to include more than one act of sentencing to "consecutive terms of imprisonment", either by another magistrate, or by the same magistrate who may sentence that same individual on subsequent occasions. We do not deem that the provision intended to refer to any other judicial sentence, either previously or subsequently rendered, in calculating the 90-day limit. Simply put, this provision requires a magistrate who pronounces a sentence upon a person to consecutive terms of imprisonment, to limit those consecutive terms to 90-days, total, in that pronouncement of sentence.

2. Does this amended statute apply to municipal judges as well as magistrates?

Yes. Pursuant to S.C. Code Ann. Section 14-25-45, municipal courts shall have "... all such powers, duties and jurisdiction in criminal cases made under state law and conferred upon magistrates." In other contexts, we have previously construed Section 22-3-550 together with Section 14-25-45. For instance, we have advised that, a magistrate and also a municipal judge may, pursuant to Section 22-3-550, impose a sentence of a term of imprisonment without offering the alternative of a fine to a defendant convicted in his court. See, Op. Atty. Gen., No. 87-83, p. 219 (October 12, 1987), citing Op. Atty. Gen., May 11, 1983 and February 2, 1981. Thus, we conclude that Section 22-3-550, as amended, constrains municipal judges in the same way as it does magistrates, as discussed above in Question 1.

3. How should release dates be computed on sentences which exceed the mandated 90-day limit wherein the sentencing magistrate has imposed a sentence in excess of 90 days? Should they be computed on:

(a) the total number of days or

(b) limited to just 90 days?

The law recognizes as a fundamental tenet the idea that:

> [t]he duty of an officer in executing the mandate of a judicial order in the nature of a commitment is purely ministerial and his power with request thereto is limited and restricted to compliance with its terms.

Firmly established, also, is the following principle:

> [t]he custodian of a prison on receiving a commitment can do only what the commitment orders him to do, that is, receive and safely keep the prisoner, so that the prisoner may then be discharged in due course of law.

60 Am.Jur.2d, Penal and Correctional Institutions, § 22. Similarly, it is helpful to note that Section 24-5-10 requires a sheriff or jailer to "receive and safely keep in prison any person delivered or committed." (emphasis added). A jailer owes a duty to the public at

large. See, Rayfield v. S.C. Dept. of Corrections, 297 S.C. 95, 374 S.E.2d 910 (Ct. App. 1988); Section 24-5-130 [leaving jails unattended]. See also 72 C.J.S., Prisons, § 15; Mu'Min v. Commonwealth, 239 Va. 433, 389 S.E.2d 886 (1990), affd., 500 U.S. _____, 111 S.Ct. 1899, 114 L.Ed.2d 493 (1991); People v. Lockhart, 699 P.2d 1332 (Colo. 1985); Op. Atty. Gen., April 8, 1980 [jail administrator may not release a prisoner where arresting officer has obtained no warrant, but should take the prisoner before a magistrate]; Op. Atty. Gen., November 16, 1972 [jailer may not release a prisoner who is still intoxicated without a court order]: As was stated by the Court in Whalen v. Christell, 161 Kan. 747, 173 P.2d 252 (1946),

> ... in carrying out the mandate of a commitment or judicial order the duty of an officer is purely ministerial .... Upon receiving such commitment he can only comply with its terms .... He cannot release a prisoner from jail before the date fixed for his discharge by the magistrate .... (emphasis added).

A federal decision, in Zuranski v. Anderson, 582 F.Supp. 101, 108-9 (N. D. Ind. 1984) concluded that a sheriff and jailer could not act on their own behalf with respect to the disposition of prisoners within their custody:

> The defendant sheriff and warden have no choice under Indiana law but to carry out the order of a judge when that judge is acting in this judicial capacity in a matter over which he has jurisdiction. To require the sheriff or warden to investigate each order of commitment by a judge and to independently determine if the sentence was legally imposed would be absurd. Here when carrying out a direct order of a court, the sheriff and warden enjoy the immunity afforded the committing judge.

See also, Op. Atty. Gen., March 7, 1991 [order of court valid on its face sufficient to protect employee disclosing records pursuant to such order].

Referencing the foregoing, in the absence of a judicial order or some other authority requiring a prisoner's release, a prison custodian would not be authorized to release an individual prior to the service of the full term ordered by the committing judge.

If a mistake or error of law has been made in sentencing an individual, redress would lie with the courts.

Sincerely,

Charles Molony Condon
Attorney General

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