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November 16, 1990

George A. Markert, Assistant Director
South Carolina Court Administration
Post Office Box 50447
Columbia, South Carolina 29250

Dear Mr. Markert:

In a letter to this Office you raised several questions relating to the use of bench warrants by magistrates and municipal judges.

You first asked whether magistrates and municipal judges are authorized to sentence a defendant in his absence. I assume you are referring to a situation where there is no forfeiture of bond previously posted. Of course, a defendant may be tried in absentia if he has been properly notified as to the time and place of his trial and no appearance is made at the proper time. See: State v. Adkison, 264 S.C. 180, 213 S.E.2d 591 (1975); State v. Goode, 299 S.C. 479, 385 S.E.2d 844 (1989); Rules 16 and 37, South Carolina Criminal Practice Rules. Following such a trial, a judge may apply any forfeited bond to the sentence if the sentence is a fine. However, as referenced by your second question, if the sentence is a term of imprisonment, a judge typically issues a bench warrant which requires the defendant to be brought before the court to comply with the sentence. See: Opinions of the Attorney General dated May 23, 1980; November 6, 1989. Also, if forfeiture of a bond is not adequate as to any fine imposed, or if no bond has been posted, a bench warrant could similarly be issued. I would note that in the magistrates' Bench Book, reference is made at page III-16 to the use of a bench warrant "... where the defendant, under sentence, fails to properly pay a fine or otherwise comply with the sentence; where the defendant, tried in his/her absence, must now be brought before the court to comply with the sentence...."

Therefore, a magistrate or municipal judge could impose a sentence in a defendant's absence. Typically, where necessary, a bench warrant would then be issued to bring the defendant before the court for compliance with the sentence.

Mr. Markert
Page 2
November 16, 1990

You next asked if a defendant resides in another county, may the sentencing judge include in the bench warrant a provision permitting release upon payment of a fine to the magistrate in the county of arrest. You also asked if the defendant was tried and sentenced in his absence, and a bench warrant issued to enforce the sentence, may a provision permitting release upon payment of a fine to a magistrate in the county of arrest be inserted in a bench warrant endorsed for service in another county.

As referenced in the Order of former Chief Justice Lewis dated November 14, 1980 which you included with your letter, and which provides for the endorsement of bench warrants for service in foreign counties in the same manner as arrest warrants, 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.

With best wishes, I am

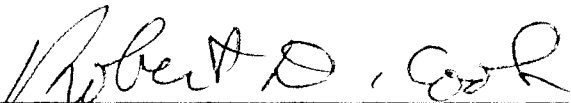
Very truly yours,



Charles H. Richardson
Assistant Attorney General

CHR/an

REVIEWED AND APPROVED BY:



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