

1983 S.C. Op. Atty. Gen. 27 (S.C.A.G.), 1983 S.C. Op. Atty. Gen. No. 83-14, 1983 WL 142685

Office of the Attorney General

State of South Carolina

Opinion No. 83-14

May 11, 1983

***1 SUBJECT: Magistrates-Sentence**

(1) A magistrate lacks authority to order the release of an individual, previously sentenced by the magistrate to a term of imprisonment where an alternative sentence of a fine was not offered, after the sentence has gone into execution.

(2) A magistrate must exercise his authority to suspend a sentence at the time he imposes such sentence.

TO: The Honorable Robert H. Orr, Jr.
Sheriff of Chester County

QUESTION:

1. Is a magistrate authorized to order the release of an individual, previously sentenced by the magistrate to a term of imprisonment without being provided the alternative of a fine, after the sentence has gone into execution?

OPINION:

Pursuant to [Section 22–3–550, Code of Laws of South Carolina](#), 1976, as amended, a magistrate may impose a sentence of a term of imprisonment without offering an alternative of a fine to a defendant convicted of an offense in his court. Furthermore, pursuant to [Section 22–3–800, Code of Laws of South Carolina](#), 1976, as amended,

‘ . . . any magistrate may at the time of sentence suspend the imposition or execution of a sentence upon such terms and conditions as he may deem appropriate. . . . ’

In [State v. Best](#), 257 S.C. 361, 186 S.E.2d 272 (1972), the Supreme Court construed [Section 24–21–410, Code of Laws of South Carolina](#), 1976, which provides that a judge of a court of record:

‘ . . . at the time of sentence may suspend the imposition or the execution of a sentence and place the defendant on probation or may impose a fine and also place the defendant on probation. ’

The Court determined that pursuant to such provision, a judge must exercise his power to suspend a sentence at the time it is imposed and that thereafter, a judge has no right to suspend a sentence. The Supreme Court in [Best](#) also held that generally a judge is without authority to alter, amend, or modify a sentence imposed by him after the expiration of the term of court in which the sentence was imposed. See also: [State ex rel McLeod v. County Court of Richland County](#), 261 S.C. 478, 200 S.E.2d 843 (1973); [State v. Patterson](#), 272 S.C. 2, 249 S.E.2d 770 (1968).

It is also generally held that a material amendment to a valid sentence must be made before the sentence goes into execution. ‘ Generally speaking, where accused has executed or entered on the execution of a valid sentence, the jurisdiction of the trial court is ended, and it cannot thereafter . . . set it aside and render a new sentence, nor can any amendment to the judgment

be allowed where it would require a new sentence to be pronounced.’ 24 C.J.S. Criminal Law, Section 1589(a) at 598 (1961). See also: Annot. [168 A.L.R. 706 \(1947\)](#).

Furthermore,

‘[s]ome courts have said that an attempt of a trial court to reduce sentence after term after it goes into execution is an infringement upon the exclusive power of the executive to commute sentence.’ [State v. Westlake](#), 76 Ohio L. Abs., 145 N.E.2d 501 at 502 (1957).

*2 Referencing the above, in the opinion of this Office, a magistrate lacks the authority to order the release of an individual, previously sentenced by the magistrate to a term of imprisonment, where an alternative sentence of a fine was not offered, after the sentence has gone into execution. Furthermore, a magistrate must exercise his authority to suspend a sentence under such terms and conditions as he deems appropriate at the time he imposes such sentence.

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