

1981 WL 158031 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

October 28, 1981

*1 Mr. George A. Markert
Associate Director
South Carolina Court Administration
Post Office Box 11788
Columbia, South Carolina 29211

Dear George:

In a letter to this office you raised the following question:

Is a municipal court judge, or magistrate, required to impose some sentence (be it a fine or imprisonment for a criminal conviction), when no minimum sentence is mandated by law or may the judge only find the individual guilty with no sentence imposed or suspended?

You indicated that a particular municipal judge in certain instances upon finding a criminal defendant guilty does not feel bound to impose a sentence. He also does not desire to impose a sentence and suspend it.

It is generally provided that:

'[j]udgment is rendered . . . (in a criminal case) . . . by the pronouncing of sentence after the conviction. Until sentence is imposed there is no finality of judgment; and the case necessarily remains pending until lawfully disposed of by sentence. 24 C.J.S. Criminal Law § 1577, p. 529. (Emphasis added).

In Ex Parte Murray, 261 S.C. 255, 199 S.E.2d 718 (1973), the South Carolina Supreme Court was confronted with a situation where a trial judge had found an individual guilty of an offense but had withheld disposition of the case by not sentencing the individual. The Court concluded that until the individual was sentenced, there was no final judgment. Therefore, for purposes of that particular case, an appeal could not be taken since there had been no sentencing of the defendant. The Court specifically held that

'[t]o create finality in criminal cases for purpose of appeal, it is necessary that conviction should be followed by sentence.' 261 S.C. 255 at 256.

As to all criminal cases following a conviction, to dispose of the case, the individual must be sentenced. Until the defendant is sentenced, the case remains open. Therefore, in the opinion of this office, to adequately conclude a particular criminal case, a municipal court judge or magistrate is required to impose a sentence even if he suspends the sentence. Otherwise, the case remains open and pending since there has been no final disposition.

If there are any questions concerning the above, please advise.

Sincerely,

Charles H. Richardson
Assistant Attorney General

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