1979 S.C. Op. Atty. Gen. 41 (S.C.A.G.), 1979 S.C. Op. Atty. Gen. No. 79-29, 1979 WL 29035

Office of the Attorney General

State of South Carolina
Opinion No. 79-29
February 15, 1979

***1 SUBJECT: Corrections, Courts**

The Department of Corrections has no authority to incarcerate persons ordered to confinement after being adjudicated in contempt of court.

TO: William D. Leeke
Commissioner
South Carolina Department of Corrections

QUESTION:

May an individual be accepted as an inmate at the Department of Corrections who has been held in contempt of court and ordered by the court to be placed in jail to serve his sentence for contempt.

STATUTES AND CASES:

Code of Laws of South Carolina (1976), Sections 14–21–650, 14–21–810, 24–3–10, 24–3–30, 24–13–210; South Carolina Constitution of 1895, Article 1, Section 15; McComb v. Jacksonville Paper Co., 336 U.S. 187 (1948); State v. James E. Hite, Opinion No. 20861, —— S.C. —— (1979); 17 Am. Jur. 2d, 'Contempt,' § 105; Working Papers of the Constitutional Revision Committee.

DISCUSSION:

Section 24–3–10 sets forth in part that the penitentiary at Columbia shall be the general penitentiary and prison of the State in which shall be securely confined 'all offenders who shall have been convicted and sentenced according to law to the punishment of solitary imprisonment or confinement therein at hard labor.' Section 24–3–30 of the 1976 Code provides that notwithstanding any other provision of law, 'any person convicted of an offense against the State of South Carolina shall be in the custody of the Board of Corrections.'

Under the Constitution of South Carolina of 1895 (prior to the revision) Article 1, Section 19 contained the following provision: the power to punish for contempt of court shall not in any case extend to imprisonment in the State penitentiary.

Article 1, Section 15 of the revised Constitution of 1895 essentially contains the protections of the former Constitution's sections 19 and 20 of that Article, except that the above-quoted sentence was deleted. The working papers of the Constitutional Revision Committee states:

There seems to be no reason to delete . . . [the sentence concerning contempt] and there is no available explanation why . . . [it was] included. State Penitentiary is no longer the terminology used to describe state prisons and probably should be changed to a more general term such as state prisons. It is assumed that for contempt one may be confined in a county jail. Working Papers of the Constitutional Revision Committee, p. 25.

It, therefore, appears as if the intent in redrafting the former Article 1, Section 19 was not to change the law but was to delete from the Constitution a statement which was deemed to be not of constitutional value.

Of course, Section 24–3–10 of the Code was enacted prior to the deletion of the constitutional provision on contempt and Section 24–3–30 of the Code, although enacted after the revision, uses essentially the same language stating that any person 'convicted of an offense . . . shall . . ..' In our opinion the use of this language in these statutes does not convey the intention of the legislature to include contempt of court within the definition of an 'offense against the State.'

***2** With respect to those persons found in civil comtempt of court for violating a Family Court order, Section 14–21–810(b)(11) and (12) gives the Family Court Judge the power to release a person confined for contempt prior to the expiration of his sentence if the court is satisfied it would serve the best interest of the family and community and further gives the Family Court power to modify or vacate any order issued by that Court. Section 14–21–650 of the Code provides that

> any adult found in contempt of court [Family Court] may be punished by a fine or by imprisonment on the public works of the county, or both fine and imprisonment, in the discretion of the court, but not to exceed imprisonment for one year or a fine of $1,500.00, or both.

As can be seen from a reading of these statutes it is clear the Family Court may order an adult found in civil contempt of court for violating a Family Court order to be confined on the public works of the county. This Office has previously issued an opinion to that effect. Clearly civil contempt is not a crime or offense against the State. The sanctions of civil contempt are employed to coerce compliance with the court's order and to compensate the complainant for losses sustained. McComb v. Jacksonville Paper Co., 336 U.S. 187 (1948). Imprisonment for civil contempt is available primarily as a coercive rather than a punitive measure. 17 Am. Jur. 2nd, 'Contempt,' § 105. This Office has also previously issued an opinion to the effect that the good time statutes, specifically Section 24–13–210 of the Code, do not apply to persons confined for civil contempt. The Department of Corrections should not, therefore, take custody of those persons adjudicated in contempt of court and ordered to confinement.

The Supreme Court of this State in a decision filed on January 24, 1979, held that the South Carolina Probation, Parole and Pardon Board had no jurisdiction to parole an individual who had been adjudicated in contempt of court for jury tampering and ordered confined in the Lexington County Jail for a period of three (3) months. State, etc. v. James E. Hite, Opinion No. 20861, —— S.C. ——. The Court stated that the nature of the contempt power was inherent in the courts of general jurisdiction in this State. The case at issue dealt with an adjudication for criminal contempt and the Respondent was ordered confined for a definite term. The Court stated that the actions of the Respondent constituted 'an offense against the court' and were calculated to obstruct, degrade, and undermine the administration of justice. The court stated that the power to punish for contempt could not be abridged. The Court ordered the Respondent recommitted to the Lexington County Jail for the remainder of the service of his sentence.

By analogy the same reasoning which the Court utilized in holding that the Parole Board was without authority or jurisdiction to parole an individual ordered confined for contempt would apply to the Department of Corrections in the operation of the several statutes permitting the Department to release an individual placed in its custody earlier than the maximum release date. The statutes giving the Board of Corrections authority to grant good conduct credits, earned work credits and permitting the Department to assign inmates in its custody to a work release program clearly would fall within the reasoning of the Court in Hite. Pursuant to the Court's decision in Hite it follows that the Department of Corrections cannot restrict or limit a court's power to punish for contempt by allowing such persons to work in a work release program or to permit such persons to obtain an early release by means of affording them good conduct credits or earned work credits.

***3** Most of these statutes were enacted during the period when the constitutional provision prohibiting persons found in contempt of court from being confined in the penitentiary was in effect. It can, therefore, be assumed that the legislature was cognizant of the prohibition when it enacted the statutes and used the language used in those statutes. It is our opinion, therefore,

that it was not the intent of the legislature that the Department of Corrections should take custody of persons adjudicated in contempt of court whether that contempt be considered civil or criminal contempt.

CONCLUSION

The Department of Corrections has no authority to incarcerate persons ordered to confinement after being adjudicated in contempt of court. The Department should not accept such persons as inmates where their custody would be based solely on the contempt adjudication.

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