

1980 WL 121243 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

May 23, 1980

\*1 Mr. Ray J. Norton  
Investigative Major  
Lexington County Sheriff's Department  
521 Gibson Road  
Lexington, South Carolina 29072

Dear Mr. Norton:

In a letter to this office you questioned whether a magistrate must indicate on a bench warrant issued by him as to a defendant tried in his absence whether a sentence of imprisonment that he has imposed as to that defendant is to run concurrently or consecutively. Such request was sent following a telephone conversation in which the situation was discussed at length. It was indicated that such a bench warrant is being used as a commitment paper with the result that following the issuance of such a bench warrant by a magistrate, the defendant is incarcerated and not taken before the issuing magistrate.

Referencing the above, please be advised that it is improper to use the bench warrant itself as any authority to incarcerate a defendant. A bench warrant is a form of process issued by a judicial officer for the arrest of an individual and is used to bring the individual back before the court for a specific purpose after the court has previously acquired jurisdiction over the defendant.

As to your situation, it is proper for a magistrate to issue a bench warrant to bring before the court a defendant who, having been tried in his absence, receiving a prison sentence. When such a defendant is brought before the magistrate, the magistrate at that time should inform the defendant of his sentence and issue the commitment papers ordering his imprisonment. As to your specific question noted above, there is no obligation on the magistrate to indicate on a bench warrant whether a sentence he has imposed as to a defendant tried in his absence should run concurrently or consecutively. Moreover, there is no obligation on the magistrate to specifically provide at all on a bench warrant issued by him as to such a defendant the sentence he has imposed on the defendant. As stated, the bench warrant itself does not function as a commitment paper. Therefore it should not be considered as authority to incarcerate an individual for the purpose of serving any sentence of imprisonment imposed by a magistrate.

If there are any questions concerning the above, please contact me.

Sincerely,

Charles H. Richardson  
Assistant Attorney General

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