

1974 S.C. Op. Atty. Gen. 78 (S.C.A.G.), 1974 S.C. Op. Atty. Gen. No. 3721, 1974 WL 21239

Office of the Attorney General

State of South Carolina

Opinion No. 3721

February 20, 1974

***1 Re: Power of the Civil and Criminal Court of Oconee County to impose a sentence providing for intermittent incarceration.**

Mr. William F. Derrick
Assistant Solicitor
Tenth Judicial Circuit
County Court House Building
Walhalla, South Carolina 29691

Dear Mr. Derrick:

You have requested an opinion from this Office with regard to the authority of a court to impose a sentence of specified duration, but providing further that it may be served at intervals as ordered by the court. The example you have cited is that of a sentence for six (6) months 'to be served in the county jail from 7:00 p.m. Friday until 5:00 p.m. Sunday for a period of six (6) months.

It is well established in this jurisdiction that trial judges have no general and unlimited power to suspend sentences, in the absence of specific authority conferred upon them by the General Assembly. Moore v. Patterson, 203 S.C. 90, 26 S.E.2d 317 (1943); State v. Abbott, 87 S.C. 466, 70 S.E. 6 (1911). Act No. 893, Acts of 1971, which establishes the Civil and Criminal Court of Oconee County contains no provision purporting to grant authority to impose sentences of the type previously mentioned; nor is such authority contained in the provision bestowing upon the judge the same jurisdiction as circuit judges inasmuch as there is no statute in South Carolina which empowers any court to provide for intermittent incarceration.

In the absence of a statute specifically providing therefor, it appears that execution of sentence cannot be suspended from time to time so that the prisoner serves time by being imprisoned on certain days of the week only, being free the rest of the week. 21 Am. Jur. (2d) Criminal Law § 558 at 530 (1965). See also Annot., 39 A.L.R. (29) 985 (1955).

In State v. Bigelow, 76 Ariz. 13, 258 P. (2d) 979 (1953), the Supreme Court of Arizona was requested to determine whether a sentence of ninety days that was imposed upon a defendant convicted of drunk driving could be served and completed by the defendant's going to jail on certain days of each week. The Court held that the trial Court had no power to impose a sentence which provided for intermittent incarceration and that the trial Court was required either to impose one of the sentences that was fixed by statute or, in a proper case, suspend the imposition of sentence.

It is therefore, the opinion of this Office that the practice of intermittent incarceration is invalid in the State of South Carolina inasmuch as it is not authorized by statute.

You have also inquired as to the eligibility for and computation of credit for good behavior of prisoners serving their sentences at designated intervals. It would appear that this is a moot question in view of the conclusion that such sentences are beyond the power of our Courts. Assuming a viable issue, Section 55-8, South Carolina Code of Laws (1962), as amended, requires computation 'for each month served.' In such a content, it seems apparent that time 'served' refers to the period of actual incarceration.

*2 I hope that this information will prove useful to you. If this office can be of further assistance, please feel free to call upon us.

Very truly yours,

Dudley Saleeby, Jr.
Assistant Attorney General

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