2014-067

STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

LUTHER STRANGE
ATTORNEY GENERAL

501 WASHINGTON AVENUE
P.O. BOX 300152
MONTGOMERY, AL 36130-0152
(334) 242-7300
WWW.AGO.ALABAMA.GOV

June 26, 2014

Honorable Lyn Head
Tuscaloosa County District Attorney
Sixth Judicial Circuit of Alabama
714 Greensboro Avenue, Suite 410
Tuscaloosa, Alabama 35401

District Attorneys – Restitution – Jails

There is no authority to remit restitution owed by a criminal defendant for serving time in prison and/or jail for nonpayment. Rule 26.11(i)(1)(i) of the Alabama Rules of Criminal Procedure is limited solely to fines.

Dear Mrs. Head:

This opinion of the Attorney General is issued in response to your request.

QUESTION

Is there any authority to remit and/or discharge restitution owed by a defendant based upon the defendant serving time in prison and/or jail for nonpayment?

FACTS AND ANALYSIS

Criminals must pay restitution to the victims of their crimes to compensate the victims for damages resulting from the crimes. The Code of Alabama states this principle as follows:

> The Legislature hereby finds, declares and determines that it is essential to be fair and impartial in the administration of justice, that all perpetrators of criminal activity or conduct be required to fully compensate all victims of such conduct or activity for any pecuniary loss, damage or injury as a direct or indirect result thereof. The provisions of this article shall be construed so as to accomplish this purpose and to promote the same which shall be the public policy of this state.

ALA. CODE § 15-18-65 (2011).

The courts of this state are required to order that criminal defendants make restitution to their victims. ALA. CODE § 15-18-67 (2011). A court may make restitution "as a condition of suspension of execution of sentence or as a condition of probation." ALA. CODE § 15-18-70 (2011).

The Alabama Supreme Court is authorized to adopt rules of practice and procedure. ALA. CODE § 15-1-1 (2011). Rule 26.11 of the Alabama Rules of Criminal Procedure governs the procedure for imposing and enforcing fines, costs, and restitution. ALA. R. CRIM. P. 26.11. If a "[criminal] defendant fails to pay a fine and/or restitution, the court may . . . [d]irect that the defendant be incarcerated until the unpaid fine and/or restitution, or any portion thereof, is paid. . . ." ALA. R. CRIM. P. 26.11(h).

Section (i) of Rule 26.11 establishes the parameters of incarceration for nonpayment of fines and restitution and provides that, "[i]n no event shall such period of incarceration exceed one (1) day for each fifteen dollars ($15.00) of the fine." ALA. R. CRIM. P. 26.11(i)(1)(i). Further, "the aggregate period of incarceration imposed pursuant to this rule and the term of sentence originally imposed may not exceed the maximum term of imprisonment authorized for the offense." ALA. R. CRIM. P. 26.11(i)(1)(iv). It is generally accepted that these provisions allow courts, upon a finding of nonpayment and subject to established limitations, to order criminal defendants to jail for one day for each $15 owed, allowing credit against the fine and costs owed for $15 for each day served. *See, e.g. Owens v. State*, 728 So. 2d 673, 674 (1998) (court ordered appellant to "serve out" his fines and costs in jail at the rate of $15 per day").

The allowance of credit against moneys due, however, applies only to fines and costs. It does not apply to restitution. As the Alabama Court of Criminal Appeals has stated, "***the Rule does not provide for credit for restitution***. Although some subsections of Rule 26.11(i), Ala. R. Crim. P., refer to both fines and restitution, ***Rule 26.11(i)(1)(i), Ala. R. Crim. P., by its very language, is limited solely to fines***." *Ware v. State*, 842 So. 2d 38, 40 (Ala. Crim. App. 2002) (emphasis added).

CONCLUSION

There is no authority to remit restitution owed by a criminal defendant for serving time in prison and/or jail for nonpayment. Rule 26.11(i)(1)(i) of the Alabama Rules of Criminal Procedure is limited solely to fines.

I hope this opinion answers your question. If this Office can be of further assistance, please contact Ben Baxley of my staff.

Sincerely,

LUTHER STRANGE
Attorney General
By:

BRENDA F. SMITH
Chief, Opinions Division

LS/BB/LD
1773367/177719-002