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STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

TROY KING
ATTORNEY GENERAL

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ALABAMA STATE HOUSE
11 SOUTH UNION STREET
MONTGOMERY, AL 36130
(334) 242-7300
WWW.AGO.STATE.AL.US

Honorable Douglas Albert Valeska
District Attorney, Twentieth Judicial Circuit
Post Office Box 1632
Dothan, Alabama 36302

Contempt – Fines – Restitution – Houston
County

Subject to the limitations of Rule 26.11(i) of the Alabama Rules of Criminal Procedure, Rule 26.11(h) allows a court to order a criminal defendant to serve time for failure to pay fines, costs, and/or restitution after the defendant has served his or her sentence for the underlying offense.

Dear Mr. Valeska:

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

QUESTION

May a criminal defendant be held in contempt of court and ordered to serve time for failure to pay fines, costs, and/or restitution in a case where the defendant has served his or her sentence and been released?

FACTS AND ANALYSIS

Rule 26.11(h) of the Alabama Rules of Criminal Procedure states that “[i]f the defendant fails to pay a fine and/or restitution, the court may: . . . (3) Direct that the defendant be incarcerated until the unpaid fine and/or restitution, or any portion thereof, is paid, subject, however, to section (i) of this rule.” ALA. R. CRIM. P. 26.11(h).

Rule 26.11(i) of the Alabama Rules of Criminal Procedure states as follows:

(1) Incarceration shall not automatically follow the nonpayment of a fine or restitution. Incarceration should be employed only after the court has examined the reasons for nonpayment. After consideration of the defendant's situation, means, and conduct with regard to the nonpayment of the fine and/or restitution, the court shall determine the period of any incarceration in default of payment of the fine and/or restitution, subject to the following limitations:

(i) In no event shall such period of incarceration exceed one (1) day for each fifteen dollars (\$15.00) of the fine.

(ii) If the fine was imposed in connection with a felony, the period of incarceration may not exceed one (1) year.

(iii) If the fine was imposed in connection with a misdemeanor or municipal ordinance violation, the period of incarceration may not exceed one-third (1/3) of the maximum term of incarceration authorized for the offense.

(iv) If, at the time the fine was imposed or the restitution was ordered, a sentence of incarceration was also imposed, the aggregate of the period of incarceration imposed pursuant to this rule and the term of the sentence originally imposed may not exceed the maximum term of imprisonment authorized for the offense.

(2) In no case shall an indigent defendant be incarcerated for inability to pay a fine or court costs or restitution.

(3) If the court orders a defendant to pay a fine and/or restitution imposed as a result of a traffic infraction, the court may suspend the defendant's privilege to operate a motor vehicle in the state upon a failure of the defendant to comply with the order of the court. If the defendant's privilege to operate a motor

vehicle has been suspended for failure to comply with such court order, the privilege may remain suspended until the total amount of the fine and/or restitution imposed is paid.

ALA. R. CRIM. P. 26.11(i).

Rule 26.11(h) allows the court to direct that a defendant be incarcerated until the unpaid fine and/or restitution, or any portion thereof, is paid, subject to the limitations of section (i) of Rule 26.11. For example, a court cannot order the defendant to serve additional time if the aggregate of the time served would exceed the maximum term of imprisonment authorized for the underlying offense. *See* ALA. R. CRIM. P. 26.11(i)(1)(iv) above. Nor may a court order a defendant to serve time for failure to pay fines, costs, and/or restitution if the defendant is indigent. *See* ALA. R. CRIM. P. 26.11(i)(2) above. Accordingly, Rule 26.11 allows a court to incarcerate a defendant for failure to pay fines, costs, and/or restitution subject to the limitations of Rule 26.11(i) of the Alabama Rules of Criminal Procedure.

CONCLUSION

Subject to the limitations of Rule 26.11(i) of the Alabama Rules of Criminal Procedure, Rule 26.11(h) allows a court to order a criminal defendant to serve time for failure to pay fines, costs, and/or restitution after the defendant has served his or her sentence for the underlying offense.

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

Sincerely,

TROY KING
Attorney General
By:



CAROL JEAN SMITH
Chief, Opinions Division