

RELIEF OF INSOLVENT CRIMINALS CONFINED:

Construction of Section  
3859 R. S. Mo. 1929.

8-23

August 17, 1933



Honorable Herbert Perkins  
Clerk of the Circuit Court  
Pineville, Missouri

Dear Sir:

Your letter of July 21st, addressed to this Department wherein you desire an opinion as to the construction of Section 3859 R. S. Mo. 1929, has been handed to me for answer. Your letter is herewith quoted:

"It has been a question here discussed by myself and the Prosecuting Attorney as to whether Section 3859 rules in case of insolvent prisoners, and if it does as I think and claim, then I or it would be my business to order the release of insolvent prisoner after laying in jail one day for each two dollars of fine and costs, now Puckett the prosecuting attorney claims that it will take 20 days to lay out any amount of costs, and it has always been the practice here to keep prisoner in jail twenty days for the cost regardless of what the cost might be.

If I am called upon to do same I will try the Section 3859, as I now see it, and if it is not too much trouble I would like for you to give me your opinion in this matter."

You state that you are in doubt as to whether or not Section 3859 R. S. Mo. 1929, should be followed in the case of insolvent prisoners. We suppose that the other statutes which might confuse you on the matter are Sections 3727 and 3728 R.S. Mo. 1929, which are as follows:

"When any person is held in custody or imprisoned for a fine imposed for a criminal offense, as specified in the last section, the court in which the cause was tried, or the judge thereof in vacation, on the petition of the prisoner for that purpose, shall sentence him to imprisonment for a limited time, in lieu of the fine; and at the expiration of such time, the prisoner shall be discharged on the payment of costs, or obtaining his discharge in the manner in the next sections provided.

Whenever any person shall be detained for the costs of a criminal prosecution, he shall, after having endured twenty days' imprisonment in the county jail for the nonpayment of such costs, be permitted to take the benefit of the laws for the relief of insolvent persons confined on criminal process, on making application for that purpose, and conforming to the provisions of such law."

As to which of the above quoted sections or Section 3859 R. S. Mo. 1929, as mentioned in your letter should apply, would in a large degree depend upon the facts and circumstances surrounding the individual case. Under Section 3727 above, if a person is fined in a certain amount which would necessarily carry the costs he could not be discharged or take advantage of paying the costs or enduring twenty days' imprisonment as under Section 3728, unless the trial judge should in lieu of his fine sentence him to imprisonment for a limited time. This was held in the case of Ex parte Roy Secrest, Petitioner, 326 Mo. 1. c. 841:

"The statute authorizing petitioner's commitment is Section 4070, Revised Statutes 1919, as follows:

Whenever any defendant shall, on a conviction, be sentenced to imprisonment in a county jail, or to pay a fine, he shall be imprisoned until

the sentence is fully complied with and all costs paid, unless he be sooner discharged in the manner hereinafter provided,

This statute, within its scope, applies alike to misdemeanors and felonies. It is a part and parcel of every sentence to a fine (Ex parte Parker, 108 Mo. 551, 555, 17 S.W. 658), and the judgment was in substantial compliance therewith. The manner in which defendant could 'be sooner discharged' is thus set forth in the sections immediately following:

Section 4071: 'When any person is held in custody or imprisoned for a fine imposed for a criminal offense, as specified in the last section, the court in which the cause was tried, or the judge thereof in vacation, on the petition of the prisoner for that purpose, shall sentence him to imprisonment for a limited time, in lieu of the fine; and at the expiration of such time, the prisoner shall be discharged on payment of costs, or obtaining his discharge in the manner in the next sections provided.'

Section 4072: 'Whenever any person shall be detained for the costs of a criminal prosecution, he shall, after having endured twenty days' imprisonment in the county jail for the non-payment of such costs, be permitted to take the benefit of the laws for the relief of insolvent persons confined on criminal process, on making application for that purpose, and conforming to the provisions of such law.'

Section 4071, supra, provides a method, and we are advised of no other, by which a defendant so committed may discharge the fine apart from the

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costs assessed against him by the same judgment. He may petition the court in which the cause was tried, or the judge thereof in vacation, to 'sentence him to imprisonment for a limited time, in lieu of the fine,' When such prison sentence is served he is entitled to be discharged on payment of costs or obtaining his discharge under Section 4072 and the act for the relief of insolvents confined on criminal process. To authorize a discharge there must be a strict compliance with the statutes prescribing the methods by which it may be obtained. Having followed a way of his own choosing not authorized by statute petitioner is not entitled to be discharged."

Now as to the section in controversy, namely, Section 3859 R. S. No. 1929, which is as follows:

"Any person detained in prison for the nonpayment of any fine or costs on account of any criminal proceeding may be ordered to be discharged from such imprisonment, by the court or by the judge of the court having criminal jurisdiction for the county in which he may be, or by the clerk of said court in vacation, after being imprisoned one day for every two dollars of such fine and costs, or after having endured twenty days' actual imprisonment for the nonpayment of costs, if he be unable to pay the same."

you state that the prosecuting attorney takes the position that it requires twenty days to be served by a prisoner for the costs regardless of what the costs might be, repeating that portion of the above quoted section "or after having endured twenty days' actual imprisonment for the nonpayment of costs", if he is unable to pay the same we agree with the prosecuting attorney provided that the costs would be \$40.00 or more. But for the sake of argument let us assume that the total costs are only \$16.00, the prisoner being allowed by the Section \$2.00 for each day confined in the jail

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for serving his costs should have the costs served in eight days. Why should he be confined in jail twenty days at the rate of \$2.00 per day to serve \$16.00 in costs? The costs in criminal cases are sometimes very exorbitant and these statutes for the 'relief of insolvent criminals confined' in our opinion were designed to prevent a prisoner from being confined in a jail indefinitely, in the event that he was unable to pay the costs.

We do not believe that the statute contemplates that every insolvent prisoner regardless of the amount of his costs, should be compelled to remain twenty days serving time for the costs but rather if the costs are more than twenty days at \$2.00 per day he should be given the opportunity to discharge himself under the procedure as set out in subsequent statutes, if he desires to avail himself of the opportunity.

Yours very truly,

OLLIVER W. NOLEN  
Assistant Attorney General,

APPROVED:

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ROY McKITTRICK  
Attorney General.

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