

MAGISTRATES:  
MAGISTRATE COURT:  
REMISSION OF FINE OR SENTENCE:  
EXECUTION - STAY OF:  
JUDGMENT OF CONVICTION:  
SUSPENSION OF IMPOSITION OF SENTENCE:  
SUSPENSION OF EXECUTION OF SENTENCE:  
PAROLE:  
PROBATION:

1. A magistrate judge may not remit a portion of a fine or a sentence of imprisonment previously imposed nor may he set aside a judgment of conviction previously imposed.  
2. Magistrate courts may grant a stay of execution for a period of not more than six months at the expiration of

which the defendant must comply with the sentence. A bond is required during the period that execution is stayed.

3. The magistrate court may grant a stay of execution for purposes of appeal for so long as is necessary until the judgment becomes final. A bond is also necessary under these circumstances.

4. All magistrate courts and the St. Louis Court of Criminal Correction do have the power to suspend either the imposition or the execution of sentence following a conviction of a misdemeanor. In so doing, the judge may place the defendant on probation.

5. Magistrate courts and the St. Louis Court of Criminal Correction are empowered to grant paroles to persons who are imprisoned pursuant to a conviction in said courts and prior to the expiration of the term of the sentence.

September 23, 1964

OPINION NO. 6 (1964)



Honorable Hugh H. Waggoner  
Superintendent  
Missouri State Highway Patrol  
Highway Patrol Building  
Jefferson City, Missouri

*Extra copies in vault*

Dear Colonel Waggoner:

This is in answer to your request for an opinion of this office reading in part as follows:

"There have been some recent questions as to whether a magistrate judge has the authority to remit fine or to set aside a judgement."

Magistrate courts are courts of limited jurisdiction and they have only those powers given to them by the constitution and the legislature. American Life Insurance Co. v. Morris, Mo.App., 281 S.W. 2d 601; State v. Sestric, 349 Mo. 182, 159 S.W. 2d 786. There is no authorization in the constitution or in our statutes for a magistrate to remit or set aside a judgment. The magistrate judges are therefore without such powers.

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We deem it advisable to consider the effect of various statutes and Supreme Court Rules in order to determine the present state of the law on the powers of magistrate courts.

Section 543.290(4), RSMo 1959, empowers magistrate judges to grant a stay of execution "in any case and upon such conditions as in his discretion may meet the needs of justice." This apparent power to grant an unlimited stay of execution has been supplanted by Supreme Court Rule 22.12, which authorizes a magistrate to grant a stay of execution only for purposes of appeal or in accordance with the procedure set out in Supreme Court Rule 27.24.

Supreme Court Rule 27.24 authorizes a stay of execution following conviction in a misdemeanor case "for good cause shown", but the period of said stay is limited to six months. Further, the defendant is required to post a bond conditioned upon his surrendering himself on the proper date for execution of the sentence. This court rule applies to situations in which the court desires to allow the defendant a period of time not exceeding six months in which to raise money to pay a fine, prepare his affairs prior to imprisonment, or for some other good reason. It is clear, though, that this rule contemplates that the sentence shall be executed upon the expiration of the stay.

On the other hand, there is nothing in the rules which imposes a time limitation upon the stay of execution granted for purposes of appeal as provided in Supreme Court Rule 22.12. Such a stay may be granted until such time as the judgment and conviction becomes final on appeal. A bond must also be filed in this situation.

All magistrate courts except those in first class counties under charter form of government are empowered by Section 549.193, RSMo 1959, to grant judicial probation or parole in the same manner as are the circuit courts. Section 549.197, RSMo 1959, grants the same powers to magistrate courts in first class charter counties as does Section 549.061, RSMo Cum. Supp. 1963, to the St. Louis Court of Criminal Correction.

The power of judicial probation and parole is covered by Chapter 549, RSMo Cum. Supp. 1963. The powers of circuit courts and magistrate courts respecting judicial probation and parole are identical under this chapter and, hence, is applicable to magistrate courts. Section 549.071, RSMo Cum. Supp. 1963, provides:

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"1. When any person of previous good character is convicted of any crime and commitment to the state department of correction or other confinement or fine is assessed as the punishment therefor, the court before whom the conviction was had, if satisfied that the defendant, if permitted to go at large, would not again violate the law, may in its discretion, by order of record, suspend the imposition of sentence or may pronounce sentence and suspend the execution thereof and may also place the defendant on probation upon such conditions as the court sees fit to impose.

"2. The courts, subject to the restrictions herein provided, may, in their discretion, when satisfied that any person against whom a fine has been assessed or a jail sentence imposed, will, if permitted to go at large, not again violate the law, parole the defendant upon such conditions as the court sees fit to impose."

Thus, pursuant to Section 549.071(1), RSMo Cum. Supp. 1963, magistrate courts may suspend the imposition of sentence upon persons convicted in their courts or may pronounce sentence and suspend the execution thereof. In either case the court may also place the defendant upon probation upon such conditions as the court sees fit to impose. If either the imposition or the execution of sentence is suspended, the defendant is not liable for service of any term of imprisonment or payment of a fine, unless, of course, the defendant has been placed on probation and probation should be revoked. If the court sees fit to retain jurisdiction by placing the defendant on probation, then Section 549.111, RSMo Cum. Supp. 1963, contemplates a final discharge of the judgment upon the satisfactory performance of the conditions imposed by the court.

Section 549.071(2), RSMo Cum. Supp. 1963, authorizes magistrate courts to grant a parole to a defendant upon such conditions as the court sees fit to impose. Since Section 549.058(2), RSMo Cum. Supp. 1963, defines parole to mean the release of one already imprisoned prior to the expiration of his term, Section 549.071(2) means that magistrate courts may grant a parole and thereby release persons imprisoned in the county jail as a result of convictions in said courts.

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Here, also, a discharge by the court of a defendant previously placed on parole operates as a complete satisfaction of the original judgment. Section 549.111, RSMo Cum. Supp. 1963.

CONCLUSION

It is, therefore, the opinion of this office that:

1. A magistrate judge may not remit a portion of a fine or a sentence of imprisonment previously imposed nor may he set aside a judgment of conviction previously imposed.

2. Magistrate courts may grant a stay of execution for a period of not more than six months at the expiration of which the defendant must comply with the sentence. A bond is required during the period that execution is stayed.

3. The magistrate court may grant a stay of execution for purposes of appeal for so long as is necessary until the judgment becomes final. A bond is also necessary under these circumstances.

4. All magistrate courts and the St. Louis Court of Criminal Correction do have the power to suspend either the imposition or the execution of sentence following a conviction of a misdemeanor. In so doing, the judge may place the defendant on probation.

5. Magistrate courts and the St. Louis Court of Criminal Correction are empowered to grant paroles to persons who are imprisoned pursuant to a conviction in said courts and prior to the expiration of the term of the sentence.

The foregoing opinion, which I hereby approve, was prepared by my assistant, James J. Murphy.

Very truly yours,

  
THOMAS F. EAGLETON  
Attorney General