

*See also Hendrix v Lark
482 SW 2d 427*

CRIMINAL LAW:
CRIMINAL PROCEDURE:
FINES:
PRISONERS:
JAILS:

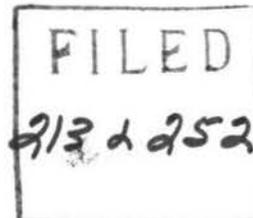
1. An indigent person may not be held in or committed to jail for failure to make immediate payment of a fine if he lacks the means to make such payment. 2. A person who claims that he is unable to pay a fine is entitled to a hearing to determine his ability to pay. 3. A person who fails to pay a fine which he is able to pay may be committed to jail for voluntary nonpayment. 4. The burden of proof of inability to make an immediate payment of a fine is on the person upon whom the fine is assessed and may be satisfied by such person's testimony. 5. Courts have authority to permit the payment of fines in installments. 6. An indigent cannot be sentenced to a longer period in jail than the maximum period of imprisonment prescribed for the offense because of his involuntary failure to pay a fine. 7. If a fine only is prescribed for an offense, an indigent cannot be sentenced to jail for his involuntary nonpayment of the fine.

OPINION NOS. 213 and 252

October 27, 1971

Honorable James G. Baker
Representative, District 3
104 East 41st Street
Kansas City, Missouri 64111

Honorable Robert B. Paden
Prosecuting Attorney
DeKalb County
Maysville, Missouri 64469



Gentlemen:

This opinion is in response to your respective inquiries concerning the effect of the holding of the United States Supreme Court in Tate v. Short, 401 U.S.395, 28 L.Ed.2d 130, 91 S.Ct. 668 (1971).

Inasmuch as the questions involve similar problems, we have combined your requests into one opinion. The questions posed by Mr. Paden are:

" . . . 'How will the Magistrate Courts impose sentences and/or fines in case of traffic violations where the defendant alleges himself to be indigent and unable to pay a fine'.

" . . . 'Do the statutes of the State of Missouri permit the imposition of installment

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finances and in the event that the defendant fails to meet one or more installments, who is responsible [sic] for the unpaid installment and what can the court do about it if the installment is unpaid'?"

The questions posed by Representative Baker are similar in content to the above.

First of all we wish to note that Senate Bill No. 227 of the 76th General Assembly effective September 28, 1971, repealed Sections 71.220 and 543.270, RSMo 1969, and enacted in lieu thereof two sections bearing the same number designations. The new legislation states:

"71.220. The various cities, towns and villages in this state, whether organized under special charter or under the general laws of the state, are hereby authorized and empowered to, by ordinance, cause all persons who have been convicted and sentenced by the mayor, judge of the police court, or other court having jurisdiction, for violation of ordinance of such city, town or village, whether the punishment be by fine or imprisonment, or by both, to be put to work and perform labor on the public streets, highways and alleys or other public works or buildings of such city, town or village, for such purposes as such city, town or village may deem necessary. And the marshal, constable, street commissioner, or other proper officer of such city, town or village, shall have power and be authorized and required to have or cause all such prisoners as may be directed by the mayor, or other chief officer of such city, town or village, to work out the full number of days for which they may have been sentenced, at breaking rock, or at working upon such public streets, highways or alleys or other public works or buildings of such city, town or village as may have been designated. And if the punishment is by fine, and the fine be not paid, then for every ten dollars of such judgment the prisoner shall work one day. And it shall be deemed a part of the judgment and sentence of the court that such prisoner may be worked as herein provided. When a fine is assessed for violation of an ordinance, it shall be within the discretion of the judge, or other official,

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assessing the fine to provide for the payment of the fine on an installment basis under such terms and conditions as he may deem appropriate.

"543.270. When any person shall be unable to pay any fine and costs assessed against him the magistrate shall have power, at the request of the defendant, to commute such fine and costs to imprisonment in the county jail, which shall be credited at the rate of ten dollars of such fine and costs for each day's imprisonment. When a fine is assessed by a magistrate, it shall be within his discretion to provide for the payment of the fine on an installment basis under such terms and conditions as he may deem appropriate."

Therefore, it is clear at the outset that installment payments are authorized by Senate Bill No. 227.

In analyzing the holding of the Supreme Court of the United States in Tate v. Short, we must first review the holding of the United States Supreme Court in Williams v. Illinois, 399 U.S. 235, 26 L.Ed.2d 586, 90 S.Ct. 2018 (1970).

In Williams v. Illinois, the court held that where the maximum term of imprisonment for petty theft was one year, the effect of the sentence imposed required appellant to be confined for 101 days beyond the maximum period of confinement fixed by the statute since he could not pay the fine and costs. The court held that where the aggregate imprisonment exceeded the maximum period of confinement fixed by statute, which resulted directly from an involuntary non-payment of a fine or court costs, there was an impermissible discrimination resting upon ability to pay.

In reaching this conclusion, the court stated at 399 U.S., 1.c. 241-242 et seq.:

"A State has wide latitude in fixing the punishment for state crimes. Thus, appellant does not assert that Illinois could not have appropriately fixed the penalty, in the first instance, at one year and 101 days. Nor has the claim been advanced that the sentence imposed was excessive in light of the circumstances of the commission of this particular offense. However, once the State has defined the outer limits of incarceration necessary to satisfy its penological interests and policies, it may not then

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subject a certain class of convicted defendants to a period of imprisonment beyond the statutory maximum solely by reason of their indigency.

". . . By making the maximum confinement contingent upon one's ability to pay, the State has visited different consequences on two categories of persons since the result is to make incarceration in excess of the statutory maximum applicable only to those without the requisite resources to satisfy the money portion of the judgment."

However, the court continued at l.c. 243-244 noting that:

"It bears emphasis that our holding does not deal with a judgment of confinement for non-payment of a fine in the familiar pattern of alternative sentence of '\$30 or 30 days.' We hold only that a State may not constitutionally imprison beyond the maximum duration fixed by statute a defendant who is financially unable to pay a fine. A statute permitting a sentence of both imprisonment and fine cannot be parlayed into a longer term of imprisonment than is fixed by the statute since to do so would be to accomplish indirectly as to an indigent that which cannot be done directly. We have no occasion to reach the question whether a State is precluded in any other circumstances from holding an indigent accountable for a fine by use of a penal sanction. We hold only that the Equal Protection Clause of the Fourteenth Amendment requires that the statutory ceiling placed on imprisonment for any substantive offense be the same for all defendants irrespective of their economic status.

"The State is not powerless to enforce judgments against those financially unable to pay a fine; indeed, a different result would amount to inverse discrimination since it would enable an indigent to avoid both the fine and imprisonment for nonpayment whereas other defendants must always suffer one or the other conviction."

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And the court added by footnote:

"What we have said regarding imprisonment for involuntary nonpayment of fines applies with equal force to imprisonment for involuntary nonpayment of court costs. . . . Thus inability to pay court costs cannot justify imprisoning an indigent beyond the maximum statutory term since the Equal Protection Clause prohibits expanding the maximum term specified by the statute simply because of inability to pay."

Shortly after the Supreme Court decided the case of Williams v. Illinois, which we have quoted above, it also decided Morris v. Schoonfield, 399 U.S. 508, 26 L.Ed.2d 773, 90 S.Ct. 2232 (1970). In the Morris case the court per curiam vacated judgment and remanded for reconsideration on the basis of the Williams case. Four members of the court agreeing with the decision stated at 399 U.S., l.c. 509:

"However, I deem it appropriate to state my view that the same constitutional defect condemned in Williams also inheres in jailing an indigent for failing to make immediate payment of any fine, whether or not the fine is accompanied by a jail term and whether or not the jail term of the indigent extends beyond the maximum term that may be imposed on a person willing and able to pay a fine. In each case, the Constitution prohibits the State from imposing a fine as a sentence and then automatically converting it into a jail term solely because the defendant is indigent and cannot forthwith pay the fine in full.

"As I understand it, Williams v. Illinois does not mean that a State cannot jail a person who has the means to pay a fine but refuses or neglects to do so. Neither does it finally answer the question whether the State's interest in determining unlawful conduct and in enforcing its penal laws through fines as well as jail sentences will justify imposing an 'equivalent' jail sentence on the indigent who, despite his own reasonable efforts and the State's attempt at accommodation, is unable to secure the necessary funds. But Williams means, at minimum, that in imposing fines

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as punishment for criminal conduct more care must be taken to provide for those whose lack of funds would otherwise automatically convert a fine into a jail sentence."

Returning to Tate v. Short, we note that the question under consideration involved an appeal from a corporation court in the State of Texas from fines accumulating \$425 on nine convictions. The corporation court under Texas law had no jurisdiction to impose prison sentences but committed the defendant to the municipal prison farm according to the provisions of a state statute and a municipal ordinance which required that the defendant remain there a sufficient time to satisfy the fines at the rate of five dollars for each day. The court stated at 401 U.S., 1.c. 397-398:

"Although the instant case involves offenses punishable by fines only, petitioner's imprisonment for nonpayment constitutes precisely the same unconstitutional discrimination since, like Williams, petitioner was subjected to imprisonment solely because of his indigency.
. . ."

The court continued at 1.c. 399:

". . . Since Texas has legislated a 'fines only' policy for traffic offenses, that statutory ceiling cannot, consistently with the Equal Protection Clause, limit the punishment to payment of the fine if one is able to pay it, yet convert the fine into a prison term for an indigent defendant without the means to pay his fine. Imprisonment in such a case is not imposed to further any penal objective of the State. . . .

* * *

". . . Nor is our decision to be understood as precluding imprisonment as an enforcement method when alternative means are unsuccessful despite the defendant's reasonable efforts to satisfy the fines by those means; the determination of the constitutionality of imprisonment in that circumstance must await the presentation of a concrete case."

It is clear from the foregoing that at this time the opinions of the Supreme Court of the United States prohibit the jailing of

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an indigent person for the involuntary nonpayment of a fine for a period in excess of the maximum period of confinement allowed by law (Williams v. Illinois); that an indigent cannot be jailed for failing to make immediate payment of any fine, whether or not the fine is accompanied by a jail term and whether or not the jail term of the indigent extends beyond the maximum term that may be imposed on a person willing and able to pay a fine (Morris v. Schoonfield); and, that where a state has legislated a "fines only" policy, the court cannot arbitrarily limit the punishment to payment of the fine if one is able to pay it yet convert the fine into a prison term for an indigent defendant. (Tate v. Short).

Thus, under Senate Bill No. 277 quoted above and the holdings of the Supreme Court of the United States, an indigent is to be offered the alternative of paying a fine in installments. The determination of indigency must be made after a hearing giving the accused an opportunity to show that he is unable to pay his fine and it is our view that the oral testimony of the defendant with respect to his indigency may satisfy his burden of proceeding in that respect. Obviously, a defendant who makes a false statement as to material facts concerning his inability to pay a fine may be subject to various sanctions.

With respect to the question concerning whether an indigent person may be imprisoned for the involuntary nonpayment of installments of a fine, we note that recent decisions in other states suggest divergent views. That is, in In Re Antazo, 473 P.2d 999 (1970) the Supreme Court of California stated that the proper use of imprisonment for nonpayment of a fine presupposes an ability to pay and a contumacious offender. On the other hand, in State v. De-Bonis, 276 A.2d 137 (1971) the Supreme Court of New Jersey after a lengthy analysis of the Williams case concluded that a fine was a part of the punishment and therefore an indigent could be imprisoned for involuntary nonpayment of installments.

Inasmuch as neither the Supreme Court of the United States nor the Supreme Court of Missouri have as yet resolved the question as to whether an indigent can be imprisoned for involuntary nonpayment of installments of a fine, we are of the view that we must leave that question to the courts.

CONCLUSION

It is the opinion of this office that:

1. An indigent person may not be held in or committed to jail for failure to make immediate payment of a fine if he lacks the means to make such payment.

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2. A person who claims that he is unable to pay a fine is entitled to a hearing to determine his ability to pay.

3. A person who fails to pay a fine which he is able to pay may be committed to jail for voluntary nonpayment.

4. The burden of proof of inability to make an immediate payment of a fine is on the person upon whom the fine is assessed and may be satisfied by such person's testimony.

5. Courts have authority to permit the payment of fines in installments.

6. An indigent cannot be sentenced to a longer period in jail than the maximum period of imprisonment prescribed for the offense because of his involuntary failure to pay a fine.

7. If a fine only is prescribed for an offense, an indigent cannot be sentenced to jail for his involuntary nonpayment of the fine.

The foregoing opinion, which I hereby approve, was prepared by my assistant, John C. Klaffenbach.

Very truly yours,

A handwritten signature in cursive script, appearing to read "John C. Danforth". The signature is written in dark ink and is positioned above the typed name.

JOHN C. DANFORTH
Attorney General