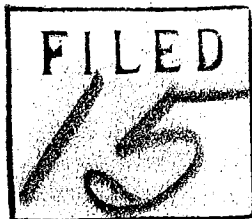


JAILS:
INSOLVENTS:
DISCHARGES:



A person legally confined in the county jail for nonpayment of costs properly assessed against him in a criminal proceeding is not entitled to discharge as an insolvent, except upon strict compliance with the procedure set forth in Chapter 551 RSMo 1949.

June 22, 1955

Honorable John R. Caslavka
Prosecuting Attorney
Dade County
Greenfield, Missouri

Dear Sir:

Your recent request for an official opinion reads as follows:

"On the 23rd day of October, 1954, one George McGeehee entered his plea of guilty to the charge of careless and reckless driving and was by the Circuit Court of Dade County, Missouri, sentenced to 90 days in the County Jail and then and there paroled by the Court conditioned upon his good behavior in leading the life of a law abiding citizen. At the same time the cost in this action, amounting to some \$111.45 was assessed against the defendant and he was given 60 days to pay the same.

"On the 14th day of March, 1955, and the defendant having paid \$3.00 on the cost so assessed against him under order of the court, an execution was issued against the defendant for nonpayment of cost and he was then and there committed to the county jail of Dade County, Missouri, the sheriff's return being dated the 31st day of March, 1954.

"During a part of the time the defendant was in jail he worked on the county buildings under order of the county court and was on the 5th day of May, 1955, discharged from the county jail by the sheriff of this county.

"Since that time Mr. McGeehee has indicated that he was held in jail for non-payment of fine and cost some 15 days in excess of the time provided for by the laws of the State of Missouri. Apparently Mr. McGeehee is basing this

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on Section 221.180 Revised Statutes of Missouri, 1949, which provides in Section 4 that 'no prisoner shall be required to work over 20 days for the cost assessed against him.'

"This office is having a difficult time reconciling Section 221.180 Revised Statutes of Missouri, 1949 and Section 551.010 Revised Statutes of Missouri, 1949, and inasmuch as Mr. McGeehee has filed a claim with the county court for loss of income during the time he was incarcerated in excess of his 20 days for the non-payment of fine and cost. Your very earliest opinion on this question would be appreciated."

Chapter 551, RSMo 1949, to which you refer, is entitled "relief of insolvents confined on criminal process." Section 551.010, RSMo 1949, reads:

"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."

Subsequent sections elaborate upon the duties imposed upon the prisoner petitioner, and others, if the petitioner seeks to take advantage of and obtain a discharge under Chapter 551.

In regard to the above, we direct attention to the case of *Ex parte Secrest*, 32 S.W.(2d) 1085. At l.c. 1087 of its opinion in that case the court stated:

"(1) The statute authorizing petitioner's commitment is section 4070, R.S.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

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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, 106 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 the 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 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.'

"(2-4) 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 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

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obtained. 15 G. J. Sec. 861, p. 344; Ex parte Parker, 106 Mo. 551, 17 S.W. 658; In re Curley, 34 Iowa, 184; In re Dobson, 37 Neb. 449, 55 N.W. 1071. Having followed a way of his own choosing not authorized by statute, petitioner is not entitled to be discharged."

It will be noted that the above states that to authorize a discharge because of insolvency, the prisoner must strictly comply with the procedure set forth by statute, which is now found in Chapter 551, supra. However, in your letter to us, you do not state that the prisoner made any attempt whatever to comply with Chapter 551. We shall, therefore, consider that he did not do so, and for this reason Chapter 551 has no application whatever in this situation.

Section 221.180, RSMo 1949, to which you refer, reads as follows:

"1. The county courts in this state may, in their discretion, cause all persons who have been convicted and sentenced by a court of competent jurisdiction, for crime, the punishment of which is defined by law to be a fine or by imprisonment in the county jail for any length of time, or by both such fine and imprisonment, or by fine and imprisonment until such fine be paid, to be put to work and perform labor on the public roads and highways, turnpikes, or other public works or buildings of said county, or of any town or city therein, for such purposes as they may deem necessary.

"2. Whenever there shall be ten or more such persons confined in the jail, it shall be obligatory for the county court to cause all such persons, except females and those physically incapable of manual labor, to be worked.

"3. The county courts may, in their discretion, procure a lot of ground by purchase or renting, at such place and of such size as they may select, and may authorize the sheriff to buy perch rock to be delivered on said lot; and the sheriff shall have or cause all such prisoners as may be directed by the county court to work out the full number of days for which they have been sentenced, at breaking such rock or at working upon such public roads and highways, turnpikes or other public works or buildings as may have

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been designated.

"4. If the punishment is by fine and the fine and costs be not paid, then for every dollar of said judgment, including costs, 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. No prisoner shall be required to work over twenty days for the costs assessed against him."

You will note that the last sentence of the above holds that the prisoner shall not be required to work over twenty days for the "costs" assessed against him. You do not state how long the prisoner in your case was worked, but we note that you do not state that McGeehee claims to have been worked over twenty days. He claims instead that he was held in jail some fifteen days longer than he should have been. It would appear, therefore, that he did work approximately twenty days, at the end of which time he thought he should be discharged, but that instead of being discharged he was held in jail for some additional fifteen days. The prisoner would have been entitled to discharge after twenty days' imprisonment, according to Section 551.010, supra, if he had complied with the provisions set forth in Chapter 551, which, as we noted, he did not do.

As we noted above, Section 221.180, supra, held only that a prisoner could not be worked over twenty days for the payment of costs, but it does not state that having worked twenty days he shall be discharged.

Section 546.850 RSMo 1949, reads:

"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."

We have noted above that the prisoner did not "take the benefit of the law for the relief of insolvent persons", which is Chapter 551, and so Section 546.850, supra, does not apply to this prisoner, and Section 546.830, supra, did apply to him.

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CONCLUSION

It is the opinion of this department that a person legally confined in a county jail for nonpayment of costs properly assessed against him in a criminal proceeding is not entitled to discharge as an insolvent, except upon strict compliance with the procedure set forth in Chapter 551 RSMo 1949.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Hugh P. Williamson.

Very truly yours,

JOHN M. DALTON
Attorney General

HPW/ld