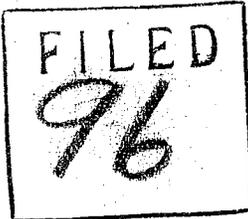


COURTS: FINES:
CRIMINAL LAW:
MAGISTRATE COURT:
PROSECUTING ATTORNEY:

Prosecuting attorney may dismiss an affidavit filed by him charging a person with the commission of a crime in another state, and that said person has fled therefrom. Fines assessed in magistrate court are judgments which may be collected, unless barred by Section 516.350, RSMo 1949.



April 19, 1954

Honorable W. C. Whitlow
Prosecuting Attorney
Callaway County
Fulton, Missouri

Dear Sir:

By letter dated January 26th, 1954, you requested an official opinion, as follows:

"I have two problems regarding procedure in the Magistrate Court which I would like to get straightened out and which I have been unable to do on my own research.

"At the request of the State of Wisconsin, back in March of 1953, we filed an affidavit against one Rolla Giboney for removing mortgaged property from the State of Wisconsin and held him under arrest for extradition. He was taken into custody and eventually returned to Wisconsin, but as I understand it, he returned voluntarily and not under the extradition requisition.

"The case is still pending in our Magistrate Court and since it is of no further use, I would like to get it off of the record. Is dismissal the proper procedure to dispose of this matter or since he was taken into custody under the charge filed, should the record show that the case has been disposed of? Unless we can properly dispose of it, it would seem that it would lay here until the end of time.

Honorable W. C. Whitlow

"We also have a great many cases in our files in which fines have been assessed, generally upon a plea of guilty by the defendant. These fines, however, have not been paid, generally because the court has given the defendant time in which to make payment. There are cases in the files at this time showing unpaid balances that are at least two and some of them three and four years old. As I interpret the statutes, any unpaid fine cannot be collected if it is not collected within one year of the date of assessment. What record should be made on these cases in order to close them?
* * * "

We presume that the affidavit filed in March of 1953 was under authority of Section 548.060, which at that time read as follows:

"Whenever any person within this state shall be charged, on the oath or affirmation of any credible witness, before any judge or magistrate of a court of record, except judge of the probate court, with the commission of any crime in any other state or territory of the United States, and that he fled from justice, it shall be lawful for the judge or magistrate to issue his warrant for the apprehension of the party charged."

This section was amended by the 67th General Assembly subsequent to the time in question, but that amendment will not be here discussed. We gather from your letter that you, as prosecuting attorney, filed the affidavit. Prosecuting attorneys in the state of Missouri are given wide discretion in discontinuing or dismissing prosecutions. The extent of such discretion vested in prosecuting attorneys is discussed at length in *State ex rel. Griffin v. Smith*, 258 S.W. (2d) 590. At l.c. 593, the Supreme Court by Conkling, C.J., made this observation:

"It is clearly the weight of authority that if there is no statute respecting the right to enter a nolle prosequi (and

Honorable W. C. Whitlow

there is no such statute in Missouri) that such right lies within the sole discretion of the prosecuting attorney. 14 Am. Jur. Criminal Law, Sec. 296, p. 967, 22 C.J.S. Criminal Law, Sec. 457, page 707. This court stated that principle in State on Inf. of McKittrick v. Graves, 346 Mo. 990, 144 S.W. 2d 91, 95, wherein we said: 'Hence they (the dismissals made by a prosecuting attorney of certain criminal cases) lay within his discretion under the power of nolle prosequi which the law vests in the prosecuting officer in the absence of a statute on the subject. 14 American Jurisprudence 967.' See also Ex parte Claunch, 71 Mo. 233.

"In State ex rel. Thrash v. Lamb, Judge, supra, the question now before us was squarely ruled in these words: 'A prosecuting attorney has discretionary power to institute or discontinue prosecutions. * * *'"

Thus, we conclude that you, in your discretion, may dismiss the affidavit filed against Rolla Giboney, mentioned in your letter.

We turn now to your second question as to the disposition of criminal cases in the magistrate court in which assessed fines have not been paid.

A magistrate may stay the execution of a sentence, but may not commute it (see enclosed opinion of this office to Honorable Frank W. May, Prosecuting Attorney of St. Francois County, dated March 31, 1953).

Provision for collection of fines in magistrate courts is made by Section 543.260, RSMo 1949, as follows:

"Whenever the defendant shall be tried and found guilty, either by the magistrate or a jury, or shall enter a plea of guilty, and a fine shall be assessed, the magistrate

Honorable W. C. Whitlow

shall enter judgment against the defendant for such fine, and if the punishment shall be imprisonment in the county jail or shall be both a fine and imprisonment, the magistrate shall enter judgment according to the finding of the court or verdict of the jury, and immediately commit the defendant to the county jail for the time designated in the judgment, and the defendant shall be adjudged to pay the costs, and may be committed to the county jail until the judgment for both fine and costs shall be paid, or until he shall be discharged therefrom under the provisions of section 543.270."

The Springfield Court of Appeals in Hicks v. McCown, 144 Mo. App. 544, l.c. 547, made this statement about this section:

"This section contemplates a judgment for fine or costs and its meaning is unmistakable."

Section 516.350 is the statute of limitations on judgments:

"Every judgment, order or decree of any court of record of the United States, or of this or any other state, territory or country, shall be presumed to be paid and satisfied after the expiration of ten years from the date of the original rendition thereof, or if the same has been revived upon personal service duly had upon the defendant or defendants thereon, then after ten years from and after such revival, or in case a payment has been made on such judgment, order or decree, and duly entered upon the record thereof, after the expiration of ten years from the last payment so made, and after the expiration of ten years from the date of the original rendition or revival upon personal service, or from the date of the last payment, such judgment shall be conclusively presumed to be paid, and no execution, order or process

Honorable W. C. Whitlow

shall issue thereon, nor shall any suit be brought, had or maintained thereon for any purpose whatever."

The above limitation is made applicable to the state by Section 516.360, RSMo 1949. Since the assessment of a fine by a magistrate is a judgment, and the magistrate court is a court of record, Section 516.350 covers the present situation.

CONCLUSION

It is, therefore, the opinion of this office, that a prosecuting attorney may dismiss an affidavit filed by him charging a person with the commission of a crime in another state, and that said person has fled therefrom. Fines assessed in magistrate court are judgments which may be collected, unless barred by Section 516.350, RSMo 1949.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Paul McGhee.

Very truly yours,

JOHN M. DALTON
Attorney General

PMcG:vlw