

A FINE SENTENCE FOR CLASS 3 MISDEMEANORS?

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WHAT IS THE RULE?

- New G.S. 15A-1340.23(d) states:
 - "Unless otherwise provided for a specific offense, the judgment for a person convicted of a Class 3 misdemeanor who has no more than three prior convictions shall consist only of a fine."
- Effective for offenses committed on or after December 1, 2013.

WHY?

- To reduce counsel costs
- Joint Conference Committee Report on the budget (p. 110) reduces IDS budget by \$2 million and states:
 - "With no possibility of incarceration, these offenses do not require legal counsel."

WHAT SENTENCES ARE PERMISSIBLE?

- Available
 - Fine
 - Costs (7A-304)
 - If authorized for specific offense
- Unavailable
 - Imprisonment, active or suspended
 - Probation
- Unclear
 - Restitution

IS "TIME SERVED" A PERMISSIBLE SENTENCE?

- Yes
 - Because time served, beeliejuice, abracadabra, and other phrases allowing immediate release of the defendant are basically the same in this context

HOW SHOULD PRIORS BE COUNTED?

- Use the structured sentencing rules on counting priors
 - Multiple convictions from the same session of court count as one conviction

IS APPOINTMENT AUTHORIZED WITHOUT
FOUR OR MORE PRIORS?

- No
 - A defendant does not have a Sixth Amendment or statutory right to counsel unless subject to imprisonment (but see later slide on pretrial detainees)

IS APPOINTMENT PENDING A DETERMINATION
OF PRIOR RECORD PERMISSIBLE?

- No
 - Appointment is not constitutionally or statutorily authorized
 - It would undermine the General Assembly's intent
 - IDS will not pay for appointments not authorized by law

CAN THE DEFENDANT BE ASKED TO DISCLOSE
PRIORS TO OBTAIN COUNSEL?

- No
 - A defendant may not be asked to surrender one constitutional right (the right against self-incrimination) to gain the benefit of another (the right not to be tried without counsel)

IS IMPRISONMENT PERMISSIBLE IF COUNSEL WAS NOT AFFORDED?

- No
 - Imprisonment, active or suspended, may not be imposed for a misdemeanor if the defendant was not afforded the right to counsel

IS RECONSIDERATION OF APPOINTMENT PERMISSIBLE?

- Yes, if timely
 - Appointment must be before commencement of trial or acceptance of a guilty plea
 - No do-overs
 - Appointment at sentencing or activation of a suspended sentence is insufficient to authorize imprisonment

IS APPOINTMENT AUTHORIZED IF THE AGGREGATE FINE IS \$500 OR MORE?

- Probably not
 - 7A-451(a)(1) authorizes counsel in any case in which a fine of \$500 or more is likely to be adjudged.
 - In other contexts, the courts have refused to aggregate charges for purposes of finding a constitutional right that does not exist for individual charges

IS APPOINTMENT REQUIRED FOR A SENTENCE OF TIME SERVED?

- No
 - Time served is not a sentence of imprisonment, active or suspended, as a result of the conviction and so is constitutionally permissible without affording appointed counsel to the defendant
 - See also

IS APPOINTMENT PERMISSIBLE IF OTHER CHARGES AUTHORIZE APPOINTMENT?

- As a practical matter, yes

IS APPOINTMENT PERMISSIBLE FOR PRETRIAL DETAINEES ON CLASS 3 MISDEMEANORS?

- Probably
 - Inmates have a Due Process right to meaningful access to the courts
 - A state satisfies this right by ensuring adequate legal assistance to inmates, e.g., through law libraries and appointment of counsel for indigent inmates
 - Absent evidence of adequate alternatives, appointment of counsel for pretrial detainees would seem appropriate to ensure meaningful access to the courts
- If the court unsecures the bond, the right to legal assistance to access the courts does NOT apply

IS APPOINTMENT AUTHORIZED BECAUSE OF SIGNIFICANT COLLATERAL CONSEQUENCES?

- Some courts have suggested the possibility under their state constitutions
 - City of Pendleton v. Standerfer, 688 P.2d 68 (Oregon 1984) (en banc)
 - Alexander v. City of Anchorage, 490 P.2d 910 (Alaska 1971)

IS IMPRISONMENT PERMISSIBLE FOR NONPAYMENT OF THE FINE?

- Unclear
 - 15A-1361 through 15A-1365 contain procedures for imposing up to 30 days imprisonment for nonpayment of a fine
 - The defendant must be afforded counsel at the nonpayment stage
 - Some federal courts have also found that a violation of stand-alone conditions, without a suspended sentence of imprisonment, may not later be enforced by imprisonment if the defendant was not afforded counsel when initially convicted
- A fine may be docketed as a judgment (15A-1365)

WILL THERE BE FORMS?

- Yes
 - Yes
 - Yes
 - Yes
 - Yes
 - Yes
 - Yes
