

**Opinion No. 80.****Justice Court—Judgment—Re-arrested.**

HELD: A person who has been sentenced in justice court to pay a fine only, must be discharged and he may not thereafter be re-arrested and compelled to serve time for failure to pay the fine.

June 16, 1939.

Mr. Walter T. Murphy  
County Attorney  
Superior, Montana

Dear Mr. Murphy:

You have submitted the question whether a person, who, upon plea of guilty in justice court, has been sentenced to pay a fine of \$25.00, and thereafter released, may afterwards, upon failure or refusal to pay such fine, be re-arrested and compelled to serve in prison one day's imprisonment for every two dollars of fine.

We agree with your opinion that this question must be answered in the negative; that there is a distinction between a judgment for payment of a fine and one for the payment of a fine and imprisonment, until the fine is paid, is recognized by Sections 12329, 12340 and 12341, R. C. M., 1935. Section 12340 reads:

"If a judgment of acquittal is given, or judgment imposing a fine only, without imprisonment for non-payment, and the defendant is not detained for any other legal cause, he must be discharged as soon as the judgment is given."

Therefore, if the judgment is for fine only, the defendant must be discharged as soon as judgment is given and he may not thereafter be re-arrested and required to serve time for failure to pay such fine as that was not the judgment of the court according to the docket entry of judgment.

(State ex rel. Hogdon v. District Court, 33 Mont. 120; Volume 4, Opinions of the Attorney General, p. 156.)