

CRIMES AND CRIMINAL PROCEDURE - Fines; Imprisonment of indigents. Section 95-2008, R.C.M. 1947.

- HELD:**
1. A person who has been sentenced to a term of imprisonment and has also been fined, cannot be imprisoned beyond the maximum term of imprisonment set by statute for the crime in question if he is indigent and financially unable to pay the fine at the time of sentencing.
 2. When an offense is punishable by fine only, a court cannot initially imprison an indigent because he is financially unable to pay the fine.
 3. If an indigent is unable to pay a fine it would not be unreasonable to require him to pay on a predetermined installment basis.

October 4, 1971

Mr. Conrad B. Fredricks
Sweet Grass County Attorney
Big Timber, Montana 59011

Dear Mr. Fredricks:

I am in receipt of your recent letter wherein you asked for my opinion on the following questions:

1. What effect do the recent United States Supreme Court decisions of **Williams v. Illinois**, 399 U.S. 235, 26 L.Ed.2d 586, 90 S. Ct. 2018 (1970), and **Tate v. Short**, U.S. , 28 L.Ed.2d 130, 91 S. Ct. 668 (1971), relating to the incarceration of a criminal defendant for failure to pay a fine, have upon the provision of section 95-2008, Revised Codes of Montana, 1947?
2. In light of the above-quoted cases, would it be permissible, under section 95-2008, Revised Codes of Montana, 1947, for the judgment to specify that the fine be paid in installments, with the alternative of imprisonment for failure to meet the installment payments?

In **Williams v. Illinois**, supra, the appellant was convicted of petty theft and received the maximum sentence provided by law: one year imprisonment and a \$500 fine. He also was required to pay \$5 in court costs. Williams was indigent and at the expiration of his one-year imprisonment was financially unable to pay the additional \$505. The

court ordered him to remain in jail and “work off” the monetary obligations at the rate of \$5 per day. Such a ruling would have required Williams to remain in jail 101 days beyond the maximum term of imprisonment for petty theft (one year). The United States Supreme Court reversed the Texas court decision, saying:

“We conclude that when the aggregate imprisonment exceeds the maximum period fixed by the statute and results directly from an involuntary nonpayment of a fine or court costs we are confronted with an impermissible discrimination that rests on ability to pay, and accordingly, we vacate the judgment below.

* * *

“Applying the teaching of the **Griffin** case (*Griffin v. Illinois*, 351 U.S. 12 (1956)) here, we conclude that an indigent criminal defendant may not be imprisoned in default of payment of a fine beyond the maximum authorized by the statute regulating the substantive offense.”

Section 95-2008 (c), R.C.M. 1947, provides in part:

“A judgment that the defendant pay a fine may also direct that he be imprisoned until the fine be satisfied, in the proportion of one (1) day’s imprisonment for every ten dollars (\$10.00) of the fine.”

I believe your question can best be answered by using a hypothetical example. Assume an indigent person is convicted of driving while under the influence of intoxicating liquor. Section 32-2142, Revised Codes of Montana, 1947, states that a first conviction is punishable by imprisonment for not more than six (6) months, or by a fine of not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500) or by both such fine and imprisonment. Let us further assume that the court sentenced this indigent to six months in the county jail and fined him \$100. At the expiration of his six months sentence this indigent was financially unable to pay the fine. Under the rationale of **Williams v. Illinois**, *supra*, the court could not keep this individual imprisoned for an additional ten days to “work off” his fine. If this was done the indigent would be serving a sentence in excess of the maximum sentence authorized by law (six months).

If the court sentenced this indigent to three months in the county jail and fined him \$100, and after he had served his three months he was unable to pay the fine, he could be required to stay in jail an additional ten days to “work off” his fine. His total imprisonment would be three months and ten days, which is below the maximum six months sentence imposed by statute. The court in **Williams v. Illinois**, *supra*, did not strike down this method. The court stated at page 241:

“However, once the State has defined the outer limits of incarceration necessary to satisfy its penological interests and policies, it may not then subject a certain class of convicted defendants to a period of imprisonment beyond the statutory maximum solely by reason of their indigency.

* * *

“The mere fact that an indigent in a particular case may be imprisoned for a longer time than a nonindigent convicted of the same offense does not, of course, give rise to a violation of the Equal Protection Clause.”

It is my opinion that, in this latter instance, since the total term of imprisonment does not exceed the maximum penalty permitted by law, that the court is not precluded from confining the indigent for nonpayment of his fine. I believe that this is the doctrine established in *Williams v. Illinois*, *supra*.

However, *Tate v. Short*, *supra*, adopted the concurring opinion in *Morris v. Schoonfield*, 399 U.S. 508 (1970), which may have altered the *Williams* interpretation. The court stated in the *Tate* case at page 133:

“... 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.”

Tate may be limited to its particular facts. Since the Texas statute did not provide for a jail term, the court may have concluded that nonpayment of a fine cannot be converted into a jail sentence, but an indigent could be jailed for nonpayment of a fine if the total term of imprisonment, if one is authorized by statute, does not exceed the maximum penalty permitted by law.

The United States Supreme Court was confronted with a somewhat different situation in *Tate v. Short*, *supra*, than it was in *Williams*. *Tate* had accumulated \$425 in fines for nine traffic offenses. He was unable to pay because of his indigency. A Texas court committed him to the municipal prison farm and ordered that he remain there a sufficient time to satisfy the fines at the rate of five dollars for each day; this required that he serve 85 days at the prison farm. Traffic offenses are punishable by fine only. The court held that such imprisonment was unlawful, and stated at page 133:

“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 said it was discriminatory to jail an indigent merely because he was without the financial resources to pay a fine, and it suggested that the state could establish other methods for collection.

The same rationale must now hold true in Montana. Section 94-3511, R.C.M. 1947, for example, makes it unlawful to conduct the business of haircutting, shaving, or shampooing, or to open barber-shops for the doing of such business, on Sunday. A first violation is punishable by a fine of not less than fifteen dollars and not to exceed fifty dollars. If an indigent is convicted of violating this statute, and is without means to pay the fine, *Tate v. Short*, supra, precludes the state from initially holding the indigent accountable for the fine by imposing a jail sentence. *Williams* and *Tate* both indicate that there are many alternatives available to the states to collect this fine. A defendant cannot be held immune from punishment simply because he is indigent. The court in *Williams*, on page 244, stated:

“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.”

Although section 95-2008, R.C.M. 1947, does not expressly provide for collection of fines by installment payments, it is my opinion that such a procedure is permissible. Since the courts have the power to levy a fine they also have the implied power to collect the fine by whatever means are reasonable under the circumstances. The Montana Supreme Court, in *State ex rel. Hoagland v. School District No. 13 of Prairie County*, 116 Mont. 294, 151 P.2d 168 (1944), said:

“It may be laid down as a general principle that the limit of the power of a public officer is the statute conferring the power, and what further power is necessarily implied in order to effectuate that which is expressly conferred.”

If an indigent is unable to pay a fine at the time of sentencing, it would not be unreasonable to require him to pay the fine in a predetermined installment schedule. As noted before, the court has the authority to levy a fine and, therefore, it also has the implied authority to collect the fine. The court, in *Williams and Tate*, stated that if these

alternative methods of collection are unsuccessful the indigent may be imprisoned for nonpayment. This procedure, i.e., collecting fines on an installment basis, must be limited to those individuals who are indigent.

IT IS THEREFORE MY OPINION that:

1. A person who has been sentenced to a term of imprisonment and who has also been fined, cannot be imprisoned beyond the maximum term of imprisonment set by statute for the crime in question if he is indigent and financially unable to pay the fine.
2. When an offense is punishable by fine only, a court cannot, initially, imprison an indigent because he is financially unable to pay the fine.
3. If an indigent is unable to pay a fine it would not be unreasonable to require him to pay on a predetermined installment basis.

Very truly yours,

ROBERT L. WOODAHL
Attorney General