

STATE OF TENNESSEE

OFFICE OF THE
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Opinion No. 04-096

Contributions to Sheriff's Drug Fund

QUESTIONS

1. Is it permissible in a misdemeanor drug possession case for the trial judge to order, as part of the sentence, a "contribution" of \$1,000 to the sheriff's drug fund in addition to the mandatory minimum statutory fine?
2. May such a "contribution" to the sheriff's drug fund be required as part of a plea agreement?

OPINIONS

1. No. A trial judge is only authorized to sentence a defendant to a term of imprisonment and a fine.
2. Yes. A defendant may agree to make a contribution to the sheriff's drug fund as part of a plea agreement.

ANALYSIS

1. Simple possession of a controlled substance is a Class A misdemeanor. *See* Tenn. Code Ann. § 39-17-418(c). A Class A misdemeanor is punishable by imprisonment for a period not greater than eleven months, twenty-nine days, a fine not exceeding \$2,500, or both. Tenn. Code Ann. § 40-35-111(e)(1). Additionally, misdemeanor possession of a controlled substance requires a mandatory minimum fine ranging from \$250 to \$1,000, depending on the type of drug possessed and the number of prior convictions for the same offense. *See* Tenn. Code Ann. § 39-17-428(b).

While a trial judge is authorized to impose a period of confinement and a fine on a defendant convicted of a misdemeanor drug offense, a trial judge has no statutory authority to order a defendant to make a "contribution" to a special drug fund in addition to paying a fine. *See* Tenn. Code Ann. § 40-35-111. Rather, the distribution of fines between special drug funds and general funds is

controlled by statute. *See* Tenn. Code Ann. §§ 39-17-420, 39-17-428(c); Op. Tenn. Att’y Gen. 00-171. Accordingly, it is not permissible for a trial judge to order a “contribution” to the sheriff’s drug fund as part of his or her sentencing order.

2. Rule 11(e) of the Tennessee Rules of Criminal Procedure permits plea bargaining between the district attorney general and the attorney for the defendant. “Plea agreements . . . have been treated as contracts and are enforceable once the condition precedent is met; that is, the trial judge accepts the agreement.” *State v. Howington*, 907 S.W.2d 403, 407 (Tenn. 1995). Because plea agreements are essentially contracts between a district attorney general and a defendant, a defendant may agree to make a contribution to a special drug fund as part of a plea agreement, even though a trial court could not otherwise order such a contribution. *See, e.g., State v. Franklin B. Caldwell*, No. 01C01-9411-CC-00389, 1995 WL 376736, at *1 (Tenn. Crim. App. June 22, 1995) (defendant agreed to \$2,000 fine and \$2,000 contribution to the drug fund as condition of plea agreement); *Titus Reed v. State*, No. 03C01-9207-CR-00252, 1993 WL 87833, at *1 n. 1 (Tenn. Crim. App. Mar. 25, 1993) (defendant agreed to \$3,000 fine and \$7,000 contribution to drug fund as condition of plea agreement); *State v. Mark Van Hook*, No. 88-140-III, 1989 WL 4940, at *1 (Tenn. Crim. App. Jan. 24, 1989) (defendant agreed to \$250 contribution to drug fund as condition of plea agreement).

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