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Opinion No.04-124

Effect of Tenn. Code Ann. § 40-6-215 on Type of Process Available to Initiate Contempt Proceeding for Non-Payment of Court-Ordered Fine

QUESTION

Does the enactment of Tenn. Code Ann. § 40-6-215 eliminate the option of issuing a "contempt warrant" when a defendant has failed to pay fines that he or she has been ordered to pay by the court?

OPINION

No. The provisions of Tenn. Code Ann. §§ 40-6-210—40-6-216, which include § 40-6-215, do not apply to the issuance of process by a court to initiate a contempt proceeding for the non-payment of a court-ordered fine.

ANALYSIS

Title 40, Part 6, Chapter 2, Tennessee Code Annotated (§§ 40-6-201—40-6-216 (2000)), governs arrest warrants. Section 40-6-201 defines a warrant of arrest as "an order, in writing, stating the substance of the complaint, directed to a proper officer, signed by a magistrate, and commanding the arrest of the defendant." The succeeding statutes in Chapter 2 address various technical requirements for arrest warrants. Two of these statutes provide, under certain circumstances, for a criminal summons in lieu of an arrest warrant. Section 40-6-205 provides:

> If the magistrate is satisfied from the written examination that there is probable cause to believe the offense complained of has been committed and that there is probable cause to believe the defendant has committed it, then the magistrate shall issue a warrant of arrest. The finding of probable cause shall be based on evidence, which may be hearsay in whole or in part; provided, there is a substantial basis for believing the source of the hearsay to be credible and for believing that there is a factual basis for the information furnished. If the affiant is not a law enforcement officer, as defined by § 39-11-106(21), or if

> none of the affiants in the case of multiple-affiants is a law enforcement officer, as defined by § 39-11-106(21), then a criminal summons as provided in § 40-6-215 shall issue instead of a warrant of arrest; provided, however, that in the case of multiple-affiants, if one or more of the affiants is a law enforcement officer as defined by § 39-11-106(21), then the magistrate may issue a warrant of arrest; provided, further, that if, after examination of the affiant and the affidavit of complaint, the magistrate has probable cause to believe that the issuance of a warrant of arrest rather than a criminal summons is necessary to prevent an immediate threat of imminent harm to a victim as defined in § 36-3-601(8), and makes a written finding of fact that an arrest warrant rather than a criminal summons is necessary, the magistrate may issue a warrant of arrest notwithstanding the fact that the affiant is not a law enforcement officer, or, in the case of multiple-affiants, that none of the affiants is a law enforcement officer.

Section 40-6-215, to which the opinion request refers, also provides, in pertinent part:

> (a) As an alternative to a warrant of arrest as provided in §§ 40-6-201— 40-6-214, the magistrate, judge or clerk may issue a criminal summons instead of a warrant of arrest except when an affiant is not a law enforcement officer as defined by § 39-11-106(21), or none of the affiants in the case of multiple-affiants is a law enforcement officer as defined by § 39-11-106(21), in which instance the magistrate, judge or clerk shall issue a summons; provided, however, that if, after examination of the affiant and the affidavit of complaint, the magistrate or judge has probable cause to believe that the issuance of a warrant of arrest rather than a criminal summons is necessary to prevent an immediate threat of imminent harm to a victim as defined in § 36-3-601(8), and makes a written finding of fact that an arrest warrant rather than a criminal summons is necessary, the magistrate or judge may issue a warrant of arrest notwithstanding the fact that the affiant is not a law enforcement officer, or, in the case of multiple-affiants, that none of the affiants is a law enforcement officer.

This series of statutes (§§ 40-6-201—40-6-216) clearly contemplates an arrest warrant or summons for a person suspected of committing a criminal offense. For example, § 40-6-201 refers to the subject of the warrant as "the defendant." And §§ 40-6-203—40-6-205 require the preparation of an affidavit of complaint; a presentation to, and an examination by, a magistrate; and a finding of probable cause before a warrant is issued. Most of these requirements are echoed in the Rules of

Criminal Procedure, *see* Rule 4, Tenn.R.Crim.P., which apply only to "criminal proceedings." *See* Rules 1 and 2, Tenn.R.Crim.P.

But a contempt proceeding is not a criminal prosecution. *Bowdon v. Bowdon*, 198 Tenn 143, 146-47, 278 S.W.2d 670 (1955) ("contempt proceedings are sui generis—neither a civil action nor a criminal prosecution as ordinarily understood. . . ."). Furthermore, our contempt statutes do not speak in terms of the issuance of an arrest "warrant" for contempt, but rather of the issuance of an "attachment" of the person. *See, e.g.*, Tenn. Code Ann. § 29-9-102 (2000) (referring to the "power of the several courts to issue attachments[ ] and inflict punishments for contempts of courts"); § 29-9-106 (providing for bail "[u]pon an attachment to answer for a contempt"). Although the order commanding that the contemnor be taken into custody may be loosely described as a "warrant" or "bench warrant," it is, strictly speaking, not of the species of warrants contemplated by §§ 40-6-201—40-6-216. Thus, in all likelihood, the General Assembly did not intend those provisions to apply to contempt proceedings. Therefore, it is the opinion of the office that Tenn. Code Ann. § 40-6-201—40-6-216, including § 40-6-215 to which the request refers, do not apply to the issuance of process by a court to initiate a contempt proceeding for the non-payment of a court-ordered fine.

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