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Opinion No. 00-078

Community Corrections Act

QUESTIONS

What is the meaning of the last sentence of Tenn. Code Ann. § 40-36-106(a), to wit: "Persons who are sentenced to incarceration or on escape at the time of consideration will not be eligible."

1. Does this provision mean that one who is serving a sentence of incarceration (from another county, another court, or on another charge) cannot be ordered to serve a sentence on Community Corrections, regardless of whether the sentence runs concurrently with or consecutively to the prior sentence?

2. Does this provision mean that one cannot be placed on Community Corrections when one is incarcerated on another sentence even if the Community Corrections sentence is ordered to begin upon the expiration of the defendant's incarceration?

3. Does this provision prohibit one from being on Community Corrections at the same time that one is serving a sentence of incarceration?

4. Does it matter whether the sentence of incarceration is a sentence ordered to be served in the Department of Corrections, on split confinement, on periodic confinement, or is for a misdemeanor?

OPINIONS

1-4. An offender is not eligible for Community Corrections placement if at the time of consideration, that person is serving a sentence of incarceration for another crime or has been sentenced to incarceration on another crime, no matter how the prior sentence is ordered to be served.

ANALYSIS

The minimum requirements for Community Corrections eligibility are set forth in Tenn. Code Ann. § 40-36-106(a). After establishing six qualifications for inclusion in a Community Corrections program, the legislature set an additional criteria excluding those offenders who were sentenced to incarceration or were on escape at the time of consideration. Tenn. Code Ann. § 40-36-106(a). The determination of criteria for admissibility to the program is solely within the prerogative of the legislature. *See, e.g., State v. Moss*, 727 S.W.2d 229 (Tenn. 1986). Likewise, it is clearly within the authority of the legislature to limit the discretion of the courts with regard to matters of sentencing, such as probation or suspension of sentences. *Id.*

A basic principle of statutory construction is to ascertain and give effect to the intention and purpose of the legislature. That intent and purpose is to be ascertained primarily from the natural and ordinary meaning of the language used, without a forced or subtle construction that would limit or extend the meaning of the language. *Tuggle v. Allright Parking Systems, Inc*., 922 S.W.2d 105, 107 (Tenn. 1996); *National Gas Distributors, Inc. v. State*, 804 S.W.2d 66, 67 (Tenn. 1991).

Where the statutory language is plain, clear, and unambiguous, there is no room for interpretation or construction that departs from the words of the statute. *Tuggle*, 922 S.W.2d at 107. The clear, unambiguous language of Tenn. Code Ann. § 40-36-106(a) is that a person cannot be placed on Community Corrections if he has a sentence of incarceration entered against him at the time that he is being considered for Community Corrections, whether he has begun serving that period of incarceration or not.

The phrase "[p]ersons who are sentenced to incarceration. . . at the time of consideration" means that if the defendant is subject to a sentence that includes a period of incarceration, i.e., confinement in either a local jail or workhouse or state penal institution at the time of his consideration for Community Corrections, then that defendant will not be eligible for placement on Community Corrections while he remains subject to that sentence of incarceration. .

Thus, an offender is ineligible for Community Corrections if, at the time of consideration, he is already serving a sentence of incarceration or has already been sentenced to incarceration, even if the Community Corrections sentence is proposed to run consecutively to the sentence of incarceration, or if the intent is for the Community Corrections sentence to begin at the expiration of the existing sentence of incarceration. Further, it is immaterial under the terms of the statute whether the period of incarceration which disqualifies an offender is to be served in the Department of Correction, is a part of a judgment ordering split confinement or periodic confinement, or is for a misdemeanor sentence.

In summary, an offender is not eligible to be considered for Community Corrections until that person is no longer subject to a sentence of incarceration.

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