

Opinion No. 79-17

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MOTOR VEHICLES

Misdemeanors under the Motor Vehicle Code carrying penalties of up to ninety days may be deemed "petty misdemeanors" for purposes of the Rules of Criminal Procedure for the Magistrate Courts, and jury trials may be afforded only upon demand as provided by Rule 23.

QUESTIONS

Is a "misdemeanor" under the Motor Vehicle Code a "petty misdemeanor" for purposes of Rule 23 of the Rules of Criminal Procedure for the Magistrate Courts, which governs the right to jury trials?

CONCLUSIONS

Yes.

ANALYSIS

Rule 23 provides that:

"(a) **Petty Misdemeanor Offense.** If the offense charged is a petty misdemeanor, either party to the action may demand a trial by jury. The demand shall be made: (1) orally or in writing to the court at or before the time of entering a plea; or (2) in writing to the court within ten days after the time of entering a plea. If demand is not made as provided in this paragraph, trial by jury is deemed waived.

(b) **Misdemeanor Offense.** If the offense is a misdemeanor, the case shall be tried by jury unless the defendant, in writing, waives a jury trial with the approval of the court and the consent of the State."

OPINION

Thus, the right to a jury trial in Magistrate Court depends upon the offense charged. For a petty misdemeanor, there will be no jury trial unless demand is properly made; for misdemeanors, there will be a jury trial unless waived by the defendant.

The Criminal Code distinguishes between misdemeanors and petty misdemeanors by defining the former as offenses for which imprisonment in excess of six months but less than one year is authorized as a sentence and the latter as offenses for which imprisonment for six months or less is authorized as a sentence. Section 30-1-6 NMSA 1978. However, no distinction is made in the Motor Vehicle Code between misdemeanors and petty misdemeanors. Rather, it provides that all violations of the Code are misdemeanors unless otherwise declared a felony and that all misdemeanors "shall be punished by a fine of not more than one hundred dollars (\$100) or by imprisonment for not more than ninety days, or both" unless another penalty is specified. Section 66-8-7 NMSA 1978.

Nevertheless the failure of the Motor Vehicle Code to specify a class of petty misdemeanors does not mean that violations of the Code cannot be deemed as such for purposes of Rule 23. It is well established that the Sixth and Fourteenth Amendments to the United States Constitution do not require states to provide jury trials for petty crimes. **Duncan v. Louisiana**, 391 U.S. 145, 20 L. Ed. 2d 491, 88 S. Ct. 1444 (1968); **Cheff v. Schnackenberg**, 384 U.S. 373, 16 L. Ed. 2d 629, 86 S. Ct. 1523 (1966). The penalty authorized for the offense is the major factor in determining whether a crime is sufficiently serious to subject it to the requirements of the Sixth Amendment. **Duncan v. Louisiana, supra.**

While the boundaries of the petty offense category are not well-defined, courts may look to existing laws and practices in "determining whether the length of the authorized prison term or seriousness of other punishment is enough in itself to require a jury trial." **Duncan v. Louisiana**, 391 U.S. at 161. Both federal and the noted New Mexico laws and practice set six months as the determinative boundary. Motor Vehicle Code violations carrying penalties of up to 90 days imprisonment fall well within this boundary and thus may be classified as petty offenses.

Therefore, persons charged with offenses classified as misdemeanors under the Motor Vehicle Code may under Rule 23 demand a jury trial but are not afforded one as a matter of right.

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