

## Opinion No. 79-18

April 25, 1979

**OPINION OF:** Jeff Bingaman, Attorney General

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**TO:** Dr. Charles E. Becknell, Secretary, Criminal Justice Department, 113 Washington Avenue, Santa Fe, New Mexico 87501

### COURTS

When an offense is a violation of the Criminal Code or the Motor Vehicle Code, a magistrate court is authorized pursuant to its sentencing powers, to grant victim restitution as a condition of probation.

### QUESTIONS

Is a magistrate court authorized to grant victim restitution pursuant to its sentencing powers when the offense violates the Criminal Code or the Motor Vehicle Code?

### CONCLUSIONS

Yes. Only as a condition of probation.

### OPINION

Under Article VI, Section 26 of the New Mexico Constitution, magistrate courts are courts of limited jurisdiction. This constitutional provision has been interpreted as limiting the magistrate court's authority to act within the power affirmatively granted to them by law. **State v. Vega**, 91 N.M. 22, 569 P.2d 948 (1977).

The Victim Restitution Statute, Section 31-17-1 NMSA 1978, specifically authorizes victim restitution as an option in sentencing. That statute, however, applies only to district courts in that such authority is to be exercised in conjunction with Section 31-20-6 NMSA 1978, a section relating to the sentencing authority of district courts. Thus, the question presented is whether the magistrate courts may require victim restitution apart from the Victim Restitution Statute.

Criminal jurisdiction of the magistrate courts is limited to all cases of misdemeanors or any other criminal action in which jurisdiction is specifically granted. Section 35-3-4(A) NMSA 1978. Such jurisdiction is applicable to misdemeanors which come under the Criminal Code and to those created by statutes which are not part of the Criminal Code.

The sentencing authority of magistrate courts under the Criminal Code is defined in Section 31-19-1 NMSA 1978 which provides that:

"A. Where the defendant has been convicted of a crime constituting a misdemeanor, the judge shall sentence such person to be imprisoned in the county jail for a definite term less than one year, or to the payment of a fine of not more than one thousand dollars (\$1,000) or to both such imprisonment and fine in the discretion of the judge.

"B. Where the defendant has been convicted of a crime constituting a petty misdemeanor, the judge shall sentence such person to be imprisoned in the county jail for a definite term not to exceed six months, or to the payment of a fine of not more than one hundred dollars (\$100) or to both such imprisonment and fine in the discretion of the judge."

{\*44} The Motor Vehicle Code prescribes its own penalties which may be more or less than those provided in the Criminal Code. Section 31-18-11 NMSA 1978 authorizes a district court or magistrate court to impose sentences in accordance with the provisions prescribed by statutes other than those found in the Criminal Code.

Apart from the Motor Vehicle Code's exclusive penalty provisions, Section 31-20-3 NMSA 1978 confers upon any court having jurisdiction the authority to issue orders of probation, deferment or diagnostic treatment within their sentencing authority. The applicable provisions of that section provide:

"Upon entry of judgment of conviction **of any crime** not constituting a capital or first degree felony, **any court having jurisdiction** when it is satisfied that the ends of justice and the best interest of the public as well as the defendant will be served thereby, may either:

A. enter an order deferring the imposition of sentence;

B. sentence the defendant and enter an order suspending in whole or in part the execution of the sentence; or

C. commit the convicted person to the department of corrections [corrections division] for up to sixty days for purposes of diagnosis, with direction that the court be given a report as to what disposition appears best when the interest of the public and the individual are evaluated." (Emphasis added.)

Thus, upon conviction of a misdemeanor offense the magistrate court under Section 31-20-3, **supra**, may provide some alternative to sentencing and rehabilitation other than imprisonment or fine. The magistrate court is given a broad mandate to satisfy the ends of justice and the best interests of the public and defendant. The deferment or suspension of sentence has been construed as a matter of clemency and not a matter of right, and therefore, within the discretion of the court. **State v. Serrano**, 76 N.M. 655, 417 P.2d 795 (1966).

A magistrate court has the authority to attach any reasonable conditions to its order of deferment or suspension of sentence. To maintain that a magistrate court may only suspend or defer the sentence without retaining some supervisory control over the defendant would defeat the purpose of Section 31-20-3, **supra**, in that the court would hesitate to extend clemency. Moreover, to permit the magistrate court to impose conditions upon deferment or suspension does not enlarge the jurisdiction of the court which is limited by statute only by subject-matter. Indeed, every grant of power implies the power necessary and proper for the execution of the express grant. **State v. Hal**, 23 N.M. 422, 168 P. 715 (1917). Therefore, the imposition of reasonable conditions upon a deferred or suspended sentence may be implied as necessary for the execution of the power to act in the interest of justice, the public and the defendant.

Finally, it is noted that the Supreme Court, in exercising its superintending control over the magistrate courts, approved Criminal Form 8.10 for use in district, magistrate, and municipal courts pursuant to Magistrate Court Rule 33. Form 8.10 reads in pertinent part:

"4. SENTENCE DEFERRED (Complete if applicable)

{\*45}  IT IS ADJUDGED that the imposition of sentence is DEFERRED on the following terms and conditions:

6. DISPOSITION (If sentence has not been deferred, check and complete one of the following)

IT IS ORDERED that the execution of such (sentence) (and) (fine) (is) (are) hereby SUSPENDED on the following terms and conditions:"

It appears that the Supreme Court impliedly recognizes the magistrate court's inherent power to impose conditions on deferred or suspended sentences.

Based on the foregoing analysis, the magistrate may, as part of its sentencing power, order a Criminal Code or Motor Vehicle Code violator to make restitution under the broad mandate "to satisfy the ends of justice and the best interests of the public and defendant."

However, the amount of the compelled or agreed restitution in cases involving the Criminal Code (i.e. assault and battery) or the Motor Vehicle Code is limited by the magistrate's monetary (\$2,000) jurisdiction. See Section 35-3-3 NMSA 1978. A restitution award in excess of \$2,000 may be challenged on the basis that the magistrate court exceeded its statutory sentencing power by purporting to assume the district court's "general jurisdiction" powers. It is well settled that a court must act only within the confines of its jurisdiction lest its acts be a nullity and void. **State v. Carmody**, 53 N.M. 367, 208 P.2d 1073 (1949); **State v. Tackett**, 68 N.M. 318, 361 P.2d 724 (1961).

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