



Lynn Fitch
ATTORNEY GENERAL
OPINIONS AND POLICY

January 24, 2023

The Honorable Anthony Nowak
Municipal Court Judge, City of Hernando
Post Office Box 346
Hernando, Mississippi 38632

Re: Authority to Incarcerate for Failure to Comply with Court Ordered Detention

Dear Judge Nowak:

The Office of the Attorney General has received your request for an official opinion.

Questions Presented

1. Does a defendant's failure to comply with a previously ordered schedule of incarceration constitute an act of civil contempt or would it be constructive criminal contempt?
2. If the response to question one is that it is a matter of civil contempt, may the court then immediately incarcerate the defendant for the period of jail time he/she failed to serve?

Brief Response

1. The purpose of civil contempt is to compel compliance with a court's orders, admonitions, and instructions, while the purpose of criminal contempt is to punish. Whether a certain matter constitutes civil or criminal contempt is a mixed question of fact and law that this office may not determine by official opinion.
2. Even though we cannot answer your second question definitively because it requires a determination of the type of contempt, the Mississippi Supreme Court has said, "[t]he power of the court to imprison in a civil contempt in order to coerce the performance of a decree is without limit because, as already said, the contemnor himself may end the sentence by performing the decree or by declaring his willingness to perform it, -and being released he proceeds so to do with costs, if within his power." *Masonite Corp. v. International Woodworkers of America, AFL-CIO*, 206 So. 2d 171, 179 (Miss. 1967).

Applicable Law and Discussion

Pursuant to Mississippi Code Annotated Section 7-5-25, this office is authorized to answer prospective questions of state law only and is not permitted to make factual determinations. Because your first question is a mixed question of fact and law, we are unable to answer it by official opinion. For general guidance, the Mississippi Supreme Court has repeatedly held that “[c]ontempts are neither wholly civil nor altogether criminal. And ‘it may not always be easy to classify a particular act as belonging to either one of these two classes. It may partake of the characteristics of both.’” *Donaldson v. Cotton*, 336 So. 3d 1099, 1109 (Miss. 2022) (internal citations omitted). The type of contempt is determined “by looking at the primary purpose of the contempt order. . . .” *Id.* at 1110 (internal citations and quotation marks omitted). In determining a contempt’s purpose, the court “should focus on the character of the sanction itself and not the intent of the court imposing the sanction.” *Id.* at 1108 (internal citations and quotation marks omitted). The court further stated:

If the primary purpose is to enforce the rights of private party litigants or to enforce compliance with a court order, the contempt is civil. One may be jailed or fined for civil contempt[;] however, the contemnor must be relieved of the penalty when he performs the required act. Criminal contempt penalties are designed to punish for past offenses[,] and they do not end when the contemnor has complied with the court order. Conduct directed against the court’s dignity and authority is criminal contempt. It involves an act “which tends to bring the court into disrepute or disrespect.”

Id. (internal citations omitted). Ultimately, “[t]he purpose of civil contempt is to compel compliance with the court’s orders, admonitions, and instructions, while the purpose of criminal contempt is to punish.” *Id.* at 1109 (internal citations and quotation marks omitted). Again, the type of contempt is a mixed question of fact and law that the court must determine on its own.

While we are unable by official opinion to determine whether the contempt about which you ask is civil or criminal, we refer you to the Mississippi Supreme Court’s position regarding imprisonment in civil contempt: “[t]he power of the court to imprison in a civil contempt in order to coerce the performance of a decree is without limit because, as already said, the contemnor himself may end the sentence by performing the decree or by declaring his willingness to perform it, -and being released he proceeds so to do with costs, if within his power.” *Masonite Corp.*, 206 So. 2d 171, 179 (Miss. 1967).

If this office may be of any further assistance to you, please do not hesitate to contact us.

Sincerely,

LYNN FITCH, ATTORNEY GENERAL

By: /s/ Abigail C. Overby

Abigail C. Overby
Special Assistant Attorney General