

**STATE OF TENNESSEE**

OFFICE OF THE  
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Opinion No. 02-126

Does Tenn. Code Ann. § 40-6-206 Prohibit Serving a 5-Year-Old Probation Violation Warrant

**QUESTION**

Whether Tenn. Code Ann. § 40-6-206 prohibits service of a probation violation warrant on a misdemeanant who absconded during the probationary period and could not be found until arrested more than five years after the probation violation warrant was issued.

**OPINION**

No. Tenn. Code Ann. § 40-6-206 applies to misdemeanor warrants in criminal prosecutions and requires that such warrants automatically terminate if not served, returned or quashed within five years from the date of their issuance. This statute does not apply to probation violation warrants.

**ANALYSIS**

This opinion concerns whether a probation violation warrant may be served on a defendant who was sentenced to supervised probation for a misdemeanor offense when the defendant absconded and could not be found until arrested for another offense over five years after the probation violation warrant was issued. Tenn. Code Ann. § 40-6-206, entitled, “Time of issuance and return--Misdemeanor cases,” provides:

Any process, warrant, precept or summons authorized to be issued by any of the judges or clerks of the court, in any criminal prosecution on behalf of the state, may be issued at any time and made returnable to any day of the term. In a misdemeanor case, if such a process, warrant, precept or summons has not been served, returned or quashed within five (5) years from the date of its issuance, such process, warrant, precept or summons shall be automatically terminated and removed from the records.

It is a primary rule of statutory construction that the intention of the legislature must prevail. *Worrall v. Kroger Co.*, 545 S.W.2d 736, 738 (Tenn. 1977); *Dunn v. Hackett*, 833 S.W.2d 78, 81 (Tenn. Crim.

App. 1992), *appeal denied* (May 4, 1992). The legislative intent must be determined from the plain language of the statute and should be construed in accordance with its ordinary meaning. *Dunn*, 833 S.W.2d at 81; *Montgomery v. Hoskins*, 432 S.W.2d 654, 655 (1968); *State v. Rollins*, 785 S.W.2d 129, 131 (Tenn. Crim. App. 1989).

The legislative history of Tenn. Code Ann. § 40-6-206 indicates that “this is a statute of limitations for misdemeanor processes. The bill was designed as a housecleaning measure to unclog the computers and rid the justice system of stale, unserved, **unadjudicated** cases.” *State v. Allen*, No. 02C01-9503-CR-00087, 1995 WL 764996, at \* 1 (Tenn. Crim. App. Dec. 28, 1995) (appeal denied Mar. 25, 1996) (emphasis added). This statute applies to warrants “in any criminal prosecution on behalf of the State.” Tenn. Code Ann. § 40-6-206. *Allen*, the only case found that discusses this statute, is illustrative. The defendant there was convicted of a second offense of driving under the influence of an intoxicant and sentenced to 90 days in a workhouse, with 45 days suspended. Defendant requested that his sentence be deferred until a future date. His request was granted, but he fled the jurisdiction and was not apprehended until over ten years after the *capias* was issued. The defendant challenged the trial court’s imposition of the sentence arguing that the warrant was void pursuant to Tenn. Code Ann. § 40-6-206. The Tennessee Court of Criminal Appeals held that the statute did not apply and affirmed the sentence imposed by the trial court.

Criminal prosecution has concluded when an accused is adjudicated guilty and is sentenced. This appellant has been prosecuted and convicted. Sentence was imposed. In the context of Tenn. Code Ann. § 40-6-206, criminal prosecution does not encompass warrants issued for execution of sentence after a defendant is convicted.

*Id.* The same reasoning applies here. A probation violation warrant is not a warrant in a “criminal prosecution on behalf of the state.” A defendant in violation of his probation has already been prosecuted, convicted and sentenced. Accordingly, Tenn. Code Ann. § 40-6-206 has no application to probation violation warrants.

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