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FINES AND SUMS IN RESTITUTION AS CONDITIONS OF PROBATION

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Shore v. Edmisten, ___ N.C. ___, decided September 1, 1976, reaffirms that Article IX, Sec. 7 of the N.C. Constitution requires a fine, whether imposed in a criminal case as a sentence or a condition of probation, and whether called a fine or merely a specified sum of money, to be paid to the county for the use of the public schools.

In thirty-four criminal actions tried in Guilford County the judgments included provisions that each defendant pay a fine (or a sum of money) to various state and local (primarily law enforcement) agencies. In a declaratory judgment sought by the Clerk of Court of Guilford County, Judge Ralph Walker held that the monetary judgments were all fines in fact (although some were labeled restitution and others were unlabeled), and must be credited to the county for the public school fund. One defendant, the City of Greensboro, appealed. The Supreme Court upheld the declaratory judgment in all but one instance.

In the thirty-fourth instance, a drug case, the judgment of the trial court provided for suspension of a sentence to confinement on condition that the defendant ". . . pay \$60.00 into the office of the Clerk . . . for the benefit of the Greensboro Police Department-Vice Division for money they spent on these drugs." The accompanying probation judgment stated that the defendant was to make ". . . reparation or restitution . . . in an amount to be determined by the Court: \$60.00," and a special condition of probation provided that restitution was to be disbursed to the "GPD-Vice Division." On these facts, the Supreme Court found that the \$60 penalty was not a fine, but restitution. The court found restitution to be authorized under G.S. 15-199(10) ("Make reparation or restitution to the aggrieved party for the damage or loss caused by his offense . . .") and also under G.S. 90-95.3

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(1975 Cum. Supp.) which provides: "When a person is convicted of an offense under this Article [N.C. Controlled Substances Act], the court may order him to make restitution to any law-enforcement agency for reasonable expenditures made in purchasing controlled substances from him or his agent as part of an investigation leading to his conviction." Restitution, of course, is authorized only as a condition of probation, not as part or all of a sentence.

The court stated, "In a case for prosecution for sale or possession of contraband we hold that it is proper to order reimbursement to a state or local agency as a condition for suspension of sentence or probation for any sum paid by its agents to the defendant in order to obtain evidence of the crime." The court also pointed out that when restitution is ordered it must be "to a specific aggrieved party and this party must be named in the judgment." Under this decision "aggrieved party" apparently includes a named law enforcement agency.

The opinion also points out that payment of money for "continued enforcement" of the criminal laws is not authorized as a condition of probation; such sums must come from the legislature, not the judiciary. Restitution may be used to reimburse a state or local agency only "where the offense charged results in particular damage or loss to it over and above its normal operating costs."

Finally, the opinion cautions that the trial record must contain support for the amount of money to be restored in a restitution case. The record and judgment should also specify that the money is being used to reimburse the agency for specific expenses, such as the cost of drugs or liquor purchased from the defendant.

This memo should be filed as a supplement to C. E. Hinsdale's paper on Conditions of Probation, which was presented to trial judges in April and June, 1976. That paper will be updated to include Shore v. Edmisten, and reissued to new judges.