



THE ATTORNEY GENERAL
OF TEXAS

151

AUSTIN 11, TEXAS

PRICE DANIEL
ATTORNEY GENERAL

February 21, 1952

Hon. R. L. Whitehead
Criminal District Attorney
Longview, Texas

Opinion No. V-1411

Attention: Hon. Paul Painter
Assistant

Re: Allowing a person to
make bond following
arrest for a violation
of probation under the
Adult Probation and
Parole Law pending
final decision.

Dear Sir:

We quote from your letter asking for an opinion of this office as follows:

"We would like to know if a person who has been found guilty of a felony and given a probated sentence is entitled to bond, at any time after he has been arrested under the provisions of Sec. 5, Art. 781B, C.C.P., (Adult Probation and Parole Law) for violation of the terms of his probation. More specifically, would a person convicted of a felony, probated under the Adult Probation and Parole Law, arrested as provided by said law, for violating the terms of said probation, and evidence produced for the revocation of said probation, be entitled to bond when and while the Court took the matter under advisement before rendering his decision?"

The Adult Probation and Parole Law, Article 781b, Vernon's Code of Criminal Procedure, is intended to supplement the existing procedures and facilities for punishment and rehabilitation of persons convicted of crime. It makes provision for persons convicted of certain offenses to be released on probation by the Court, under proper supervision and under conditions prescribed by the Court. The conditions of the probation are within the discretion of the Court.

We quote from Article 781b as follows:

"Section 1. The courts of the State of Texas having original jurisdiction of criminal actions, when it shall appear to the satisfaction of the court that the ends of justice and the best interests of the public as well as the defendant will be subserved thereby, shall have the power, after conviction or a plea of guilty for any crime or offense except murder, rape, and offenses against morals, decency, and chastity where the maximum punishment assessed the defendant does not exceed ten (10) years imprisonment, and where the defendant has not been previously convicted of a felony, to suspend the imposition or the execution of sentence and may place the defendant on probation for the maximum period of the sentence imposed or if no sentence has been imposed for the maximum period for which the defendant might have been sentenced, or impose a fine applicable to the offense committed and also place the defendant on probation as hereinafter provided. Any such person placed on probation shall be under the supervision of such court and a probation and parole officer serving such court as hereinafter provided.

"Sec. 3. Such court shall determine the terms and conditions of probation and may at any time during the period of probation alter or modify the conditions . . .

"Sec. 4. The period of probation shall be determined by such courts and may at any time be modified or terminated by such courts.

"Sec. 5. At any time during the period of probation such courts may issue a warrant for violation of any of the conditions of the probation and cause the defendant to be arrested. Any probation and parole officer, police officer or other officer with power of arrest may arrest such defendant without a warrant upon the request of the judge of such courts. A probationer so arrested may be detained in the county jail or other appropriate place of detention until he can be taken before the court.

Such probation and parole officer shall forthwith report such arrest and detention to such courts and submit in writing a report showing in what manner the probationer has violated his probation. Thereupon, the court shall cause the defendant to be brought before it and, after a hearing without a jury, may continue or revoke the probation and shall in such case proceed to deal with the case as if there had been no probation. . . . When he is notified that his probation is revoked for violation of the conditions of probation and he is called on to serve a jail or penitentiary sentence he may appeal the revocation." (Emphasis supplied.)

In Wilson v. State, 240 S.W.2d 774 (Tex. Crim. 1951), a case involving the right of a convict to a jury in a hearing on revocation of probation, the Court stated:

"When a court extends clemency under the statute, the relationship existing is, in a way, contractual -- that is, the court agrees with the convict that clemency by way of probation will be extended if he will keep and perform certain requirements and conditions, the violation of which will authorize the revocation of the probation. In this particular, there exists the similarity existing in conditional pardons.

"The convict surrenders no right, privilege, or consideration for the clemency extended. In accepting the clemency, he does so under the conditions upon which it is extended. Obviously, therefore, the proceeding to revoke probation is not a trial, as that term is used and contemplated by the Constitution in reference to criminal cases, and is not a proceeding required to be conducted as such a trial."

Based upon the holding of the Court in the above case, it is our opinion that until the time of an actual revocation of probation by the Court the disposition of the probationer is entirely within the Court's sound discretion. We agree with you that the probationer has no absolute right to a bond, but the Court may under its authority to provide the terms and conditions of the person's release authorize a bond if it so desires.

SUMMARY

Persons arrested for violation of probations under Article 781b, V.C.C.P., do not have the right to make bond pending determination by the Court as to a revocation of the probation, but the Court may, in its discretion, permit the probationer to make bond.

APPROVED:

Yours very truly,

E. Jacobson
Reviewing Assistant

PRICE DANIEL
Attorney General

Charles D. Mathews
First Assistant

By 
Ned McDaniel
Assistant

NMc:jmc