

1 February 1946

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ARIZONA ATTORNEY GENERAL

Mr. A. G. Walker, Warden
Arizona State Prison
Florence, A r i z o n a

Dear Mr. Walker:

We have examined that part of the judgment and sentence of Joe Montoya, No. A-6602, which reads as follows:

"IT IS THEREFORE ORDERED, ADJUDGED AND DECREED, and the judgment and sentence of the court is, that you Joe Montoya are guilty of Receiving the Earnings of Prostitute, a felony, as charged in the information filed December 6, 1945 and that you be punished therefor by the payment of a fine in the sum of Five Hundred Dollars, and that in default of the payment of said fine, you be committed to the State Prison at Florence, Arizona, at the rate of \$1.00 per day.

IT IS FURTHER ORDERED that the imposition of the sentence of imprisonment in this case be suspended for a period of five (5) years upon the condition that you violate no law.

Done in open court this 18th day of December, 1945."

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Section 43-4404, A.C.A. 1939, provides as follows:

"Any person who knowingly receives any money or valuable thing from the earnings of any female engaged in prostitution, shall be guilty of a felony and imprisoned for a term not exceeding ten (10) years and fined not less than five hundred dollars (\$500)."

Section 44-2234 states:

"A judgment that the defendant pay a fine may also direct that he be imprisoned until the fine be satisfied, but the judgment must specify the extent of the imprisonment, which must not exceed one (1) day for every dollar of the fine, nor extend in any case beyond

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the term for which the defendant might be sentenced to imprisonment for the offense of which he has been convicted. A judgment that the defendant shall pay a fine, with or without the alternative of imprisonment, shall constitute a lien in like manner as a judgment for money rendered in civil action."

After a consideration of the material part of the sentence and judgment above set forth, we are of the opinion that it is proper under the above statutory provisions. The penalties for receiving the earnings of a prostitute are imprisonment for a term not exceeding ten (10) years and a fine of not less than five hundred dollars (\$500). In this particular sentence the defendant was fined \$500 and, in default of the payment of the fine, was committed to the state prison at Florence at the rate of one dollar per day. This is in full compliance with the statute.

The suspension of the imposition of sentence of imprisonment for a period of five years, as contained in the last paragraph of said judgment and sentence, is a suspension of the imprisonment provided in Section 43-4404 and is not a suspension of the imprisonment on default of payment of the fine.

Very truly yours,

JOHN L. SULLIVAN
Attorney General

BURR SUTTER
Assistant Attorney General

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