



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 21, 1998

The Honorable James Warren Smith, Jr.
Frio County Attorney
Box 1
Pearsall, Texas 78061-3100

Letter Opinion No. 98-069

Re: Jurisdiction of juvenile court after
expiration of period of deferred prosecution
probation (RQ-1096)

Dear Mr. Smith:

You have asked this office whether, in effect, deferred prosecution probation pursuant to section 53.03 of the Family Code may be revoked on account of an offense or offenses committed after the expiration of the six month period of the probation. Analogizing section 53.03 to section 42.12 of the Code of Criminal Procedure, you argue that such revocation is not possible because, the period having expired with no action taken to revoke probation, the court has no further jurisdiction over the matter. We agree.

The facts, as we understand them, are as follows. A juvenile was placed on deferred prosecution probation pursuant to section 53.03 of the Family Code for six months, commencing on February 26, 1997. The probation period ended, apparently without incident, on or about August 26, 1997. On September 5, some ten days later, the juvenile was again taken into custody for public intoxication and evading arrest. The juvenile probation department, taking the view that the prior offense may still be prosecuted because jeopardy had not attached for it when the term of deferred prosecution probation began, wishes your office to move for adjudication of that offense. You demur.

Section 53.03(a) of the Family Code reads in relevant part:

[T]he probation officer or other designated officer of the court, subject to the direction of the juvenile court, may advise the parties *for a reasonable period of time not to exceed six months* concerning deferred prosecution and rehabilitation of a child. [Emphasis added.]

Commenting upon this provision, *Texas Juvenile Law*, by Professor Robert O. Dawson, the principal treatise in this area, notes:

The period for deferred prosecution is set by Section 53.03(a) at "a reasonable period of time not to exceed six months." *If deferred prosecution has been successful at the end of the six months, or lesser*

set period, the child must be discharged from probation. The case should be closed and any petition that has been filed should be dismissed. [Emphasis added.]

ROBERT O. DAWSON, TEXAS JUVENILE LAW 62 (4th ed. 1996). (Emphasis added.)

You analogize juvenile deferred prosecution with adult deferred adjudication, and note that there can be no revocation of adult probation if the probationary period has ended without the filing of a motion to revoke and the issuance of a capias to arrest. A clear statement of this principle is to be found in *Garza v. State*:¹

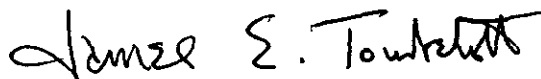
A trial court has jurisdiction to hear a motion and revoke probation after the expiration of the probationary period if the motion to revoke was filed and the capias for arrest issued prior to the expiration of the period. . . . The failure to timely file the motion and issue the capias deprives the court of jurisdiction, and jurisdictional matters may not be waived.

Concededly, there are distinctions between the adult and juvenile probationary schemes, most notably that jeopardy has not attached in the juvenile scheme. However, to read that distinction to mean that prosecution of the original offense is still possible after the expiration of the probationary period when the conduct which would arguably violate probation occurs after the end of the period would extend the period from "a reasonable period of time not to exceed six months" to one indefinite in duration. We cannot reconcile such a result with the statutory language. Accordingly, while your office may take whatever action you deem appropriate with regard to the offenses for which the juvenile was arrested on September 5, 1997, you may not move for adjudication of the offense for which the probation began on February 26, 1997.

S U M M A R Y

Deferred prosecution probation pursuant to section 53.03 of the Family Code may not be revoked on account of an offense or offenses committed after the expiration of the probationary period.

Yours very truly,



James E. Tourtelott
Assistant Attorney General
Opinion Committee

¹*Garza v. State*, 695 S.W.2d 726, 729 (Tex. App.--Dallas 1985) *aff'd*, 725 S.W. 256 (Tex. Crim. App. 1987).