CHAPTER 25

Judgment and Execution

ARTICLE 1

Conviction and Sentence

**SECTION 17‑25‑10.** No person shall be punished until legally convicted.

 No person shall be punished for an offense unless duly and legally convicted thereof in a court having competent jurisdiction of the cause and of the person.

HISTORY: 1962 Code Section 17‑551; 1952 Code Section 17‑551; 1942 Code Section 999; 1932 Code Section 999; Cr. P. ‘22 Section 85; Cr. C. ‘12 Section 79; Cr. C. ‘02 Section 52; G. S. 2452; R. S. 51.

CROSS REFERENCES

Constitutional provision that no conviction shall work corruption of blood or forfeiture of estate, see SC Const, Art I, Section 4.

The pretrial intervention program for certain criminal cases, see Section 17‑22‑10 et seq.

Library References

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Westlaw Topic No. 350H.

C.J.S. Criminal Law Sections 2080 to 2083.

NOTES OF DECISIONS

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1. In general

Sentencing, although often combined with admission of guilt in a hearing, is separate issue from guilt and distinct phase of criminal process. Easter v. State (S.C. 2003) 355 S.C. 79, 584 S.E.2d 117. Sentencing And Punishment 200

It is the duty of the trial judge to decide what the verdict meant, and, in reaching conclusion thereabout, it is judge’s duty to take into consideration not only the language of the verdict, but all the matters that occurred in the course of the trial. Wertz v. State (S.C. 2002) 349 S.C. 291, 562 S.E.2d 654. Criminal Law 893

Generally, in a criminal case, the trial court acquires subject matter jurisdiction by way of a valid indictment, and a court lacks subject matter jurisdiction to convict and sentence a defendant for an offense for which he was not indicted. State v. Johnston (S.C. 1999) 333 S.C. 459, 510 S.E.2d 423. Criminal Law 99

2. Review

Conviction of defendant was reversed where defendant was convicted by jury drawn pursuant to jury selection provision of Florence County magistrates court [Act No. 883, 1966 Stat. 2220] since such statute was found to be special legislation in violation of South Carolina Constitution Article 3 Section 34. State v. McIver (S.C. 1978) 270 S.C. 242, 241 S.E.2d 747.

**SECTION 17‑25‑20.** Punishment for felony when not specially provided.

 When no special punishment is provided for a felony, it shall, at the discretion of the court, be by one or more of the following modes, to wit: Confinement in the Penitentiary or in a workhouse or penal farm, when such institutions shall exist, for a period of not less than three months nor more than ten years, with such imposition of hard labor and solitary confinement as may be directed.

HISTORY: 1962 Code Section 17‑552; 1952 Code Section 17‑552; 1942 Code Section 1034; 1932 Code Section 1034; Cr. P. ‘22 Section 124; Cr. C. ‘12 Section 103; Cr. C. ‘02 Section 76; G. S. 2614; R. S. 76; 1865 (13) 406; 1869 (14) 175.

CROSS REFERENCES

Provision relating to establishment of a classification system based on maximum term of imprisonment, see Section 24‑26‑60.

Right against cruel, unusual, or corporal punishment, see SC Const, Art I, Section 15.

Library References

Sentencing and Punishment 30.

Westlaw Topic No. 350H.

C.J.S. Criminal Law Sections 1996, 2008.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Assault and Battery Section 16, Sentence for Abhan.

LAW REVIEW AND JOURNAL COMMENTARIES

Annual Survey of South Carolina Law: Criminal Law: Misprision of a Felony. 33 S.C. L. Rev. 65, August 1981.

Capital Punishment in South Carolina: The End of an Era. 24 S.C. L. Rev. 762.

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1. In general

Applied in State v McAdams (1932) 167 SC 405, 166 SE 405. Allen v MacDougall (1967, DC SC) 267 F Supp 837.

For additional related cases, see State v Cole (1822) 1; as to cumulative sentences, State v McKellar (1910) 85 SC 236, 67 SE 314. State v Sanders (1904) 68 SC 192, 47 SE 55. State v Williamson (1903) 65 SC 242, 43 SE 671. State v Reeder (1905) 72 SC 223, 51 SE 702. State v Norris (1903) 65 SC 287, 43 SE 791. State v Gadsden (1905) 70 SC 430, 50 SE 16. State v Williams (1907) 76 SC 135, 56 SE 783.

The punishment for grand larceny is not particularly prescribed by statute. Thus, it falls within the terms of this section [Code 1962 Section 17‑552]. State v Huffstetler (1948) 213 SC 319, 49 SE2d 585. State v Alexander (1956) 230 SC 195, 95 SE2d 160. State v Mayfield (1959) 235 SC 11, 109 SE2d 716, cert den 363 US 846, 4 L Ed 2d 1728, 80 S Ct 1616 and reh den 364 US 857, 5 L Ed 2d 81, 81 S Ct 36.

Where no special punishment is provided for a misdemeanor, the sentence must not exceed ten years. State v. Storgee (S.C. 1982) 277 S.C. 412, 288 S.E.2d 397.

Twenty‑year sentence was proper where defendant was convicted of both burglary, with jury recommending mercy, and assault of high and aggravated nature, since maximum of ten years could have been imposed for assault plus any number of years less than life for burglary, making aggregate of sentences which might have been imposed far beyond that imposed by trial judge. State v. Mallory (S.C. 1978) 270 S.C. 519, 242 S.E.2d 693.

Sentence imposed was within maximum statutory limit under Section 17‑25‑20, where appellant convicted of grand larceny was sentenced to serve 10 years, suspended upon service of 9 years with 5 years probation. Kneece v. State (S.C. 1977) 269 S.C. 177, 236 S.E.2d 746. Larceny 88

Sentence to a term of 5 years was within statutory limits and there was no abuse of discretion where trial judge made inquiry as to degree of participation of appellant and concluded that he was the “prime movement” in the crime of which he was convicted. State v. Dozier (S.C. 1974) 263 S.C. 267, 210 S.E.2d 225.

A sentence of ten years is within the limits prescribed by law for the offense of assault and battery of a high and aggravated nature. State v. Hill (S.C. 1970) 254 S.C. 321, 175 S.E.2d 227.

A sentence of nine years and six months for grand larceny imposed as prescribed by this section [Code 1962 Section 17‑552] is not so severe as to show abuse of discretion of the court. State v. Hurt (S.C. 1948) 212 S.C. 461, 48 S.E.2d 313.

A sentence of fifteen years for highway robbery was held excessive in view of this section [Code 1962 Section 17‑552] and Code 1962 Section 17‑553. State v. Edwards (S.C. 1923) 127 S.C. 116, 120 S.E. 490.

A sentence of fifteen years for arson was held illegal in view of this section [Code 1962 Section 17‑552] and a section of the Code formerly in effect which provided for punishment for arson on verdict of guilty of arson with recommendation for mercy. State v. Collins (S.C. 1923) 125 S.C. 267, 118 S.E. 423.

Where provision is made for punishment of accused, convicted of arson in situation where verdict is accompanied by recommendation for mercy, by imprisonment in the county jail or at hard labor in the Penitentiary or on the public highways in the discretion of the court, the effect of the act defining such punishment is to place the matter of punishment under the regulations of this section [Code 1962 Section 17‑552]. State v. Collins (S.C. 1923) 125 S.C. 267, 118 S.E. 423.

2. Constitutional issues

Maximum sentence imposed under this section [Code 1962 Section 17‑552] for making obscene phone calls is not so excessive and disproportionate as to constitute cruel and unusual punishment prohibited by the Eighth Amendment. Wood v. State of S. C. (C.A.4 (S.C.) 1973) 483 F.2d 149.

The procedure in South Carolina for sentencing defendants convicted of the crime of receiving stolen goods is not in violation of the Eighth Amendment and Fourteenth Amendment of the Constitution of the United States or SC Const, Art 1, Sections 5 (now Art 1, Section 3) and 19 (now Art 1, Section 15). State v. Fogle (S.C. 1971) 256 S.C. 149, 181 S.E.2d 483. Constitutional Law 4713; Sentencing And Punishment 206

Sentencing a woman to 30 months’ hard labor does not constitute cruel or unreasonable punishment. State v. Huffstetler (S.C. 1948) 213 S.C. 319, 49 S.E.2d 585.

3. Construction and application

Code 1962 Section 17‑553, dealing with lesser crimes, permits a sentence to be imposed either by fine or imprisonment or both. The authority to impose both fine and imprisonment under that section, however, must be exercised in any event so that the sentence imposed under its provisions, including any fine, does not exceed the maximum punishment under this section [Code 1962 Section 17‑552]. State v Hill (1971) 254 SC 321, 175 SE2d 227. State v Fogle (1971) 256 SC 149, 256 SE2d 483.

The sentence to be imposed under Code 1962 Section 17‑553 is left to the discretion of the trial court, and may be either by fine or imprisonment or both. However, the maximum sentence which may be imposed in the exercise of such discretion is controlled by the provisions of this section [Code 1962 Section 17‑552]. This section [Code 1962 Section 17‑552] limits the maximum punishment for a felony, falling within its provisions, to a period of ten years. Code 1962 Section 17‑553 refers to the punishment for misdemeanors and leaves the sentence within the discretion of the court. When the two sections are construed together, it seems clear that a sentence under Code 1962 Section 17‑553 for a misdemeanor cannot exceed the maximum sentence permitted under this section [Code 1962 Section 17‑552] for a felony. Certainly the legislature did not intend to permit a greater maximum punishment for the lesser offenses. State v Hill (1970) 254 SC 321, 175 SE2d 227. State v Fogle (1971) 256 SC 149, 181 SE2d 483.

The trial court did not err in sentencing a defendant, who was convicted of second degree criminal sexual conduct with a minor under Section 16‑3‑655 (which does not specify a maximum penalty), to 20 years imprisonment even though Section 17‑25‑20 provides a maximum penalty of 10 years for a felony for which the legislature has failed to provide another sentence, since Section 16‑3‑653 provides that second degree criminal sexual conduct is punishable by imprisonment for up to 20 years, and the clear intent of the legislature was to read Sections 16‑3‑655 and 16‑3‑653, statutes within the same act, in conjunction. State v. Outlaw (S.C.App. 1991) 304 S.C. 347, 404 S.E.2d 516, reversed 307 S.C. 177, 414 S.E.2d 147.

This section [Code 1962 Section 17‑552], dealing with felonies, does not permit the imposition of a fine, but places the maximum imprisonment at ten years. Therefore, the maximum confinement under Code 1962 Section 17‑553 cannot exceed a period of ten years. State v. Fogle (S.C. 1971) 256 S.C. 149, 181 S.E.2d 483.

There is no statute which prescribes a specific punishment for assault and battery of a high and aggravated nature and the sentence for such offense is determined under the provisions of Code 1962 Section 17‑553, which must be construed in conjunction with this section [Code 1962 Section 17‑552]. State v. Hill (S.C. 1970) 254 S.C. 321, 175 S.E.2d 227.

Under statutory provision authorizing sentence as is conformable to common usage and practice in state according to nature of offense, in case of legal conviction when no punishment is provided, must be construed in conjunction with provision for confinement for period not less than three months nor more than ten years, in case of felony when no special punishment is provided. Code 1952, Sections 17‑552, 17‑553. State v. Self (S.C. 1954) 225 S.C. 267, 82 S.E.2d 63. Sentencing And Punishment 11

4. Review

Where the sentence is illegal but the conviction legal, the conviction may be sustained and the case remanded for a legal sentence. State v Collins (1923) 125 SC 267, 118 SE 423. State v Baker (1900) 58 SC 111, 36 SE 501.

The Supreme Court has no jurisdiction to correct a sentence alleged to be excessive when it is within the limits prescribed by law. State v. Fogle (S.C. 1971) 256 S.C. 149, 181 S.E.2d 483.

**SECTION 17‑25‑30.** Sentence when no punishment is provided.

 In cases of legal conviction when no punishment is provided by statute the court shall award such sentence as is conformable to the common usage and practice in this State, according to the nature of the offense, and not repugnant to the Constitution.

HISTORY: 1962 Code Section 17‑553; 1952 Code Section 17‑553; 1942 Code Section 1038; 1932 Code Section 1038; Cr. P. ‘22 Section 127; Cr. C. ‘12 Section 105; Cr. C. ‘02 Section 78; G. S. 2653; R. S. 78.

CROSS REFERENCES

Constitutional provision as to cruel and unusual punishments, see SC Const, Art I, Section 15.

Imprisonment for debt, see SC Const, Art I, Section 19.

Provision relating to establishment of a classification system based on maximum term of imprisonment, see Section 24‑26‑60.

Punishment for conspiracy, see Section 16‑17‑410.

Library References

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Westlaw Topic No. 350H.

C.J.S. Criminal Law Sections 1996, 2008.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Assault and Battery Section 16, Sentence for Abhan.

S.C. Jur. Extortion, Blackmail, and Threats Section 11, Sentence and Punishment.

LAW REVIEW AND JOURNAL COMMENTARIES

Annual Survey of South Carolina Law: Criminal Law: Misprision of a Felony. 33 S.C. L. Rev. 65, August 1981.

Sentencing. 24 S.C. L. Rev. 523.

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1. In general

Formerly, the punishment imposed under this section [Code 1962 Section 17‑553] for conspiracy to commit a crime might exceed the penalty provided by statute for the completed offense. State v Ferguson (1952) 221 SC 300, 70 SE2d 355, cert den 344 US 830, 97 L Ed 646, 73 S Ct 35. State v McIntire (1952) 221 SC 504, 71 SE2d 410.

Defendant convicted of high and aggravated breach of the peace could be sentenced to 10 years’ imprisonment, suspended upon the service of three years’ imprisonment, plus three years’ probation, where defendant had been prosecuted in circuit court due to aggravated nature of offense; general sentencing statute applied, since statute permitting magistrates to punish “all breaches of the peace” with a maximum of 30 days and $500 fine did not apply once defendant was “waived up” to circuit court. State v. Simms (S.C. 2015) 412 S.C. 590, 774 S.E.2d 445, rehearing denied. Disorderly Conduct 151

Assault with intent to kill is a misdemeanor, and since the General Assembly has not provided a specific punishment for such crime, the maximum punishment under Section 17‑25‑30 is ten years. State v. Mims (S.C. 1985) 286 S.C. 553, 335 S.E.2d 237. Assault And Battery 100; Criminal Law 27

Twenty‑year sentence was proper where defendant was convicted of both burglary, with jury recommending mercy, and assault of high and aggravated nature, since maximum of ten years could have been imposed for assault plus any number of years less than life for burglary, making aggregate of sentences which might have been imposed far beyond that imposed by trial judge. State v. Mallory (S.C. 1978) 270 S.C. 519, 242 S.E.2d 693.

Sentence was properly imposed under Code 1962 Section 16‑93.1, rather than under this section [Code 1962 Section 17‑553], where the crime occurred approximately nine days after Code 1962 Section 16‑93.1 became effective. State v. Tessnear (S.C. 1971) 257 S.C. 290, 185 S.E.2d 611.

The law in effect at the time the crime was committed controls the imposition of sentence. State v. Tessnear (S.C. 1971) 257 S.C. 290, 185 S.E.2d 611.

A sentence of ten years is within the limits prescribed by law for the offense of assault and battery of a high and aggravated nature. State v. Hill (S.C. 1970) 254 S.C. 321, 175 S.E.2d 227.

Applied in State v. Cunningham (S.C. 1969) 253 S.C. 388, 171 S.E.2d 159.

No specific punishment being provided by statute either for resisting an officer or for aggravated assault and battery, the sentence upon conviction of either offense is, by this section [Code 1962 Section 17‑553], left to the discretion of the trial court. State v. Hollman (S.C. 1958) 232 S.C. 489, 102 S.E.2d 873.

Whether violation of the provisions of Code 1962 Section 65‑1270 is punishable under Code 1962 Section 4‑107 or under this section [Code 1962 Section 17‑553] would not be decided, where the sentence that had been imposed was within the court’s power under either. State v. Conally (S.C. 1955) 227 S.C. 507, 88 S.E.2d 591.

A sentence of two years on first offense of unlawful manufacture of alcoholic liquors, although somewhat harsh, was not excessive. State v. Hall (S.C. 1954) 224 S.C. 546, 80 S.E.2d 239.

Cited in State v. Pulley (S.C. 1950) 216 S.C. 552, 59 S.E.2d 155.

Appellant conducted a retail liquor store and took liquor from his liquor store, required by law to be closed at sundown, and placed it in the office of his grocery store which he kept open until midnight. Upon conviction therefor, he received eighteen months imprisonment with half suspended. It was held that such sentence did not violate this section [Code 1962 Section 17‑553]. State v. Brandon (S.C. 1947) 210 S.C. 495, 43 S.E.2d 449.

The court did not err in sentencing the defendant under authority of this section [Code 1962 Section 17‑553], on conviction for an aggravated assault and battery, to imprisonment without the option of paying a fine. State v. Charles (S.C. 1917) 107 S.C. 418, 93 S.E. 136.

Where accused is indicted under the common law and is sentenced under this section [Code 1962 Section 17‑553], he cannot question the constitutionality of another act relating to the offense for which he was indicted and sentenced, and his exceptions to the refusal of the court to quash the indictment, on the ground that the act is unconstitutional, present only speculative questions which the court on appeal will not consider. State v. Dalby (S.C. 1910) 86 S.C. 367, 68 S.E. 633. Criminal Law 1134.26

A sentence imposed under the authority of this section [Code 1962 Section 17‑553] is wholly within the discretion of the court. State v. Dalby (S.C. 1910) 86 S.C. 367, 68 S.E. 633.

2. Constitutional issues

The procedure in South Carolina for sentencing defendants convicted of the crime of receiving stolen goods is not in violation of the Eighth Amendment and Fourteenth Amendment of the Constitution of the United States or SC Const, Art 1, Sections 5 (now Art 1, Section 3) and 19 (now Art 1, Section 15). State v. Fogle (S.C. 1971) 256 S.C. 149, 181 S.E.2d 483. Constitutional Law 4713; Sentencing And Punishment 206

A ten‑year sentence for assault and battery with intent to kill, to commence after the service of a two‑year sentence which defendant is in the process of serving, does not amount to cruel and unusual punishment and does not violate this section [Code 1962 Section 17‑553]. State v. King (S.C. 1952) 222 S.C. 108, 71 S.E.2d 793. Homicide 1569; Sentencing And Punishment 631; Sentencing And Punishment 1508

Sentence of nine years and six months for grand larceny is not so severe as to be repugnant to the Constitution. State v. Hurt (S.C. 1948) 212 S.C. 461, 48 S.E.2d 313.

3. Construction and application

This section [Code 1962 Section 17‑553], dealing with lesser crimes, permits a sentence to be imposed either by fine or imprisonment or both. The authority to impose both fine and imprisonment under this section [Code 1962 Section 17‑553], however, must be exercised in any event so that the sentence imposed under its provisions, including any fine, does not exceed the maximum punishment under Code 1962 Section 17‑552. State v Hill (1970) 254 SC 321, 175 SE2d 227; State v Fogle (1971) 256 SC 149, 181 SE2d 483.

The sentence to be imposed under this section [Code 1962 Section 17‑553] is left to the discretion of the trial court, and may be either by fine or imprisonment or both. However, the maximum sentence which may be imposed in the exercise of such discretion is controlled by the provisions of Code 1962 Section 17‑552. That section limits the maximum punishment for a felony, falling within its provisions, to a period of ten years. This section [Code 1962 Section 17‑553] refers to the punishment for misdemeanors and leaves the sentence within the discretion of the court. When the two sections are construed together, it seems clear that a sentence under this section [Code 1962 Section 17‑553] for a misdemeanor cannot exceed the maximum sentence permitted under Code 1962 Section 17‑552 for a felony. Certainly the legislature did not intend to permit a greater maximum punishment for the lesser offenses. State v Hill (1970) 254 SC 321, 175 SE2d 227. State v Fogle (1971) 256 SC 149, 181 SE2d 483.

Code 1962 Section 17‑552, dealing with felonies, does not permit the imposition of a fine, but places the maximum imprisonment at ten years. Therefore, the maximum confinement under this section [code 1962 Section 17‑553] cannot exceed a period of ten years. State v. Fogle (S.C. 1971) 256 S.C. 149, 181 S.E.2d 483.

There is no statute which prescribes a specific punishment for the crime of receiving stolen goods and the sentencing for such offense is determined under the provisions of this section [Code 1962 Section 17‑553], which must be construed in connection with Code 1962 Section 17‑552. State v. Fogle (S.C. 1971) 256 S.C. 149, 181 S.E.2d 483.

There is no statute which prescribes a specific punishment for assault and battery of a high and aggravated nature and the sentence for such offense is determined under the provisions of this section [Code 1962 Section 17‑553], which must be construed in conjunction with the preceding Code 1962 Section 17‑552. State v. Hill (S.C. 1970) 254 S.C. 321, 175 S.E.2d 227.

Under statutory provision authorizing sentence as is conformable to common usage and practice in state according to nature of offense, in case of legal conviction when no punishment is provided, must be construed in conjunction with provision for confinement for period not less than three months nor more than ten years, in case of felony when no special punishment is provided. Code 1952, Sections 17‑552, 17‑553. State v. Self (S.C. 1954) 225 S.C. 267, 82 S.E.2d 63. Sentencing And Punishment 11

In prosecution for assault and battery with intent to kill, where instrument used in striking plaintiff was in doubt, defendant should not have been sentenced under Code 1962 Section 16‑333, but under this section [Code 1962 Section 17‑553] construed in conjunction with Code 1962 Section 17‑552. State v. Self (S.C. 1954) 225 S.C. 267, 82 S.E.2d 63.

It applies to prosecution of a bridge company for failure to keep its bridge in proper condition as required by Code 1962 Section 33‑769. State v. Charleston Bridge Co. (S.C. 1919) 113 S.C. 116, 101 S.E. 657.

4. Review

A determination of whether a defendant was convicted and sentenced for a crime for which he was not indicted involves a question of subject matter jurisdiction and, therefore, can be raised for the first time on appeal. State v. Johnston (S.C. 1999) 333 S.C. 459, 510 S.E.2d 423. Criminal Law 1032(7)

Although defendant failed to preserve issue of excessive sentence for direct appeal by failing to raise it to trial court, she would not be required to seek relief through Post Conviction Relief Act (PCR), where State conceded that trial court imposed sentence that exceeded statutory maximum, and there was threat that defendant would remain incarcerated beyond legal sentence due to additional time it would take to pursue PCR remedy. State v. Johnston (S.C. 1999) 333 S.C. 459, 510 S.E.2d 423. Criminal Law 1042.3(1)

The Supreme Court has no jurisdiction to correct a sentence alleged to be excessive when it is within the limits prescribed by law. State v. Fogle (S.C. 1971) 256 S.C. 149, 181 S.E.2d 483.

Where a 30‑month sentence was imposed pursuant to this section [Code 1962 Section 17‑553] and was within limits of its provisions, Supreme Court had no jurisdiction to change the sentence alleged to be excessive. State v. Bass (S.C. 1963) 242 S.C. 193, 130 S.E.2d 481, certiorari denied 84 S.Ct. 71, 375 U.S. 828, 11 L.Ed.2d 59.

Where a six‑year sentence was imposed pursuant to this section [Code 1962 Section 17‑553] and was within the limits of its provisions the Supreme Court had no jurisdiction to change the sentence. Shelton v. State (S.C. 1962) 239 S.C. 535, 123 S.E.2d 867.

The Supreme Court has no jurisdiction on appeal to correct a sentence alleged to be excessive when it is within the limits prescribed by law and in the discretion of the trial judge, and is not the result of partiality, prejudice, oppression or corrupt motive. State v. Hall (S.C. 1954) 224 S.C. 546, 80 S.E.2d 239. Criminal Law 1184(4.1)

The Supreme Court will not interfere, where there was no abuse of discretion, with the circuit court sentence made under the authority of this section [Code 1962 Section 17‑553], unless it is made to appear that the fine imposed is such as to shock the conscience of the court or virtually amounts to confiscation of the defendant’s property. State v. Charleston Bridge Co. (S.C. 1920) 115 S.C. 233, 105 S.E. 349. Criminal Law 1156.10

**SECTION 17‑25‑45.** Life sentence for person convicted for certain crimes.

 (A) Notwithstanding any other provision of law, except in cases in which the death penalty is imposed, upon a conviction for a most serious offense as defined by this section, a person must be sentenced to a term of imprisonment for life without the possibility of parole if that person has either:

 (1) one or more prior convictions for:

 (a) a most serious offense; or

 (b) a federal or out‑of‑state conviction for an offense that would be classified as a most serious offense under this section; or

 (2) two or more prior convictions for:

 (a) a serious offense; or

 (b) a federal or out‑of‑state conviction for an offense that would be classified as a serious offense under this section.

 (B) Notwithstanding any other provision of law, except in cases in which the death penalty is imposed, upon a conviction for a serious offense as defined by this section, a person must be sentenced to a term of imprisonment for life without the possibility of parole if that person has two or more prior convictions for:

 (1) a serious offense;

 (2) a most serious offense;

 (3) a federal or out‑of‑state offense that would be classified as a serious offense or most serious offense under this section; or

 (4) any combination of the offenses listed in items (1), (2), and (3) above.

 (C) As used in this section:

 (1) “Most serious offense” means:

|  |  |  |
| --- | --- | --- |
|  |  |  |
|   | 16‑1‑40 | Accessory, for any offense enumerated in this item |
|   | 16‑1‑80 | Attempt, for any offense enumerated in this item |
|   | 16‑3‑10 | Murder |
|   | 16‑3‑29 | Attempted Murder |
|   | 16‑3‑50 | Voluntary manslaughter |
|   | 16‑3‑85(A)(1) | Homicide by child abuse |
|   | 16‑3‑85(A)(2) | Aiding and abetting homicide by child abuse |
|   | 16‑3‑210 | Lynching, First degree |
|   | 16‑3‑210(B) | Assault and battery by mob, First degree |
|   | 16‑3‑620 | Assault and battery with intent to kill |
|   | 16‑3‑652 | Criminal sexual conduct, First degree |
|   | 16‑3‑653 | Criminal sexual conduct, Second degree |
|   | 16‑3‑655 | Criminal sexual conduct with minors, except where evidence presented at the criminal proceeding and the court, after the conviction, makes a specific finding on the record that the conviction obtained for this offense resulted from consensual sexual conduct where the victim was younger than the actor, as contained in Section 16‑3‑655(3) |
|   | 16‑3‑656 | Assault with intent to commit criminal sexual conduct, First and Second degree |
|   | 16‑3‑910 | Kidnapping |
|   | 16‑3‑920 | Conspiracy to commit kidnapping |
|   | 16‑3‑1075 | Carjacking |
|   | 16‑3‑2020 | Trafficking in persons |
|   | 16‑11‑110(A) | Arson, First degree |
|   | 16‑11‑311 | Burglary, First degree |
|   | 16‑11‑330(A) | Armed robbery |
|   | 16‑11‑330(B) | Attempted armed robbery |
|   | 16‑11‑540 | Damaging or destroying building, vehicle, or other property by means of explosive incendiary, death results |
|   | 24‑13‑450 | Taking of a hostage by an inmate |
|   | 25‑7‑30 | Giving information respecting national or state defense to foreign contacts during war |
|   | 25‑7‑40 | Gathering information for an enemy |
|   | 43‑35‑85(F) | Abuse or neglect of a vulnerable adult resulting in death |
|   | 55‑1‑30(3) | Unlawful removing or damaging of airport facility or equipment when death results |
|   | 56‑5‑1030(B)(3) | Interference with traffic‑control devices or railroad signs or signals prohibited when death results from violation |
|   | 58‑17‑4090 | Obstruction of railroad, death results. |

 (2) “Serious offense” means:

 (a) any offense which is punishable by a maximum term of imprisonment for thirty years or more which is not referenced in subsection (C)(1);

 (b) those felonies enumerated as follows:

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| --- | --- | --- |
|  |  |  |
|   | 16‑3‑220 | Lynching, Second degree |
|   | 16‑3‑210(C) | Assault and battery by mob, Second degree |
|   | 16‑3‑600(B) | Assault and battery of a high and aggravated nature |
|   | 16‑3‑810 | Engaging child for sexual performance |
|   | 16‑9‑220 | Acceptance of bribes by officers |
|   | 16‑9‑290 | Accepting bribes for purpose of procuring public office |
|   | 16‑11‑110(B) | Arson, Second degree |
|   | 16‑11‑312(B) | Burglary, Second degree |
|   | 16‑11‑380(B) | Theft of a person using an automated teller machine |
|   | 16‑13‑210(1) | Embezzlement of public funds |
|   | 16‑13‑230(B)(3) | Breach of trust with fraudulent intent |
|   | 16‑13‑240(1) | Obtaining signature or property by false pretenses |
|   | 16‑25‑20(B) | Domestic violence, First degree |
|   | 16‑25‑65 | Domestic violence of a high and aggravated nature |
|   | 38‑55‑540(3) | Insurance fraud |
|   | 44‑53‑370(e) | Trafficking in controlled substances |
|   | 44‑53‑375(C) | Trafficking in ice, crank, or crack cocaine |
|   | 44‑53‑445(B)(1)&(2) | Distribute, sell, manufacture, or possess with intent to distribute controlled substances within proximity of school |
|   | 56‑5‑2945 | Causing death by operating vehicle while under influence of drugs or alcohol; and |

 (c) the offenses enumerated below:

|  |  |  |
| --- | --- | --- |
|  |  |  |
|   | 16‑1‑40 | Accessory before the fact for any of the offenses listed in subitems (a) and (b) |
|   | 16‑1‑80 | Attempt to commit any of the offenses listed in subitems (a) and (b) |
|   | 43‑35‑85(E) | Abuse or neglect of a vulnerable adult resulting in great bodily injury. |

 (3) “Conviction” means any conviction, guilty plea, or plea of nolo contendere.

 (D) Except as provided in this subsection or subsection (E), no person sentenced pursuant to this section shall be eligible for early release or discharge in any form, whether by parole, work release, release to ameliorate prison overcrowding, or any other early release program, nor shall they be eligible for earned work credits, education credits, good conduct credits, or any similar program for early release. A person is eligible for work release if the person is sentenced for voluntary manslaughter (Section 16‑3‑50), kidnapping (Section 16‑3‑910), carjacking (Section 16‑3‑1075), burglary in the second degree (Section 16‑11‑312(B)), armed robbery (Section 16‑11‑330(A)), or attempted armed robbery (Section 16‑11‑330(B)), the crime did not involve any criminal sexual conduct or an additional violent crime as defined in Section 16‑1‑60, and the person is within three years of release from imprisonment.

 (E) For the purpose of this section only, a person sentenced pursuant to this section may be paroled if:

 (1) the Department of Corrections requests the Department of Probation, Parole and Pardon Services to consider the person for parole; and

 (2) the Department of Probation, Parole and Pardon Services determines that due to the person’s health or age he is no longer a threat to society; and

 (a) the person has served at least thirty years of the sentence imposed pursuant to this section and has reached at least sixty‑five years of age; or

 (b) the person has served at least twenty years of the sentence imposed pursuant to this section and has reached at least seventy years of age; or

 (c) the person is afflicted with a terminal illness where life expectancy is one year or less; or

 (d) the person can produce evidence comprising the most extraordinary circumstances.

 (F) For the purpose of determining a prior or previous conviction under this section and Section 17‑25‑50, a prior or previous conviction shall mean the defendant has been convicted of a most serious or serious offense, as may be applicable, on a separate occasion, prior to the instant adjudication. There is no requirement that the sentence for the prior or previous conviction must have been served or completed before a sentence of life without parole can be imposed under this section.

 (G) The decision to invoke sentencing under this section is in the discretion of the solicitor.

 (H) Where the solicitor is required to seek or determines to seek sentencing of a defendant under this section, written notice must be given by the solicitor to the defendant and defendant’s counsel not less than ten days before trial.

HISTORY: 1982 Act No. 358, Sections 1, 2; 1986 Act No. 462, Section 37; 1995 Act No. 83, Section 18; 1997 Act No. 113, Section 4; 1997 Act No. 136, Section 4; 1998 Act No. 402, Section 3; 2002 Act No. 176, Sections 1, 2, eff March 5, 2002; 2006 Act No. 342, Section 9, eff July 1, 2006; 2007 Act No. 72, Section 3, eff June 13, 2007; 2010 Act No. 273, Section 20, eff June 2, 2010; 2010 Act No. 289, Section 7, eff June 11, 2010; 2015 Act No. 7 (S.196), Section 6.C, eff April 2, 2015; 2015 Act No. 58 (S.3), Pt II, Section 7, eff June 4, 2015.

Code Commissioner’s Note

Section 16‑11‑540, referenced in subsection (C)(1), was repealed by 2000 Act No. 237. Section 16‑3‑220, referenced in subsection (C)(2)(b), and Section 16‑3‑620, referenced in subsection (C)(1), were repealed by 2010 Act No. 273.

Editor’s Note

2010 Act No. 273, Section 7.C, provides:

“Wherever in the 1976 Code of Laws reference is made to the common law offense of assault and battery of a high and aggravated nature, it means assault and battery with intent to kill, as contained in repealed Section 16‑3‑620, and, except for references in Section 16‑1‑60 and Section 17‑25‑45, wherever in the 1976 Code reference is made to assault and battery with intent to kill, it means attempted murder as defined in Section 16‑3‑29.”

Effect of Amendment

2015 Act No. 7, Section 6.C, in (C)(1), substituted “16‑3‑2020” for 16‑3‑930”.

2015 Act No. 58, Section 7, in (C)(2)(b), added 16‑25‑20(B), domestic violence, first degree, and 16‑25‑65, domestic violence of a high and aggravated nature.

Library References

Sentencing and Punishment 1250 to 1285, 1400.

Westlaw Topic No. 350H.

C.J.S. Criminal Law Sections 2296, 2298 to 2300, 2302 to 2306, 2310 to 2311.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Assault and Battery Section 10, Degrees.

S.C. Jur. Assault and Battery Section 19, Sentence for Assault and Battery With Intent to Kill.

S.C. Jur. Burglary Section 7, Punishment.

S.C. Jur. Burglary Section 9, Punishment.

S.C. Jur. Constitutional Law Section 31, Executive‑ Judicial Conflicts.

S.C. Jur. Constitutional Law Section 80, Criminal Proceedings.

S.C. Jur. Constitutional Law Section 103, Retroactive Laws that Are Not Ex Post Facto.

LAW REVIEW AND JOURNAL COMMENTARIES

Parity in South Carolina Recidivist Sentencing: State v. Gordon, 56 S.C. L. Rev. 723 (Summer 2005).

United States Supreme Court Annotations

Sentencing, mandatory sentence of life without parole for juvenile convicted of homicide violates Eighth Amendment, see Miller v. Alabama, 2012, 132 S.Ct. 2455, 567 U.S. 460, 183 L.Ed.2d 407, on remand 2013 Ark. 175, 426 S.W.3d 906, on remand 148 So.3d 78. Homicide 1572; Sentencing and Punishment 1607

Sentencing, prior convictions, armed career offenders, violent felonies, failure to report offense, see Chambers v. U.S., 2009, 129 S.Ct. 687, 555 U.S. 122, 172 L.Ed.2d 484, on remand 318 Fed.Appx. 433, 2009 WL 922496.

Attorney General’s Opinions

Discussion of the authority of a magistrate to set bond for a defendant who is charged with, or has prior convictions for, several offenses classified as serious or most serious offenses under Section 17‑25‑45. S.C. Op.Atty.Gen. (Oct. 8, 2013) 2013 WL 5651552.

NOTES OF DECISIONS

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1. In general

Sentence of life without possibility of parole (LWOP) was mandated for defendant’s conviction for armed robbery pursuant to recidivist statute imposing life sentence for certain offenses, where at time of defendant’s armed robbery conviction, defendant had already been convicted, on a separate occasion, of the most serious offenses of murder and armed robbery. State v. Benjamin (S.C. 2003) 353 S.C. 441, 579 S.E.2d 289, habeas corpus dismissed 2008 WL 3411733, appeal dismissed 301 Fed.Appx. 240, 2008 WL 4964018, certiorari denied 129 S.Ct. 2769, 174 L.Ed.2d 275, habeas corpus dismissed 2012 WL 4903682. Sentencing And Punishment 1421

A capital sentencing jury should not be informed that a life without parole sentence does not necessarily mean the defendant will never be released from prison. State v. Shafer (S.C. 2002) 352 S.C. 191, 573 S.E.2d 796. Sentencing And Punishment 1780(3)

Once the state has proven a prior conviction that the state seeks to use under a sentence enhancement statute, the defendant has the burden of proving it is constitutionally defective or otherwise invalid by a preponderance of the evidence. State v. Payne (S.C.App. 1998) 332 S.C. 266, 504 S.E.2d 335. Sentencing And Punishment 1378; Sentencing And Punishment 1380(2)

Code 1962 Sections 17‑553.1 to 17‑553.3, inclusive, are the codification of a recidivist statute prescribing and making mandatory the punishment for persons convicted for a third or for a fourth time of certain crimes. State v. Muldrow (S.C. 1972) 259 S.C. 414, 192 S.E.2d 211.

2. Constitutional issues

Sentence of life in prison without parole imposed on defendant for his second armed robbery conviction, pursuant to recidivist statute requiring life without parole for defendants convicted of “most serious offense” who had prior conviction for such an offense, did not violate Eighth Amendment prohibition against cruel and unusual punishment, even though defendant was a juvenile at the time he committed his first armed robbery and had not completed his sentence for that offense when he was convicted for his second armed robbery; defendant was an adult when he was sentenced for his second conviction, and state’s Supreme Court had never ruled that defendant must complete first sentence before he could be sentenced to life without parole for a subsequent most serious offense. State v. Green (S.C.App. 2015) 412 S.C. 65, 770 S.E.2d 424, rehearing denied, certiorari denied. Sentencing and Punishment 1421; Sentencing and Punishment 1513

Sentence of life imprisonment without parole under recidivist statute for distribution of less than half a gram of cocaine was not cruel and unusual punishment, although defendant’s prior conviction was for offense committed while he was a juvenile; sentence was not inconsistent with evolving standards of contemporary values, and was not grossly disproportionate to committed offense. State v. Williams (S.C.App. 2008) 380 S.C. 336, 669 S.E.2d 640, rehearing denied, certiorari denied. Sentencing And Punishment 1513

Two‑Strikes Law, mandating life imprisonment without parole, did not violate the separation of powers doctrine by depriving the judicial branch of discretion to consider mitigating circumstances, as sentencing was a matter of legislative prerogative. State v. Standard (S.C. 2002) 351 S.C. 199, 569 S.E.2d 325, certiorari denied, certiorari denied 123 S.Ct. 1255, 537 U.S. 1195, 154 L.Ed.2d 1032. Constitutional Law 2371; Sentencing And Punishment 1210

Defendant’s sentence of life imprisonment without the possibility of parole under “Two‑Strikes” law did not violate the separation of powers doctrine on basis that law deprives the judiciary of “all judicial discretion” in the exercise of its sentencing function; judicial discretion in sentencing was subject to statutory restriction without any violation of the separation of powers doctrine. State v. Johnson (S.C.App. 2002) 350 S.C. 543, 567 S.E.2d 486, rehearing denied, certiorari denied. Constitutional Law 2371; Sentencing And Punishment 1210

Application to defendant of “Two‑Strikes” law, resulting in sentence of life imprisonment without possibility of parole for his convictions for first‑degree burglary, armed robbery, and kidnapping, did not amount to cruel and unusual punishment; burglary, armed robbery, and kidnapping were grave offenses of the most serious nature, and when considered along with defendant’s prior offenses, two of which were for attempted armed robbery and one of which was for assault and battery with intent to kill, penalty of life without parole for each of offenses for which defendant was convicted was not extreme. State v. Johnson (S.C.App. 2002) 350 S.C. 543, 567 S.E.2d 486, rehearing denied, certiorari denied. Sentencing And Punishment 1513

Defendant’s mandatory life sentence without parole for first‑degree burglary under so‑called “two‑strikes law” did not amount to cruel and unusual punishment, considering that a life sentence was possible even for first offense of first‑degree burglary, which was a most serious offense, defendant had two prior convictions for most serious offense of armed robbery. State v. White (S.C. 2002) 349 S.C. 33, 562 S.E.2d 305, habeas corpus dismissed 2007 WL 709001, appeal dismissed 250 Fed.Appx. 568, 2007 WL 2963701, certiorari denied 128 S.Ct. 1454, 552 U.S. 1235, 170 L.Ed.2d 283. Sentencing And Punishment 1513

Defendant’s mandatory life sentence without parole for armed robbery under so‑called “two‑strikes law” did not violate separation of powers doctrine, in light of prosecutor’s ability to choose not to pursue triggering offenses or to plea charges down to non‑triggering offenses and fact that matter of sentencing upon a triggering offense was matter within province of legislature. State v. Jones (S.C. 2001) 344 S.C. 48, 543 S.E.2d 541. Constitutional Law 2392; Sentencing And Punishment 1421

Defendant’s mandatory life sentence without parole for armed robbery under so‑called “two‑strikes law” did not constitute cruel and unusual punishment, considering that the “most serious” nature of armed robbery, when combined with the prior “most serious” offense of assault and batter with intent to kill, was not disproportionate to a sentence of life without parole, such sentence was proportionate to that of other criminals in state with a second “most serious” offense conviction, and life sentences for armed robbery were imposed under recidivist laws in other states. State v. Jones (S.C. 2001) 344 S.C. 48, 543 S.E.2d 541. Sentencing And Punishment 1513

Defendant’s mandatory life sentence without parole for three counts of armed robbery under recidivist statute was not an ex post facto violation, where the armed robberies occurred subsequent to passage of the recidivist statute. State v. Jones (S.C. 2001) 344 S.C. 48, 543 S.E.2d 541. Constitutional Law 2815; Sentencing And Punishment 1216

Imposition of consecutive life sentences without parole for first‑degree burglary and criminal sexual assault under enhanced punishment statute was not grossly disproportionate to offenses and, thus, did not violate Eighth Amendment; crimes enumerated as most serious offenses to which enhanced sentencing applied were crimes of violence, which were momentous enough to warrant deterrence and retribution of life sentence without parole. State v. Brannon (S.C.App. 2000) 341 S.C. 271, 533 S.E.2d 345. Sentencing And Punishment 1513

Recidivist statute mandating life in prison without parole upon conviction of triggering offense enumerated in statute did not violate separation of powers doctrine, in light of ability of prosecutor to choose not to pursue triggering offenses or to plea charges down to non‑triggering offenses. Const. Art. 1, Sections 8; Code 1976, Sections 17‑25‑45(G). State v. Burdette (S.C. 1999) 335 S.C. 34, 515 S.E.2d 525. Constitutional Law 2392; Sentencing And Punishment 1210

3. Construction and application

Under recidivist sentencing schemes, the enhanced punishment imposed for a present offense is not to be viewed as an additional penalty for the earlier crimes, but instead as a stiffened penalty for the latest crime, which is considered to be an aggravated offense because it is a repetitive one. State v. Williams (S.C.App. 2008) 380 S.C. 336, 669 S.E.2d 640, rehearing denied, certiorari denied. Sentencing And Punishment 1206

Two prior convictions for armed robbery that stemmed from single criminal incident constituted one offense, for purposes of sentencing under three‑strikes law. State v. Woody (S.C. 2004) 359 S.C. 1, 596 S.E.2d 907, rehearing denied. Sentencing And Punishment 1308

Recidivist Two Strikes law, which imposes sentence of life imprisonment without parole (LWOP) for certain offenses, must be construed in conjunction with separate recidivist statute requiring a trial court to treat as one offense those offenses which have been committed at closely connected times, in order to determine whether crimes committed at points close in time qualify for a recidivist sentence; overruling State v. Benjamin, 353 S.C. 441, 579 S.E.2d 289. State v. Gordon (S.C. 2003) 356 S.C. 143, 588 S.E.2d 105, rehearing denied, habeas corpus denied 2013 WL 195517. Sentencing And Punishment 1213

Supreme Court’s holding in instant case, that recidivist Two Strikes Law imposing sentence of life imprisonment without parole (LWOP) had to be construed in conjunction with separate recidivist statute requiring a trial court to treat as one offense any number of offenses which have been committed at times so closely connected in point of time that they could be considered as one offense, would be applied retroactively. State v. Gordon (S.C. 2003) 356 S.C. 143, 588 S.E.2d 105, rehearing denied, habeas corpus denied 2013 WL 195517. Courts 100(1)

Recidivist statute imposing life sentence for certain offenses was to be construed independent of any other statute, and thus, it was not appropriate or necessary to harmonize or reconcile such statute with separate recidivist statute providing that closely connected offenses were considered one offense; language specifically barring consideration of any other statute in prior version of statute was retained in current version; overruling State v. Woody, 345 S.C. 34, 545 S.E.2d 521. State v. Benjamin (S.C. 2003) 353 S.C. 441, 579 S.E.2d 289, habeas corpus dismissed 2008 WL 3411733, appeal dismissed 301 Fed.Appx. 240, 2008 WL 4964018, certiorari denied 129 S.Ct. 2769, 174 L.Ed.2d 275, habeas corpus dismissed 2012 WL 4903682. Sentencing And Punishment 1213

4. Prior convictions

State failed to establish that arson defendant’s prior conviction of burning involved a school facility, as required for use of such prior conviction as predicate serious offense for sentence of life without parole (LWOP). State v. Phillips (S.C. 2012) 400 S.C. 460, 734 S.E.2d 650. Sentencing and Punishment 1260

For purposes of determining whether defendant’s prior conviction of burning constituted serious offense within scope of life without parole (LWOP) sentencing statute following his conviction of second‑degree arson, offense of second‑degree arson was not limited to burning of structures designed for human occupancy. State v. Phillips (S.C. 2012) 400 S.C. 460, 734 S.E.2d 650. Sentencing and Punishment 1260

When a prior conviction relied upon as basis for imposition of a sentence of life without parole is for an offense not found in the applicable sentencing statute, trial judges can look to the elements of the prior offense to determine if they are equivalent to the elements of an offense found in the statute for purposes of sentence enhancement. State v. Phillips (S.C. 2012) 400 S.C. 460, 734 S.E.2d 650. Sentencing and Punishment 1250

Defendant’s 1979 conviction for burning was not shown to be a “serious offense,” and thus could not be used to enhance his current sentence for second‑degree arson to life imprisonment without the possibility of parole (LWOP); there was no evidence that defendant’s 1979 conviction involved the burning of a school facility. State v. Phillips (S.C.App. 2011) 393 S.C. 407, 712 S.E.2d 457, rehearing denied, affirmed as modified 400 S.C. 460, 734 S.E.2d 650. Sentencing and Punishment 1251

In seeking an life imprisonment without the possibility of parole (LWOP) sentence, the State bears the burden of establishing the defendant’s prior convictions for serious or most serious offenses. State v. Phillips (S.C.App. 2011) 393 S.C. 407, 712 S.E.2d 457, rehearing denied, affirmed as modified 400 S.C. 460, 734 S.E.2d 650. Sentencing and Punishment 1378

Convictions for first two of three armed robberies that were committed over three‑day period were “prior convictions” that subjected defendant mandatory sentence of life without parole on subsequent conviction for third robbery; overruling State v. Gordon, 356 S.C. 143, 588 S.E.2d 105. Bryant v. State (S.C. 2009) 384 S.C. 525, 683 S.E.2d 280. Sentencing And Punishment 1308

Prior conviction 19 years earlier for assault and battery with intent to kill was not too remote in time to be used to enhance defendant’s sentence under recidivist statute to life sentence without parole for first degree criminal sexual conduct, assault and battery with intent to kill, kidnapping, and strong arm robbery conviction. State v. Rogers (S.C.App. 2004) 361 S.C. 178, 603 S.E.2d 910, habeas corpus dismissed 2006 WL 490111, appeal dismissed 187 Fed.Appx. 321, 2006 WL 1827999, habeas corpus dismissed 2007 WL 397370, habeas corpus dismissed 2008 WL 625020, appeal dismissed 283 Fed.Appx. 149, 2008 WL 2611332, habeas corpus dismissed 2010 WL 478826, habeas corpus dismissed 2013 WL 2338617, appeal dismissed 544 Fed.Appx. 211, 2013 WL 5764549. Sentencing And Punishment 1297

Defendant’s prior rape conviction did not necessarily contain all elements of most serious criminal sexual conduct (CSC) offenses, and thus defendant could not be sentenced to life imprisonment without parole (LWOP) for subsequent first‑degree CSC conviction; there was no evidence in record concerning earlier conviction, and thus conviction may have fallen into category of third‑degree CSC, which did not involve aggravating circumstances and which was not “most serious offense” for which LWOP could be imposed. State v. Lindsey (S.C. 2003) 355 S.C. 15, 583 S.E.2d 740. Sentencing And Punishment 1258

Recidivist statute imposing life sentence for certain offenses, including most serious or serious offenses, had no requirement that commission of prior most serious offense must have occurred on an earlier, separate occasion; there was no reference to time of prior offense’s commission in statute, rather the only temporal reference was to the prior conviction. State v. Benjamin (S.C. 2003) 353 S.C. 441, 579 S.E.2d 289, habeas corpus dismissed 2008 WL 3411733, appeal dismissed 301 Fed.Appx. 240, 2008 WL 4964018, certiorari denied 129 S.Ct. 2769, 174 L.Ed.2d 275, habeas corpus dismissed 2012 WL 4903682. Sentencing And Punishment 1302

Sentence of life imprisonment without parole (LWOP) under the Two‑Strikes law for first‑degree burglary was not cruel and unusual punishment even though defendant was only 15 years old at the time he committed triggering offense of armed robbery, for which he was tried and adjudicated as an adult. State v. Standard (S.C. 2002) 351 S.C. 199, 569 S.E.2d 325, certiorari denied, certiorari denied 123 S.Ct. 1255, 537 U.S. 1195, 154 L.Ed.2d 1032. Sentencing And Punishment 1513

Evidence was sufficient to show that defendant and the individual previously convicted were one and the same, and thus, State satisfied its burden of proof that defendant had been convicted of the prior offenses that triggered the “Two‑Strikes” law; State proffered certified copies of court records showing that defendant had previously pled guilty to two counts of attempted armed robbery and one count of assault and battery with intent to kill, and defendant offered no evidence to suggest that he was not that individual. State v. Johnson (S.C.App. 2002) 350 S.C. 543, 567 S.E.2d 486, rehearing denied, certiorari denied. Sentencing And Punishment 1381(6)

At sentencing for second degree burglary, two prior armed robbery convictions should have been treated as one for purposes of recidivist sentencing statute, which allowed for a sentence of life in prison without the possibility of parole upon conviction of three serious offenses; the two prior convictions were closely connected offenses within one incident, and two charges were brought only because different victims were involved. State v. Woody (S.C.App. 2001) 345 S.C. 34, 545 S.E.2d 521, rehearing denied, certiorari denied, certiorari granted, affirmed 359 S.C. 1, 596 S.E.2d 907. Sentencing And Punishment 1308

Defendant convicted of murder and armed robbery on earlier, separate occasion was properly sentenced to life imprisonment without parole under recidivist statute for subsequent armed robbery conviction, despite defendant’s contention that prior convictions and subsequent robbery, all arising from same incident, should be treated as one conviction for sentencing purposes. State v. Benjamin (S.C.App. 2000) 341 S.C. 160, 533 S.E.2d 606, rehearing denied, certiorari granted, affirmed 353 S.C. 441, 579 S.E.2d 289, habeas corpus dismissed 2008 WL 3411733, appeal dismissed 301 Fed.Appx. 240, 2008 WL 4964018, certiorari denied 129 S.Ct. 2769, 174 L.Ed.2d 275. Sentencing And Punishment 1300

Defendant’s prior common‑law burglary conviction could be used to seek life sentence without parole under “repeat offender statute,” even though common‑law burglary was not listed in that statute as “most serious” or “serious” offense; common‑law offense contained same legal elements as burglary, first degree, which “repeat offender statute” did declare “most serious” offense. State v. Washington (S.C. 2000) 338 S.C. 392, 526 S.E.2d 709. Sentencing And Punishment 1260

Defendant failed to meet his burden of proving that prior DUI conviction was obtained in violation of his constitutional rights and, therefore, trial court did not err in allowing State to use prior conviction to enhance sentence for second conviction; defendant failed to produce any evidence to prove his assertion, and evidence submitted by state was inconclusive. State v. Payne (S.C.App. 1998) 332 S.C. 266, 504 S.E.2d 335. Automobiles 359.6

5. Out‑of‑state convictions

First‑degree burglary statute unambiguously permits use of out‑of‑state convictions as predicate offenses, even when considered with statute that expressly includes prior foreign convictions, if their elements follow local law, as offenses that warrant imposition of life sentences after subsequent convictions for certain crimes; legislative policy behind burglary statute is to provide stiffened penalty for latest crime, which is considered to be aggravated offense because it is repetitive one, and to shift focus to fact that defendant’s prior offenses may have occurred in different jurisdictions would thwart objective of requiring heightened accountability from repeat offenders for their subsequent crimes. State v. Zulfer (S.C.App. 2001) 345 S.C. 258, 547 S.E.2d 885, rehearing denied, certiorari granted, certiorari dismissed as improvidently granted 353 S.C. 537, 579 S.E.2d 317. Sentencing And Punishment 1270

6. Juvenile adjudication of delinquency

Before a life without parole sentence is imposed upon a juvenile offender, he must receive an individualized hearing where the mitigating hallmark features of youth are fully explored. (Per Hearn, J., with one Justice concurring and one Justice concurring separately.) Aiken v. Byars (S.C. 2014) 410 S.C. 534, 765 S.E.2d 572, certiorari denied 135 S.Ct. 2379, 192 L.Ed.2d 179. Infants 3011; Sentencing and Punishment 1607

United States Supreme Court decision in Miller v. Alabama, which held that mandatory imposition of sentences of life without possibility of parole on juveniles constituted cruel and unusual punishment, precluded imposition of life sentences on juveniles without the possibility of parole under nonmandatory sentencing scheme without individualized consideration of defendants’ youth; Miller court unequivocally held that youth had constitutional dimension when determining appropriateness of lifetime of incarceration with no possibility of parole, and Miller did more than ban mandatory life sentencing schemes for juveniles, it established affirmative requirement that courts fully explore impact of a defendant’s juvenility on the sentence rendered. Aiken v. Byars (S.C. 2014) 410 S.C. 534, 765 S.E.2d 572, certiorari denied 135 S.Ct. 2379, 192 L.Ed.2d 179. Infants 3011; Sentencing and Punishment 1607

United States Supreme Court decision in Miller v. Alabama, which held that mandatory imposition of sentences of life without possibility of parole on juveniles constituted cruel and unusual punishment, announced a new substantive constitutional rule and, therefore, could be applied retroactively on collateral review; rule excluded certain class of defendants, juveniles, from specific punishment, life without parole absent individualized consideration of youth. Aiken v. Byars (S.C. 2014) 410 S.C. 534, 765 S.E.2d 572, certiorari denied 135 S.Ct. 2379, 192 L.Ed.2d 179. Courts 100(1)

Murder defendant was not eligible for mandatory life without possibility of parole (LWOP) sentencing under recidivist statute based upon his juvenile adjudication of delinquency for voluntary manslaughter; juvenile adjudications were not included in statutory list of qualifying events, and Children’s Code specifically provided that family court adjudication of juvenile’s status was not a conviction. State v. Ellis (S.C. 2001) 345 S.C. 175, 547 S.E.2d 490. Sentencing And Punishment 1291

6.5. Most serious offense

Defendant’s prior conviction for common law assault with intent to ravish, under South Carolina law, did not necessarily contain all elements of most serious criminal sexual conduct offenses, as required to support sentence of life imprisonment without parole under the South Carolina two‑strike sentencing statute, upon defendant’s subsequent conviction for armed robbery; there was little evidence in record concerning facts of earlier conviction, and thus, it was possible that prior offense did not involve aggravating circumstances. Bowers v. McFadden, 2015, 153 F.Supp.3d 875. Sentencing and Punishment 1273

Under South Carolina law, common law crime of assault with intent to ravish was not same as statutory offenses of first or second degree assault with intent to commit criminal sexual conduct, for purpose of determining whether common law offense qualified as most serious offense, under two‑strike mandatory sentencing law; the common law crime was broader than the statutory offenses, as both statutory offenses required intent to commit a sexual battery or the use of aggravated force. Bowers v. McFadden, 2015, 153 F.Supp.3d 875. Sentencing and Punishment 1273

Defendant’s prior conviction for armed robbery was a conviction for a “most serious offense” within meaning of recidivist statute, and thus trial court was required to sentence defendant to life without parole for subsequent armed robbery conviction, even though defendant was 17 years old when he committed prior armed robbery, where defendant had been tried as an adult in general sessions court for the prior armed robbery. State v. Green (S.C.App. 2015) 412 S.C. 65, 770 S.E.2d 424, rehearing denied, certiorari denied. Sentencing and Punishment 1260

7. Notice

Defendant received at least 10 days of actual notice of potential life without parole (LWOP) sentence for armed robbery charges, as required when state intended to seek the sentence, where trial judge informed defendant that he would receive mandatory LWOP sentence if convicted, defendant acknowledged the sentence, and state filed notice of intent to seek life without parole more than two weeks before trial. Harris v. State (S.C. 2008) 377 S.C. 66, 659 S.E.2d 140, subsequent habeas corpus proceeding 2010 WL 2464873. Sentencing And Punishment 241

So long as the defendant and his counsel, at least ten days prior to trial, possess actual notice of state’s intention to seek a sentence under recidivist sentencing statute, the statute’s notice requirements have been satisfied; overruling State v. Johnson, 347 S.C. 67, 552 S.E.2d 339. James v. State (S.C. 2007) 372 S.C. 287, 641 S.E.2d 899. Sentencing And Punishment 1361

Even if trial counsel rendered deficient performance by failing to object that armed robbery defendant had not been provided with written notice of state’s intent to seek sentence of life imprisonment without possibility of parole (LWOP), rather than stipulating prior to trial that notice was adequate, such deficiency did not prejudice defendant, and thus could not amount to ineffective assistance; even if counsel had objected, solicitor, upon hearing objection, could have simply dismissed the indictment, re‑indicted defendant, provided defendant with written notice, and proceeded to seek an LWOP sentence, or could have postponed defendant’s trial to provide defendant with written notice. James v. State (S.C. 2007) 372 S.C. 287, 641 S.E.2d 899. Criminal Law 1957

Fact that armed robbery defendant had actual notice of state’s intention to seek a life sentence was not sufficient to meet notice requirements of recidivist sentencing statute; under the statute, state was required to provide defendant and his counsel with written notice. State v. Johnson (S.C.App. 2001) 347 S.C. 67, 552 S.E.2d 339, rehearing denied, certiorari denied. Sentencing And Punishment 1361

Failure to list indictment number for first degree burglary in notice of application of recidivist statute, to inform defendant on which of indicted offenses triggered statute, did not violate constitutional right to be fully informed of nature of charges against defendant, in light of fact that defendant was fully informed of charges against him in indictment and could have determined triggering offense by looking at recidivist statute. State v. Burdette (S.C. 1999) 335 S.C. 34, 515 S.E.2d 525. Sentencing And Punishment 1367

8. Review

After having declared unconstitutional a provision of a state’s habitual offender statute requiring, for persons convicted of a third or subsequent felony, the imposition of a sentence of 20 years plus the longest imprisonment for which the third or subsequent felony conviction was punishable had it been a first offense, the state’s highest court, in a subsequent case involving a criminal defendant whom a jury, prior to the declaration of unconstitutionality, had sentenced to 40 years’ imprisonment as instructed in accordance with the provision of the habitual offender statute subsequently declared unconstitutional, deprives such defendant of his liberty without due process of law in violation of the Fourteenth Amendment when it affirms such defendant’s conviction and sentence on the theory that he had not been prejudiced by the impact of the invalid statutory provision because of the fact that his sentence was within the range of punishment that could have been imposed in any event under a valid provision of the habitual offender statute providing that persons convicted of an offense such as the defendant’s, after previously having been convicted of an offense punishable by imprisonment, must be punished by imprisonment “for a term of not less than ten (10) years,” since if the jury which sentenced the defendant had been instructed in terms of such valid provision there was a substantial possibility that it would have returned a sentence of less than 40 years; the action of the state’s highest court in refusing to vacate the defendant’s conviction cannot be justified on the theory that, in view of the statutory authority of the state’s highest court to revise judgments on appeal, the defendant had no absolute right to a sentence imposed by a jury, where, under the practice in the state, a defendant’s right to have a jury fix the sentence in the first instance is determinative, at least as a practical matter, of the maximum sentence that a defendant will receive. Hicks v. Oklahoma, U.S.Okla.1980, 100 S.Ct. 2227, 447 U.S. 343, 65 L.Ed.2d 175.

Court of Appeals had no authority to review armed robbery defendant’s mandatory sentence of life without parole, imposed pursuant to the recidivist statute, where defendant’s sentence was within the limits provided by statute for the discretion of the trial court, and record did not reveal that the sentence was the result of prejudice, oppression, or corrupt motive by the trial court. State v. Green (S.C.App. 2015) 412 S.C. 65, 770 S.E.2d 424, rehearing denied, certiorari denied. Criminal Law 1023(11)

In a prosecution for armed robbery, the case would be remanded for a sentencing hearing to determine whether the defendant’s prior convictions should be considered as one or as separate in accordance with Section 17‑25‑50 and whether the imposition of a life sentence under the present conviction was therefore proper under Section 17‑25‑40. State v. Stewart (S.C. 1980) 275 S.C. 447, 272 S.E.2d 628.

**SECTION 17‑25‑50.** Considering closely connected offenses as one offense.

 In determining the number of offenses for the purpose of imposition of sentence, the court shall treat as one offense any number of offenses which have been committed at times so closely connected in point of time that they may be considered as one offense, notwithstanding under the law they constitute separate and distinct offenses.

HISTORY: 1962 Code Section 17‑553.2; 1955 (49) 179.

Library References

Sentencing and Punishment 603.

Westlaw Topic No. 350H.

RESEARCH REFERENCES

ALR Library

7 ALR 5th 263 , Chronological or Procedural Sequence of Former Convictions as Affecting Enhancement of Penalty Under Habitual Offender Statutes.

LAW REVIEW AND JOURNAL COMMENTARIES

Parity in South Carolina Recidivist Sentencing: State v. Gordon, 56 S.C. L. Rev. 723 (Summer 2005).

United States Supreme Court Annotations

Jury trial, judicial findings of fact, imposition of consecutive sentences for multiple offenses, see Oregon v. Ice, 2009, 129 S.Ct. 711, 555 U.S. 160, 172 L.Ed.2d 517, on remand 346 Or. 95, 204 P.3d 1290.

NOTES OF DECISIONS

In general 1

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1. In general

Three armed robberies committed over three‑day period and which involved three different victims were not so inextricably connected, and did not share an immediate temporal proximity, such that they could be considered one offense, for sentencing purposes. Bryant v. State (S.C. 2009) 384 S.C. 525, 683 S.E.2d 280. Sentencing And Punishment 1308

Defendant’s prior burglary convictions did not qualify to be treated as one crime for purposes of sentencing under recidivist statute, and, thus, sentence of life without possibility of parole (LWOP), imposed on defendant after his subsequent convictions for grand larceny and second‑degree burglary, was appropriate; the third of defendant’s three prior burglaries of which he was convicted was of a different building, in a different location, which occurred two weeks after prior two burglaries, and, as such, clearly constituted a separate burglary, and, thus, defendant had, at the very least, two prior serious convictions such that present conviction constituted his third. Koon v. State (S.C. 2007) 372 S.C. 531, 643 S.E.2d 680. Sentencing And Punishment 1307

Two prior convictions for armed robbery that stemmed from single criminal incident constituted one offense, for purposes of sentencing under three‑strikes law. State v. Woody (S.C. 2004) 359 S.C. 1, 596 S.E.2d 907, rehearing denied. Sentencing And Punishment 1308

At sentencing for second degree burglary, two prior armed robbery convictions should have been treated as one for purposes of recidivist sentencing statute, which allowed for a sentence of life in prison without the possibility of parole upon conviction of three serious offenses; the two prior convictions were closely connected offenses within one incident, and two charges were brought only because different victims were involved. State v. Woody (S.C.App. 2001) 345 S.C. 34, 545 S.E.2d 521, rehearing denied, certiorari denied, certiorari granted, affirmed 359 S.C. 1, 596 S.E.2d 907. Sentencing And Punishment 1308

Trial court had discretion to impose consecutive sentences for armed robbery, assault and battery with intent to kill, and attempted armed robbery, as each was separate and distinct crime involving distinct elements not included in other; thus, counsel was not ineffective for failing to request concurrent sentences. Legare v. State (S.C. 1998) 333 S.C. 275, 509 S.E.2d 472, rehearing denied, subsequent habeas corpus proceeding 11 Fed.Appx. 142, 2001 WL 417684, subsequent habeas corpus proceeding 2009 WL 497136. Criminal Law 1957; Sentencing And Punishment 606

Where the indictment charges the defendant with the commission of separate and distinct crimes, each involving distinct elements not included in the other, then it is entirely proper for the court to impose sentences on each count for which the defendant is convicted. Legare v. State (S.C. 1998) 333 S.C. 275, 509 S.E.2d 472, rehearing denied, subsequent habeas corpus proceeding 11 Fed.Appx. 142, 2001 WL 417684, subsequent habeas corpus proceeding 2009 WL 497136. Sentencing And Punishment 509

Recognizing the fairness and logic exemplified by the provisions of Sections 17‑25‑50 and 56‑1‑1020, the Court of Appeals has ruled that where a defendant has been convicted on 2 or more counts for the violation of the Controlled Substance Act arising out of simultaneous acts committed in the course of a single incident, the conviction will be considered as only one for the purpose of sentencing upon a subsequent conviction for a violation of the Controlled Substance Act. State v. Boyd (S.C.App. 1986) 288 S.C. 206, 341 S.E.2d 144.

Code 1962 Sections 17‑553.1 to 17‑553.3, inclusive, are the codification of a recidivist statute prescribing and making mandatory the punishment for persons convicted for a third or for a fourth time of certain crimes. State v. Muldrow (S.C. 1972) 259 S.C. 414, 192 S.E.2d 211.

Where the indictment charged the defendant with the commission of two separate and distinct crimes, each involving distinct elements not included in the other, and he was convicted on both, it was entirely proper for the court to impose sentence on each count. State v. Muldrow (S.C. 1972) 259 S.C. 414, 192 S.E.2d 211. Criminal Law 29(14); Sentencing And Punishment 537

Quoted in Dixon v. State (S.C. 1969) 253 S.C. 41, 168 S.E.2d 770.

Defendant’s previous convictions qualified as prior felony convictions under career offender guideline, despite defendant’s contention that his prior convictions were part of ongoing conspiracy that formed basis for subject conviction, where superseding indictment alleged that conspiracy for which defendant was convicted began in 1995, and prior felony convictions occurred well before 1995. U.S. v. White (C.A.4 (S.C.) 2002) 54 Fed.Appx. 576, 2002 WL 31819670, Unreported, habeas corpus dismissed 2005 WL 3244108, reconsideration denied 2006 WL 752859, appeal dismissed 193 Fed.Appx. 243, 2006 WL 2258310, habeas corpus dismissed 2007 WL 2110480, appeal dismissed 252 Fed.Appx. 549, 2007 WL 3152326, habeas corpus dismissed 518 F.Supp.2d 752, affirmed 262 Fed.Appx. 540, 2008 WL 238551, habeas corpus dismissed 2009 WL 1456712, affirmed 348 Fed.Appx. 868, 2009 WL 3418654. Sentencing And Punishment 1308

2. Construction and application

Supreme Court’s holding in instant case, that recidivist Two Strikes Law imposing sentence of life imprisonment without parole (LWOP) had to be construed in conjunction with separate recidivist statute requiring a trial court to treat as one offense any number of offenses which have been committed at times so closely connected in point of time that they could be considered as one offense, would be applied retroactively. State v. Gordon (S.C. 2003) 356 S.C. 143, 588 S.E.2d 105, rehearing denied, habeas corpus denied 2013 WL 195517. Courts 100(1)

Recidivist Two Strikes law, which imposes sentence of life imprisonment without parole (LWOP) for certain offenses, must be construed in conjunction with separate recidivist statute requiring a trial court to treat as one offense those offenses which have been committed at closely connected times, in order to determine whether crimes committed at points close in time qualify for a recidivist sentence; overruling State v. Benjamin, 353 S.C. 441, 579 S.E.2d 289. State v. Gordon (S.C. 2003) 356 S.C. 143, 588 S.E.2d 105, rehearing denied, habeas corpus denied 2013 WL 195517. Sentencing And Punishment 1213

3. Review

Defendant failed to preserve for appellate review his claim that the trial court erred when sentencing defendant to life without parole for the victim’s rape as the rape was inextricably connected to a prior rape of victim, and thus both rapes should be considered one offense, where defendant failed to raise the issue during trial. State v. Taylor (S.C.App. 2012) 399 S.C. 51, 731 S.E.2d 596, certiorari denied. Criminal Law 1030(3)

**SECTION 17‑25‑60.** Change of sentence when former convictions were not considered at time of imposition.

 If during the service of any such sentence, it is made to appear to the court that the defendant had been convicted of one or more crimes which were not taken into account at the time of the imposition of the original sentence, the court is authorized to issue a rule directed to the defendant requiring him to show cause before the court, not less than ten days from the granting of the rule, why the former sentence should not be revoked and the defendant be sentenced as required if all of the convictions had been brought to the attention of the court at the time of the imposition of the original sentence.

HISTORY: 1962 Code Section 17‑553.3; 1955 (49) 179.

Library References

Sentencing and Punishment 2261.

Westlaw Topic No. 350H.

LAW REVIEW AND JOURNAL COMMENTARIES

Sentencing. 24 S.C. L. Rev. 523.

NOTES OF DECISIONS

In general 1

1. In general

Code 1962 Sections 17‑553.1 to 17‑553.3, inclusive, are the codification of a recidivist statute prescribing and making mandatory the punishment for persons convicted for a third or for a fourth time of certain crimes. State v. Muldrow (S.C. 1972) 259 S.C. 414, 192 S.E.2d 211.

**SECTION 17‑25‑65.** Reduction of sentence for substantial assistance to the State; motion practice.

 (A) Upon the state’s motion made within one year of sentencing, the court may reduce a sentence if the defendant, after sentencing, provided:

 (1) substantial assistance in investigating or prosecuting another person; or

 (2) aid to a Department of Corrections employee or volunteer who was in danger of being seriously injured or killed.

 (B) Upon the state’s motion made more than one year after sentencing, the court may reduce a sentence if the defendant’s substantial assistance involved:

 (1) information not known to the defendant until one year or more after sentencing;

 (2) information provided by the defendant to the State within one year of sentencing, but which did not become useful to the State until more than one year after sentencing;

 (3) information, the usefulness of which could not reasonably have been anticipated by the defendant until more than one year after sentencing, and which was promptly provided to the State after its usefulness was reasonably apparent to the defendant; or

 (4) aid to a Department of Corrections employee or volunteer who was in danger of being seriously injured or killed.

 (C) A motion made pursuant to this provision shall be filed by that circuit solicitor in the county where the defendant’s case arose. The State shall send a copy to the chief judge of the circuit within five days of filing. The chief judge or a circuit court judge currently assigned to that county shall have jurisdiction to hear and resolve the motion. Jurisdiction to resolve the motion is not limited to the original sentencing judge.

HISTORY: 2010 Act No. 273, Section 13, eff June 2, 2010.

Library References

Sentencing and Punishment 2263, 2270 to 2318.

Westlaw Topic No. 350H.

C.J.S. Criminal Law Sections 2084, 2139.

**SECTION 17‑25‑70.** Authority of local officials to require able‑bodied convicted persons to perform labor in public interest.

 Notwithstanding another provision of law, a local governing body may authorize the sheriff or other official in charge of a local correctional facility to require any able‑bodied convicted person committed to the facility to perform labor in the public interest. This labor may involve public service work or related activities which conform to the provisions of Section 24‑13‑660. The public service work may include, but is not limited to, maintenance or repair of the drainage systems, highways, streets, bridges, grounds, and buildings and litter control and emergency relief efforts. A convicted person physically capable of performing the labor who refuses to obey a direct order to perform the labor is not entitled to good behavior credits pursuant to Section 24‑13‑210 or productive duty credits pursuant to Section 24‑13‑230. An inmate participating in a local work punishment or other public service sentence program must not be removed arbitrarily from the program and required to perform work on the public works or ways. A local governing body may enter into a contractual agreement with another governmental entity for use of inmate labor in the performance of work for a public purpose.

HISTORY: 1962 Code Section 17‑554; 1952 Code Section 17‑554; 1942 Code Sections 1035, 1036, 3835; 1932 Code Sections 1035, 1036, 3831, 3835; Civ. C. ‘22 Sections 723, 1078; Cr. P. ‘22 Sections 125, 126; Civ. C. ‘12 Sections 639, 957; Cr. C. ‘12 Sections 104, 943; Civ. C. ‘02 Section 773; Cr. C. ‘02 Section 657; R. S. 544, 663; 1885 (19) 125; 1892 (21) 22; 1894 (21) 481; 1896 (22) 245; 1899 (23) 13; 1905 (24) 915; 1911 (27) 169; 1912 (27) 553; 1914 (28) 515; 1917 (30) 265; 1922 (32) 947; 1960 (51) 1779; 1986 Act No. 462, Section 15; 1995 Act No. 7, Part II, Section 52.

CROSS REFERENCES

Duty of the Department of Corrections to develop standards for the operation of local inmate work programs, see Section 24‑13‑950.

Library References

Prisons 170.

Westlaw Topic No. 310.

C.J.S. Convicts Sections 16 to 19.

Attorney General’s Opinions

There is no absolute bar to hard labor and work assigned to prisoners. S.C. Op Atty Gen (March 16, 2010) 2010 WL 1370085.

County may provide inmate labor to private nonprofit, nonsectarian organization to assist organization in operation of animal shelter, as such involves performance of a public purpose. Of course, certain prerequisites must be complied with prior to use of inmates in local inmate work programs, such as prior authorization of work programs by county governing body, establishment of regulations under which labor is to be performed, establishment of written policies for inmate management and supervision, and compliance with minimum standard for local detention facilities. 1991 Op Atty Gen, No. 91‑17 p 61 (March 01, 1991) 1991 WL 474747.

Place of confinement for juvenile defendants under the age of seventeen is a matter within the discretion of the trial judge. 1966‑67 Op Atty Gen, No 2369, p 216 (September 05, 1967) 1967 WL 8677.

All sentences providing for sentence to penitentiary, even though alternatively to county gang or jail, should be reported to the Department of Corrections. 1966‑67 Op Atty Gen, No 2243, p 49 (March 15, 1967) 1967 WL 8559.

Where a person was indicted in one county, tried and convicted in another county motion for change of venue having been granted the sentence should be carried out in the county having original jurisdiction, except where the court sentenced the defendant by special order to confinement in the State Penitentiary. 1964‑65 Op Atty Gen, No 1779, p 11 (January 05, 1965) 1965 WL 7946.

NOTES OF DECISIONS

In general 1

Constitutional issues 2

1. In general

Requirement that defendants, convicted of night hunting of deer, perform 30‑day period of free public work for county, forestry department or wildlife department or any other public agency, was not authorized under Section 50‑11‑20; provisions for imprisonment can only be on public works of county or State Department of Corrections; there is no provision that defendants may be sentenced to perform other public works. State v. Moore (S.C. 1979) 273 S.C. 176, 255 S.E.2d 448. Sentencing And Punishment 2049

Under this section [Code 1962 Section 17‑554] the sentencing judge determines the amount of time to be served. McLamore v. State (S.C. 1972) 257 S.C. 413, 186 S.E.2d 250, certiorari denied 93 S.Ct. 240, 409 U.S. 934, 34 L.Ed.2d 189.

Where the defendant was not entitled to be sentenced under the Youthful Offender Act, and was not sentenced under the dangerous defendant provisions of this section [Code 1962 Section 17‑554], he was properly sentenced in the alternative under the first provision set forth in this section [Code 1962 Section 17‑554]. McLamore v. State (S.C. 1972) 257 S.C. 413, 186 S.E.2d 250, certiorari denied 93 S.Ct. 240, 409 U.S. 934, 34 L.Ed.2d 189.

South Carolina Const, Art 5, Section 33, does not require the judge to single out the place of confinement. McLamore v. State (S.C. 1972) 257 S.C. 413, 186 S.E.2d 250, certiorari denied 93 S.Ct. 240, 409 U.S. 934, 34 L.Ed.2d 189.

Discretion as to where a sentence will be served is permitted ont only at the time the sentence is to commence, but throughout the time the sentence is being served. McLamore v. State (S.C. 1972) 257 S.C. 413, 186 S.E.2d 250, certiorari denied 93 S.Ct. 240, 409 U.S. 934, 34 L.Ed.2d 189.

This section [Code 1962 Section 17‑554] permits and contemplates that the court sentence the defendant to hard labor unless the judge, exercising his discretion, designates “such labor as the prisoner is able to perform” or indicates otherwise. McLamore v. State (S.C. 1972) 257 S.C. 413, 186 S.E.2d 250, certiorari denied 93 S.Ct. 240, 409 U.S. 934, 34 L.Ed.2d 189.

Cited in Frick v. State (S.C. 1968) 250 S.C. 513, 159 S.E.2d 279.

Applied in Maxey v. Manning (S.C. 1953) 224 S.C. 320, 78 S.E.2d 633.

Municipal authorities may sentence persons convicted of offenses against their laws to the municipal chain gang. City of Greenville v. Pridmore (S.C. 1931) 162 S.C. 52, 160 S.E. 144. Municipal Corporations 643

Municipal authorities have the power to sentence able‑bodied male convicts to hard labor upon the county chain gang of the county in which said person shall have been convicted, and it is the duty of the county authorities in charge of the respective chain gangs to accept the prisoners so sentenced. City of Greenville v. Pridmore (S.C. 1931) 162 S.C. 52, 160 S.E. 144.

Persons sentenced by municipal authorities to labor on municipal chain gang cannot be required to labor on the county chain gang. City of Greenville v. Pridmore (S.C. 1931) 162 S.C. 52, 160 S.E. 144. Prisons 214

When county authorities have not formed a county chain gang, State and county courts and magistrates may sentence persons to labor on any chain gang established by a municipality situate in that county, if terms as to the working and maintenance of such convicts are agreed upon by and between the county commissioners and the municipal authorities operating such chain gangs. City of Greenville v. Pridmore (S.C. 1931) 162 S.C. 52, 160 S.E. 144. Prisons 214

2. Constitutional issues

Certain constitutional rights follow a person into a State prison through the Fourteenth Amendment and among these is the protection of the Eighth Amendment against cruel and unusual punishment. McLamore v. State (S.C. 1972) 257 S.C. 413, 186 S.E.2d 250, certiorari denied 93 S.Ct. 240, 409 U.S. 934, 34 L.Ed.2d 189.

Hard labor is not of itself a cruel or unusual punishment. McLamore v. State (S.C. 1972) 257 S.C. 413, 186 S.E.2d 250, certiorari denied 93 S.Ct. 240, 409 U.S. 934, 34 L.Ed.2d 189.

Punishment by imprisonment at hard labor is not of itself cruel and unusual within the meaning of the constitutional ban on such punishments. McLamore v. State (S.C. 1972) 257 S.C. 413, 186 S.E.2d 250, certiorari denied 93 S.Ct. 240, 409 U.S. 934, 34 L.Ed.2d 189. Sentencing And Punishment 1526

A work camp per se does not constitute such inhuman, barbarous or torturous punishment as to violate the Eighth Amendment. McLamore v. State (S.C. 1972) 257 S.C. 413, 186 S.E.2d 250, certiorari denied 93 S.Ct. 240, 409 U.S. 934, 34 L.Ed.2d 189.

It is not cruel and unusual punishment to compel a prisoner to work on the public highways or streets. McLamore v. State (S.C. 1972) 257 S.C. 413, 186 S.E.2d 250, certiorari denied 93 S.Ct. 240, 409 U.S. 934, 34 L.Ed.2d 189.

This section [Code 1962 Section 17‑554] is not an unconstitutional delegation of judicial authority contrary to SC Const, Art 5, Section 33. McLamore v. State (S.C. 1972) 257 S.C. 413, 186 S.E.2d 250, certiorari denied 93 S.Ct. 240, 409 U.S. 934, 34 L.Ed.2d 189.

By sentencing in the alternative to imprisonment at hard labor or to hard labor on a county chain gang, under this section [Code 1962 Section 17‑554], the judge does not delegate the authority conferred on him by SC Const, Art 5, Section 33, to some administrative officer such as the county supervisor (and presumably the Director of the Department of Corrections) to determine in which institution the sentence will be served. Rather, the judge performs the duty imposed upon him by the Constitution, and the legislature confers upon the county supervisor and/or the Director the right and the duty to determine where the sentence will be served. McLamore v. State (S.C. 1972) 257 S.C. 413, 186 S.E.2d 250, certiorari denied 93 S.Ct. 240, 409 U.S. 934, 34 L.Ed.2d 189.

**SECTION 17‑25‑80.** Authority of Commissioner of Department of Corrections as to convicts sentenced to hard labor.

 Notwithstanding the specific language of the sentence which confines an inmate to “hard labor” in the custody of the State Department of Corrections, the Commissioner thereof may assign such inmate to the type of labor he deems appropriate and necessary for the benefit of the Department and the inmate concerned, and such assignment shall fulfill the conditions of the sentence.

HISTORY: 1962 Code Section 17‑554.1; 1971 (57) 223.

Library References

Prisons 170.

Sentencing and Punishment 1067.

Westlaw Topic Nos. 310, 350H.

C.J.S. Convicts Sections 16 to 19.

C.J.S. Criminal Law Section 2008.

Attorney General’s Opinions

There is no absolute bar to hard labor and work assigned to prisoners. S.C. Op Atty Gen (March 16, 2010) 2010 WL 1370085.

Magistrates have authority to impose a sentence to be served in the penitentiary. 1966‑67 Op Atty Gen, No 2290, p 110 (June 30, 1967) 1967 WL 8600.

**SECTION 17‑25‑100.** Suspension of sentence in misdemeanor cases.

 The circuit judges of this State may, in their discretion, suspend sentences imposed by them except in cases of felony upon such terms and upon such conditions as in their judgment may be fit and proper.

HISTORY: 1962 Code Section 17‑557; 1952 Code Section 17‑557; 1942 Code Section 1039; 1932 Code Section 1039; Cr. P. ‘22 Section 128; 1912 (27) 773.

CROSS REFERENCES

Appeal to stay execution of sentence, see Section 18‑1‑70.

Power of recorders of municipalities to suspend sentence, see Section 14‑25‑810.

Provision relating to establishment of a classification system based on maximum term of imprisonment, see Section 24‑26‑60.

Suspending sentence and placing defendant on probation, see Section 24‑21‑410 et seq.

Suspension of imposition or execution of sentence by magistrate notwithstanding limitations of this section, see Section 22‑3‑800.

Suspension of imposition or execution of sentence by magistrates, see Section 22‑3‑800.

What constitutes a misdemeanor, see Section 16‑1‑20.

Library References

Sentencing and Punishment 1806, 1960 to 1983(3).

Westlaw Topic No. 350H.

C.J.S. Criminal Law Sections 2151 to 2152.

Attorney General’s Opinions

A defendant can be ordered to pay support payments to his wife and children as terms of probation. 1963‑64 Op Atty Gen, No 1743, p 242 (October 16, 1964) 1964 WL 8364.

NOTES OF DECISIONS

In general 1

Construction and application 2

Review 3

1. In general

The proper remedy upon a circuit judge attempting to suspend a sentence in a case of felony is to move for the execution of the sentence. State v Breuer (1920) 113 SC 177, 102 SE 15. McGaha v Beacham (1930) 157 SC 288, 154 SE 166.

Stated in Moore v. Patterson (S.C. 1943) 203 S.C. 90, 26 S.E.2d 319, 147 A.L.R. 653.

Conditions imposed upon defendant to secure lighter sentence are not obligatory on him. He is not compelled to accept them, but once accepted he must obey them or suffer consequences for disobedience. State v. Gleaton (S.C. 1934) 172 S.C. 300, 174 S.E. 12. Sentencing And Punishment 1960

Upon hearing for revocation of suspension of sentence because accused violated suspension condition, refusing to grant accused’s request for jury trial was not error. State v. Gleaton (S.C. 1934) 172 S.C. 300, 174 S.E. 12. Sentencing And Punishment 2026

Bigamy is a felony within the meaning of this section [Code 1962 Section 17‑557], and, therefore, a sentence given for such offense cannot be suspended under the authority of this section [Code 1962 Section 17‑557]. State v. Breuer (S.C. 1920) 113 S.C. 177, 102 S.E. 15.

Under the authority of this section [Code 1962 Section 17‑557], the court has power to suspend part of a sentence of imprisonment in a seduction case on condition that defendant pay a specified amount towards support of a child of the seduced girl. State v. Teal (S.C. 1918) 108 S.C. 455, 95 S.E. 69. Sentencing And Punishment 1972(2)

Partial suspension of prison sentence upon conviction for crime of seduction, on condition that defendant support child of seduced girl, is not a fine or penalty because the defendant can elect to serve his term. State v. Teal (S.C. 1918) 108 S.C. 455, 95 S.E. 69. Sentencing And Punishment 1974(1)

2. Construction and application

Term “sentence” within Section 17‑25‑100 applies to both incarceration and fines; nonetheless, this section was inapplicable to case involving defendant who was convicted of second‑offense driving under the influence (DUI) under Section 56‑5‑2930 and was sentenced pursuant to Section 56‑5‑2940(2), which requires the imposition of at least $1,000 fine for that offense; and, non‑applicability of Section 17‑25‑100 in the instant case recognizes that in certain situations, the South Carolina legislature has explicitly provided by statute that the mandatory minimum sentence can be suspended. U.S. v. Jacobs, 1993, 815 F.Supp. 898.

3. Review

Magistrate judge committed plain error in failing to impose any fine upon defendant convicted of second‑offense driving under the influence (DUI) under Section 56‑5‑2930, assimilated by the Assimilative Crimes Act, since the penalty required for such offense under Section 56‑5‑2940(2) includes at least $1,000 fine on defendant; nonetheless, sentence imposed was affirmed where government did not timely object to sentence, the terms of which did not result in denial of fundamental justice since defendant did not escape punishment and magistrate’s decision not to impose fine was based on legitimate conclusion that defendant had no means to pay fine. U.S. v. Jacobs, 1993, 815 F.Supp. 898. Criminal Law 1042.3(1); Criminal Law 1182

**SECTION 17‑25‑110.** Suspension of sentence shall run for period of time prescribed by judge.

 When the sentence of any person who has been sentenced by a court of competent jurisdiction of this State shall be suspended by a judge of such court such suspension shall run for the period of time prescribed by such judge in the sentence or order of suspension and no person who has had a sentence so suspended shall be called back and required to do service under such sentence beyond and after the expiration of such period.

HISTORY: 1962 Code Section 17‑558; 1952 Code Section 17‑558; 1942 Code Section 1039‑4; 1935 (39) 431.

CROSS REFERENCES

For provision relating to establishment of a classification system based on maximum term of imprisonment, see Section 24‑26‑60.

Library References

Sentencing and Punishment 1942 to 1948.

Westlaw Topic No. 350H.

C.J.S. Criminal Law Section 2153.

**SECTION 17‑25‑120.** Restitution of stolen goods.

 If any person shall rob or take away any money, goods or chattels from any person, from their person or otherwise, and be found guilty thereof, such money, goods and chattels shall be restored to the party so robbed or the owner thereof and the judge before whom any such person shall be found guilty shall award, from time to time, writs of restitution for such money, goods and chattels.

HISTORY: 1962 Code Section 17‑559; 1952 Code Section 17‑559; 1942 Code Section 1148; 1932 Code Section 1148; Cr. C. ‘22 Section 42; Cr. C. ‘12 Section 187; Cr. C. ‘02 Section 153; G. S. 2492; R. S. 149; 21 H. 8 c. 11; 1712 (2) 458.

CROSS REFERENCES

Restitution in the pretrial intervention program, see Sections 17‑22‑90, 17‑22‑140.

Library References

Criminal Law 1221.

Sentencing and Punishment 2208.

Westlaw Topic Nos. 110, 350H.

C.J.S. Criminal Law Section 2411.

**SECTION 17‑25‑125.** Sentence for crimes involving the unlawful taking or receiving of or malicious injury to property may not be suspended unless restitution made.

 Notwithstanding any other provision of law, in every case in which a person is sentenced for a crime involving the unlawful taking or receiving of or malicious injury to another’s property, and the judge sentences such person less than the maximum sentence prescribed by law, a portion of such sentence may be suspended and the defendant placed on probation if he makes restitution to the victim in an amount equal to the monetary loss sustained by the victim as determined by the judge.

 If the defendant fails to make restitution in accordance with the terms prescribed by the judge, the suspension shall be revoked and the defendant shall serve the original sentence.

 Nothing contained herein shall preclude a judge from prescribing other conditions of probation.

HISTORY: 1976 Act No. 645.

CROSS REFERENCES

Restitution in the pretrial intervention program, see Sections 17‑22‑90, 17‑22‑140.

Library References

Sentencing and Punishment 1801, 1973.

Westlaw Topic No. 350H.

C.J.S. Criminal Law Sections 2147, 2152.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Probation, Parole, and Pardon Section 9, Conditions of Probation.

NOTES OF DECISIONS

In general 1

Review 2

1. In general

A defendant convicted of malicious injury to personal property could properly be ordered to make restitution to his victim as a condition of the suspension of his sentence and granting of probation where the trial court also imposed on him the maximum term of imprisonment; Section 17‑25‑125 merely mandates restitution as a condition of suspension and probation when the sentence is less than maximum, it does not prohibit it when the sentence is the maximum. Higgins v. State (S.C. 1992) 307 S.C. 446, 415 S.E.2d 799.

The trial court did not lack subject matter jurisdiction, and properly imposed as a condition of probation for certain forgery convictions, the restitution of forgeries for which the defendant had not been indicted where (1) the defendant consented to this condition and was told in open court that if he did not want to pay such restitution, indictments would be sought on each of the forgeries, (2) the judge informed the defendant that he could either pay the restitution or receive the maximum sentence, and (3) the defendant was at all times represented by counsel; the argument that the defendant did not waive indictment and plead guilty to these forgeries was inapplicable since the order of restitution was not a conviction and sentencing for the unindicted forgeries. State v. Bynes (S.C.App. 1991) 304 S.C. 62, 403 S.E.2d 126, certiorari denied.

Part of sentence conditioning parole upon making restitution was void. on parole. State v. Sanders (S.C. 1977) 269 S.C. 215, 237 S.E.2d 53.

2. Review

The imposition of $1,500 restitution as a condition of probation on a count of second degree burglary would be reversed where the trial judge stated that he was ordering the defendant to pay the restitution “just for antagonizing the man” whose place of business had been broken into a number of times, and the only evidence regarding the amount of loss was a statement by the solicitor that the defendant had stolen stereo equipment, office supplies and some other small items worth over $200; the judge’s reasons for ordering restitution were improper and the solicitor’s statement was insufficient to support the amount of restitution ordered. State v. Fussell (S.C. 1989) 299 S.C. 162, 383 S.E.2d 1.

**SECTION 17‑25‑130.** Accepted plea of guilty as equivalent of jury recommendation of mercy for sentencing purposes.

 In all cases where by law the punishment is affected by the jury recommending the accused to the mercy of the court, and a plea of guilty is accepted with the approval of the court, the accused shall be sentenced in like manner as if the jury in a trial had recommended him to the mercy of the court.

HISTORY: 1962 Code Section 17‑553.4; 1962 (52) 2155.

Library References

Criminal Law 885.

Sentencing and Punishment 117.

Westlaw Topic Nos. 110, 350H.

C.J.S. Criminal Law Section 2082.

LAW REVIEW AND JOURNAL COMMENTARIES

Criminal Procedure—South Carolina Death Penalty Statutes—Guilty Pleas—Sentencing by the Jury. 20 S.C. L. Rev. 841.

Duty of the Trial Judge to Advise a Defendant of the Consequences of a Guilty Plea. 19 S.C. L. Rev. 261.

United States Supreme Court Annotations

Avoidance of death penalty as basis for guilty plea. 25 L Ed 747.

NOTES OF DECISIONS

In general 1

Constitutional issues 2

1. In general

Cited in Thompson v State (1968) 251 SC 593, 164 SE2d 760. Quillien v Leeke (1969, DC SC) 303 F Supp 698.

The mere fact that accused’s plea was taken in accordance with the provisions of this section [Code 1962 Section 17‑553.4], subsequently declared unconstitutional, did not automatically under State v Harper (1968) 251 SC 379, 162 SE2d 712, make the plea coercively entered as a matter of law. Rather the question remains in each case whether the plea was coerced or encouraged by the death penalty power in the jury in the event of a trial. Breland v State (1969) 253 SC 187, 169 SE2d 604. Sweet v State (1971) 255 SC 293, 178 SE2d 657.

Applied in Cousar v State (1967) 250 SC 47, 156 SE2d 331. Wilson v State (1968) 250 SC 550, 159 SE2d 282.

Regardless of past custom and practice, the choice between life imprisonment and the death penalty must be left by the trial courts in this State to the jury in every case, in accord with Code 1962 Section 16‑52 regardless of how the defendant’s guilt has been determined, whether by the verdict of the jury or by a plea of guilty. State v. Harper (S.C. 1968) 251 S.C. 379, 162 S.E.2d 712. Jury 24

Where an accused represented by counsel is sufficiently informed of the consequences of his plea of guilty, no further admonition by the court as to such consequences is necessary, or, at least, the failure to give such admonition is not prejudicial error. Thompson v. State (S.C. 1966) 248 S.C. 475, 151 S.E.2d 221. Criminal Law 1166(3)

2. Constitutional issues

This section [Code 1962 Section 17‑553.4] is unconstitutional under the test laid down in State v Harper (1968) 251 SC 379, 162 SE2d 712. United States v Jackson (1968) 390 US 570, 20 L Ed 2d 138, 88 S Ct 1209.

This section [Code 1962 Section 17‑553.4] is unconstitutional, because its effect is to make the death penalty applicable to only those defendants who assert the right to plead not guilty. State v Cannon (1972) 257 SC 425, 186 SE2d 413; State v Hamilton (1972) 257 SC 428, 186 SE2d 419.

Section was previously declared unconstitutional in its entirety, and there is no exception for non‑capital offenses. Criminger v. State (S.C. 1980) 274 S.C. 241, 262 S.E.2d 734.

This section [Code 1962 Section 17‑553.4] was held unconstitutional. State v. Speights (S.C. 1974) 263 S.C. 127, 208 S.E.2d 43.

Section severable from Code 1962 Section 16‑52. State v. Speights (S.C. 1974) 263 S.C. 127, 208 S.E.2d 43.

This section [Code 1962 Section 17‑553.4] was declared unconstitutional because of its tendency to coerce guilty pleas by fear of the death penalty. Sweet v. State (S.C. 1971) 255 S.C. 293, 178 S.E.2d 657.

Following the decision of the United States Supreme Court in United States v Jackson (1968) 390 US 570, 20 L Ed 2d 138, 88 S Ct 1209, the South Carolina Supreme Court held this section [Code 1962 Section 17‑553.4] unconstitutional since its impermissible tendency was to coerce a defendant into waiving a jury trial and entering a plea of guilty solely in order to avoid the death penalty. Breland v. State (S.C. 1969) 253 S.C. 187, 169 S.E.2d 604.

This section [Code 1962 Section 17‑553.4] is declared unconstitutional as placing an impermissible burden on the constitutional right of a defendant to a jury trial. Breland v. State (S.C. 1969) 253 S.C. 187, 169 S.E.2d 604.

The evil condemned in this section [Code 1962 Section 17‑553.4] is not that it necessarily coerces guilty pleas and jury waivers, but simply that it needlessly encourages them. Breland v. State (S.C. 1969) 253 S.C. 187, 169 S.E.2d 604.

The vice condemned in this section [Code 1962 Section 17‑553.4] was that it inevitably discouraged assertion of the Fifth Amendment right not to plead guilty and to deter exercise of the Sixth Amendment right to demand a jury trial. Breland v. State (S.C. 1969) 253 S.C. 187, 169 S.E.2d 604.

**SECTION 17‑25‑135.** Entry of sex offenders on Central Registry of Child Abuse and Neglect upon conviction of certain crimes.

 (A) When a person is convicted of or pleads guilty or nolo contendere to an “Offense Against the Person” as provided for in Title 16, Chapter 3, an “Offense Against Morality or Decency” as provided for in Title 16, Chapter 15, criminal domestic violence, as defined in Section 16‑25‑20, criminal domestic violence of a high and aggravated nature as defined in Section 16‑25‑65, or the common law offense of assault and battery of a high and aggravated nature, and the act on which the conviction or the plea of guilty or nolo contendere is based involved sexual or physical abuse of a child, the court shall order that the person’s name, any other identifying information, including, but not limited to, the person’s date of birth, address, and any other identifying characteristics, and the nature of the act which led to the conviction or plea be placed in the Central Registry of Child Abuse and Neglect established by Subarticle 13, Article 3, Chapter 7, Title 63. The clerk shall forward the information to the Department of Social Services for this purpose in accordance with guidelines adopted by the department.

 (B) For purposes of this section:

 (1) “Physical abuse” means inflicting physical injury upon a child or encouraging or facilitating the infliction of physical injury upon a child by any person including, but not limited to, a person responsible for the child’s welfare, as defined in Section 63‑7‑20.

 (2) “Sexual abuse” means:

 (a) actual or attempted sexual contact with a child; or

 (b) permitting, enticing, encouraging, forcing, or otherwise facilitating a child’s participation in prostitution or in a live performance or photographic representation of sexual activity or sexually explicit nudity; by any person including, but not limited to, a person responsible for the child’s welfare, as defined in Section 63‑7‑20.

HISTORY: 1997 Act No. 132, Section 1.

Editor’s Note

1997 Act No. 132, Section 10, provides as follows:

“SECTION 10. (A) The data system which constituted the Central Registry of Child Abuse and Neglect prior to the effective date of this statute shall be incorporated into the statewide data systems of the department provided for in Section 20‑7‑680(A).

“(B) Except as provided in subsection (C), information concerning perpetrators listed in the Central Registry of Child Abuse and Neglect prior to the effective date of this act must be placed in the modified Central Registry of Child Abuse and Neglect created by Subarticle 7, Article 7, Chapter 7, Title 20 of the 1976 Code if there has been an affirmative determination that the perpetrator physically or sexually abused the child or wilfully or recklessly neglected the child.

“(C) Information concerning all cases indicated before January 1, 1993, shall be placed in the modified Central Registry of Child Abuse and Neglect created by Subarticle 7, Article 7, Chapter 7, Title 20 of the 1976 Code. At such time as the department receives a request for information concerning a perpetrator of child abuse or neglect in a case indicated prior to January 1, 1993, the department must review the records of the case. Information concerning the case may be released to the party requesting the information only if (1) the case was indicated for physical or sexual abuse or wilful or reckless neglect and (2) the department’s determination that the perpetrator abused or neglected the child was confirmed by a finding in family court or an administrative fair hearing, or the subject of the report waived the opportunity for a family court determination or for an administrative review. Upon request of a person identified in the record as a perpetrator, the department may review records of cases indicated before January 1, 1993, and may decide whether confirmation or waiver occurred, whether the department should redesignate the person’s status, or whether the department should provide a hearing pursuant to Section 20‑7‑655.

“(D) For purposes of this section, ‘wilful or reckless neglect’ refers to cases of neglect in which criminal charges were filed against the perpetrator.

“(E) No other case shall be placed in the modified Central Registry of Child Abuse and Neglect created by Subarticle 7, Article 7, Chapter 7, Title 20 of the 1976 Code unless the requirements of Sections 20‑7‑650, 20‑7‑670, or 17‑25‑510 have been met.”

2010 Act No. 273, Section 7.C, provides:

“Wherever in the 1976 Code of Laws reference is made to the common law offense of assault and battery of a high and aggravated nature, it means assault and battery with intent to kill, as contained in repealed Section 16‑3‑620, and, except for references in Section 16‑1‑60 and Section 17‑25‑45, wherever in the 1976 Code reference is made to assault and battery with intent to kill, it means attempted murder as defined in Section 16‑3‑29.”

Library References

Mental Health 469(2).

Westlaw Topic No. 257A.

C.J.S. Mental Health Sections 290 to 291, 299.

NOTES OF DECISIONS

Effective assistance of counsel 1

1. Effective assistance of counsel

Trial counsel’s failure to accurately define sexual battery to defendant before the guilty plea hearing constituted deficient performance. Terry v. State (S.C. 2009) 383 S.C. 361, 680 S.E.2d 277. Criminal Law 1920

**SECTION 17‑25‑137.** Liability of court imposing alternative sentence.

 Notwithstanding another provision of law, a court which imposes an alternative sentence upon a defendant is not liable for any injuries sustained by the defendant while the defendant completes his sentence.

HISTORY: 1999 Act No. 100, Part II, Section 97.

Library References

Judges 36.

Westlaw Topic No. 227.

C.J.S. Judges Sections 207 to 210, 212 to 214, 216 to 219.

ARTICLE 2

Community Penalties Programs

**SECTION 17‑25‑140.** Definitions.

 For purposes of this article the following definitions apply:

 (1) “Targeted offenders” means criminal defendants not previously convicted of a violent crime as defined in Section 16‑1‑60 and who have not yet been convicted in a pending indictment and are determined by the community penalties program staff to face an imminent and substantial threat of imprisonment, with the exception of criminal defendants charged with a violent crime as defined in Section 16‑1‑60; provided, a targeted offender shall not mean a criminal defendant who has previously participated in a community penalties program or a pretrial intervention program.

 (2) “Community penalty plan” means a plan presented in writing to the solicitor and presiding judge after an adjudication of guilt which provides a detailed description of the targeted offender’s proposed specific plan for sentencing in the case;

 (3) “Community penalties program” means an agency or individual within the judicial circuit which shall prepare community penalty plans and arrange or contract with public or private agencies for necessary services for offenders.

HISTORY: 1986 Act No. 462, Section 3.

Library References

Sentencing and Punishment 2045 to 2096.

Westlaw Topic No. 350H.

C.J.S. Criminal Law Sections 556 to 580.

**SECTION 17‑25‑145.** Implementation and operation of community penalties program; contracts for preparation of individual community penalty program plans.

 The Department of Probation, Parole, and Pardon and Services must implement a community penalties program in each judicial circuit of the State. The Department at its discretion may operate the program or contract with public or private agencies for necessary services. Agencies or individuals may contract to prepare individual community penalty program plans for offenders in a particular judicial circuit as prescribed by the Department.

HISTORY: 1986 Act No. 462, Section 3.

CROSS REFERENCES

Department of Probation, Parole and Pardon Services, generally, see Section 24‑21‑10 et seq.

Library References

Sentencing and Punishment 2045 to 2096.

Westlaw Topic No. 350H.

C.J.S. Criminal Law Sections 556 to 580.

**SECTION 17‑25‑150.** Responsibilities of program; mandatory community penalty plan provisions; limitation upon use of funds.

 (A) Each community penalties program is responsible for:

 (1) targeting offenders who face an imminent and substantial threat of imprisonment;

 (2) preparing detailed community penalty plans for presentation to the presiding judge by the offender’s attorney;

 (3) contracting or arranging with public or private agencies for services described in the community penalty plan;

 (4) defining objectives of the Communities Penalties Programs;

 (5) outlining goals for reduction of offenders committed to prison for each county within the circuit, and a system of monitoring the number of commitments to prison;

 (6) developing procedures for obtaining services from existing public or private agencies and preparation of a detailed budget for staff, contracted services, and all other costs;

 (7) developing procedures for cooperation with the probation personnel who have supervisory responsibility for the offender;

 (8) outlining procedures for evaluating the program’s effect on numbers of prison commitments;

 (9) outlining procedures for returning offenders who do not comply with their community penalty plan to court for action by the court.

 (B) Every community penalty plan must include the following:

 (1) notification to the victim of the offender’s placement in the program;

 (2) solicitation of victim response into the offender’s proposed community penalty;

 (3) restitution to the victim by the offender within a specified period of time and in an amount to be determined by the court;

 (4) payment of such fees and costs of the program by the offender unless the court grants a waiver due to indigency. Procedures for collecting a fee from offenders must be implemented based on a sliding scale according to income and ability to pay;

 (5) procedures for returning offenders who do not comply with their community penalty plan to court for action by the court.

 (C) Funds provided for use under the provisions of this article may not be used for the operating cost, construction, or any other cost associated with local jail confinement.

HISTORY: 1986 Act No. 462, Section 3.

Library References

Sentencing and Punishment 2045 to 2096.

Westlaw Topic No. 350H.

C.J.S. Criminal Law Sections 556 to 580.

**SECTION 17‑25‑160.** Funds for implementing program.

 The funds for implementing the provisions of the Community Penalties Program established in this article must be provided by the General Assembly in the annual general appropriations act from funds available pursuant to Section 14‑1‑210 of the 1976 Code.

HISTORY: 1986 Act No. 462, Section 2.

Library References

States 127, 129.

Westlaw Topic No. 360.

C.J.S. States Sections 386 to 387, 390 to 417.

ARTICLE 3

Enforcement and Execution

**SECTION 17‑25‑310.** Opening and enforcement of sealed sentences upon arrest.

 Upon the arrest of a person for whom there is a sealed sentence the sheriff shall forthwith carry the prisoner before the clerk of the court who shall, in the presence of the prisoner and the attorney of record if there be one, open and publish such sentence and it shall at once be enforced unless stayed by appeal.

HISTORY: 1962 Code Section 17‑571; 1952 Code Section 17‑571; 1942 Code Section 984; 1932 Code Section 984; Cr. P. ‘22 Section 75; Cr. C. ‘12 Section 72; 1910 (26) 587, 762; 1911 (27) 135.

NOTES OF DECISIONS

In general 1

1. In general

Whatever right State had to require defendant to be present in person was waived by permitting his counsel to consent to verdict of guilty in defendant’s absence, and defendant having accepted that verdict and having complied with terms of sentence imposed as result thereof, State was estopped to urge, as basis for estreatment of appearance recognizance, that defendant’s appearance by counsel had not been sufficient compliance with condition of recognizance. Code 1952, Sections 16‑414, 17‑571. State v. Simring (S.C. 1956) 230 S.C. 49, 94 S.E.2d 9. Estoppel 62.2(2)

**SECTION 17‑25‑320.** Enforcement of sentence and judgment against corporations.

 The sentence and judgment of the court of general sessions in a criminal case against a corporation shall be enforced in the same manner by execution against the property of the defendant as is provided by law for enforcing the judgments of the courts of common pleas in civil actions.

HISTORY: 1962 Code Section 17‑572; 1952 Code Section 17‑572; 1942 Code Section 991; 1932 Code Section 991; Civ. C. ‘22 Section 4299; Civ. C. ‘12 Section 2832; 1911 (27) 41.

CROSS REFERENCES

Application of laws pertaining to enforcing criminal liability of corporations to unincorporated associations convicted of barratry, see Section 16‑17‑30.

Library References

Corporations and Business Organizations 2624.

Westlaw Topic No. 101.

**SECTION 17‑25‑322.** Restitution to crime victim by person convicted of crime; hearing; determination of method, manner, and amount; entry of order.

 (A) When a defendant is convicted of a crime which has resulted in pecuniary damages or loss to a victim, the court must hold a hearing to determine the amount of restitution due the victim or victims of the defendant’s criminal acts. The restitution hearings must be held unless the defendant in open court agrees to the amount due, and in addition to any other sentence which it may impose, the court shall order the defendant make restitution or compensate the victim for any pecuniary damages. The defendant, the victim or victims, or their representatives or the victim’s legal representative as well as the Attorney General and the solicitor have the right to be present and be heard upon the issue of restitution at any of these hearings.

 (B) In determining the manner, method, or amount of restitution to be ordered, the court may take into consideration the following:

 (1) the financial resources of the defendant and the victim and the burden that the manner or method of restitution will impose upon the victim or the defendant;

 (2) the ability of the defendant to pay restitution on an installment basis or on other conditions to be fixed by the court;

 (3) the anticipated rehabilitative effect on the defendant regarding the manner of restitution or the method of payment;

 (4) any burden or hardship upon the victim as a direct or indirect result of the defendant’s criminal acts;

 (5) the mental, physical, and financial well‑being of the victim.

 (C) At the restitution hearings, the defendant, the victim, the Attorney General, the solicitor, or other interested party may object to the imposition, amount or distribution of restitution, or the manner or method of them, and the court shall allow all of these objections to be heard and preserved as a matter of record. The court shall enter its order upon the record stating its findings and the underlying facts and circumstances of them. The restitution order shall specify a monthly payment schedule that will result in full payment for both restitution and collection fees by the end of eighty percent of the offender’s supervision period. In the absence of a monthly payment schedule, the Department of Probation, Parole, and Pardon Services shall impose a payment schedule of equal monthly payments that will result in full restitution and collections fee being paid by the end of eighty percent of an offender’s supervision period. The department, through its agents, must initiate legal process to bring every probationer, whose restitution is six months in arrears, back to court, regardless of wilful failure to pay. The judge shall make an order addressing the probationer’s failure to pay.

 (D) All restitution funds, excluding the twenty percent collection fee, collected before or after the effective date of this section that remain unclaimed by a crime victim for more than eighteen months from the day of last payment received must be transferred to the South Carolina Victim Compensation Fund, notwithstanding the Uniform Unclaimed Property Act of 1981.

 (E) An offender may not be granted a pardon until the restitution and collection fees required by the restitution order have been paid in full.

HISTORY: 1993 Act No. 140, Section 1; 1996 Act No. 437, Section 2.

Code Commissioner’s Note

Pursuant to 2017 Act No. 96, Section 14, the reference to “Victim’s Compensation Fund” in (D) was changed to “Victim Compensation Fund”.

Editor’s Note

1996 Act No. 437, Section 8, eff January 1, 1997, provides as follows:

“Implementation of the changes in law effectuated by this act to Sections 16‑3‑1110, 16‑3‑1535, 17‑25‑322, 17‑25‑324, and 24‑21‑490 of the 1976 Code and the requirements thereunder or in any new provisions of law contained herein which would necessitate funding are contingent upon appropriations of sufficient funding by the General Assembly. Nothing herein shall relieve the various agencies and authorities within the offices of the respective clerks of court or judicial, correctional, and parole systems of this State from continuing to meet, enforce, and address those provisions of law related to restitution in effect prior to the enactment hereof.”

CROSS REFERENCES

Victim and Witness Bill of Service Rights, see Section 16‑3‑1510 et seq.

Library References

Sentencing and Punishment 2100 to 2217.

Westlaw Topic No. 350H.

C.J.S. Criminal Law Sections 2473 to 2510.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Arson Section 22, Sentence and Punishment.

S.C. Jur. Burglary Section 7, Punishment.

S.C. Jur. Extortion, Blackmail, and Threats Section 11, Sentence and Punishment.

S.C. Jur. False Pretenses Section 3, Misdemeanor Status and Punishment.

S.C. Jur. Probation, Parole, and Pardon Section 9, Conditions of Probation.

United States Supreme Court Annotations

Restitution, Colorado scheme requiring exonerated defendants to show actual innocence to be refunded costs, fees, and restitution they paid violated due process, see Nelson v. Colorado, 2017, 137 S.Ct. 1249, 197 L.Ed.2d 611. Constitutional Law 4737, 4841; Costs 290; Sentencing and Punishment 2107

Restitution, separate notice of appeal from amended judgment determining restitution amount must be filed unless Government forfeits its objection, see Manrique v. U.S., 2017, 137 S.Ct. 1266, 197 L.Ed.2d 599. Criminal Law 1081(4.1)

NOTES OF DECISIONS

In general 1

Admissibility of evidence 2

Civil settlements 4

Review 3

1. In general

Although trial court is allowed broad discretion in conducting restitution hearing, defendant must receive notice of hearing and evidence intended to be used to prove amount of restitution, during hearing defendant must be given opportunity to be heard and to cross‑examine witnesses, and evidence admitted during restitution hearing must be reliable and trustworthy. State v. Gulledge (S.C. 1997) 326 S.C. 220, 487 S.E.2d 590.

2. Admissibility of evidence

Restitution hearing is part of sentencing proceeding, and thus, trial court may consider information which may be inadmissible under evidentiary rules. State v. Gulledge (S.C. 1997) 326 S.C. 220, 487 S.E.2d 590. Sentencing And Punishment 2186

During the sentencing phase of an action for breach of trust with fraudulent intent, the trial court did not err in allowing the prosecution to introduce into evidence a hand written summary of the amounts allegedly stolen where, although the documents on which the summary was based were not provided to the court, the defendant was allowed to cross‑examine the person who prepared the summary. State v. Gulledge (S.C.App. 1996) 321 S.C. 399, 468 S.E.2d 665, rehearing denied, review granted, affirmed as modified 326 S.C. 220, 487 S.E.2d 590.

3. Review

The Court of Appeal refused to address the defendant’s contentions that the State failed to prove she had the resources to pay restitution as ordered and that the trial court failed to state its findings and underlying facts when ordering restitution where these arguments were neither raised nor addressed by the trial court. State v. Gulledge (S.C.App. 1996) 321 S.C. 399, 468 S.E.2d 665, rehearing denied, review granted, affirmed as modified 326 S.C. 220, 487 S.E.2d 590. Criminal Law 1042.3(5); Criminal Law 1045

4. Civil settlements

The execution of a civil settlement and covenant not to execute between the assault victim and defendant prior to sentencing did not preclude an award of restitution; civil settlements and criminal restitution were distinct remedies with differing considerations, and the plain language of the covenant did not preclude further litigation between the parties, let alone restitution in the criminal court. State v. Morgan (S.C.App. 2016) 417 S.C. 338, 790 S.E.2d 27. Sentencing and Punishment 2138

When a defendant is convicted of a crime causing pecuniary damages or loss to a victim, the South Carolina Code requires that the court hold a hearing to determine the amount of restitution due the victim as a result of the defendant’s criminal acts. State v. Morgan (S.C.App. 2016) 417 S.C. 338, 790 S.E.2d 27. Sentencing and Punishment 2192

**SECTION 17‑25‑323.** Continuing jurisdiction over court‑ordered payments; default; hearing to show cause; enforcement; entry in records; satisfaction of judgment.

 (A) The trial court retains jurisdiction of the case for the purpose of modifying the manner in which court‑ordered payments are made until paid in full, or until the defendant’s active sentence and probation or parole expires.

 (B) When a defendant is placed on probation by the court or parole by the Board of Probation, Parole and Pardon Services, and ordered to make restitution, and the defendant is in default in the payment of them or any installment or any criminal fines, surcharges, assessments, costs, and fees ordered, the court, before the defendant completes his period of probation or parole, on motion of the victim or the victim’s legal representative, the Attorney General, the solicitor, or a probation and parole agent, or upon its own motion, must hold a hearing to require the defendant to show cause why his default should not be treated as a civil judgment and a judgment lien attached. The court must enter:

 (1) judgment in favor of the State for the unpaid balance, if any, of any fines, costs, fees, surcharges, or assessments imposed; and

 (2) judgment in favor of each person entitled to restitution for the unpaid balance if any restitution is ordered plus reasonable attorney’s fees and cost ordered by the court.

 (C) When a defendant is ordered to make restitution by a magistrate or municipal court, and the defendant is in default in the payment of restitution or of any installment or any criminal fines, surcharges, assessments, costs, and fees ordered, the magistrate or municipal court, within one year of the imposition of the sentence, on motion of the victim or the victim’s legal representative, the Attorney General, the solicitor, or the prosecuting law enforcement agency, or upon its own motion, must hold a hearing to require the defendant to show cause why his default should not be treated as a civil judgment and a judgment lien attached. The magistrate or municipal court must enter:

 (1) judgment in favor of the State for the unpaid balance, if any, of any fines, costs, fees, surcharges, or assessments imposed; and

 (2) judgment in favor of each person entitled to restitution for the unpaid balance if any restitution is ordered plus reasonable attorney’s fees and cost ordered by the court.

 Notwithstanding the provisions of Section 14‑25‑65, municipal courts shall have the authority and jurisdiction to convert unpaid restitution, fines, costs, fees, surcharges, and assessments to civil judgments.

 The magistrate or municipal court, upon a conversion to a judgment, must transmit the judgment to the clerk of the circuit court in the county for entry pursuant to subsection (F). Judgments entered and docketed pursuant to this subsection must be handled in the same manner and have the same force and effect as judgments entered and docketed pursuant to Sections 22‑3‑300, 22‑3‑310, and 22‑3‑320.

 (D) The judgments may be enforced as a civil judgment.

 (E) A judgment issued pursuant to this section has the force and effect of a final judgment and may be enforced by the judgment creditor in the same manner as any other civil judgment with enforcement to take place in the court of common pleas.

 (F) The clerk of the circuit court must enter a judgment issued pursuant to this section in the civil judgment records of the court. A judgment issued pursuant to this section is not effective until entry is made in the civil judgment records of the court as required pursuant to this subsection.

 (G) A filing or other fee may not be required for seeking or for the filing of a civil judgment obtained or issued pursuant to this section.

 (H) Upon full satisfaction of a judgment entered pursuant to this section, the judgment creditor must record the satisfaction on the margin of the copy of the judgment on file in the civil judgment records of the court.

 (I) Any funds resulting from the collection of a judgment for unpaid fines, costs, fees, surcharges, or assessments must be distributed in the same manner and proportion as fines, costs, fees, surcharges, or assessments are distributed as otherwise set forth by law.

HISTORY: 1993 Act No. 140, Section 2; 1996 Act No. 437, Section 3; 2013 Act No. 82, Section 4, eff June 13, 2013.

Effect of Amendment

The 2013 amendment rewrote the section.

CROSS REFERENCES

Jurisdiction over minor offenses, restitution, contempt, maximum consecutive sentences, see Section 22‑3‑550.

Maximum penalties that court may impose, restitution, contempt, see Section 14‑25‑65.

Victim and Witness Bill of Service Rights, see Sections 16‑3‑1510 et seq.

Library References

Sentencing and Punishment 1973(3).

Westlaw Topic No. 350H.

Attorney General’s Opinions

Discussion of statute of limitations on judgments placed on a person’s estate as a result of a criminal action prior to their death. S.C. Op.Atty.Gen. (March 14, 2002) 2002 WL 735346.

Discussion of whether Sections 17‑25‑323 and 17‑25‑325 may be applied to court orders for restitution which preceded the effective date of the statutes. S.C. Op.Atty.Gen. (Dec. 4, 1995) 1995 WL 810367.

NOTES OF DECISIONS

In general 1

1. In general

In the prosecution of an action for breach of trust with fraudulent intent, the trial court erred in entering a civil judgment for restitution where the payments were not to begin until her release from prison; pursuant to Section 17‑25‑323, a civil judgment may be entered only upon default of the order of restitution. State v. Gulledge (S.C.App. 1996) 321 S.C. 399, 468 S.E.2d 665, rehearing denied, review granted, affirmed as modified 326 S.C. 220, 487 S.E.2d 590.

**SECTION 17‑25‑324.** Restitution to secondary victims and third‑party payees; reports.

 (A) Secondary victims and third‑party payees, excluding the offender’s insurer, may receive restitution as determined by the court. The Department of Probation, Parole and Pardon Services shall ensure that a primary victim receives his portion of a restitution order before any of the offender’s payments are credited to a secondary victim or a third party payee, or both.

 (B) The department shall report to the Governor’s Office, the President of the Senate, the Speaker of the House, the Chairman of the House Judiciary Committee, and the Chairman of the Senate Corrections and Penology Committee by the first day of the 1997 Legislative Session detailed recommendations for collection and distribution of restitution and issues relating to indigent offenders and use of civil remedies.

HISTORY: 1996 Act No. 437, Section 7; 2002 Act No. 356, Section 1, Pt IV.F, eff July 1, 2002.

Editor’s Note

1996 Act No. 437, Section 8, eff January 1, 1997, provides as follows:

“Implementation of the changes in law effectuated by this act to Sections 16‑3‑1110, 16‑3‑1535, 17‑25‑322, 17‑25‑324, and 24‑21‑490 of the 1976 Code and the requirements thereunder or in any new provisions of law contained herein which would necessitate funding are contingent upon appropriations of sufficient funding by the General Assembly. Nothing herein shall relieve the various agencies and authorities within the offices of the respective clerks of court or judicial, correctional, and parole systems of this State from continuing to meet, enforce, and address those provisions of law related to restitution in effect prior to the enactment hereof.”

Library References

Sentencing and Punishment 2122 to 2125.

Westlaw Topic No. 350H.

Attorney General’s Opinions

Discussion of whether it is appropriate for a magistrate to order restitution to the Pawn Shop Buy Back Program, established by the Spartanburg County Sheriff’s Office, when the person charged is found guilty. S.C. Op.Atty.Gen. (May 7, 2002) 2002 WL 1340414.

**SECTION 17‑25‑325.** Enforcement and execution of judgment in criminal case; findings supported by evidence.

 The sentence and judgment of the court of general sessions in a criminal case against an individual may be enforced in the same manner by execution against the property of the defendant as is provided by law for enforcing the judgments of the courts of common pleas in civil actions. Before a general sessions court may enter a judgment against a defendant’s property as authorized by this section, the judge must make findings of fact as to the amount of the judgment to be entered against the defendant. These findings must be supported by the preponderance of the relevant evidence as is offered by the parties.

HISTORY: 1993 Act No. 140, Section 3.

CROSS REFERENCES

Victim and Witness Bill of Service Rights, see Section 16‑3‑1510 et seq.

Library References

Sentencing and Punishment 2212.

Westlaw Topic No. 350H.

C.J.S. Criminal Law Sections 2493, 2510.

Attorney General’s Opinions

Discussion of statute of limitations on judgments placed on a person’s estate as a result of a criminal action prior to their death. S.C. Op.Atty.Gen. (March 14, 2002) 2002 WL 735346.

Discussion of whether Sections 17‑25‑323 and 17‑25‑325 may be applied to court orders for restitution which preceded the effective date of the statutes. S.C. Op.Atty.Gen. (Dec. 4, 1995) 1995 WL 810367.

**SECTION 17‑25‑326.** Alteration, modification, or rescission of order; petition upon good cause; preponderance of evidence.

 Any court order issued pursuant to the provisions of this article may be altered, modified, or rescinded upon the filing of a petition by the defendant, Attorney General, solicitor, or the victim for good and sufficient cause shown by a preponderance of the evidence.

HISTORY: 1993 Act No. 140, Section 4; 1996 Act No. 437, Section 4.

CROSS REFERENCES

Victim and Witness Bill of Service Rights, see Section 16‑3‑1510 et seq.

Library References

Sentencing and Punishment 1984, 2225.

Westlaw Topic No. 350H.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Probation, Parole, and Pardon Section 9, Conditions of Probation.

Attorney General’s Opinions

A court will likely find the South Carolina Constitution requires a victim to be notified of and allowed to speak or present a new or updated statement in regards to a sentence reconsideration regardless of whether such motion is filed pursuant to the Rules of Criminal Procedure or pursuant statute. S.C. Op.Atty.Gen. (Feb. 24, 2014) 2014 WL 1398591.

**SECTION 17‑25‑330.** Execution on forfeited recognizance or for fine.

 When any recognizance shall be adjudged forfeited under the provisions of Section 17‑15‑170 or when any fine shall be imposed by or recovered for the use of the State in any court or before a magistrate, if the party incurring such fine or forfeiture shall fail to pay it down, with the costs of prosecution, then a writ in the nature of an execution shall issue, by virtue of which the sheriff or his deputy shall sell in the same manner as property is sold under execution in civil cases so much of such offender’s estate, real or personal, as may be necessary to satisfy the fine or forfeiture, the cost of prosecution and the reasonable charges of taking, keeping and selling such property, returning the overplus, if any, to the offender, together with a bill of the fine or forfeiture, with costs and charges, if he requires it.

HISTORY: 1962 Code Section 17‑573; 1952 Code Section 17‑573; 1942 Code Section 1042; 1932 Code Section 1042; Cr. P. ‘22 Section 131; Cr. C. ‘12 Section 113; Cr. C. ‘02 Section 86; G. S. 2661; R. S. 86; 1787 (5) 13.

Library References

Fines 6.

Westlaw Topic No. 174.

C.J.S. Fines Section 16.

Attorney General’s Opinions

No time limit exists on the collection of fines, fees and restitution imposed by the Court of General Sessions. 1994 Op Atty Gen, No 94‑10, p 29 (January 18, 1994) 1994 WL 50433.

An inmate under sentence of imprisonment and fine must at the expiration of his sentence of imprisonment, including any credits due, be released regardless of whether the fine has been paid or not. 1969‑70 Op Atty Gen, No 2923, p 169 (June 24, 1970) 1970 WL 12205.

**SECTION 17‑25‑340.** When offender may be committed to jail; privilege of insolvent debtors.

 If the sheriff or his deputy return on oath that such offender refused to pay or has not any property or not sufficient whereon to levy, then a writ of capias ad satisfaciendum shall issue whereby he shall be committed to the common jail, until the forfeiture, costs and charges shall be satisfied. Such offender shall be entitled, however, to the privilege of insolvent debtors.

HISTORY: 1962 Code Section 17‑574; 1952 Code Section 17‑574; 1942 Code Section 1043; 1932 Code Section 1043; Cr. P. ‘22 Section 132; Cr. C. ‘12 Section 114; Cr. C. ‘02 Section 87; G. S. 2662; R. S. 87; 1787 (5) 13.

Library References

Fines 10.

Westlaw Topic No. 174.

C.J.S. Fines Sections 21 to 22.

Attorney General’s Opinions

An inmate under sentence of imprisonment and fine must at the expiration of his sentence of imprisonment, including any credits due, be released regardless of whether the fine has been paid or not. 1969‑70 Op Atty Gen, No 2923, p 169 (June 24, 1970)1970 WL 12205.

NOTES OF DECISIONS

In general 1

Constitutional issues 2

1. In general

This holding does not deal with a judgment of confinement for nonpayment of a fine in the familiar pattern of alternative sentence of “$30 or 30 days.” Williams v. Illinois, U.S.Ill.1970, 90 S.Ct. 2018, 399 U.S. 235, 26 L.Ed.2d 586, 52 O.O.2d 281.

A person convicted of bastardy who does not give a recognizance can after an execution is returned unsatisfied be arrested on a capias ad satisfaciendum under this section [Code 1962 Section 17‑574]. State v. Brewer (S.C. 1893) 38 S.C. 263, 16 S.E. 1001, 37 Am.St.Rep. 752.

For additional related case, see Hurst v. Samuels (S.C. 1888) 29 S.C. 476, 7 S.E. 822.

2. Constitutional issues

A state may not constitutionally imprison beyond the maximum duration fixed by statute a defendant who is financially unable to pay a fine. A statute permitting a sentence of both imprisonment and fine cannot be parlayed into a longer term of imprisonment than is fixed by the statute since to do so would be to accomplish indirectly as to an indigent that which cannot be done directly. Williams v. Illinois, U.S.Ill.1970, 90 S.Ct. 2018, 399 U.S. 235, 26 L.Ed.2d 586, 52 O.O.2d 281.

Once the state has defined the outer limits of incarceration necessary to satisfy its penological interests and policies, it may not then subject a certain class of convicted defendants to a period of imprisonment beyond the statutory maximum solely by reason of their indigency. Williams v. Illinois, U.S.Ill.1970, 90 S.Ct. 2018, 399 U.S. 235, 26 L.Ed.2d 586, 52 O.O.2d 281. Fines 11

The equal protection clause of the Fourteenth Amendment requires that the statutory ceiling placed on imprisonment for any substantive offense be the same for all defendants irrespective of their economic status. Williams v. Illinois, U.S.Ill.1970, 90 S.Ct. 2018, 399 U.S. 235, 26 L.Ed.2d 586, 52 O.O.2d 281. Constitutional Law 3808

When the aggregate imprisonment exceeds the maximum period fixed by the statute and results directly from an involuntary nonpayment of a fine or court costs, there is an impermissible discrimination that rests on ability to pay. Williams v. Illinois, U.S.Ill.1970, 90 S.Ct. 2018, 399 U.S. 235, 26 L.Ed.2d 586, 52 O.O.2d 281. Constitutional Law 3809

The holding regarding imprisonment for involuntary nonpayment of fines applies with equal force to imprisonment for involuntary nonpayment of court costs. Williams v. Illinois, U.S.Ill.1970, 90 S.Ct. 2018, 399 U.S. 235, 26 L.Ed.2d 586, 52 O.O.2d 281.

Inability to pay court costs cannot justify imprisoning an indigent beyond the maximum statutory term since the equal protection clause prohibits expanding the maximum term specified by the statute simply because of inability to pay. Williams v. Illinois, U.S.Ill.1970, 90 S.Ct. 2018, 399 U.S. 235, 26 L.Ed.2d 586, 52 O.O.2d 281.

Nothing in this holding precludes a judge from imposing on an indigent, as on any defendant, the maximum penalty prescribed by law. Williams v. Illinois, U.S.Ill.1970, 90 S.Ct. 2018, 399 U.S. 235, 26 L.Ed.2d 586, 52 O.O.2d 281.

The mere fact that an indigent in a particular case may be imprisoned for a longer time than a nonindigent convicted of the same offense does not give rise to a violation of the equal protection clause. Williams v. Illinois, U.S.Ill.1970, 90 S.Ct. 2018, 399 U.S. 235, 26 L.Ed.2d 586, 52 O.O.2d 281. Constitutional Law 3227

Nothing in this decision precludes imprisonment for willful refusal to pay a fine or court costs. Williams v. Illinois, U.S.Ill.1970, 90 S.Ct. 2018, 399 U.S. 235, 26 L.Ed.2d 586, 52 O.O.2d 281.

**SECTION 17‑25‑350.** Schedule for payment of fine by indigent; consequences of failure to comply.

 In any offense carrying a fine or imprisonment, the judge or magistrate hearing the case shall, upon a decision of guilty of the accused being determined and it being established that he is indigent at that time, set up a reasonable payment schedule for the payment of such fine, taking into consideration the income, dependents and necessities of life of the individual. Such payments shall be made to the magistrate or clerk of court as the case may be until such fine is paid in full. Failure to comply with the payment schedule shall constitute contempt of court; however, imprisonment for contempt may not exceed the amount of time of the original sentence, and where part of the fine has been paid the imprisonment cannot exceed the remaining pro rata portion of the sentence.

 No person found to be indigent shall be imprisoned because of inability to pay the fine in full at the time of conviction.

 Entitlement to free counsel shall not be determinative as to defendant’s indigency.

HISTORY: 1962 Code Section 17‑574.1; 1973 (58) 266.

Library References

Fines 10, 19.

Westlaw Topic No. 174.

C.J.S. Fines Sections 4, 13, 20 to 22.

Attorney General’s Opinions

Discussion of whether a defendant can repeatedly be held in contempt of court for failure to make restitution payments until the restitution payments are made. S.C. Op.Atty.Gen. (Aug. 10, 1999) 1999 WL 986742.

No time limit exists on the collection of fines, fees and restitution imposed by the Court of General Sessions. 1994 Op Atty Gen, No 94‑10, p 29 (January 18, 1994) 1994 WL 50433.

Where an indigent fails to comply with the schedule of payments established by the court and the court determines that the indigent has willfully refused to pay or failed to make bona fide efforts to pay, the court is authorized to imprison the defendant for contempt; as provided in Section 17‑25‑350, where part of the fine has been paid, the imprisonment cannot exceed the remaining pro rata portion of the sentence. There appears to be no basis for a court to impose a fine in addition to the sentence originally imposed. 1987, Op Atty Gen, No 87‑95, p 255 (November 30, 1987) 1987 WL 245503.

When one is sentenced in the alternative, he must either pay the entire fine or serve the entire sentence, unless he falls within the provisions of Section 17‑25‑360; Section 17‑25‑350 and Section 17‑25‑360 indicate that either the judge or the clerk of court would be responsible for prorating a sentence. 1982 Op Atty Gen, No 82‑74, p 73 (December 29, 1982) 1982 WL 155043.

Magistrates may punish all behavior within the definition of contemptuous exhibited in their presence while performing the duties of their office as contempt of court. 1978 Op Atty Gen, No 78‑191, p 214 (November 13, 1978) 1978 WL 22659.

Code 1962 Section 17‑574.1 [Code 1976 Section 17‑25‑350], mandatory on judges and magistrates, entitles a defendant a schedule of payment for multiple offenses; and contempt on a previous charge cannot prohibit the application of the statute. 1974‑75 Op Atty Gen, No 4223, p 263 (December 29, 1975) 1975 WL 22520.

**SECTION 17‑25‑360.** Fines in the alternative shall be apportioned when part of sentence has been served.

 In all cases in this State when a sentence has been imposed by any judge, magistrate, mayor or intendant of any city or town in the alternative, by fine or imprisonment, and the person upon whom the sentence has been imposed shall enter upon the service of the sentence and thereafter such person or anyone in his behalf shall desire or offer to pay the fine imposed by the sentence, the clerk of the court in the county in which the sentence was imposed or the judge, magistrate, mayor or intendant who imposed the sentence shall apportion the fine imposed therein, so that the person or anyone in his behalf shall be allowed to pay such part of the fine as shall be in proportion to the balance of the time to be served under the sentence. Upon the payment of such proportionate part of the fine, the clerk, judge, magistrate, mayor or intendant shall release and discharge the person in behalf of whom the fine is so paid from further custody.

HISTORY: 1962 Code Section 17‑576; 1952 Code Section 17‑576; 1942 Code Section 1045; 1932 Code Section 1045; 1922 (32) 767.

Library References

Fines 1.5.

Westlaw Topic No. 174.

C.J.S. Fines Sections 1 to 2, 8, 10 to 12.

Attorney General’s Opinions

Discussion of the sentencing authority of municipal court judges. S.C. Op.Atty.Gen. (June 5, 2001) 2001 WL 790269.

When one is sentenced in the alternative, he must either pay the entire fine or serve the entire sentence, unless he falls within the provisions of Section 17‑25‑360; Section 17‑25‑350 and Section 17‑25‑360 indicate that either the judge or the clerk of court would be responsible for prorating a sentence. 1982 Op Atty Gen, No 82‑74, p 73 (December 29, 1982) WL 155043.

**SECTION 17‑25‑370.** Execution of death sentence upon affirmance of judgment or dismissal or abandonment of appeal.

 In all criminal cases in which the sentence of death is imposed and which are appealed to the Supreme Court or in which notice of intention to appeal is given, when the judgment below has been affirmed or the appeal dismissed or abandoned, the clerk of the Supreme Court, when the remittitur is sent down or the appeal is dismissed or abandoned, shall notify the Commissioner of the prison system or his duly appointed officer in charge of the State Penitentiary of the final disposition of such appeal and, on the fourth Friday after the receipt of such notice the sentence appealed from shall be duly carried out as provided by law in such cases, unless stayed by order of the Supreme Court or respite or commutation of the Governor.

HISTORY: 1962 Code Section 17‑578; 1952 Code Section 17‑578; 1942 Code Section 1046; 1932 Code Section 1046; 1923 (33) 113; 1929 (36) 66; 1936 (39) 1306; 1960 (51) 1917.

Library References

Sentencing and Punishment 1795 to 1799.

Westlaw Topic No. 350H.

C.J.S. Criminal Law Sections 2191 to 2194, 2219.

LAW REVIEW AND JOURNAL COMMENTARIES

Boken, Expounding the state constitution: the substantive right of privacy in South Carolina. 46 S.C. L. Rev. 191 (Autumn 1994).

Capital Punishment in South Carolina: The End of an Era. 24 S.C. L. Rev. 762.

Fetzer, Execution of the mentally retarded: a punishment without justification. 40 S.C. L. Rev. 419 (Winter 1989).

Paternoster and Kazyaka, The administration of the death penalty in South Carolina: experiences over the first few years. 39 S.C. L. Rev. 245 (Winter 1988).

United States Supreme Court Annotations

Death penalty, stay of execution, foreign defendant, denial of right to consular access, treaty obligations, likelihood of Congressional or legislative action, see Medellin v. Texas, U.S.Tex.2008, 129 S.Ct. 360, 554 U.S. 759, 171 L.Ed.2d 833.

Double jeopardy, death penalty, hearing to determine whether defendant’s mental capacity precludes execution, see Bobby v. Bies, 2009, 129 S.Ct. 2145, 556 U.S. 825, 173 L.Ed.2d 1173.

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Constitutional issues 2

1. In general

Cited in Moorer v. State of S. C., 1965, 240 F.Supp. 531.

Supreme Court will issue an execution notice in a death penalty case after the defendant either has exhausted all appeals and other avenues of post‑conviction relief (PCR) in state and federal courts, or after the defendant, who is determined by the Supreme Court to be mentally competent, knowingly and voluntarily waives such appeals. Reed v. Ozmint (S.C. 2007) 374 S.C. 19, 647 S.E.2d 209. Sentencing And Punishment 1795

Murder defendant who had been sentenced to death was not mentally competent to waive his right to pursue post‑conviction relief; while defendant apparently understood what he was tried for and reason for his punishment, it was clear he did not understand nature of the post‑conviction relief proceeding, as he was not able to describe, in a reasonably coherent fashion using layman’s terms, basic purposes or procedures available to him in post‑conviction proceeding, and Supreme Court was not persuaded that defendant possessed sufficient capacity or ability to rationally communicate with counsel, given opinions of mental health experts who examined defendant, and cited his inability to communicate adequately with counsel as a primary reason for their conclusion he was not mentally competent. Hughes v. State (S.C. 2006) 367 S.C. 389, 626 S.E.2d 805. Criminal Law 1572

When considering a request by a defendant who has been sentenced to death to waive the right to appeal or pursue post‑conviction relief, and to be executed forthwith, Supreme Court necessarily decides each case on an individual basis, and it is within the Court’s discretion whether to allow defendant to waive his appellate or post‑conviction rights. Hughes v. State (S.C. 2006) 367 S.C. 389, 626 S.E.2d 805. Criminal Law 1026.10(1); Criminal Law 1572; Sentencing And Punishment 1788(2)

Following a competency hearing in the trial court for a defendant who has been sentenced to death and has requested to waive his right to appeal or pursue post‑conviction relief, and to be executed forthwith, the parties are required by the Supreme Court to file briefs and an appendix containing the testimony and evidence considered by the trial court, and defendant is required, when directed by the Court, to appear at oral argument and personally respond to questions regarding the waiver of his appellate or post‑conviction rights. Hughes v. State (S.C. 2006) 367 S.C. 389, 626 S.E.2d 805. Criminal Law 1026.10(1); Criminal Law 1572; Sentencing And Punishment 1788(2)

When considering a request by a defendant who has been sentenced to death to waive the right to appeal or pursue post‑conviction relief, and to be executed forthwith, the practice of the Supreme Court is to remand the matter to trial court for a hearing and ruling on whether defendant is mentally competent to make such a waiver, and whether any waiver of appellate or post‑conviction rights is knowing and voluntary; the Court remands such a matter when it deems it necessary to further develop or explore the facts of a case. Hughes v. State (S.C. 2006) 367 S.C. 389, 626 S.E.2d 805. Criminal Law 1181.5(8)

Since defendant was sentenced to death for murder committed in the commission of the crime of robbery while armed with a deadly weapon under a statute declared unconstitutional, the cause was remanded to the Circuit Court for resentencing to life imprisonment. State v. Law (S.C. 1978) 270 S.C. 664, 244 S.E.2d 302.

This section [Code 1962 Section 17‑578] held applicable to dismissal of appeal from order denying new trial on after‑discovered evidence. Ex parte Howell (S.C. 1932) 168 S.C. 197, 167 S.E. 230.

2. Constitutional issues

Constitutionality of this section [Code 1962 Section 17‑578] was upheld in Ex parte Howell (S.C. 1932) 168 S.C. 197, 167 S.E. 230.

**SECTION 17‑25‑380.** Number of copies and form of notice under Section 17‑25‑370.

 Two copies of the notice shall be served or sent by registered mail to the Director of the Department of Corrections or his duly appointed officer in charge of the applicable correctional facility. The notice, when the sentence has been affirmed, shall read substantially as follows:

 “This is to notify you that the sentence of death imposed in the case of State vs. \_\_\_\_\_\_\_\_\_\_ from which an appeal has been taken has been affirmed and finally disposed of by the Supreme Court and the remittitur has been sent down to the clerk of the Court of General Sessions of \_\_\_\_\_\_\_\_\_\_ County. It is, therefore, required of you by Section 17‑25‑370 of the Code of Laws of South Carolina to execute the judgment and sentence of death imposed on said defendant or defendants (if more than one) on the fourth Friday after the service upon you or receipt of this notice”.

 When the appeal has been dismissed or abandoned the notice shall be substantially the same as when the sentence has been affirmed except that the first sentence shall read as follows:

 “This is to notify you that the appeal from the sentence of death imposed in the case of State vs. \_\_\_\_\_\_\_\_\_\_ has been dismissed (or abandoned) and the notice has been sent down to the clerk of the Court of General Sessions of \_\_\_\_\_\_\_\_\_\_ County”.

HISTORY: 1962 Code Section 17‑579; 1952 Code Section 17‑579; 1942 Code Section 1046; 1932 Code Section 1046; 1923 (33) 113; 1929 (36) 66; 1936 (39) 1306; 1960 (51) 1917; 1996 Act No. 448, Section 3.

Editor’s Note

1996 Act No. 448, Section 1, eff June 18, 1996, provides as follows:

“This act [consisting of Sections 16‑3‑21, 17‑25‑380, 17‑27‑130, 17‑27‑150, and 17‑27‑160] is known and may be cited as the ‘South Carolina Effective Death Penalty Act of 1996’.”

CROSS REFERENCES

Use of certified mail, see Section 2‑7‑90.

Library References

Sentencing and Punishment 1797.

Westlaw Topic No. 350H.

C.J.S. Criminal Law Section 2192.

**SECTION 17‑25‑390.** Acknowledgment of receipt of notice.

 The receipt of the notice shall be acknowledged in writing by the recipient. The acknowledgment shall be filed by the clerk of the Supreme Court and, in case of service, the return of service shall be filed.

HISTORY: 1962 Code Section 17‑580; 1952 Code Section 17‑580; 1942 Code Section 1046; 1932 Code Section 1046; 1923 (33) 113; 1929 (36) 66; 1936 (39) 1306.

Library References

Sentencing and Punishment 1797.

Westlaw Topic No. 350H.

C.J.S. Criminal Law Section 2192.

**SECTION 17‑25‑400.** Service of notice on prisoner.

 The Commissioner of the prison system or his duly appointed officer shall immediately serve one of the copies of the notice upon the defendant personally.

HISTORY: 1962 Code Section 17‑581; 1952 Code Section 17‑581; 1942 Code Section 1046; 1932 Code Section 1046; 1923 (33) 113; 1929 (36) 66; 1936 (39) 1306; 1960 (51) 1917.

Library References

Sentencing and Punishment 1797.

Westlaw Topic No. 350H.

C.J.S. Criminal Law Section 2192.

NOTES OF DECISIONS

In general 1

1. In general

Cited in Moorer v. State of S. C., 1965, 240 F.Supp. 531.

ARTICLE 5

Notoriety for Profit

**SECTION 17‑25‑500.** Title of act.

 This article may be known as the “South Carolina Notoriety for Profit Act”.

HISTORY: 2000 Act No. 306, Section 4.

Library References

Criminal Law 1221.

Westlaw Topic No. 110.

C.J.S. Criminal Law Section 2411.

**SECTION 17‑25‑510.** Definitions.

 As used in this article:

 (1) “Office” means Office of the Attorney General, South Carolina Crime Victim Services Division.

 (2) “Convicted” includes any conviction by entry of a plea of guilty or nolo contendere, conviction after trial, a finding of guilty but mentally ill, or a finding of not guilty by reason of insanity.

 (3) “Eligible person” means:

 (a) a victim of the particular crime in question who has suffered direct or threatened physical, psychological, or financial harm as a result of the commission of the particular crime;

 (b) a victim’s spouse;

 (c) a victim’s parent;

 (d) a victim’s child;

 (e) a spouse, parent, child, or lawful representative of a victim who is:

 (i) deceased;

 (ii) a minor;

 (iii) incompetent; or

 (iv) physically or psychologically incapacitated; or

 (f) a person dependent for principal support on the deceased victim of the crime.

 “Eligible person” does not include the offender criminally responsible for the crime in question or a person aiding or abetting the offender criminally responsible.

 (4) “Offender” means the person convicted of the particular crime in question.

 (5) “Profit from a crime” includes any of the following:

 (a) property obtained through or income generated from the commission of a crime for which the offender was convicted;

 (b) property obtained or income generated from the sale, conversion, or exchange of proceeds of a crime for which the offender was convicted, including gain realized by the sale, conversion, or exchange; or

 (c) property which the offender obtained or income generated as a result of having committed the crime for which the offender was convicted, including assets obtained through the unique knowledge obtained during the commission of or in preparation for the commission of the crime, as well as any property obtained by or income generated from the sale, conversion, or exchange of that property and any gain realized by that sale, conversion, or exchange.

HISTORY: 2000 Act No. 306, Section 4.

Code Commissioner’s Note

Pursuant to 2017 Act No. 96, Section 14, the reference to “State Office of Victim Assistance in the office of the Governor” in (1) was changed to “Office of the Attorney General, South Carolina Crime Victim Services Division”.

Library References

Criminal Law 1221.

Westlaw Topic No. 110.

C.J.S. Criminal Law Section 2411.

**SECTION 17‑25‑520.** Notice of payment of profit from crime; notification of victims.

 If an offender, or his representative or agent, knowingly contracts for or agrees to be paid any profit from a crime, he must give written notice to the office of the payment or the obligation to pay and a copy of the contract between the offender and contracting party as soon as practical after discovering that the payment or intended payment is a profit from a crime. The office, upon receiving notice of the contract, agreement to pay, or payment of profits from a crime, shall request from all agencies with the duty to notify crime victims pursuant to Article 15, Chapter 3 of Title 16, the name and last known address of any eligible person who is a victim of the offender of the crime in question. It is the duty of the office to notify all known eligible persons at their last known address of the existence of profits.

HISTORY: 2000 Act No. 306, Section 4.

Library References

Criminal Law 1221.

Westlaw Topic No. 110.

C.J.S. Criminal Law Section 2411.

**SECTION 17‑25‑530.** Civil action to recover profits; limitations; action by Office of Victim Assistance to recover payments and expenses.

 (A) Notwithstanding any other provision of law or rule of civil procedure, an eligible person has the right to bring a civil action in a court of competent jurisdiction to recover money damages from an offender or the legal representative of that offender within three years of the discovery of the existence of any profits from the crime. Damages awarded in this action are recoverable only up to the value of the profits from the crime.

 (B) If an action is filed under this article after the expiration of all other applicable statutes of limitation, any other eligible person must file an action for damages as a result of the crime within three years of:

 (1) the actual discovery of the existence of the profits from the crime; or

 (2) actual notice received from or notice published by the office of the discovery of the existence of profits, whichever is later.

 (C) If profits from a crime remain after the payment of all claims made under this article, the office has the right to bring an action in a court of competent jurisdiction against an offender or the legal representative of that offender within two years of the discovery of the existence of any profits to recover payments made by the office pursuant to Article 13, Chapter 3 of Title 16 and expenses incurred by the office pursuant to Article 13, 14, or 15 of Chapter 3 of Title 16 or Section 24 of Article 1 of the South Carolina Constitution with regard to the crime or the offender in question.

HISTORY: 2000 Act No. 306, Section 4.

Library References

Criminal Law 1220, 1221.

Westlaw Topic No. 110.

C.J.S. Criminal Law Sections 2411, 2462 to 2510.

**SECTION 17‑25‑540.** Notification of Office of Victim Assistance of commencement of action; duties of Office upon receipt of notification.

 (A) Upon filing an action pursuant to Section 17‑25‑530, the eligible person shall give notice to the office by delivering or mailing a copy of the complaint. The eligible person may, prior to filing the action, notify the office of his intent to file an action in order to allow the office to apply for other appropriate remedies which are authorized prior to the commencement of an action.

 (B) The office may act on behalf of all eligible persons and may apply for any remedies available to an eligible person bringing an action under Section 17‑25‑530. These remedies include the right of attachment, injunction, receivership, and notice of pendency. On the motion for a particular remedy, the moving party shall state whether any other remedy has been sought in the same action against the same offender. The court may require the moving party to elect its remedy.

 (C) Upon receipt of a copy of the complaint, the office shall:

 (1) use certified mail, return receipt requested, to notify all other known eligible persons whose addresses are known of the alleged existence of profits from a crime;

 (2) publish, at least once a year for three years from the date it is initially notified by an eligible person under this section, a legal notice in newspapers of general circulation in the county where the crime was committed and in contiguous counties advising any eligible persons of the alleged existence of profits from a crime. The office may provide additional notice in its discretion; and

 (3) avoid the wasting of the assets identified in the complaint as the newly discovered profits from a crime in any manner consistent with subsection (B).

HISTORY: 2000 Act No. 306, Section 4.

Library References

Criminal Law 1220, 1221.

Westlaw Topic No. 110.

C.J.S. Criminal Law Sections 2411, 2462 to 2510.

Attorney General’s Opinions

Absent amendment of notice statutes requiring notice in a newspaper of general circulation by the General Assembly, the term newspaper of general circulation cannot be extended to include online newspapers. S.C. Op.Atty.Gen. (October 21, 2015) 2015 WL 6745997.

**SECTION 17‑25‑550.** Failure of offender or agent to notify Office of Victim Assistance of contract or monies; civil penalty; action to recover; disposition of proceeds.

 (A) An offender or his representative or agent who wilfully fails to submit to the office a copy of the contract described in Section 17‑25‑520 or who fails to pay to the office the monies or other consideration, as required by this article, is subject to a civil penalty of not less than ten thousand dollars but not more than an amount equal to three times the contract amount for each offense.

 (B) If two or more individuals are subject to the penalties provided in this section, the individuals are jointly and severally liable for the payment of the penalty imposed.

 (C) The office may bring an action to recover a civil penalty assessed under this section in a court of competent jurisdiction within six years after the cause of action accrues.

 (D) Civil penalties imposed pursuant to this section must be paid to the office and used for the compensation of victims of crime.

HISTORY: 2000 Act No. 306, Section 4.

Library References

Criminal Law 1221.

Westlaw Topic No. 110.

C.J.S. Criminal Law Section 2411.

**SECTION 17‑25‑560.** Obligation to report knowledge of profit from crime.

 All state agencies, solicitors, and law enforcement agencies with knowledge of profit from a crime which an offender has obtained or generated shall report this information to the office promptly.

HISTORY: 2000 Act No. 306, Section 4.

Library References

Criminal Law 1221.

Westlaw Topic No. 110.

C.J.S. Criminal Law Section 2411.

**SECTION 17‑25‑570.** Action by offender to defeat purpose of article null and void.

 Any action taken by an offender, whether by execution of a power of attorney, creation of corporate entities, or otherwise, to defeat the purpose of this article is null and void as against the public policy of this State.

HISTORY: 2000 Act No. 306, Section 4.

Library References

Criminal Law 1221.

Westlaw Topic No. 110.

C.J.S. Criminal Law Section 2411.