

May 5, 2008

Lieutenant Joe Means
South Carolina Law Enforcement Division
P. O. Box 21398
Columbia, South Carolina 29221-1398

Dear Joe:

You have requested our review of S.C. Code Ann. § 22-5-910 which states:

(A) [f]ollowing a first offense conviction in a magistrates court or a municipal court, the defendant after three years from the date of the conviction may apply, or cause someone acting on his behalf to apply, to the circuit court for an order expunging the records of the arrest and conviction. However, this section does not apply to:

- (1) an offense involving the operation of a motor vehicle;
- (2) a violation of Title 50 or the regulations promulgated pursuant to Title 50 for which points are assessed, suspension provided for, or enhanced penalties for subsequent offenses are authorized; or
- (3) an offense contained in Chapter 25 of Title 16, except first offense criminal domestic violence as contained in [Section 16-25-20](#), which may be expunged five years from the date of the conviction.

(B) If the defendant has had no other conviction during the three-year period, or during the five-year period as provided in subsection (A)(3), following the first offense conviction in a magistrates court or a municipal court, the circuit court may issue an order expunging the records. No person may have his records expunged under this section more than once. A person may have his record expunged even though the conviction occurred prior to June 1, 1992.

(C) After the expungement, the South Carolina Law Enforcement Division is

required to keep a nonpublic record of the offense and the date of the expungement to ensure that no person takes advantage of the rights of this section more than once. This nonpublic record is not subject to release under [Section 34-11-95](#), the Freedom of Information Act, or any other provision of law except to those authorized law or court officials who need to know this information in order to prevent the rights afforded by this section from being taken advantage of more than once.

(D) As used in this section, "conviction" includes a guilty plea, a plea of nolo contendere, or the forfeiting of bail. (emphasis added).

In a prior opinion dated December 28, 1999, this office concluded that

[a]lthough Section 22-5-910 does not expressly state that each charge is a separate offense, if a defendant is charged with multiple offenses in a single court appearance, it is the opinion of this office...that the phrase "first offense conviction" refers only to one specific charge. Thus, a person with multiple convictions from a single court appearance could not have his record expunged under Section 22-5-910.

Your question arises out of a situation where an individual was charged on two separate arrest warrants for shoplifting and entered guilty pleas to both offenses at a single court appearance. Since the referenced opinion was issued, the State Court of Appeals issued an opinion in Fryer v. South Carolina Law Enforcement Division, 369 S.C. 395, 631 S.E.2d 918 (Ct.App. 2006). In that case, the defendant was arrested on two separate warrants for two separate offenses, petit larceny and malicious injury to personal property, but pled guilty to both charges in a single court appearance. By court orders, both offenses were ordered expunged, the malicious injury to personal property charge by an order in 1998 and the petit larceny charge by an order in 2000. It was argued that the 2000 order expunging the petit larceny charge was void because it was in violation of Section 22-5-910. The Court of Appeals disagreed. Therefore, consistent with Fryer, there is a basis to allow expungement for two offenses where there were two convictions at a single court appearance.

While this office in the referenced opinion determined that an individual with multiple convictions from a single court appearance could not have his record expunged pursuant to Section 22-5-910, it is now the opinion of this office in light of Fryer that if separate offenses result in convictions in a single court appearance, the expungement of these separate offenses may be allowed pursuant to Section 22-5-910. As stated by such provision, "[i]f the defendant has had no other conviction during the three-year period, or during the five-year period as provided in subsection (A)(3), following the first offense conviction in a magistrates court or a municipal court, the circuit court may issue an order expunging the records." In order to authorize an expungement, there must be a clean record for all other days of the three year period with no convictions occurring during that time.

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If there are any questions, please advise.

Sincerely,

Henry McMaster
Attorney General

By: Charles H. Richardson
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:

Robert D. Cook
Deputy Attorney General