

July 9, 2008

Tiffany B. Raines, Staff Attorney
South Carolina Court Administration
1015 Sumter Street, Suite 200
Columbia, South Carolina 29201

Dear Ms. Raines:

In a letter to this office you questioned the propriety of magistrates conducting bond hearings for violations of a conditional release authorized by S.C. Code Ann. § 24-19-150. Such provision states:

[i]f, at any time before the unconditional discharge of a committed youthful offender, the Division is of the opinion that such youthful offender will be benefitted by further treatment in an institution or other facility any member of the Division may direct his return to custody or if necessary may issue a warrant for the apprehension and return to custody of such youthful offender and cause such warrant to be executed by an appointed supervisory agent, or any policeman. Upon return to custody, such youthful offender shall be given an opportunity to appear before the Division or a member thereof. The Division may then or at its discretion revoke the order of conditional release.

In your letter you stated that “[t]raditionally, bond has been set by a circuit court judge when there is a violation of a YOA conditional release, as is done with parolees pursuant to S.C. Code Ann. § 24-21-680.” You pointed out that in the case of a probation violation, a bond hearing is conducted by a magistrate pursuant to S.C. Code Ann. § 24-21-450. However, as explained in your letter, “[u]nlike these two situations, there is no clear directive concerning bond for a violation of a conditional release of an offender sentenced under the YOA.”

Section 24-21-680 provides that

[u]pon failure of any prisoner released on parole under the provisions of this chapter to do or refrain from doing any of the things set forth and required to be done by and under the terms of his parole, the parole agent must issue a warrant or citation

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charging the violation of parole, and a final determination must be made by the board as to whether the prisoner's parole should be revoked and whether he should be required to serve any part of the remaining unserved sentence. But such prisoner must be eligible to parole thereafter when and if the board thinks such parole would be proper. The board shall be the sole judge as to whether or not a parole has been violated and no appeal therefrom shall be allowed; provided, that any person arrested for violation of terms of parole may be released on bond, for good cause shown, pending final determination of the violation by the Probation, Parole and Pardon Board. No bond shall be granted except by the presiding or resident judge of the circuit wherein the prisoner is arrested, or, if there be no judge within such circuit, by the judge, presiding or resident, in an adjacent circuit, and the judge granting the bond shall determine the amount thereof.

Section 24-21-450 states:

[a]t any time during the period of probation or suspension of sentence the court, or the court within the venue of which the violation occurs, or the probation agent may issue or cause the issuing of a warrant and cause the defendant to be arrested for violating any of the conditions of probation or suspension of sentence. Any police officer or other agent with power of arrest, upon the request of the probation agent, may arrest a probationer. In case of an arrest, the arresting officer or agent must have a written warrant from the probation agent setting forth that the probationer has, in his judgment, violated the conditions of probation, and such statement shall be warrant for the detention of such probationer in the county jail or other appropriate place of detention, until such probationer can be brought before the judge of the court or of the court within the venue of which the violation occurs. Such probation agent must forthwith report such arrest and detention to the judge of the court, or of the court within the venue of which the violation occurs, and submit in writing a report showing in what manner the probationer has violated his probation. Provided, that any person arrested for the violation of the terms of probation must be entitled to be released on bond pending a hearing, and such bond shall be granted and the amount thereof determined by a magistrate in the county where the probationer is confined or by the magistrate in whose jurisdiction the alleged violation of probation occurred.

As pointed out by you, there is no clear directive concerning bond for a violation of a conditional release of an offender sentenced under the YOA. In reviewing your question, I talked with Ben Aplin with the Department of Probation, Parole and Pardon Services. The State Department of Corrections has contracted with that agency to supervise inmates sentenced under the Youthful Offender Act who have been released conditionally under supervision as provided for in S.C. Code Ann. §§ 24-19-10 et seq. which includes Section 24-19-150. He forwarded to me a copy of the contract which, however, does not refer to how any bond proceedings are to be handled.

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In its decision in State v. Proctor, 345 S.C. 299, 546 S.E.2d 673 (Ct.App. 2001), the State Court of Appeals referenced that in the circumstances before the Court, Proctor had been granted a conditional release pursuant to Section 24-19-110. The Court noted that consistent with Section 24-19-150, there was authority to revoke the conditional release and incarcerate Proctor for the remainder of his YOA term. In its decision, the Court also noted that "...the case law of this State...equates the conditional release of an inmate to the parole of an inmate." 345 S.C. at 303 (emphasis added). The Court cited the case of Crooks v. State, 123 S.C. 28, 115 S.E. 760 (1922) stating that in that decision, "...the Supreme Court likened the parole of an inmate to a conditional release." An opinion of this office dated February 19, 1982 noted statutory provisions relating to the "parole" of a youthful offender.

As noted in your letter, there is no clear directive in the pertinent statutes as to the release on bond of a youthful offender returned to custody pursuant to Section 24-19-150. Nevertheless, it appears that inasmuch as there is authority supporting the conclusion that the conditional release of a youthful offender may be compared to the release of that individual on parole, consistent with Section 24-21-680, any bond, if such is allowed, should be considered by a circuit court judge as opposed to a magistrate. However, inasmuch as there is no clear authority specifically outlining such a procedure, this is a matter where legislative clarification would be advantageous. Pending such clarification, I can only recommend that any bond proceedings be brought before a circuit court judge consistent with Section 24-21-680.

With kind regards, I am,

Very truly yours,

Henry McMaster
Attorney General

By: Charles H. Richardson
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:

Robert D. Cook
Deputy Attorney General