

1982 WL 189161 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

February 8, 1982

***1 Re: Eligibility for the Supervised Furlough**

Mr. John Stephen Hooks, Jr.
Special Assistant for Legal Affairs
Office of the Governor
P. O. Box 11450
Columbia, SC 29211

Dear Mr. Hooks:

I am in receipt of your letter dated February 4, 1982, to this Office requesting an opinion on whether the Department of Corrections Board may consider eligible for supervised furlough those inmates who were convicted of violent crimes other than murder, armed robbery, criminal sexual assault, assault and battery with intent to kill or kidnapping. The opinion of this Office is that there is no statutory exclusion for the consideration of these inmates as long as the other minimum statutory qualifications are met.

The 1981 Prison Reform Act, 1981 Acts and Resolutions, No. 100, p. 333, provided for the establishment of a supervised furlough program for inmates in the South Carolina Department of Corrections. More specifically, the Act provided in its pertinent part the following:

The Department of Corrections and Parole and Community Corrections Board will jointly develop the policies, procedures and guidelines for the implementation of a supervised furlough program which will permit carefully screened and selected inmates who have not committed the crime of murder, armed robbery, criminal sexual assault, assault and battery with intent to kill or kidnapping to be placed on furlough under the supervision of State Probation and Parole agents. . . . Eligibility criteria for the program require that the inmate accomplish all of the following:

- (1) Maintain a clear disciplinary record for at least six months prior to consideration for placement on the program;
- (2) Demonstrate to the Department of Corrections a general desire to become a law-abiding member of society;
- (3) Satisfy any other reasonable requirements imposed upon him by the Department of Corrections.

[§ 24-23-710, Code of Laws (1976), as amended 1981].

Act 100 further provided that 'the Department of Corrections shall automatically screen all offenders committed to its agency for non-violent offenses with sentences of five-years or less for possible placement on work release or supervised furlough.' § 24-13-60, Code of Laws (1976), as amended (1981). It is further significant that in the Prison Reform Act, the General Assembly amended the extended work release provision so as to make the program available to offenders with records of violent or premeditation crimes. Compare: § 24-13-610, Code of Laws (1976), as amended (1977) (1977 Act No. 185 § 1); 1981 Act 100 § 17 p. 349). An interpretation of § 24-13-60 as limiting consideration at any time for supervised furlough or extended work release only to those with nonviolent crimes would render the amendment to the extended work release provision a nullity.

A penal statute in South Carolina must be strictly construed against the State and any doubt must be resolved in favor of the inmate. [State v. Cutler](#), 274 S.C. 376, 264 S.E.2d 420 (1980), [State v. Germany](#), 216 S.C. 182, 57 S.E.2d 165 (1950). 1955 Op. Atty. Gen. 303. 82 C.J.S. [Statutes](#) § 389. Penal statutes should not be subjected to any strained or unnatural construction in order to work exemption from their penalties, or to exclude from their operation cases, which the words, in their ordinary acception, or in the sense that the General Assembly used them, would comprehend. In other words, the rule of strict construction does not require that such statutes be wantonly limited or emasculated and rendered ineffective, absurd, or nugatory. 82 C.J.S. [Statutes](#) § 389. The provisions concerning the supervised furlough program, as well as extended work release, are clear and unambiguous and must be interpreted as such.

*2 Therefore, it is the opinion of this Office that the only class of criminals precluded from eligibility for supervised furlough are those who committed murder, armed robbery, criminal sexual assault, assault and battery with intent to kill, or kidnapping. Regardless of the period of incarceration, these inmates can never be considered for the supervised furlough program under present law.

Furthermore, it is the opinion of this Office that all offenders committed to the Department of Corrections for a non-violent offense with a sentence of five years or less shall be automatically screened for placement in the supervised furlough program. All other offenders, except the five previously noted, may be eligible for the supervised furlough program, regardless of the offense or period of incarceration once they meet the minimum eligibility requirement.

I hope that this opinion has been of some assistance to you.

Sincerely,

Donald J. Zelenka
Assistant Attorney General

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