

1982 WL 189175 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

February 19, 1982

***1 Re: Opinion Request**

Larry C. Batson, Esquire
Legal Advisor
S. C. Department of Corrections
P. O. Box 21787
Columbia, South Carolina 29221

Dear Mr. Batson:

In response to your opinion request concerning the length of time a youthful offender has to serve within the Department of Corrections upon said youthful offender being sentenced to two consecutive indeterminate youthful offender sentences for the crimes of armed robbery, § 16-11-330(1), it is the opinion of this Office that the Department of Corrections is required to 'conditionally release' a youthful offender so sentenced, pursuant to the language contained in § 24-19-120, four years from the date of his conviction[s] and required to 'unconditionally release' said youthful offender no later than six years from the date of his conviction[s]. In addition, an individual so sentenced would also become eligible for parole consideration four years from the date of his conviction[s], said date representing one-third of his total sentence.

Generally when a youthful offender is sentenced pursuant to [§ 24-19-50\(c\), Code of Laws of South Carolina \(1976\)](#), the South Carolina Department of Corrections has absolute discretion, within the confines of a maximum six year sentence, as to the length of time an individual must serve within the care and confines of said Department, in addition to the period of time said individual must serve under supervision following his conditional release. However, when certain restrictions are imposed upon a youthful offender sentence and if the same are not inconsistent with its authority, the Department of Corrections must abide by and follow said restrictions.

Section 16-11-330(1) states that a youthful offender sentenced for the crime of armed robbery: shall receive and serve a minimum sentence of at least three years, no part of which shall be suspended. No such person shall be eligible for parole or probation until he has served such three year minimum sentence. [§ 16-11-330\(1\), Code of Laws of South Carolina \(1976\)](#).

The language found in the above cited portion of [§ 16-11-330\(1\)](#), requires that a youthful offender convicted of the crime of armed robbery 'receive and serve a minimum sentence of at least three years.' In addition, if this statute is considered alone, and since we are dealing with 'minimum sentences,' it would appear that if a youthful offender is sentenced to two consecutive indeterminate sentences of between three and six years, he would have to serve a minimum sentence of six years (3+3) before becoming eligible for release by the Department of Corrections. However, this section cannot be considered in isolation but rather must be considered and interpreted in conjunction with Chapter 19 of Title 24 (Youthful Offender Act) and specifically with § 24-19-120 since said sections are in pari materia and, therefore, should be construed together.

Section 24-19-120 provides as follows:

***2** A youthful offender shall be released conditionally upon supervision on or before the expiration of four years from the date of his conviction and shall be discharged unconditionally on or before six years from the date of his conviction. [§ 24-19-120, Code of Laws of South Carolina \(1976\)](#).

The language in this section is clear and unambiguous on its face and while it can be persuasively argued that the drafters of this Code Section and of Chapter 19 in general, did not envision a youthful offender receiving multiple consecutive sentences, this language, which is mandatory, coupled with the general rule of statutory construction which resolves all doubts relative to construction of sentences in favor of a criminal defendant, [State v. DeAngelis](#), 257 S.C. 44, 183 S.E.2d. 906 (1971), mandates that the Department of Corrections conditionally release all youthful offenders four years after the date of their conviction[s] and that the Department of Corrections unconditionally release said youthful offenders six years after the date of their conviction[s].

Separate and distinct from the powers afforded the Department of Corrections to conditionally and unconditionally release youthful offenders, is the authority of the South Carolina Parole and Community Corrections Board to parole criminal inmates, both adult and youthful offender. § 24-19-160. As previously noted, § 16-11-330(1), in addition to providing a minimum sentence of at least three years states that '[n]o such person shall be eligible for parole or probation until he has served such three year minimum sentence.' The language contained in this portion of § 16-11-330(1) is also clear and unambiguous and requires that a youthful offender, if sentenced to a single indefinite term of imprisonment between three and six years, must serve at least three years before becoming eligible for parole or probation. However, if a youthful offender is sentenced to two consecutive indeterminate terms of confinement, these minimum three year terms of confinement, for parole eligibility purposes only, are not stacked so as to increase or enhance an individual's parole eligibility date. Rather, for parole eligibility purposes, whether one is dealing with an adult or with a youthful offender, parole eligibility is calculated by determining the aggregate sentences received and by then treating said sentences as a single general sentence. [Mims v. State](#), 273 S.C. 740, 259 S.E.2d. 602 (1979); [Polk v. Manning](#), 224 S.C. 467, 79 S.E.2d. 875 (1954).

In order to calculate any parole eligibility date in a case involving a youthful offender, the South Carolina Parole and Community Corrections Board treats any youthful offender sentence as a six year sentence. § 24-19-160(1976). Therefore, when a youthful offender receives two consecutive indeterminate sentences of between three and six years, the Parole and Community Corrections Board should treat said sentence as a general sentence of twelve years. Therein, the youthful offender so sentenced, would become eligible for parole consideration after serving four years of said sentence, or one-third of his total twelve year sentence. § 24-21-620 (1976). However, as I am sure you can readily see, since the Department of Corrections is required to 'conditionally release' all youthful offenders no later than four years from the date of their conviction[s], the likelihood that a youthful offender so sentenced would even become eligible for parole, prior to his 'conditional release,' is extremely slight. In addition, it would appear that a youthful offender would not opt for parole, rather than 'conditional release,' if given the option due to the extended period of supervision that the latter would entail.

*3 Briefly stated, when a court sentences a youthful offender to two consecutive indeterminate sentences of between three and six years, said youthful offender is placed within the custody and control of the Department of Corrections. He is sentenced to an indeterminate term of confinement of no less than six years nor more than twelve years. Absent any other statutory authority the Department of Corrections would be required to take and maintain custody of said individual for a minimum period of six years. However, pursuant to § 24-19-120 the Department of Corrections must conditionally release said individual four years following the date of his conviction and must unconditionally release said individual no later than six years following his conviction. In addition, a youthful offender sentenced to two consecutive indeterminate sentences of between three and six years becomes eligible for parole after four years or the service of one-third of his total twelve year sentence.

With kindest personal regards, I am
Very truly yours,

Larry L. Vanderbilt
Assistant Attorney General

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