

1976 S.C. Op. Atty. Gen. 97 (S.C.A.G.), 1976 S.C. Op. Atty. Gen. No. 4285, 1976 WL 22905

Office of the Attorney General

State of South Carolina

Opinion No. 4285

March 5, 1976

*1 The statutory provisions with respect to the sentencing of youthful offenders are obligatory upon sentencing courts and an individual sentenced pursuant to the provision [Section 55–395(c)] setting up an indeterminate sentencing procedure cannot receive a sentence for a definite term.

TO: William D. Leeke
Commissioner
South Carolina Department of Corrections

QUESTION PRESENTED

Do the statutes commonly referred to as the Youthful Offender Act, Section 55–391, et seq., Code of Laws of South Carolina, 1962, as amended, provide for an indeterminate sentencing procedure and if so may courts, imposing sentences requiring commitment to the Youthful Offender Division, impose a sentence for a definite term?

STATUTES, CASES, ETC., INVOLVED

Section 55–391, et seq., Code of Laws of South Carolina, 1962, as amended

[Creel v. State](#), 262 S.C. 558, 206 S.E.2d 825

[Lewis v. Gaddy](#), 254 S.C. 66, 173 S.E.2d 376

21 Am. Jur. 2d Criminal Law Section 540

[In Re Smith](#), 162 Ohio State 58, 120 N.E.2d 736

[Home Building and Loan Association v. City of Spartanburg, et al.](#), 185 S.C. 312, 194 S.E. 139

[Ex Parte Leeke](#), 257 S.C. 82, 184 S.E.2d 80

[State v. Teat](#), 211 S.E.2d 816 (N.C.)

[State v. Black](#), 196 S.E.2d 225 (N.C.)

DISCUSSION OF THE ISSUE

Sections 55–391 through 55–400.6 were enacted together as one piece of legislation. These statutes create within the Department of Corrections a Youthful Offender Division. The statutes set out definitions of various words and terms used within the statute and generally provide in all ways for carrying out the purpose of the division. Section 55–395 sets out the powers of courts upon conviction of youthful offenders. A youthful offender is defined in the statute and these

provisions have been the subject of several court decisions. e.g. [Creel v. State](#), 262 S.C. 558, 206 S.E.2d 825. The various sections are *in pari materia* and should be construed together. [Lewis v. Gaddy](#), 254 S.C. 66, 173 S.E.2d 376.

Section 55–395(c) provides that the Court may sentence a youthful offender under the age of twenty-one (21) without his consent ‘indefinitely to the custody of the Department for treatment and supervision pursuant to this chapter until discharge by the division, the period of such custody not to be in excess of six (6) years.’

The question has arisen because several commitments have come to your attention where courts have sentenced a youthful offender pursuant to Section 55–395(c) to a definite term. It is generally held that under an indeterminate sentence law, a sentence cannot be for a definite term of imprisonment 21 Am.Jur.2d Criminal Law Section 540. The plain words of the statute make clear that it contemplates an indeterminate sentence. When the terms of a statute are clear and not ambiguous, a literal meaning should be applied to the statute's terms. [Home Building and Loan Association v. City of Spartanburg, et al.](#), 185 SC 312, 194 SE 139. Pursuant to Sections 55–399 and 55–400.2, a sentence under Section 55–395(c) is, in effect, a sentence of from one day to four years. Based on the recommendations and report of the Reception and Evaluation Center and the Division, the Commissioner may recommend that the Division release the youthful offender conditionally upon commitment or he may order him confined in a youthful offender institution for treatment. Pursuant to Section 55–400.2 a youthful offender must be released conditionally on supervision on or before the expiration of four (4) years after his conviction and must receive his absolute discharge on or before six years from the date of his conviction. Statutory provisions with respect to sentencing must be observed by the sentencing court. See *Ex Parte Leeke*, 257 S.C. 82, 184 S.E.2d 80. A statute requiring an indeterminate sentence prevails over a sentence for a definite term and a prisoner sentenced for a definite term must serve the statutory minimum, after which he becomes eligible to be considered for release under conditions that would have been applicable had he been properly sentenced. [In Re Smith](#), 162 Ohio State 58, 120 N.E.2d 736.

*2 You have also called our attention to a commitment whereby a youthful offender was sentenced under Section 55–395(c) to a period of parole of not less than three years. Of course, the sentencing court pursuant to Section 55–395(a) may in any case suspend the sentence of a youthful offender and place him on probation. The youthful offender would then fall within the jurisdiction of the South Carolina Probation, Parole and Pardon Board. Section 55–400.6 expressly states that nothing in the statutes shall be construed to alter the jurisdiction of the Parole Board. The section further states that for purposes of parole a sentence pursuant to Section 55–395(c) shall be considered a sentence for six years. If a youthful offender is sentenced pursuant to Section 55–395(c), the Division is empowered to release the inmate conditionally under supervision. Such conditional release may take place at any time after commitment upon reasonable notice to the commissioner. Any youthful offender conditionally released must serve a minimum period of one year before receiving absolute discharge. All of these decisions are placed in the discretion of the Division. The sentencing court may not utilize Section 55–395(c) for the purpose of imposing court ordered probation or parole.

Briefly stated, when a court sentences a youthful offender pursuant to Section 55–395(c), he is placed in the custody of the Department of Corrections. He is sentenced to an indefinite term not in excess of six years. The Division may confine the Youthful Offender for a period of from one day to four years. Upon release he must serve a minimum of one year under supervision of the Division before he is entitled to absolute discharge. The Probation, Parole and Pardon Board would not become involved unless the individual is in confinement at the end of two years, at which time, that agency might consider him for parole pursuant to their statutes.

If a sentencing court desires to impose a definite term as punishment upon conviction of a youthful offender, the court must sentence pursuant to Section 55–395(d). A youthful offender sentenced pursuant to Section 55–395(c) is in the custody of the division and that division has absolute discretion as to the length of the sentence to be served by the youthful offender and the length of any supervisory period upon his conditional release. The statutes are obligatory upon the sentencing court.

CONCLUSION

Youthful offenders sentenced pursuant to Section 55-395(c) and committed to the custody of the Youthful Offender Division receive an indeterminate sentence pursuant to the operation of law. Sentencing courts may not impose a sentence for a definite term on an individual sentenced pursuant to that subsection, and the decision as to when the individual is to be released and the duration of his supervised release lies within the exclusive discretion of the division.

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