

1976 S.C. Op. Atty. Gen. 224 (S.C.A.G.), 1976 S.C. Op. Atty. Gen. No. 4388, 1976 WL 23006

Office of the Attorney General

State of South Carolina

Opinion No. 4388

July 7, 1976

***1 In Re: Murder, Death Penalty, Validity Of, Section 16–51, Code of Laws of South Carolina (1962), As Amended**

Honorable James C. Anders

Solicitor

Fifth Judicial Circuit

Richland County Courthouse

Columbia, South Carolina 29201

Dear Solicitor Anders:

You have inquired as to the validity of South Carolina's death penalty provided for the crime of murder in specified circumstances in view of the United States Supreme Court's decisions of July 2, 1976, with respect to the murder death penalty statutes of Georgia, Florida, Texas, North Carolina and Louisiana, viz., Gregg v. Georgia, Proffitt v. Florida, Jurek v. Texas, Woodson v. North Carolina, and Roberts v. Louisiana.

The subject cases are in accord in stating that when the [Furman](#) [[Furman v. Georgia, 408 U.S. 238](#)] case condemned as unconstitutional the unrestricted power of a jury to impose the sentence of death for murder, or, in the alternative, life imprisonment or some lesser sentence, the Court did not intend that a simple taking away of such unguided discretion would cure the defect. Louisiana and North Carolina attempted to comply with [Furman](#) by providing mandatory death sentences in special circumstances, leaving neither the judge nor the jury any discretion to impose a lesser sentence. Georgia, Florida and Texas, by provisions that vary in manner, provide that a jury, in arriving at a sentence for murder, where such sentence is permitted, should consider additional evidence relating to the defendant personally and to the particular circumstances of the crime involved. The death sentence is not mandatory, but may be imposed in specified cases by the judge or jury, as the case may be, only after consideration of pertinent characteristics of the person who committed the crime and the specific circumstances of the particular crime. These statutes were held to be valid.

On the other hand, the statutes of North Carolina and Louisiana provide the mandatory sentence of death for murder in specified circumstances. For example, 1) killing with specific intent to kill or to inflict great bodily harm [Louisiana], and 2) murder during the commission of robbery [North Carolina]. No discretion is given judge or jury to impose a lesser sentence. These statutes were declared invalid. The United States Supreme Court states in [Woodson](#) [North Carolina], 19 Cr. L. 3287, 3292:

‘The belief no longer prevails that every offense in a like category calls for an identical punishment without regard to the past life and habits of a particular offender.’

Without question, Section 16–51 [South Carolina's death penalty statute] provides a mandatory death sentence for murder in specified circumstances without permitting discretion by judge or jury to impose a lesser sentence guided by legislated standards.

The Supreme Court says in [Woodson](#) [North Carolina], 19 Cr. L. 3287, 3295:

‘ - - - the eighth amendment - - - requires consideration of the character and record of the individual offender and the circumstances of the particular offense as a Constitutionally indispensable part of the process of inflicting the death penalty.’

*2 It is the opinion of this Office that South Carolina's mandatory death penalty for murder in specified circumstances offends the Constitutional principles set forth in Gregg and the other subject decisions of the United States Supreme Court filed July 2, 1976.

With respect to pending death penalty murder charges, it is suggested that a change in South Carolina's death penalty statute to comply with the Court's decisions of July 2 might permit trial of persons now under indictment for death penalty murder under a new statute, and that imposition of the sentence of death under such new statute might be permitted—because the penalty will not be increased. Only the procedure in arriving at such sentence need be changed.

Yours very truly,

Joseph C Coleman
Deputy Attorney General

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