

1972 WL 25263 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

April 5, 1972

***1 Re: No. 225—Pardon, etc.**

R. Pete Julian, Esq.
Attorney at Law
523 East North 1st Street
Seneca, South Carolina 29678

Dear Pete:

In your letter of March 29, 1972, you asked this office for an opinion regarding two questions, to wit:

1. Is a juvenile on probation who leaves the state for a period of eight years without the permission of the probational officer or the court still on probation upon his return to this state?
2. Upon the return of the probationer, can the probational officer summon him before the court to answer for a violation that occurred during the probation period but before the probationer left this state?

In answering the first question, we refer you to Section 55–593 of the Code of Laws of South Carolina (1962) in which it states that the court ‘may at any time modify the conditions of probation and may include among them any of the following . . .’ under which the statute lists eight conditions. This indicates that the court may set the conditions of probation and is not bound by the eight conditions enumerated. In addition thereto, we find that in granting a suspension of sentence or probation, the court may impose such reasonable conditions as it may deem fit. 24 C.J.S. Criminal Law, § 1618(8) at 889. While the above references refer to adults on probation, it would likewise be consistent that courts may impose ‘reasonable’ conditions of probation upon juveniles.

The case of [State v. McCray](#), 222 S.C. 391, 73 S.E.2d 1, (1952), states that unauthorized trips by a person on probation to points outside the state constitutes a violation of probationary conditions unless the probationer is given permission to leave. In [Lovell v. State](#), 223 S.C. 112, 118, 74 S.E.2d 570 (1953), the court analogized one on probation outside the state without permission to an escaped convict or one who has not been apprehended.

Thus we see that a violation of probation conditions tolls the probationary period. The situation is best described in the case of [U.S. v. Gepson](#), 192 F. Supp. 864, at 865 (E.D. Tenn. 1961) wherein the court had the following comments:

If a probationer, voluntarily or because of his wrongdoing, is not available to be under the control of the court and the supervision of the probation officer, the probation period is not running. . . . If this view is not correct, an offender upon whom a sentence was imposed and suspended and placed on probation for a term could immediately go to a foreign country, where he could not be extradited, stay for five years and come home a free man. . . . The wrongdoing of a probationer making it impossible for the [purposes of probation or the] provisions of the [Federal Probation] Act to be performed for a period of time, such time under such conditions is not [Emphasis added] a part of the probation period.

As to the answer to your second question, we refer you to Section 55–594 of the Code of Laws of South Carolina (1962), wherein it states that the probationer may be discharged from probation ‘[u]pon the satisfactory fulfillment of the conditions of probation . . .’ Also see 24 C.J.S. Criminal Law, § 1618(6)(c) at 885, which says that ‘[d]uring the probation period the

probationer is under the supervision of the probation officer, person, or court as prescribed by the statute.' This then means that the probationer is subject to the summons of his probational officer upon his return.

*2 In summary, it is the opinion of this office that a juvenile on probation who leaves the state for a period of eight years without the permission of his probational officer or the court is still on probation upon his return to the state and should answer the summons of the probational officer requesting him to answer for a violation of his probation.

Sincerely,

C. Tolbert Goolsby, Jr.
Deputy Attorney General

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