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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

HENRY McMASTER
ATTORNEY GENERAL

January 21, 2004

Robert M. Stewart, Chief
South Carolina Law Enforcement Division
P. O. Box 21398
Columbia, South Carolina 29221-1398

Dear Chief Stewart:

In a letter to this office you raised several questions regarding expungement orders. Your first two questions involve S.C. Code Ann. Section 22-5-910 (Supp. 2002) which states:

Following a first offense conviction in a magistrate's court or a municipal court, the defendant after three years from the date of the conviction may apply, or cause someone acting on his behalf to apply, to the circuit court for an order expunging the records of the arrest and conviction. However, this section does not apply to an offense involving the operation of a motor vehicle, to a violation of Title 50 or the regulations promulgated under it for which points are assessed, suspension provided for, or enhanced penalties for subsequent offenses authorized, or to an offense contained in Chapter 25 of Title 16, except first offense criminal domestic violence as contained in Section 16-25-20. If the defendant has had no other conviction during the three year period following the first conviction in a magistrate's court or a municipal court, the circuit court may issue an order expunging the records. No person shall have his records expunged under this section more than once. A person may have his record expunged even though the conviction occurred prior to June 1, 1992.

The statute further defines "conviction" as including "...a guilty plea, a plea of nolo contendere, or the forfeiting of bail."

In your first question you asked whether an individual is entitled to have a magistrate's court conviction expunged if it follows a first conviction in general sessions court. The cardinal rule of statutory construction is that a court is to ascertain and effectuate the actual intent of the legislature. Burns v. State Farm Mut. Auto. Ins. Co., 297 S.C. 520, 372 S.E.2d 569 (1989). In construing a statute, its words must be given their plain and ordinary meaning without resort to a subtle or forced construction to limit or expand the statute's operation. Bryant v. City of Charleston, 295 S.C. 408, 368 S.E.2d 899 (1988). If a statute's language is plain and unambiguous and conveys a clear and

Request

Chief Stewart
Page 2
January 21, 2004

definite meaning, there is no occasion for employing rules of statutory interpretation and a court has no right either to look for or impose another meaning. Chestnut v. South Carolina Farm Bureau Mut. Ins. Co., 298 S.C. 151, 378 S.E.2d 613 (Ct.App.1989).

Construing the provisions of Section 22-5-910, it appears that an individual would be entitled to have a magistrate's court conviction expunged if it follows a general sessions court conviction. As specified by Section 22-5-910, following a first offense conviction in magistrate's court, the defendant may seek an expungement order. The statute further provides that "if the defendant has had no other conviction during the three year period following the first conviction in a magistrate's court or a municipal court", an expungement may be issued. Referencing these provisions, if the general sessions conviction preceded the first offense magistrate's court conviction, the first offense magistrate's court conviction could be expunged if there were no further convictions during the three year period following the first offense magistrate's court conviction.

You next asked whether Title 56 offenses such as driving under the influence or driving under suspension are to be included as first offense convictions, since such are excluded from expungement pursuant to Section 22-5-910, so as to preclude expungements for subsequent magistrate court convictions. You indicated in our telephone conversation that you were asking whether if there was a Title 56 motor vehicle offense first, followed by another offense not within that category, such as simple assault, would the Title 56 offense count as a first offense magistrate's court conviction.

Section 22-5-910 is arguably ambiguous as to the situation addressed by you. As specified by Section 22-5-910, a "conviction" encompasses all convictions, including guilty pleas, pleas of nolo contendere or the forfeiture of bail. In my opinion, a Title 56 conviction, if it preceded another conviction, such as for simple assault, could be considered a first offense conviction so as to preclude the expungement of the simple assault conviction since the simple assault conviction would no longer be a first offense conviction. There is no intent expressed in the legislation that the General Assembly did not intend for all convictions to be considered for purposes of whether an offense is a first offense conviction. In my opinion, the language "this section does not apply to an offense involving the operation of a motor vehicle, to a violation of Title 50 or the regulations promulgated under it for which points are assessed, suspension provided for, or enhanced penalties for subsequent offenses authorized, or to an offense contained in Chapter 25 of Title 16, except first offense criminal domestic violence as contained in Section 16-25-20. ..." is to be construed solely to prohibit those convictions from ever being expunged. The language does not prohibit those convictions from otherwise being considered, such as in the situation addressed by you. To exempt a motor vehicle conviction from being considered as a first offense so as to allow expungement of a subsequent offense would also lead to a criminal domestic violence conviction, except first offense criminal domestic violence, from being considered as a first offense. Of course, the General Assembly could amend the statute if this construction is not what was intended. Moreover, the issuance of an expungement order is a matter within the discretion of the circuit court in that the

Chief Stewart
Page 3
January 21, 2004

provision states the "...the circuit court may issue an order expunging the records." As explained in a letter from this office dated July 29, 1996 "where an Order of Expungement which is valid on its face is received by SLED from a Circuit Court directing that SLED expunge particular records, such Order must be followed until it is vacated or set aside on appeal."

In your third question you asked whether a Title 56 offense, such as speeding, should be included as a conviction during the three year period required for no additional convictions pursuant to Section 22-5-910 or the fifteen year period required for Section 22-5-920. The latter provision states

(B) Following a first offense conviction as a youthful offender, the defendant after fifteen years from the date of the conviction may apply, or cause someone acting on his behalf to apply, to the circuit court for an order expunging the records of the arrest and conviction. However, this section does not apply to an offense involving the operation of a motor vehicle, to a violation of Title 50 or the regulations promulgated under it for which points are assessed, suspension provided for, or enhanced penalties for subsequent offenses authorized, to an offense classified as a violent crime in Section 16-1-60, or to an offense contained in Chapter 25 of Title 16, except as otherwise provided in Section 16-25-30. If the defendant has had no other conviction during the fifteen-year period following the first offense conviction as a youthful offender, the circuit court may issue an order expunging the records. No person may have his records expunged under this section more than once. A person may have his record expunged even though the conviction occurred before the effective date of this section.

Consistent with the preceding construction of question two, convictions for offenses such as speeding would be included as a conviction to be considered during the three year period or fifteen year period required for no additional convictions by the referenced statutes. Again, the term "conviction" includes all convictions, regardless of the offense. Of course, if such construction is not what was intended by the legislature, the General Assembly could amend the statute to specifically authorize expungements in such situation. Also, as indicated in the response to question two, a circuit court may issue an order expunging the records and such order must be given deference.

You next asked whether as to Section 22-5-920 which authorizes expungement of specified offenses, does the statute require a subject to be actually sentenced under the provisions of the Youthful Offender Act or only to meet the requirements for sentencing under the Youthful Offender Act. As set forth, Section 22-5-920 states that "(f)ollowing a first offense conviction as a youthful offender", the defendant may apply for expungement. Based upon my plain reading of the statute, it appears that for expungement purposes, an individual must actually be sentenced as a youthful offender in order to apply for expungement.

Chief Stewart
Page 4
January 21, 2004

If there are any questions, please advise.

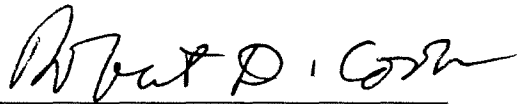
Sincerely,



Charles H. Richardson
Senior Assistant Attorney General

cc: Lieutenant Joseph Means

REVIEWED AND APPROVED BY:



Robert D. Cook
Assistant Deputy Attorney General