

8244 Liberty



HENRY McMASTER
ATTORNEY GENERAL

September 15, 2006

The Honorable Glenn G. Reese
Senator, District No. 11
597 Fagan Drive
Lake Bowen
Inman, South Carolina 29349-7000

Dear Senator Reese:

You forwarded a letter from Mr. Ronnie Blanchard in which he raised questions regarding second degree lynching.

In his first question, Mr. Blanchard questions whether second degree lynching can be nonviolent as well as violent. As explained in State v. Smith, 352 S.C. 133, 137, 572 S.E.2d 473, 475 (Ct.App. 2002),

Second degree lynching, a felony, is defined as "[a]ny act of violence inflicted by a mob upon the body of another person and from which death does not result...." S.C.Code Ann. § 16-3-220 (1985)... "Mob" is further defined as "the assemblage of two or more persons, without color or authority of law, for the premeditated purpose and with the premeditated intent of committing an act of violence upon the person of another." S.C.Code Ann. § 16-3-230 (1985)... Although "[t]he common intent to do violence" may be formed before or during the assemblage,... to sustain a conviction for lynching the State must produce at least some evidence of premeditation. See § 16-3-230...

As explained by the court in Notaro v. Evatt, 831 F.Supp. 518, 520 (D.S.C. 1993),

Under Section 16-3-110, the elements of the crime of lynching in the second degree are: (1) any act of violence, (2) inflicted by a mob, (3) upon the body of another, (4) which does not result in death... The gravamen of the offense is the infliction of violence by a mob on "another person."

Consistent with such, second degree lynching involves an act of violence.

It was also questioned whether "if you get a three year sentence for second degree lynching...(is it)...a mandatory 85% or is that up to the judge's discretion." Pursuant to Section 16-3-

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220, any defendant found guilty of second degree lynching "...shall be confined at hard labor in the State Penitentiary for a term not exceeding twenty years nor less than three years at the discretion of the presiding judge." S.C. Code Ann. § 24-13-150 states that

(A) Notwithstanding any other provision of law, except in a case in which the death penalty or a term of life imprisonment is imposed, a prisoner convicted of a "no parole offense", as defined in Section 24-13-100, and sentenced to the custody of the Department of Corrections, including a prisoner serving time in a local facility pursuant to a designated facility agreement authorized by Section 24-3-20, is not eligible for early release, discharge, or community supervision as provided in Section 24-21-560, until the prisoner has served at least eight-five percent of the actual term of imprisonment imposed.

S.C. Code Ann. § 24-13-100 states that

[f]or purposes of definition under South Carolina law, a "no parole offense" means a class A, B, or C felony or an offense exempt from classification as enumerated in Section 16-1-10(d), which is punishable by a maximum term of imprisonment of twenty years or more.

S.C. Code Ann. § 16-1-90 includes in the list of Class C felonies the offense of lynching in the second degree. Therefore, inasmuch as second degree lynching is a "no parole offense", a defendant convicted of such and sentenced to the custody of the Department of Corrections, including a prisoner serving time in a local facility pursuant to a designated facility agreement as set forth above, is not eligible for early release, discharge, or community supervision until the prisoner has served at least eight-five percent of the actual term of imprisonment imposed.

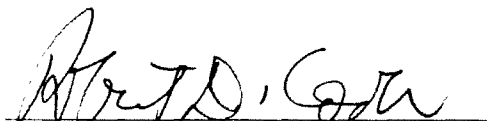
With kind regards, I am,

Very truly yours,



Charles H. Richardson
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Assistant Deputy Attorney General