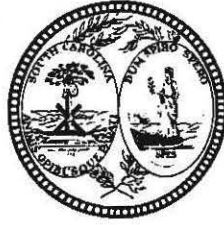


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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

January 9, 1996

The Honorable Greg Gregory
Senator, District No. 16
513 Gressette Building
Columbia, South Carolina 29202

Re: Informal Opinion

Dear Senator Gregory:

You have asked for clarification with respect to the following situation. You note that

[w]e are currently in the process of establishing a central traffic court in Lancaster County. In visiting other central traffic courts in the area, we found that they are able to increase their revenues by not reducing fine amounts and, instead, reducing the points for a traffic violation.

If we were able to do this, it would help pay for the cost of the court. I am, however, unsure as to whether this practice is acceptable by state law.

S.C. Code Ann. Sec. 56-1-720 establishes the point system for licensed drivers. This section provides a schedule of points for specific violations which will result in suspension of a driver's license for not more than six months if a driver accumulates more than twelve points over a twelve to twenty-four month period.

Section 56-5-1520 further provides that no person shall drive a motor vehicle on highway at a speed greater "than is reasonable and prudent under the conditions and having regard to the actual and potential hazards then existing." Subsection (b) establishes

maximum speed limits for particular areas of the state's roads. Subsection (d) sets the penalties for speeding as follows:

[a]ny person violating the speed limits established by this section is guilty of a misdemeanor and, upon conviction for a first offense, must be fined or imprisoned as follows:

- (1) in excess of the above posted limit but not in excess of ten miles an hour by a fine of not less than fifteen dollars nor more than twenty-five dollars;
- (2) in excess of ten miles an hour but less than fifteen miles an hour above the posted limit by a fine of not less than twenty-five dollars nor more than fifty dollars;
- (3) in excess of fifteen miles an hour but less than twenty-five miles an hour above the posted limit by a fine of not less than fifty dollars nor more than seventy-five dollars; and
- (4) in excess of twenty-five miles an hour above the posted limit by a fine of not less than seventy-five dollars nor more than two hundred dollars or imprisoned for not more than thirty days.

Various monetary fines are established by law throughout Chapter 5 of Title 56 for other traffic violations as well. See e.g. 56-5-2920 (reckless driving, fine of not less than twenty-five dollars nor more than two hundred dollars and imprisonment for not more than thirty days); § 56-5-6190 (unless otherwise established by specific provision, conviction for violation of any offense in Chapter, fine of not more than one hundred dollars or by imprisonment for not more than thirty days). Thus monetary penalties for violation of South Carolina's traffic laws are generally established by state law.

The specific issue here is what monetary penalty must be assessed when a plea of guilty to a lesser traffic offense is accepted. [e.g. individual charged with Section 56-5-1520(4), but pleads to a violation of Section 56-5-1520(2)]. A trial judge possesses broad discretion to sentence a defendant convicted of a criminal offense. Our Supreme Court has consistently stated that where the sentence is within the limits prescribed by law, it is a matter within the discretion of the Trial Judge. State v. Bowman, 137 S.C. 364, 135

S.E. 360 (1926); State v. Franklin, 267 S.C. 240, 226 S.E.2d 896 (1976); State v. Scates, 212 S.C. 150, 46 S.E.2d 693 (1948).

In addition, unless otherwise provided by statute, a guilty plea subjects the accused to the same punishment as if he were tried and found guilty by a verdict. 24 C.J.S. Criminal Law, § 1474. The court is not required to accept a plea agreement and must be convinced before doing so that such agreement was voluntarily and understandably made. State v. Rosier, _____ S.C. _____, 493 S.E.2d 307 (S.C. App. 1993). However, once made, the plea of guilty is a confession of guilt and has the same effect as a verdict of guilty and authorizes the same punishment prescribed by law. Sanders v. Leeke, 254 S.C. 444, 175 S.E.2d 796 (1970). In order to make a knowing and intelligent decision to plead guilty, the defendant must be advised of the possible range of sentences for the offense to which he pleads guilty. State v. Smith, 513 So.2d 544 (La. 1987). Our Court requires that a defendant fully understand the nature of the offense to which he was pleading and the consequences of that plea. Sweet v. State, 255 S.C. 293, 178 S.E.2d 657 (1971).

Moreover, courts have recognized that when the court accepts a plea of guilty for a lesser offense, "the trial judge's review of a plea agreement is not a forum for consideration of the factual basis of the abandoned charges." United States v. Barker, 681 F.2d 589, 592 (9th Cir. 1982). In Barker, the Court of Appeals recognized that "[i]n the context of the plea hearing, the [greater] charge is not before him." Id. And in State v. Estrada, 552 P.2d 772 (1976), the Court stated as follows:

[a] defendant who pleads guilty to a lesser charge than that contained in the original information is fully aware of the precise crime to which he is pleading and of the range of punishment for that crime.

Id. at 773. See also State v. Huffstetler, 213 S.C. 319, 49 S.E.2d 585 (1948) [sentence upon plea of guilty was "well within the statutory limit of the judge's discretion for offense pleaded to, grand larceny]; Brady v. United States, 397 U.S. 742, 90 S.Ct. 1470 (1970) [United States Supreme Court declined to hold that a guilty plea "is compelled and invalid under the Fifth Amendment whenever motivated by the defendant's desire to accept the certainty or probability of a lesser penalty rather than face a wider range of possibilities extending from acquittal to conviction and a higher penalty authorized by law for the crime charged].

Thus, it is well-recognized that the penalty imposed for conviction of a traffic violation must be within the range of punishment prescribed by law for that particular offense, not some other. As has been stated, "[t]he punishment or penalty for a crime is

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fixed by the law defining and inhibiting the criminal act ...". 24 C.J.S. Criminal Law, § 1459. Therefore, in my judgment, the applicable fine for the traffic offense would be that specified by law for the offense to which the individual pleads guilty, rather than the greater offense with which he is charged. That being the case, I do not see how the court could apply the higher monetary fine to the lesser penalty.¹

This letter is an informal opinion only. It has been written by a designated Assistant Deputy Attorney General and represents the position of the undersigned attorney as to the specific questions asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

With kind regards, I am

Very truly yours,



Robert D. Cook
Assistant Deputy Attorney General

RDC/an

¹ Many localities utilize the careless driving ordinance as a means of imposing higher fines for traffic offenses. It is my understanding, however, that this type of ordinance is not envisioned here, but that state law would be applied. I would note also that our Court has found that a portion of the DUI statute permitting persons arrested for first offense to avoid a 90 day suspension if he or she pleads guilty within 30 days of arrest impermissibly "chilled" the defendant's Fifth Amendment right not to plead guilty and Sixth Amendment right to a jury trial. Shumpert v. S.C.D.H.P.T., 306 S.C. 64, 409 S.E.2d 771 (1991).