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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

July 11, 1997

Robert L. McCurdy, Staff Attorney
South Carolina Court Administration
1015 Sumter Street, Suite 200
Columbia, South Carolina 29201

Re: Informal Opinion

Dear Mr. McCurdy:

You are seeking an opinion as to "whether magistrates may set bond on an individual who is charged with a violation of Section 16-11-311, Burglary-First Degree." You note that the authority of a magistrate to set bond is provided by Sections 17-15-10 and 22-5-570. Furthermore, you reference an opinion of this Office dated December 6, 1978. You state that "[a] conviction pursuant to Section 16-11-311, Burglary-First Degree, is punishable by life imprisonment, but may be reduced to not less than fifteen years in the discretion of the court." Your question is that because a "life sentence for a Burglary-First conviction is not mandatory, would it still be considered a capital offense, and may magistrates set bond on defendants so charged?"

Law / Analysis

The authority of a magistrate to set bond is authorized pursuant to S.C. Code Ann. Secs. 17-15-10 and 22-5-510. Section 17-15-10 provides that:

> [a]ny person charged with a noncapital offense triable in either the magistrate's, county or circuit court, shall, at his appearance before any of such courts, be ordered released pending trial on his own recognizance without surety in an amount specified by the court, unless the court determines in its discretion that such a release will not reasonably assure the appearance of the person as required, or unreasonable danger to the community will result. If such a determination is made

Request Form.

> by the court, it may impose any one or more of the following conditions of release:
>
> (a) Require the execution of an appearance bond in a specified amount with good and sufficient surety or sureties approved by the court;
>
> (b) Place the person in the custody of a designated person or organization agreeing to supervise him;
>
> (c) Place restrictions on the travel, association or place of abode of the person during the period of release;
>
> (d) Impose any other conditions deemed reasonably necessary to assure appearance as required, including a condition that the person return to custody after specified hours.

Section 22-5-510 further states in pertinent part that

> [m]agistrates may admit to bail any person charged with any offense the punishment of which is other than death or imprisonment for life ... . (emphasis added).

In Op.Atty.Gen., Op.No. 78-202 (December 6, 1978), this Office referenced these statutory provisions and concluded that

> [a] review of the above provisions results in the conclusion that magistrates have jurisdiction to consider bail for any defendant charged with an offense other than a capital offense, which is by definition an offense where the death penalty may be inflicted, or an offense punishable by life imprisonment. (emphasis added).

The offense of burglary in the first degree is established pursuant to Section 16-11-311. Section -311 (B) provides that

> [b]urglary in the first degree is a felony punishable by life imprisonment. For purposes of this section, 'life' means until death. The court, in its discretion, may sentence the defen-

> dant to a term of not less than fifteen years. (emphasis added).

Thus, the issue is whether the offense of burglary in the first degree is one "punishable by life imprisonment" for purposes of their exclusion from the referenced bond statutes. It is my opinion that this offense is excluded and thus bond may be entertained only by the circuit court.

Several important principles of statutory construction are pertinent to your inquiry. First and foremost, is the time-honored tenet of construction that the primary guideline to be used in the interpretation of statutes is to ascertain and give effect to the intention of the legislature. Belk v. Nationwide Mut. Ins. Co., 271 S.C. 24, 244 S.E.2d 744 (1978). A statute as a whole must receive a practical, reasonable and fair interpretation, consonant with the purpose, design and policy of the lawmakers. Caughman v. Cola. Y.M.C.A., 212 S.C. 337, 47 S.E.2d 788 (1948). The words used therein should be given their plain and ordinary meaning. Worthington v. Belcher, 274 S.C. 366, 264 S.E.2d 148 (1980). The interpretation should be according to the natural and obvious significance of the working without resort to subtle and refined construction for the purpose of either limiting or expanding the statute's operation. Greenville Baseball v. Bearden, 200 S.C. 363, 20 S.E.2d 813 (1942).

In United States v. Denson, 588 F.2d 1112 (5th Cir.1979), revd. on other grounds in banc, 603 F.2d 1143 (5th Cir.1979), the Court construed the phrase "not punishable by death or life imprisonment." There, the district court had sentenced defendants to ten years imprisonment, suspended upon probation. However, federal law authorized district courts to suspend imposition or execution only "[u]pon entering a judgment of conviction of any offense not punishable by death or life imprisonment." On appeal, the Fifth Circuit held such sentence was improper because even though the defendants received a ten year sentence, the offenses in question were subject to a sentence of life imprisonment. The Court's analysis was in part as follows:

> [s]ection 3651 authorizes federal courts to suspend imposition or execution of sentences only "upon entering a judgment of conviction of any offense not punishable by death or life imprisonment." ... Webster's Third International Dictionary (16th ed.1971) and Black's Law Dictionary (Rev. 4th ed.1968) both define "punishable" as meaning deserving of, liable of , or capable of being punished by law or right. See also Annotation, 35A Words and Phrases 171 (1963). The ordinary plain meaning of Section 3651, then, is that federal

courts are without authority to suspend the imposition or execution of punishment and to grant probation to defendants, such as these Defendants, who are convicted of offenses for which death or life imprisonment may be imposed as a sentence. ...

The meaning of the phrase "any offense not punishable by death or life imprisonment" in Section 2651, in our view, "is so self-evident that it hardly admits of argument." ... This case is appropriate for application of the "plain meaning" rule of statutory interpretation "a most basic principle of statutory construction." ...

... Finally, the weight of relevant judicial authority supports our construction of Section 3651. Our research has revealed only one case, State v. Taylor, 151 Fla. 296, 9 So.2d 708 (1942) (En banc), in which a court was presented with the precise question at issue here. The Taylor case involved a state statute which, like Section 3651, authorized a trial court to grant probation to a defendant except in the case of an offense "punishable by death or life imprisonment." The Florida Supreme Court concluded: "(t)he word 'punishable' may be defined as 'capable of being punished by law or right.'" Id. at 708. The Florida court held that under the statute a trial court could not grant probation to a person convicted of second degree murder an offense for which a term of life imprisonment could be imposed under state law even though a lesser term of incarceration was allowable. See also United States v. Remling, 548 F.2d 1274 (6th Cir.1977); Coon v. United States, 360 F.2d 550 (8th Cir.1966); The Thrasher, 173 F. 258 (9th Cir.1909) United States v. Carubia, 377 F.Supp. 1099 (E.D.N.Y.1974); United States v. Watkinds, 6 F. 152 (C.C.D.Or.1881). See generally Annotation, 35A Words and Phrases 171-73 (1963) and cases cited. ...

The District court rejected the plain meaning of Section 3651 and adopted our interpretation that is supported by neither legal authority not the practice in the federal judicial system.

588 F.2d at 1115-1116, 1119-1120.

Likewise, in Ringel v. State of Fla., 352 So.2d 88 (Fla.Dist.Ct.App.1977), the Court held that the phrase "punishable by life imprisonment should also be construed to mean cases where life imprisonment is the maximum punishment provided." Id. at 89. (emphasis added). Thus, the fact that a particular defendant might receive a sentence of less than life was deemed to be not controlling to the issue of whether the particular offense was one "punishable by life imprisonment."

Accordingly, it is my opinion that even though an individual defendant might, in the discretion of the court, receive less than life imprisonment for burglary in the first degree, such offense is one "punishable" by life imprisonment and thus a magistrate's court would not have jurisdiction to issue bond for that offense. Because of this fact, only a Court of General Sessions could set bond for this offense.[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/ph

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[1] Pursuant to Article I, Section 15 of the State Constitution, "all persons shall, before conviction, be bailable by sufficient sureties, but bail may be denied to persons charged with capital offenses or offenses punishable by life imprisonment ...." The decision for denial of bail would be a matter for the Court of General Sessions, not the magistrate's court. Of course, this provision was amended by the people at the polls during the 1996 general election, thereby now further excluding from bail altogether "violent offenses" as defined by Section 16-1-60 in addition to capital crimes and those punishable by life imprisonment. This amendment is awaiting ratification by the General Assembly.