

The State of South Carolina

*File 3932*



Office of the Attorney General

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April 9, 1990

Robert M. Stewart, Chief  
South Carolina Law Enforcement Division  
Post Office Box 21398  
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Dear Chief Stewart:

In a letter to this Office you questioned whether in the situation where an offender is arrested for multiple violations of Section 34-11-60 of the Code, the fraudulent check statute, and such violations are considered at a single court session where the offender is found guilty of all charges, must each conviction be considered a separate incident or should the convictions be considered collectively as comprising a single event. You elaborated that in instances where a defendant has written numerous fraudulent checks, these charges may be reflected on a single warrant or individual warrants may be drawn on each violation. You indicated that in many instances you are notified that these multiple charges are disposed by individual convictions on each count at a single hearing. You asked whether Section 34-11-60(e) authorizes expungement of all convictions where such convictions were determined at a single court appearance.

Section 34-11-90(e) states:

(a)fter a conviction under this section on a first offense, the defendant may, after one year from the date of the conviction, apply, or cause someone acting on his behalf, to apply to the court for an order expunging the records of the arrest and conviction. This provision shall not apply to any crime classified as a felony. If the defendant has had no other conviction during the one-year period following the conviction under this section, the court shall issue an order expunging the records. No person shall have any rights under this section more than one time.

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As used in this section the term "conviction" shall include the entering of a guilty plea, the entering of a plea of nolo contendere, or the forfeiting of bail. A conviction is classified as a felony if the instrument drawn or uttered in violation of this chapter exceeds the amount of five thousand dollars.

Each instrument drawn or uttered in violation of this chapter shall constitute a separate offense.

As set forth, such statute is specific in indicating that each fraudulent check is considered a separate offense. The statute is also specific in indicating that expungement is authorized only if the defendant had had no other conviction in the one year period following a conviction on a first offense. Also, expungement is prohibited for a check classified as a felony offense.

In the opinion of this Office, Section 34-11-60(e) should be interpreted as authorizing expungement only if the defendant has been convicted of a first offense violation of issuing a single fraudulent check and the defendant has had no other conviction for a fraudulent check offense during the one-year period following the conviction. Moreover, as pointed out in that provision, a defendant is entitled to expungement only once. Such construction is based on the fact that Section 34-11-90(e) provides for expungement following conviction on a first offense. As noted, the provision states that each fraudulent check is a separate offense.

In certain instances, an examination of a warrant or indictment may be necessary to determine the number of separate offenses (checks) on which a conviction is based. As you referenced, in some situations numerous fraudulent check counts may be disposed of during a single court appearance in which a defendant is convicted. For these multiple charges, one disposition or sentence may be provided. In such circumstances it may be necessary to examine court records, such as the indictment itself if the case was brought in general sessions court, to determine if expungement is proper under Section 34-11-90. Consistent with our interpretation as expressed above, expungement would be proper only if the conviction was based upon one offense (one fraudulent check). If there were at one time multiple charges, expungement would be proper only if the other charges were nolle prossed. If such is the case, consideration could be given to seeking expungement of the dismissed charges under Section 17-1-40 of the Code. Such provision states:

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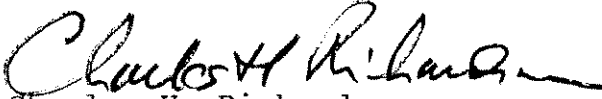
Any person who after being charged with a criminal offense and such charge is discharged or proceedings against such person dismissed or is found to be innocent of such charge the arrest and booking record, files, mug shots, and fingerprints of such person shall be destroyed and no evidence of such record pertaining to such charge shall be retained by any municipal, county or State law-enforcement agency.

However, if the other fraudulent check charges were not disposed of and convictions were obtained, it does not appear that Section 34-11-60 would authorize expungement. Such would be the case where concurrent or consecutive sentences were imposed at the one court appearance.

In conclusion, it is the opinion of this Office that expungement may be sought pursuant to Section 34-11-90 if the defendant has been convicted of issuing a single fraudulent check where such is a first offense and the defendant has had no other convictions during the one year period following the conviction. In circumstances which the defendant is convicted during a single court appearance for issuing more than one fraudulent check, expungement would not be appropriate pursuant to such provision.

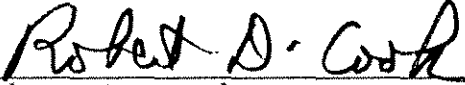
With best wishes, I am

Sincerely,

  
Charles H. Richardson  
Assistant Attorney General

CHR/nnw

REVIEWED AND APPROVED BY:

  
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