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The State of South Carolina



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July 24, 1990

Honorable M. Elizabeth Brown
Assistant Solicitor
Post Office Box 7485
Columbia, South Carolina 29202

Dear Ms. Brown:

Your request for an opinion of this office has been referred to me for a response. In your letter request, you inquire as to whether S.C. Code Ann. Section 20-7-430(5) (1989 Cum. Supp.) allows for the transfer from family court to general sessions court for a fifteen-year old juvenile who had previously been adjudicated delinquent in one adjudicatory hearing on two separate petitions for assault and battery with intent to kill (2 counts) and assault with intent to kill when the same juvenile is subsequently charged with another offense in family court. It is my opinion that transfer is authorized under that statute.

South Carolina Code Section 20-7-430(5) allows for the transfer of a juvenile from family court to general sessions court where "a child of fourteen or fifteen has had two prior and unrelated adjudications of assault, assault and battery with intent to kill, assault and battery of a high and aggravated nature, arson, housebreaking, burglary, kidnapping, attempted criminal sexual conduct or robbery and is currently charged with a third or subsequent such offense." South Carolina Code Section 20-7-430(5) (Ann. 1976). (Emphasis added). The question at hand is whether a juvenile adjudicated delinquent in one hearing on two separate and unrelated petitions of assault meets the qualifications of Section 20-7-430(5) for transfer when he is charged once again with one of the crimes listed in the statute.

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All petitions which reach the stage where a hearing takes place on the issues before the court must receive some final disposition at the hands of the court. Otherwise, the action is not terminated and cannot be brought to a close as to the claim not finally adjudicated. Compare South Carolina Rules of Civil Procedure 54(6). When more than one petition is presented in an adjudicatory hearing, the court may adjudicate each petition and enter judgment on each charged offense. In juvenile proceedings, petitions deal with a "specific charge" from a set of factual allegations "pertaining to the issue to be made" and therefore each petition should deal with a separate and unrelated offense as prescribed by the statute. South Carolina Code of Laws Section 20-7-740 (Ann. 1976).

Each petition in the instant scenario deals with a separate and independent offense, dealing therefore with the "prior" first offense and second offense respectively. That the offenses are completely independent of one another is the fact on which the answer to the above-framed question hinges. The offenses cannot "arise out of a single chain of circumstances," that is, "in substance a single ... course of conduct" or "connected transactions." State v. Tate, 334 S.E.2d 289 at 290 (S.C. App. 1985), citing City of Greenville v. Chapman, 41 S.E.2d 865 at 867 (1947). Additionally, to be judged separate independent, unrelated offenses, they must require "different evidence of proof." State v. Middleton, 339 S.E.2d 692 at 693, cert. denied 109 S.Ct. 189 (S.C. 1986).

In the above situation, the juvenile has been charged with the "third offense" required by the wordings of Section 20-7-430(5), and the fact that both previous petitions came to a final determination necessarily dictates that the juvenile has "two prior and unrelated adjudications" of the crime or crimes listed in Section 20-7-430(5), albeit both were heard and handled in one hearing.

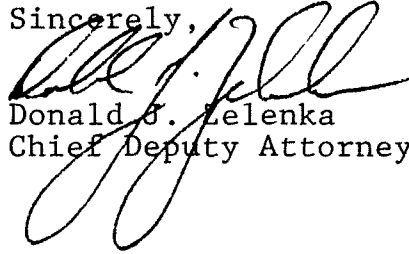
"The jurisdiction of the family court over juveniles is a privilege rather than a matter of right." Sanders v. State, 314 S.E.2d 319 at 321 (S.C. 1984). "[T]he best interests of the public or of the juvenile may sometimes require that the juvenile be held accountable as an adult for his criminal conduct." In Interest of Shaw, 265 S.E.2d 522 at 526 (S.C.

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1980). Prior to determining whether to transfer a case under Section 20-7-430(5), the family court judge is required to conduct a "full investigation and hearing." Section 20-7-430(5). "The serious nature of the offense is a major factor in the transfer decision." State v. Wright, 237 S.E.2d 764 (S.C. 1977). The nature and number of charges required to implement Section 20-7-430(5) have been met in the above described scenario and all that would be needed for a "full and careful consideration by the family court" is the additional information gathered at the hearing such as, "appellant's age, personal background and history with the family court," school records, etc. 265 S.E.2d 527 at 529, 265 S.E.2d 522 at 526. Of course, any decision to transfer a juvenile in a particular case rests solely upon the discretion of the Family Court to determine whether transfer is in the child's or public's best interest. In the Interest of Duane M., 293 S.C. 93, 359 S.E.2d 57 (1987).

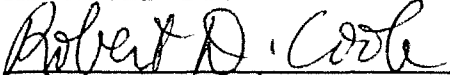
If you have any questions, do not hesitate to contact me.

Sincerely,


Donald S. Zelenka
Chief Deputy Attorney General

bbb

APPROVED BY:


Robert D. Cook
Executive Assistant for Opinions