

The State of South Carolina



Office of the Attorney General

T. TRAVIS MEDLOCK
ATTORNEY GENERAL

REMBERT C. DENNIS BUILDING
POST OFFICE BOX 11549
COLUMBIA, S.C. 29211
TELEPHONE: 803-734-3970
FACSIMILE: 803-253-6283

June 3, 1991

J. David Watson, Esquire
Assistant Solicitor
Fourth Judicial Circuit
Darlington County Courthouse, Room 411
Darlington, South Carolina 29532

Dear Mr. Watson:

In a letter to this Office you questioned whether an individual's conviction for attempted robbery in the third degree would prohibit the purchase of a handgun by that individual. You stated that it was your opinion that State law did not prohibit the purchase of a handgun by someone convicted of attempted robbery.

Section 16-23-30(e) of the Code provides that it is unlawful for any person convicted of a crime of violence to acquire a pistol in this State. See also: Section 23-31-140 of the Code. A "crime of violence" is defined by Section 16-23-10(c) of the Code as

... murder, manslaughter (except negligent manslaughter arising out of traffic accidents), rape, mayhem, kidnapping, burglary, robbery, housebreaking, assault with intent to kill, commit rape, or rob, assault with a dangerous weapon, or assault with intent to commit any offense punishable by imprisonment for more than one year.

See also: Op. of the Atty. Gen. dated May 17, 1989 (enclosed). In a prior opinion of this Office dated May 2, 1988, a copy of which is enclosed, it was determined that attempted murder and attempted rape would disqualify an individual from purchasing or possessing a handgun in this State. The opinion determined that

attempted murder may be aligned with assault with intent to kill, a crime specifically listed in the definition of crime of violence. Further, assault with intent to commit rape is also specifically listed in that definition. On the other hand, crime of violence includes assault with intent to commit any offense punishable by

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more than one year in prison. Since murder carries a minimum life sentence, and rape (now criminal sexual conduct) carries a sentence of imprisonment for at least ten years, depending upon the degree, both would fall within the broad definition of crimes punishable by imprisonment in excess of one year.

As referenced above, a "crime of violence" includes "assault with intent to kill ... or rob, assault with a dangerous weapon, or assault with intent to commit any offense punishable by imprisonment for more than one year." Robbery has been defined as

larceny from the person or immediate presence of another by violence or intimidation ... (and) ... is an offense against the person and the property.

McAninch and Fairey, The Criminal Law of South Carolina (2d ed. 1989) p. 227. The sentence for the offense of robbery is imprisonment for not more than ten (10) years. Dukes v. State, 248 S.C. 227, 149 S.E.2d 598 (1966).

Consistent with such definition, attempted robbery could be included within the category of an "assault with intent to kill ... or rob, assault with a dangerous weapon, or assault with intent to commit any offense punishable by imprisonment for more than one year." A review of the facts supporting a particular conviction for attempted robbery may be necessary to more clearly bring such offense within the definition of a "crime of violence." Therefore, a case by case analysis may be necessary. Also, legislative clarification or amendment could be sought so as to include the offense if such is desired.

If there is anything further, please advise.

Sincerely,



Charles H. Richardson
Assistant Attorney General

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REVIEWED AND APPROVED BY:



Robert D. Cook
Executive Assistant for Opinions