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The State of South Carolina

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The Honorable Glenn F. McConnell
Member, South Carolina Senate
610 Gressette Building
Columbia, South Carolina 29202

Dear Senator McConnell:

You have asked our opinion as to whether proposed bills, S-19 and S-20, are constitutional. It is our opinion that they are.

S-19 seeks to amend § 17-15-10 of the Code. Presently that provision (and those following) embody the statutory enactments concerning the granting of bail in criminal cases in this State. S-19 provides in pertinent part that all persons charged with a crime must be released pending trial on their own recognizance without surety in an amount specified by the court. However, the proposed bill would make an exception for individuals charged with certain violent crimes; if the individual is charged with murder, voluntary manslaughter, aggravated assault and battery, assault and battery with intent to kill, kidnapping, armed robbery, trafficking in illegal drugs, or criminal sexual conduct in the first, second or third degree, the proposed bill provides that he may not be released on bail pending trial if one of the following conditions is met:

(1) the proof is evident or the presumption great;

(2) the offense has been committed when the person charged is already admitted to bail on a violent separate crime charge and where the proof is evident or the presumption great;

(3) if the person charged poses a substantial danger to any other person or the community, if no conditions of release which may be imposed will reasonably assure the safety of the other person or the community, and if the proof is evident or the presumption great as to the present charge.

The bill further provides that the court possesses broad discretion to attach a number of conditions to the person's release if he is either a nonviolent offender or a violent offender (defined as having been charged with one of the designated violent offenses) who does not meet one of the three prerequisites set forth above. S-20 proposes to amend Article I, § 15 of the State Constitution to encompass the foregoing statutory provisions.

The following authorities support the constitutionality of the bills. Parker v. Roth, (Neb.), 278 N.W.2d 106 (1979); United States v. Edwards, 430 A.2d 1321 (1981); In Re Nordin, 143 C.A.3d 538; Mastrian v. Hedman, 326 P.2d 798 (8th Cir. 1964); United States ex rel. Covington v. Caparo, 297 F.Supp. 293 (S.D.N.Y. 1969); Carlson v. Landon, 342 U.S. 524, 545-546 (1952); Wansley v. Wilkerson, 263 F.Supp. 54 (W.D.Va. 1967); Rendel v. Mummert, 106 Ariz. 233, 474 P.2d 824 (1970); State v. Garrett, 16 Ariz.App. 427, 493 P.2d 1232 (1972); Bell v. Wolfish, 441 U.S. 520 (1979); Gerstein v. Pugh, 420 U.S. 103 (1975); McGowan v. Maryland, 366 U.S. 420; Beck v. State, (Tex.Cr.App. 1983), 648 S.W.2d 7, 9. These cases indicate that the Eighth Amendment to the federal Constitution provides no constitutional right to bail; that the statutory denial of bail does not inflict punishment or alter the presumption of innocence guaranteed by the Due Process Clause; that so long as there is a probable cause determination an individual may be detained prior to trial [proof is evident or presumption great meets this standard]; that the statutory denial of bail does not violate a defendant's Sixth Amendment right to the effective assistance of counsel; and that the statutory denial of bail does not violate the Eighth Amendment's protection against cruel and unusual punishment.

Several of these authorities also hold that to deny bail for violent offenses upon probable cause or where the proof is evident or the presumption great is neither arbitrary or irrational and does not violate the Equal Protection Clause. See, Parker v. Roth, supra (murder, criminal sexual conduct or

its equivalent); United States v. Edwards, supra (pretrial detention for dangerous offenders, e.g. rape, unlawful distribution of drugs, etc.; State v. Garrett, supra (felony offenses). Since a legislative determination that there exists a "real possibility of repeated acts and further victims pending trial" is given great deference by a court, see Parker v.Roth, supra, it would appear that S-19 and S-20's limitation with respect to the denial of bail to violent offenders is not irrational. As the Supreme Court of Nebraska stated in Parker v. Roth, supra, where the state by constitutional provision denied bail for rape and murder upon proof being evident or the presumption great, "[s]tate legislatures are presumed to have acted within their constitutional power...." In other words, a statutory or constitutional denial of bail "will not be set aside if any state of facts reasonably may be conceived to justify it." Supra.

By that standard, the General Assembly's (and the people's) determination, that the crimes enumerated in the bills are sufficiently violent to justify the denial of bail under the circumstances set forth in the bills, should not be "set aside." Accordingly, we believe the bills are constitutional.

Sincerely,

Robert D. Cook
Executive Assistant for Opinions

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