1984 S.C. Op. Atty. Gen. 45 (S.C.A.G.), 1984 S.C. Op. Atty. Gen. No. 84-14, 1984 WL 159822

Office of the Attorney General

State of South Carolina
Opinion No. 84-14
February 7, 1984

***1** The Honorable Ryan C. Shealy
Senator
District No. 8
513 Gressette Building
Post Office Box 142
Columbia, South Carolina 29202

Dear Senator Shealy:
You have asked for our comments concerning two proposed bills amending the Prison Overcrowding Powers Act and the Parole Act. One bill proposes to amend § 24–3–1120, Code of Law of South Carolina (1976 as amended) [Prison Overcrowding Powers Act] by adding the offense of voluntary manslaughter to the list of offenses excluded from the definition of 'qualified prisoner' for purposes of the Act; pursuant to the proposed amendment, prisoners 'presently committed' to the State Department of Corrections for the offense of voluntary manslaughter, could not receive consideration for advancement of release date. The other proposed bill also adds the offense of voluntary manslaughter to those offenses excluded from consideration for parole after service of one-fourth of a prisoner's sentence; in other words, a prisoner convicted of voluntary manslaughter could, under the proposed bill, only receive consideration for parole after service of one-third of the sentence.

I believe that, from a legal standpoint, the proposed amendments adequately accomplish the apparent purpose of excluding those convicted of voluntary manslaughter from consideration under the two acts. [1]

I would note the following by way of addition. If any change, such as is contemplated in the two bills, is made in either the Prison Overcrowding Powers Act or the Parole Act, I would urge that those same changes be also made in the Act authorizing supervised furlough, provided for in § 24–13–710 et seq. of the Code. If the General Assembly is to carry out its purpose and intent, that prisoners who commit certain violent crimes should not be entitled to early release from incarceration, then, there must be consistency in all three acts with respect to which crimes are excluded. In that way, there could be avoided potential loopholes whereby a prisoner might be entitled to advanced release in a situation where the General Assembly did not intend that to happen. I would make the following specific comments in this regard.

First, I would note that there is apparently no similar proposed amendment adding voluntary manslaughter as an offense excluded from consideration under the supervised furlough program. The General Assembly may wish to consider this addition, and I would strongly recommend it.

Secondly, I would note that the offense of trafficking in illegal drugs, specifically excluded from consideration under the Prison Overcrowding Powers Act, is not similarly excluded under the Parole Act. I would also recommend such an addition which the General Assembly may wish to consider.

My personal viewpoint is that narcotics trafficking is every bit as heinous as those other crimes already enumerated in the Parole Act. Indeed, one episode of drug trafficking could result in murder, armed robbery, criminal sexual assault or kidnapping, those offenses now listed in the Act. Of course, any final decision in this regard is, again, ultimately that of the General Assembly.

***2** Third, I would note that those sentenced as habitual offenders are excluded from consideration under the Prison Overcrowding Powers Act, but are not similarly excluded under the Parole Act. The General Assembly may wish to consider this addition and I would strongly recommend it.

As chief legal advisor and chief prosecutor for South Carolina, it is also my responsibility to bring to your attention one additional consideration. An opinion issued to J. P. Pratt (September 6, 1983, by Assistant Attorney General Donald J. Zelenka) addressed the question of which prisoners are eligible for consideration for parole under the Parole and Community Corrections Act of 1981.

The opinion stated, of course, that prisoners sentenced for the crimes of murder, armed robbery, criminal sexual assault, assault and battery with intent to kill, or kidnapping may not be considered for parole under the reduced eligibility period approved by the General Assembly. The opinion also states that the intent of the General Assembly, as expressed in the Act, was to make eligible for consideration for parole those remaining inmates at a period of one-fourth of their sentence, rather than one-third, so long as the Parole Board makes specified findings after January 1, 1984.

There has been some sentiment expressed that, instead, the Act should apply only to those prisoners sentenced after June 15, 1981, the date the legislation reducing the Parole eligibility period was approved by Governor Riley, or at some other date.

As you have requested in your letter of February 3, we have discussed above possible amendments to the Parole and Community Corrections Act. If in fact the General Assembly also wishes to narrow the application of this Act in terms of those prisoners entitled to earlier parole, it could do so by the same simple legislative process. See, fn. 1 above; see also, 1A Sands, Sutherland Statutory Construction, § 22.30.

The meaning and intent of the Parole and Community Corrections Act appears clear from its language. Furthermore, I have not received any indication that there is substantial interest within the General Assembly to change that meaning. Courts usually give considerable weight to an interpretation of a statute where the General Assembly does not see fit to change the law in light of that interpretation. Scheff v. Tn. of Maple Shade, 149 N.J. Super. 448, 374 A.2d 43 (1977); cf. Etiwan Fertilizer Co. v. S.C. Tax Comm., 217 S.C. 354, 60 S.E.2d 682 (1950). Such a change, of course, is properly a decision of the General Assembly.

It should be noted, however, that there has been some discussion of litigation to clarify the intent of that aspect of the Act. If, in fact, the General Assembly did prefer a narrower application of the legislation, a simple legislative amendment clearly stating that preference, would, in my view, be preferable to the expense, uncertainty and delay which would be created by a lawsuit.
Sincerely yours,

***3** T. Travis Medlock
Attorney General

Footnotes

1 The General Assembly might want to consider, in drafting the proposed amendment to the Parole Act, the fact that some courts might possibly view the proposed amendment as applying only to those prisoners convicted of manslaughter after the effective date of the amendment, because of the ex post facto clauses of the United States and State Constitutions. See, 16A C.J.S. Constitutional Law, § 442, pp. 151–152. Since the Parole Board, after January 1, 1984, apparently made findings that allow the Board to consider for parole those prisoners already convicted of manslaughter, after service of one-fourth of their sentences, a court might conclude that the benefits of earlier parole consideration had now vested. Other courts, however, conclude this raises no problem. See, U.S. v. Martin, 108 F.Supp. 672 (W.D.N.Y. 1952), aff'd., 200 F.2d 336 (2d Cir. 1952).

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