1984 WL 250027 (S.C.A.G.)

Office of the Attorney General

State of South Carolina
December 21, 1984

***1** The Honorable Mickey Burriss
Member
House of Representatives
District No. 80—Richland County
Box 9186
Columbia, South Carolina 29290

Dear Representative Burriss:
In a letter to this Office you requested an opinion regarding proposed legislation which would mandate that all individuals charged with driving under the influence must appear in magistrate's court to have their cases disposed of instead of such individuals being permitted to merely forfeit bond.

Inasmuch as no specific proposed bill has been presented to us for review, we cannot comment on such. However, certain general comments may be made as to the matter addressed by you. I have also discussed this matter by phone with Magistrate Davis.

Pursuant to present statutes, an individual charged with driving under the influence may forfeit the bond posted following his arrest. Section 23-5-50, Code of Laws of South Carolina, 1976, as amended, states:
'(w)hen any person is apprehended by a patrolman upon a charge of violating any traffic or other law, the enforcement of which by a patrolman is authorized by law, the person so being charged, upon being served with the official summons issued by such arresting patrolman, in lieu of being immediately brought before the proper magistrate, recorder or other judicial officer to enter into a formal recognizance or make direct the deposit of a proper sum of money in lieu of a recognizance or incarceration, may deposit with the apprehending patrolman a sum of money as bail, not less than the minimum nor more than the maximum fine, but in no case to exceed two hundred dollars, to be in due course turned over to the judicial officer as money for bail, in lieu of entering into a recognizance for his appearance for trial as set in the aforesaid summons or being incarcerated by the arresting officer and held for further action by the appropriate judicial officer. . . . The summons duly served as herein provided shall give the judicial officer jurisdiction to dispose of the matter. (Emphasis added.)

Pursuant to Section 56-5-2960, Code of Laws of South Carolina, 1976,
'. . . the forfeiture of any bail posted . . . (following an arrest for driving under the influence) . . . shall have the same effect as a conviction after trial . . ..'

Additionally, the courts have recognized treating a forfeiture as a conviction in a driving under the influence case. State v. Smith, 276 S.C. 494, 280 S.E.2d 200 (1981). However, it is clear that permitting a defendant to forfeit any bail posted instead of proceeding to trial is a matter within the discretion of the court.

Instead of concluding a case by permitting a defendant to forfeit any bail posted, an accused may be tried in absentia if he has been properly notified as to the time and place of his trial and he does not appear at the proper time. State v. Atkison, 264 S.C. 180, 213 S.E.2d 591 (1975); Brewer v. South Carolina State Highway Department, 261 S.C. 52, 198 S.E.2d 256 (1973). Following such trial, the magistrate may, but is not required to, apply the forfeited bond to the sentence if the sentence is a fine.

However, if the sentence is a jail term, a magistrate typically issues a bench warrant which requires the defendant to be brought before the court to comply with the sentence. See: Opinion of the Attorney General dated May 23, 1980.

***2** Instead of permitting the forfeiture of any bail posted or trying a defendant in absentia, a magistrate could issue a bench warrant and have a defendant brought before him for trial. As stated in a previous opinion of this Office dated October 31, 1978, a bench warrant:
'. . . may be used to bring a defendant back before a particular court for a specific purpose after the court has acquired jurisdiction over the defendant by virtue of a proper charging document. For instance, if a defendant was released on bond and failed to appear at the proper time for trial, a bench warrant may be used to bring the defendant back before the court.'

Referencing the above, it is clear that what would be accomplished by the proposed legislation, that is, requiring a defendant to appear for trial instead of forfeiting any bond posted, is presently an option for magistrates in this State. However, of course, such is not absolutely required. A mandate to require such is what Magistrate Davis is seeking according to my telephone conversation with him.

This Office is presently unaware of any constitutional prohibitions to requiring a defendant to appear for trial instead of permitting such defendant to forfeit any bond posted. However, such is obviously a matter which should be reviewed by all parties which may be affected by such requirement. Therefore, it is strongly recommended that any such proposed legislation be given considerable study prior to its introduction.

If there are any further questions, please contact me.
Sincerely,

Charles H. Richardson
Assistant Attorney General

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