1982 WL 189197 (S.C.A.G.)

Office of the Attorney General

State of South Carolina
March 8, 1982

***1** Richard A. Harpootlian, Esquire
Deputy Solicitor
1701 Main Street
Columbia, South Carolina 29201

Dear Mr. Harpootlian:
I am in receipt of the letter requesting an opinion from this Office on Mr. Swindler's case concerning the applicability of our death penalty act and the effect of the removal of detainers at this time.

It is our opinion that the present South Carolina Death Penalty Act cannot be applied in the cases involving the asserted criminal activity of Mr. Swindler. The recent Supreme Court opinion in State v. Larry Logan, Op. No. 21616, filed January 4, 1982, is dispositive of the question. The acts in this matter occurred in Richland County on September 20, 1976. State v. Rumsey, 267 S.C. 236, 226 S.E.2d 894 (1976), held the mandatory death penalty provisions unconstitutional on July 21, 1976. Our present death penalty statutory complex was enacted on June 13, 1977. Since South Carolina at the time of the crime had no operative death penalty statute, as in Logan, the death penalty cannot be sought against Mr. Swindler based on our Supreme Court's holdings.

Your second inquiry concerns the Interstate Agreement on Detainers, § 17-11-10, et seq., Code of Laws (1976).

Article III(a) of the Interstate Agreement on Detainers provides in part:
'Whenever a person has entered upon a term of imprisonment in a penal or correctional institution of a party state, and whenever during the continuance of the term imprisonment there is pending in any other party state any untried indictment, information or complaint on the basis of which a detainer has been lodged against the prisoner, he shall be brought to trial within one hundred eighty days after he shall have caused to be delivered to the prosecuting officer and the appropriate court of the prosecuting officer's jurisdiction written notice of the place of his imprisonment and his request for a final disposition to be made of the indictment, information or complaint; provided, that for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance.' (Emphasis supplied).

It appears that pursuant to this Act, Mr. Swindler has made a request for the disposition of the charges in South Carolina on December 11, 1981.

The purpose of the Act is to foster the expeditious disposition of charges outstanding against prisoners so as to eliminate the uncertainties which accompany the filing of detainers. State v. Patterson, 273 S.C. 361, 256 S.E.2d 417 (1979). The goal of promoting prisoner rehabilitation programs is achieved by requiring the receiving state to proceed to trial within one hundred and eighty (180) days. Accordingly, our Supreme Court has held that any requested continuance may be granted only at or prior to the expiration of one hundred and eighty days. State v. Patterson, supra. This continuance motion would necessarily be made in the Court of General Sessions for Richland County with the prisoner Swindler or his counsel present in open court with a showing of good cause. State v. Holbrook, 260 S.E.2d. 181 (1979).

***2** It is our opinion that the State must proceed on these indictments immediately unless a continuance is timely granted in 'open court.' Since his request for disposition has been made, it is too late for the detainer to be withdrawn. The better practice

would be to move for a continuance pursuant to Article III(a). The status of an inmate awaiting execution in another jurisdiction is clearly a situation that was not contemplated by the drafters of the Act and may be ‘good cause’ for the delay. The fostering of prisoner rehabilitation programs as a benefit of the Act is no longer applicable to Mr. Swindler's situation.

If I can be of further assistance in this matter, please advise me.
Sincerely,

Donald J. Zelenka
Assistant Attorney General

1982 WL 189197 (S.C.A.G.)

End of Document