

1981 WL 158235 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

April 16, 1981

***1 SUBJECT: Magistrates, Law Enforcement, Courts**

All pending first offense simple possession of marijuana cases may be transferred to a magistrate's court inasmuch as the penalty now provided brings such offenses within the jurisdiction of a magistrate's court.

L. Edmund Atwater, III
Director
South Carolina Court Administration

QUESTION:

1. In light of the recent approval by the Governor of the legislation reducing the penalty for first offense simple possession of marijuana, may such cases be transferred to the magistrates' courts?

OPINION:

You have requested an opinion from this Office concerning the status of pending first offense simple possession of marijuana cases in light of the recent approval by the Governor of the act which altered the penalty provisions of such offense with the result that such cases are now within the jurisdiction of a magistrate's court. Formerly, a person guilty of first offense simple possession of marijuana was subject to a term of imprisonment not to exceed three months or a fine not to exceed one hundred dollars, or both. See: [Section 44-53-370\(3\), Code of Laws of South Carolina](#), 1976, as amended. Pursuant to the recently approved act, the penalty now provided for such offense is imprisonment for a term not to exceed thirty days or a fine of not less than one hundred dollars nor more than two hundred dollars.

The South Carolina Supreme Court in the case of [State v. Gilliam](#), 208 S.C. 126, 37 S.E.2d 299 (1946), quoted with approval the following statement of the Court in [State v. Spencer](#), 177 S.C. 346, 181 S.E. 217 (1935):

‘. . . a statutory change in the punishment for a crime does not have the effect of impairing a prosecution pending at the time of the enactment of the statutory change, except to the extent of the punishment to be imposed. [208 S.C. 126 at 130.](#)’

The Court referenced that the case of [State v. Mansel](#), 52 S.C. 468, 30 S.E. 481 (1898) was an illustration of the application of such principle.

The Court in [State v. Mansel](#) had previously established the following principles to consider in a situation where an individual commits an offense under a statute which is repealed by a subsequent statute prior to being sentenced:

1. When the second act prescribes a greater punishment than the first act, the offending party may be punished under the first act.
2. When the punishment in the second act is less than is prescribed in the first act, the party convicted can be punished only to the extent prescribed in the second act.
3. When a statute contains a section prescribing a punishment for a violation of the section, and this section is repealed after a party has violated the section, but before sentence is imposed upon him, he cannot be punished

for such violation, or stated in another form: 4. When the second act repealing the first act makes no provision for punishment, the Court is without jurisdiction in the premises, and cannot impose sentence upon the party convicted. [52 S.C. 468 at 469-470](#).

*2 It appears that the situation involving first offense simple possession of marijuana cases should be construed as coming within the second category, with the result that individuals guilty of such offense should be sentenced pursuant to the provisions of the recent act. Therefore, in the opinion of this Office, all pending first offense simple possession of marijuana cases may be transferred to a magistrate's court inasmuch as the penalty which may be imposed on an individual found guilty of such offense is within the jurisdiction of a magistrate.

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