1980 S.C. Op. Atty. Gen. 110 (S.C.A.G.), 1980 S.C. Op. Atty. Gen. No. 80-67, 1980 WL 81990

Office of the Attorney General

State of South Carolina
Opinion No. 80-67
June 10, 1980

***1 SUBJECT: Magistrates, Correctional Facilities, Sentencing.**

(1) The State Board of Corrections has the discretion to determine where an individual convicted of a State offense whose sentence exceeds three months is to be incarcerated. If the term of imprisonment is three months or less such persons are to be placed in the custody of officials of the county where the sentence was pronounced.

(2) Magistrates are without authority to order a person to be incarcerated in the State Penitentiary.

TO: Raymond A. Holley
Aiken County Magistrate

QUESTION:

Does a magistrate have the authority to order that an individual sentenced to a prison term by him be incarcerated in the State Penitentiary?

AUTHORITIES:

1967 Op. Att'y Gen. No. 2290, p. 110; Section 17–25–90, Code of Laws of South Carolina, 1976; Section 24–3–30, Code of Laws of South Carolina, 1976, as amended; Lewis v. Gaddy, 254 S.C. 66, 173 S.E.2d 376 (1970).

DISCUSSION:

In a letter to this office you referenced a situation in which you sentenced a defendant to two thirty day terms to be served consecutively at the State Penitentiary. In your Order, a copy of which was forwarded with your letter, you set out the factual situation which prompted your sentence. You stated that the sentence was based on your finding that the individual sentenced '. . . was a menace to himself as well as the community,' and cited the fact that he was a habitual criminal offender. Your order made reference to a former opinion of this office, 1967 Op. Att'y Gen. No. 2290, p. 110, which stated that pursuant to the section now codified as Section 17–25–90, Code of Laws of South Carolina, 1976, which provides generally that when a sentence of imprisonment imposed is less than six months, such sentence is to be served in county or municipal facilities, magistrates can sentence prisoners to the Penitentiary if it appears to the presiding judge
'. . . that the prisoner is a dangerous character or cannot be safely kept in the county . . ..'

You indicated in your letter that local law enforcement authorities questioned your authority to sentence an individual to the State Penitentiary.

Please be advised that pursuant to Section 24–3–30, Code of Laws of South Carolina, 1976, as amended, it is now the opinion of this office that magistrates no longer have authority to sentence an individual to the State Penitentiary. Such provision states in part:

‘(n)otwithstanding the provisions of Section 24–3–10 of the 1976 Code, or any other provision of law, any person convicted of an offense against the State shall be in the custody of the Board of Corrections of the State, and the Board shall designate the place of confinement where the sentence shall be served. The Board may designate as a place of confinement any available, suitable and appropriate institution or facility, including a county jail or work camp whether maintained by the State Department of Corrections or otherwise, but the consent of the officials in charge of the county institutions so designated shall be first obtained. Provided, that if imprisonment for three months or less is ordered by the court as the punishment, all persons so convicted shall be placed in the custody, supervision and control of the appropriate officials of the county wherein the sentence was pronounced, if such county has facilities suitable for confinement.’

***2** This office in a prior opinion, 1974 Op. Att;y Gen. No. 3860, p. 274, held that such provision:
‘. . . clearly places all prisoners whose sentence exceeds three months in the custody of the Department of Corrections and allows the Board to designate the facility where a sentence is to be served.’

Furthermore, as to all individuals sentenced to a term of imprisonment of three months or less, it is equally clear that such individuals are to be placed in the custody of officials of the county where the individual was sentenced if there are appropriate facilities in the county.

While repeal by implication is not favored and while it is generally held that a statute should not be construed as impliedly repealed unless no other reasonable construction may be had, the South Carolina Supreme Court has stated that:
‘(a)ll rules of statutory construction are subservient to the one that legislative interest must prevail if it can be reasonably discovered in the language used, and that language must be construed in light of the intended purpose.’ Lewis v. Gaddy, 254 S.C. 66 at 71, 173 S.E.2d 376 (1970).

Therefore, it is apparent that based upon the clear language of Section 24–3–30, supra, it was intended that authority for determining the facility for confining individuals convicted of State offenses whose sentences exceed three months be placed with the State Board of Corrections. Moreover, it is plain that it was the legislative intent that as to individuals sentenced to terms of imprisonment of three months or less that such individuals be in the custody of officials of the county where the sentence was pronounced. As indicated, Section 24–3–30, supra, commences with the language, ‘(n)otwithstanding, the provisions of Section 24–3–10 of the 1976 Code, or any other provision of law.’ (emphasis added.)

CONCLUSION:

Referencing the above discussion, in the opinion of this office, a magistrate is without authority to order that an individual sentenced to a prison term by him be incarcerated in the State Penitentiary.

Charles H. Richardson
Assistant Attorney General

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