

1979 WL 42987 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

May 9, 1979

*1 Hon. Larry D. Smith
Sheriff
Spartanburg County
Spartanburg, South Carolina 29301

Dear Sheriff Smith:

In a letter to this Office you inquired as to the propriety of the actions of the Chief Judge of the Civil and Criminal Court of Spartanburg County, Judge Sanders, in granting a motion for a new trial as to a case originally heard by Judge Paslay, another judge of the Civil and Criminal Court. My understanding of the factual situation is that a particular defendant pled guilty to a charge of prostitution on May 22, 1979 before Judge Paslay and was sentenced by Judge Paslay to thirty days' imprisonment. On March 27, 1979 Judge Sanders entertained a motion for a new trial brought on behalf of the defendant, granted the motion, allowed the defendant to plead again to a charge of prostitution, and thereafter sentenced the defendant to time served. I have also been informed that while an assistant solicitor did appear on behalf of the State he did not consent to Judge Sanders' hearing the motion.

Pursuant to Section 15-1671.5 of the Code of Laws of South Carolina (1962), it is provided that the judges of the Civil and Criminal Court of Spartanburg County

... have the jurisdiction, power and authority, both criminal and civil, conferred upon magistrates generally throughout the county, and nothing in this chapter shall be construed to alter or change the law applicable thereto or the procedure, rules, methods, and manner of performing their duties as an ordinary magistrate in cases and matters within the jurisdiction of magistrates generally throughout the county except as is specifically set forth in this chapter.

Section 15-1671.6 of the 1962 Code of Laws, as amended by Act No. 167 of 1971, states:

(t)he judges of the court in performing their duties as magistrates shall perform them in the same manner as regular magistrates perform such duties.

Therefore, those statutes relating to the procedure and jurisdiction of magisterial courts appear to be applicable to the Civil and Criminal Court of Spartanburg County.

As to motions for new trials in magisterial courts, [Section 22-3-990 of the 1976 Code](#) of Laws states in part:

(a)ny magistrate may grant a new trial in any case tried in his court for reasons for which new trials have usually been granted in the courts of law of this State . . . (emphasis added)

[Section 22-3-1000 of the 1976 Code](#) of Laws provides in part that:

(n)o motion for a new trial shall be heard unless made within five days from the rendering of the judgment.

While my research has not revealed a case where it was expressly held that a hearing on a motion for a new trial is before the particular magistrate who considered the case, a review of several cases before the South Carolina Supreme Court which involved cases in which motions for new trials which were made in the magisterial courts indicates that all such

motions were considered in the first instance by the magistrate who originally considered the case. See [Whetstone v. Livingston](#), 54 S.C. 539, 32 S.E. 561 (1898); [State, ex rel. Erwin v. Ashe](#), 41 S.C. 92, 19 S.E. 297 (1894); [Mitchel v. Bates](#), 57 S.C. 44, 35 S.E. 420 (1900); [State v. Atkison](#), 264 S.C. 180, 213 S.E.2d 591 (1975); [Brewer v. S. C. Highway Dept.](#), 261 S.C. 52, 198 S.E.2d 256 (1973).

*2 A review of other statutes relating to the Civil and Criminal Court of Spartanburg County does not reveal any authority which expressly indicates that one judge of the three-judge court may consider a motion for a new trial as to a matter originally before another of the three judges. As to the powers of the one judge designated as the Chief Judge, it is expressly provided that in addition to other responsibilities the Chief Judge has responsibilities as to the preparation of the court's annual budget, as to the appointment and supervision of the court constables, and as to the appointment and supervision of a court administrator. The Chief Judge apparently is not given any broad authority to consider matters originally before another judge of the court.

It is generally provided that:

. . . the judge who presided at the trial is the proper judge to hear and determine a motion for a new trial, . . . and it has been held that accused has a right to have his motion heard by such judge, and that it is error for the trial judge to refuse to hear it, or for another judge to hear it. 24 C.J.S., Criminal Law, Section 1464, pp. 228-229.

No one has asserted that Judge Paslay would not have been available to entertain the motion for a new trial. Therefore, this does not appear to be a situation where the circumstances necessarily dictated that the motion be heard by another judge.

Admittedly, it is provided that

Where a criminal court may be held by three designated judges, or by any one of them, a court held by the three judges may pass on a motion for a new trial of a case tried before one of them; and it has also been held that, where a court before which a trial was had is composed of more than one judge, accused has no right to have his motion for a new trial passed on by the same judges who presided at the trial . . . 24 C.J.S. Criminal Law, Section 1464, p. 230.

However, a review of those cases cited in support of the above statement do not appear to lend support to holding that any one of the three judges of the Spartanburg court could consider a motion for a new trial as to a case originally before another judge. Furthermore, as earlier referenced, the judges of the Spartanburg Civil and Criminal Court 'in performing their duties as magistrates shall perform them in the same manner as regular magistrates.' Inasmuch as motions for new trials in the magistrate's courts are heard by the magistrate who originally considered the case, it appears that in the opinion of this Office the defendant's motion in the factual situation prompting this request should have been heard by Judge Paslay.

If there is anything further, do not hesitate to contact me.

Sincerely,

Charles H. Richardson
Assistant Attorney General

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