

1978 S.C. Op. Atty. Gen. 75 (S.C.A.G.), 1978 S.C. Op. Atty. Gen. No. 78-47, 1978 WL 22529

Office of the Attorney General

State of South Carolina

Opinion No. 78-47

March 10, 1978

*1 To: Mr. Neal Forney
Assistant Director
South Carolina Court Administration

QUESTION PRESENTED:

Do judges of the magistrate courts have the authority to vacate judgments and declare sentences null and void?

AUTHORITIES:

[Section 22-3-990, 1976 Code of Laws of South Carolina;](#)

[Section 22-3-1000, 1976 Code of Laws of South Carolina;](#)

[Section 22-5-800, 1976 Code of Laws of South Carolina;](#)

[State v. Dickert, 260 S.C. 490, 197 S.E.2d 89 \(1973\);](#)

[State v. Adkison, 264 S.C. 180, 213 S.E.2d 591 \(1975\);](#)

[Ishmell v. SCHD, 264 S.C. 340, 215 S.E.2d 201 \(1975\);](#)

[State v. Hill, 266 S.C. 49, 221 S.E.2d 398 \(1976\).](#)

DISCUSSION:

You have asked whether magistrates have general authority to vacate judgments and declare sentences null and void.

As you note in your letter, magistrates are vested with authority to grant new trials upon sufficient legal cause after a full hearing. [Section 22-3-990](#); [State v. Hill, 266 S.C. 49, 221 S.E.2d 398 \(1976\)](#). That authority, however, is limited by the provisions of [Section 22-3-1000](#) which directs that no motion for a new trial shall be heard unless made within five days from the rendering of judgment. After the expiration of that period, the jurisdiction of the magistrate to vacate the judgment and grant a new trial ends, and any action taken on a motion made after the prescribed period consequently is a nullity. [State v. Dickert, 260 S.C. 490, 197 S.E.2d 89 \(1973\)](#); [State v. Adkison, 264 S.C. 180, 213 S.E.2d 591 \(1975\)](#); and [Ishmell v. SCHD, 264 S.C. 340, 215 S.E.2d 201 \(1975\)](#).

Although magistrates also have the authority and power generally to suspend the imposition or execution of a sentence (Section 22-5-800), such action would not be equivalent to a vacation of judgment and declaration that the sentence is null and void. Such authority, furthermore, is clearly limited by the statute to the time of sentencing, not afterward.

Our research has disclosed no other provisions of law purporting to grant magistrates the authority you describe. Accordingly, it appears that no such authority exists beyond that contained in [Section 22-3-990](#) and limited by [Section 22-3-1000](#).

CONCLUSION:

Therefore, it is the opinion of this Office that magistrates have no general authority to vacate judgments and declare sentences null and void beyond that referred by [Section 22-3-990](#).

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