

1978 S.C. Op. Atty. Gen. 67 (S.C.A.G.), 1978 S.C. Op. Atty. Gen. No. 78-42, 1978 WL 22525

Office of the Attorney General

State of South Carolina

Opinion No. 78-42

March 7, 1978

***1 SUBJECT: Juveniles, Probation And Parole**

The Board of Juvenile Placement And Aftercare has the authority to conduct a hearing and through its own fact finding process, determine that a juvenile has violated a state, federal or local statute, thereby violating his conditional release, even though there has been no adjudication of guilt by any court.

TO: Harry W. Davis, Jr.
Director

QUESTIONS:

1. In the absence of an adjudication of guilt, may the Board of Juvenile Placement And Aftercare through its own fact finding process determine that a juvenile has violated a state, federal, or local statute thereby violating his conditional release.
2. If the Board can properly determine for its purposes of parole revocation that a juvenile has violated a law, could this determination be introduced at any subsequent trial or sentencing with respect to the offense in a Family Court or General Sessions Court.

STATUTES AND CASES:

Section 24–15–380, et seq., Code of Laws of South Carolina, 1976; [In re Maricopa County Juvenile Action](#), 19 Ariz. App. 577, 509 Pac.2d 649 (1973); [Morrissey v. Brewer](#), 408 U.S. 471 (1972); [Standlee v. Rhay](#), 557 F.2d 1303 (9th Cir., 1977).

DISCUSSION:

1. One of the general and customary conditions of a conditional release granted to juveniles is that the juvenile refrain from the violation of any federal, state or local law. This same condition is generally found in all adult parole instruments. In a previous Opinion issued by this Office, it was stated that no distinction arises from the fact that these are juvenile rather than adult proceedings. The same due process and fair play concepts apply. [In re Maricopa County Juvenile Action](#), 19 Ariz. App. 577, 509 Pac.2d 649 (1973).

The decision of the United States Supreme Court in [Morrissey v. Brewer](#), 408 U.S. 471 (1972), made clear that revocation of parole is not a part of the criminal prosecution and therefore the full panoply of rights due the defendant in such a proceeding do not apply to parole revocations.

Pursuant to the statutes setting up the Board of Juvenile Placement And Aftercare, the Board has the authority to conduct a hearing to determine whether or not the juvenile has violated the conditions of his release and upon finding that he has, order that he be returned to the custody of a correctional school. Section 24–15–380, 1976 Code of Laws.

In a recent case in the 9th Circuit Court of Appeals it was contended that the doctrine of collateral estoppel prohibited a parole board from finding a defendant guilty of violations of his parole when the issue of guilt for the same acts had been resolved in the defendant's favor by the trial court. He had been found not guilty at his trial. The Court held that the application of the doctrine of collateral estoppel was precluded because of the difference in burdens of proof in criminal and civil proceedings. The Court went on to state that it was well established that parole revocation is not a part of the criminal prosecution and that revocation of parole is remedial rather than punitive since it seeks to protect the welfare of parolees and the safety of society. Even though the Supreme Court has extended certain procedural safeguards to parole revocation proceedings, this does not, of itself, change the nature of the sanction which results from that proceedings. Because of the difference in the sanctions imposed and the burdens of proof required, collateral estoppel, it was held, would not bar a subsequent parole revocation hearing after a criminal acquittal. [Standlee v. Rhay, 557 F.2d 1303 \(9th Cir., 1977\)](#).

*2 It follows, therefore, that if there is no constitutional impediment to a parole board revoking parole based on acts of which the defendant has been found not guilty in a criminal proceeding, there is certainly no bar to the Board through its own fact finding processes to determine that the juvenile has violated the conditions of his conditional release where there has been no adjudication by the courts.

2. Your second question inquires as to whether or not the Board's determination could be introduced at a subsequent trial or sentencing with respect to that offense in a Family Court or the Court of General Sessions. The question of the admissibility of evidence is a question for the court. In the Family Court proceeding where there is only an adjudication made by the Family Court Judge, I do not see how the juvenile could be prejudiced by the Family Court Judge having this information. With respect to a criminal trial in the Court of General Sessions, this is a question to be resolved by the presiding judge. In view of the fact that the determination was made in a civil proceeding where the burden of proof required simply a preponderance of the evidence, it does not appear that it is proof of anything at issue in the criminal trial. The determination would, however, be up to the court.

CONCLUSION:

There is no impediment to the Board through its own fact finding processes making a determination that a juvenile has violated a state, federal or local statute and thereby violated his conditional release even though an adjudication of guilt has never been made by the court.

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