

1973 WL 27604 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

September 4, 1973

**\*1 In Re: Escape - - - When Prisoner Not Serving Sentence**

Honorable Frank Eppes  
Resident Judge  
Thirteenth Judicial Circuit  
County Courthouse  
Greenville, South Carolina 29601

Dear Judge Eppes:

Reference is to our general conversation by telephone today with reference to the punishment for the crime of escape when the defendant committed the act while in custody, but not while serving a sentence.

Section 55-6, 1962 Code of Laws of South Carolina, as amended, is somewhat vague as to whether or not the penalties provided in the Section apply when an escape is not serving a sentence. The penalty provided for violation of Section 55-6 is made largely dependent upon the length of the sentence being served at the time of escape or attempted escape. It is my personal opinion - - not the official opinion of this Office - - - that Section 55-6 probably would be construed as being inapplicable when the escapee is not serving a sentence.

Under the common law, there are two crimes involving escape from lawful custody whether or not the prisoner is serving a sentence. The defendant is guilty of escape whenever, by unlawful means, he voluntarily leaves the prison before he is delivered in the due course of law. No force is necessary to constitute the common law crime of escape. When force is used to effect an escape from lawful custody, the common law crime is prison breach. Presumably, the sentence that could be imposed for either crime would be under the general statute providing penalties in misdemeanor cases when no specific penalty is provided by law. Sincerely,

Joseph C. Coleman  
Deputy Attorney General

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