

1973 S.C. Op. Atty. Gen. 321 (S.C.A.G.), 1973 S.C. Op. Atty. Gen. No. 3640, 1973 WL 21092

Office of the Attorney General

State of South Carolina

Opinion No. 3640

October 5, 1973

***1 In Re: Sentence, Indefinite Suspension of**

Honorable Pearl S. Kirby
Clerk of Court
County Courthouse
Union, South Carolina

Dear Mrs, Kirby:

You have inquired as to the validity of the indefinite suspension of a sentence imposed upon plea of guilty in a misdemeanor prosecution, with no period of probation provided.

There is a split of authority on the question of the constitutionality of a statute empowering a trial judge to suspend execution of a sentence indefinitely upon specified conditions, although it is fairly well settled that a court has no power, absent statutory provision, to suspend a sentence. [State v. Abbot, 87 S.C. 466](#). A minority view is to the affect that statutory provision for indefinite suspension is unconstitutional. Anno. [26 A.L.R. 405](#).

Section 17-557, 1962 Code of Laws of South Carolina, enacted in 1912, reads:

§ 17-557. Suspension of sentence in misdemeanor cases. - - - The circuit judges of this State may, in their discretion, suspend sentences imposed by them except in cases of felony upon such terms and upon such conditions as in their judgment may be fit and proper. (1952 Code § 17-557; 1942 Code § 1039; 1932 Code § 1039; Cr. P. '22 § 128; 1912 (27) 773.)

This Section has not been construed by the State Supreme Court in light of the question of whether or not there is a limitation on the length of time suspension can be made to run. Similar statutes in other states have been construed to permit infinite suspension of sentences upon lawful conditions. Anno. [26 A.L.R. 400](#), [101 A.L.R. 1402](#). Under Section 17-557, sentences in felony cases could not be suspended. [State v. Breuer, 113, S.C. 177, 102 S.E. 15](#).

In 1942 (1942 [42] 1456) the General Assembly provided for suspension of all sentences, except those involving death or life imprisonment, with probation not to exceed five years:

After conviction or plea for any offense, except a crime punishable by death or life imprisonment, the judge of any court of record with criminal jurisdiction at the time of sentence may suspend the imposition or the execution of a sentence and place the defendant on probation or may impose a fine and also place the defendant on probation.

Admittedly, there is some question as to whether or not enactment of Section 55-591 repealed by implication the provisions of Section 17-557.

With the foregoing reservation, it is the opinion of this Office that a circuit judge of this State may suspend indefinitely the execution of a misdemeanor sentence upon lawful conditions, including the condition that he support his family.

Very truly yours,

Joseph C. Coleman
Deputy Attorney General

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