

1973 WL 27721 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

October 25, 1973

\*1 Edward Bohlander, Jr., Ph.D.  
Assistant Professor of Sociology  
Western Kentucky University  
Bowling Green, Kentucky 42101

Dear Mr. Bohlander:

You correspondence of October 16, 1973, concerning disposition of convicted felons has been referred to me for reply. Generally, in South Carolina Judicial Authority is founded upon the controlling statutory law of this State as applied in the various cases by the judges having jurisdiction over the particular matter. Criminal jurisdiction in felony cases is generally vested in the judges of Circuit Courts of this State. The Circuit Courts of our State are divided into the Court of Common Pleas having Civil jurisdiction and the Court of General Sessions with Criminal jurisdiction. Criminal jurisdiction may also be exercised by the various county courts of our State; however, their jurisdiction is limited in that they are prohibited from exercising jurisdiction in cases of murder, manslaughter, rape or attempted rape, arson, common law burglary, bribery or perjury all of which are classified as felonies in South Carolina.

As noted, after an individual is found guilty by a jury or after a plea of guilty, it is incumbent upon the presiding judge to sentence the individual in accord with the statutorily provided dictates. Section 17-552, Code of Laws of South Carolina, (1962), as amended, makes provisions, for instance, when a specific punishment for a given felony is not specially provided for, to wit: ' . . . Confinement in the penitentiary or in a workhouse or penal farm when such institution shall exist for a period of not less than 3 months nor more than 10 years.

In regard to probation or split sentences, it is provided by Section 55-591, Code of Laws of South Carolina, *supra*, that:

'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.

This section is intended to give trial judges the right, at the time of the sentence, to provide for a suspension of a part of such imprisonment and a placing of the defendant on probation after serving a designated portion of the imprisonment. The trial judge in his discretion may suspend the sentence either in whole or in part. As noted, the above section excepts a crime punishable by death or life imprisonment. In South Carolina, such crimes include murder, kidnapping and rape and common law burglary when no special verdict recommending mercy is given.

By way of general example in regard to the disposition of the felony cases, our law provides that manslaughter, or the unlawful killing of another without malice, express or implied, shall be punishable by hard labor in the penitentiary not exceeding thirty years nor less than two years; provided, that when the jury returns a verdict of guilty of involuntary manslaughter, the punishment shall be not less than three months nor more than three years in the discretion of the judge. In such a case the trial judge must, therefore, stay within the statutorily designated maximum. Inasmuch as manslaughter is not a crime for which a person could receive a penalty of either death or life imprisonment, the foregoing explanation in regard to probation might properly be applicable in this case.

\*2 I trust that this will be a sufficient answer to your inquiry. If this office can be of further assistance, please feel free to call upon us.

Very truly yours,

Brent Fortson  
Legal Assistant

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