



ALAN WILSON  
ATTORNEY GENERAL

August 8, 2014

The Honorable B. Lee Miller  
Greenwood Municipal Court  
P.O. Box 40  
Greenwood, SC 29648-0040

Dear Judge Miller:

By your letter dated February 14, 2014 you have asked for the opinion of this Office regarding the interpretation of Section 16-1-57 of the South Carolina Code, also known as the “three strikes and you’re out” statute. Specifically, you present us with the following scenario:

Can a defendant who has been charged and convicted of Shoplifting 1<sup>st</sup> in October [2013] and Petit Larceny 1<sup>st</sup> in November [2013], be used to enhance under 16-1-57, yet still a third different property crime, Receiving Stolen Goods, Less Than 2,000, in January [2014] by using those two previous convictions.

Or for the enhancement section 16-1-57 to be charged must it be the same crime, as two previous Shoplifting convictions, then the third Shoplifting would fall in this category.

Our response follows.

## I. Law/Analysis

We interpret your question as asking whether an individual can be sentenced under the terms of Section 16-1-57 where the crimes, although property offenses “contingent upon the value of the property involved,” are not the same offense. Because Section 16-1-57 clearly and unambiguously explains that the enhanced punishment provisions apply to any “offense for which the term of imprisonment is contingent upon the value of the property involved,” we believe an individual need not be convicted of the same offense three times in order to be subject to Section 16-1-57’s sentencing enhancement provisions.

### A. Statutory Construction

Because your question is one of statutory interpretation, we believe it prudent to review the applicable canons of statutory construction. “The cardinal rule of statutory construction is to ascertain and effectuate the legislative intent whenever possible.” Hodges v. Rainey, 341 S.C.

79, 85, 533 S.E.2d 578, 581 (2000). When ascertaining legislative intent, South Carolina's appellate courts have stated, "[w]hat a legislature says in the text of a statute is considered the best evidence of the legislative intent or will" and "courts are bound to give effect to the expressed intent of the legislature." Media General Communications, Inc. v. South Carolina Dept. of Revenue, 388 S.C. 138, 148, 694 S.E.2d 525, 530 (2010); Wade v. State, 348 S.C. 255, 259, 559 S.E.2d 843, 844 (2002). Indeed, "[t]here is no safer nor better rule of interpretation than when language is clear and unambiguous it must be held to mean what it plainly states." Jones v. South Carolina State Highway Dep't, 247 S.C. 132, 137, 146 S.E. 2d 166, 168 (1966).

Keeping these principles in mind, we now turn to the terms of the statute. Section 16-1-57 of the South Carolina Code, entitled "Classification of third or subsequent conviction of certain property crimes" explains that "[a] person convicted of an offense for which the term of imprisonment is contingent upon the value of the property involved must, upon conviction for a third or subsequent offense, be punished as prescribed for a Class E felony." S.C. Code Ann. § 16-1-57 (2003).

Here, our review of Section 16-1-57's language "an offense for which the term of imprisonment is contingent upon the value of the property involved" is clear and unambiguous in that it identifies a class of convictions subject to enhancement under the terms of the statute. This is consistent with the Court of Appeals' ruling in State v. Lewis, 325 S.C. 324, 327, 478 S.E.2d 696, 698 (Ct. App. 1996) which found the same, explaining "the 'three strikes and you're out' statute is clear and unambiguous" in that the phrase "the term of imprisonment is contingent upon the value of the property involved," defines the class of property crimes subject to statutory enhancement.<sup>1</sup> Id. This is also consistent with a 2003 opinion from this office where we reiterated the holding from the Lewis Court stating, "possession of a stolen vehicle" would qualify as a property offense for enhancement purposes under Section 16-1-57. Op. S.C. Att'y Gen., 2003 WL 21998993 (August 1, 2003).

### **B. Application of the Statute as Interpreted**

Relying on both the Lewis Court as well as our prior interpretation of Section 16-1-57, we believe, rather than requiring that an individual be convicted of the *same crime* three times, Section 16-1-57 must instead be read to apply to "the class of property crimes in which the term of imprisonment is contingent upon the value of the property involved." Lewis, 325 S.C. at 327, 478 S.E.2d at 698. As a result, an individual convicted of the crimes mentioned in your letter—Shoplifting 1<sup>st</sup>, Petit Larceny 1<sup>st</sup> and Receiving Stolen Goods under \$2000—all of which appear

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<sup>1</sup> In Lewis, the qualifying third offense at issue was shoplifting, which by its terms, punishes an individual based upon the value of the merchandise stolen. See Lewis 325 S.C. at 326-327, 478 S.E.2d at 697-98 (discussing the shoplifting statute and finding that "[s]hoplifting falls within the class of property crimes in which 'the term of imprisonment is contingent upon the value of the property involved.' "); see also S.C. Code Ann. § 16-13-110(B) (2013 Supp.) (explaining that a person who violates the shoplifting statute is punished based upon whether the value of the shoplifted merchandise is less than \$2000; between \$2000 and \$10,000; or more than \$10,000).

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to qualify under the terms of Section 16-1-57 as a property offense “contingent upon the value of the property involved,” would result in an individual being subject to the sentencing enhancement discussed in Section 16-1-57.<sup>2</sup>

## II. Conclusion

In conclusion, it is the opinion of this Office that since Section 16-1-57 clearly and unambiguously explains its enhanced punishment provisions apply to any “offense for which the term of imprisonment is contingent upon the value of the property involved,” we believe an individual need not be convicted of the same offense three times in order to receive an enhanced sentence under the statute. As a result, we believe, consistent with the first example in your request letter, that an individual convicted of Shoplifting 1st, Petit Larceny 1<sup>st</sup> and Receiving Stolen Goods Less than \$2000, each of which appear to qualify as an offense “for which the term of imprisonment is contingent upon the value of the property involve” would therefore be eligible for enhanced sentencing pursuant to Section 16-1-57.

Sincerely,



Brendan McDonald  
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook  
Solicitor General

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<sup>2</sup> While we do not interpret your question as asking whether the offenses of Petit Larceny and Receiving Stolen Goods under \$2000 qualify as offenses that are “contingent upon the value of the property involved” we believe they most likely do. Although it is true that the offense of Petit Larceny only has one punishment under the terms of Section 16-13-30(A), the difference between Petit Larceny and Grand Larceny, both of which are prohibited by the same statute, Section 16-13-30, entitled “Petit Larceny; Grand Larceny” is purely based upon the value of the goods stolen. Specifically, when the value of the goods stolen are over \$2000, Petit Larceny turns into Grand Larceny under the terms of Sections 16-13-30(A) and 16-13-30(B). Compare S.C. Code Ann. § 16-13-30(A) (explaining larceny of articles with a value over \$2000 is Petit Larceny) with S.C. Code Ann. § 16-13-30(B) (stating larceny of articles “in excess of two thousand dollars is grand larceny.”). Moreover, Section 16-13-30, much like the shoplifting statute, contains graduated penalties based upon the value of the goods stolen and utilizes the exact same ranges, under \$2000, \$2000-\$10,000, and \$10,000 and up, to differentiate the severity of the punishment. With respect to the offense of Receiving Stolen Goods under \$2000, codified in Section 16-13-180, we believe it is likely that, because Section 16-13-180(C) differentiates its punishments based upon the value of the stolen goods that are received, as is the case with the shoplifting statute and the Petit Larceny/Grand Larceny statute, the offense of receiving stolen goods meets Section 16-1-57’s definition of a property offense “contingent upon the value of the property involved.”