



ALAN WILSON
ATTORNEY GENERAL

March 15, 2016

Warren V. Ganjehsani, Esquire
General Counsel, S.C. Department of Public Safety
P.O. Box 1993
Blythewood, SC 29016

Dear Mr. Ganjehsani:

Attorney General Alan Wilson has referred your letter dated December 2, 2015 to the Opinions section for a response. The following is this Office's understanding of your question and our opinion based on that understanding.

Issue (as quoted from your letter):

"The South Carolina Department of Public Safety's Office of Highway Safety and Justice Programs awarded two National Highway Traffic Safety Administration ("NHTSA") grants for the operation of DUI court programs in [two] Judicial Circuits. In both Circuits' DUI courts, an offender can plead guilty to a DUI offense, enter treatment through a designated program, and have the original charge reduced or dismissed upon completion of the program. ...

Although the DUI court model followed by these two Circuits is approved by NHTSA, the Department is concerned that the DUI courts may permit disposal of cases by way of conditional pleas or discharges. This is significant because guilty pleas must be unconditional under South Carolina law, and a conditional discharge appears to be available only to persons charged with certain non-DUI offenses set forth in S.C. Code § 44-53-450. In the absence of express statutory authority for the conditional discharge of DUI offenses, the present DUI court iterations could be called into question by a reviewing court.

Therefore, the Department is requesting an opinion from the South Carolina Attorney General's Office on whether the foregoing DUI courts are operating in conformity with the law."¹

Law/Analysis:

By way of background, and as you stated in your letter, it is established in South Carolina that a guilty plea must be unconditional. See, e.g., State v. Peppers, 346 S.C. 502, 552 S.E.2d 288 (2001); State v. Rice, 401 S.C. 330, 737 S.E.2d 485 (2013). As our State's Supreme Court has stated, "the basis for this rule is, of course, the settled doctrine that a guilty plea constitutes *waiver* of all prior claims of constitutional rights or deprivations thereof." State v. Truesdale, 278 S.C. 368, 370, 296 S.E.2d 528, 529 (1982). Our Office has also opined that a conditional guilty plea vacated after completion of an obligation would likely be found to be improper by a court. See Op. S.C. Att'y Gen., 2001 WL 1736759 (December 10, 2001). Contrastingly, South Carolina law authorizes conditional discharges pursuant to S.C. Code § 44-53-450 which states that a person who:

¹ It is also our understanding you have contacted members of both of these Judicial Circuits to notify them of this opinion request.

Warren V. Ganjehsani, Esquire

Page 2

March 15, 2016

pleads guilty to or is found guilty of possession of a controlled substance under Section 44-53-370(c) and (d), or Section 44-53-375(A), the court, without entering a judgment of guilt and with the consent of the accused, may defer further proceedings and place him on probation upon terms and conditions as it requires, including the requirement that such person cooperate in a treatment and rehabilitation program of a state-supported facility or a facility approved by the commission, if available.

S.C. Code § 44-53-450 (1976 Code, as amended). After the conditional charge is dismissed pursuant to S.C. Code § 44-53-450(A), the person may apply for an expungement order for all public records. S.C. Code § 44-53-450(B). The sections of the Code that are eligible for a conditional discharge include controlled substances and methamphetamine and cocaine bases. S.C. Code §§ 44-53-450; 44-53-370(c)-(d); 44-53-375(A).

Conversely, as you are aware, South Carolina offers pretrial intervention through a statutorily-prescribed pretrial intervention program pursuant to S.C. Code § 17-22-10 *et seq.* An agreement to enter into a pretrial intervention program must be made in writing. S.C. Code § 17-22-120. After successful completion of the program, the charges will be disposed of, and the person is restored to his standing as if the arrest did not occur. Op. S.C. Att’y Gen., 2008 WL 4489056 (September 30, 2008); S.C. Code § 17-22-150. Nevertheless, a person charged with certain crimes is not eligible for pretrial intervention. S.C. Code § 17-22-50. Some of those crimes prohibited from pretrial intervention include driving under the influence and driving with an unlawful alcohol concentration. S.C. Code § 17-22-50. However, there is an exception to the prohibition of pretrial intervention where the Solicitor determines the elements of the crime do not fit the charge. *Id.*

Moreover, this Office has previously commented on a prosecutor’s authority to defer prosecution until conditions are met. See Op. S.C. Att’y Gen., 1996 WL 452687 (June 3, 1996). In that opinion, this Office stated that:

In summary, I agree with you that, as a general rule, a prosecutor possesses wide discretion as to whether to proceed with respect to a particular prosecution. Concerning the prosecutor’s authority to condition the non-prosecution of a case upon the meeting of certain reasonable conditions such as restitution or good behavior, I agree that, generally speaking, such is within the prosecutor’s discretion under existing case law. Such authority apparently applies to any prosecutor, be it a Solicitor or in the municipal court, “in the discretion of the individual acting as the prosecutor.” Op. Atty. Gen., April 12, 1979.

Op. S.C. Att’y Gen., 1996 WL 452687 (S.C.A.G. June 3, 1996). The 1996 opinion quoted the Court in State v. Addis, 257 S.C. 482, 487, 186 S.E.2d 415 (1972), when it stated that “[i]n every criminal prosecution the responsibility for the conduct of the trial is upon the solicitor and he does have full control of the State’s case.” *Id.* The 1996 opinion also deemed it to be the prosecutor’s discretion whether to issue a nolle prosequi at any time before the jury impanelment. *Id.* (citing State v. Charles, 183 S.C. 188, 190 S.E. 466 (1937); State v. Richardson, 47 S.C. 166, 25 S.E. 220 (1896)).

Warren V. Ganjehsani, Esquire
Page 3
March 15, 2016

Conclusion:

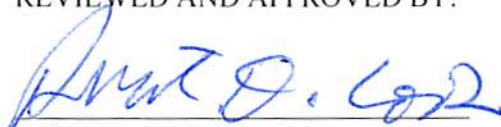
Having reviewed the law, we agree with your concern that we do not see statutory authorization for the type of conditional plea you describe. Nevertheless, we affirm that the prosecutor has the authority to condition the non-prosecution of a case, as was outlined in our June 3, 1996 opinion. However, this Office is only issuing a legal opinion based on the current law at this time and the information as provided to us. Until a court or the General Assembly specifically addresses the issues presented in your letter, this is only an opinion on how this Office believes a court would interpret the law in the matter. Additionally, you may also petition the court for a declaratory judgment, as only a court of law can interpret statutes and make such determinations. See S.C. Code § 15-53-20. If it is later determined otherwise, or if you have any additional questions or issues, please let us know.

Sincerely,



Anita S. Fair
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General