

1979 S.C. Op. Atty. Gen. 177 (S.C.A.G.), 1979 S.C. Op. Atty. Gen. No. 79-123, 1979 WL 29125

Office of the Attorney General

State of South Carolina

Opinion No. 79-123

October 18, 1979

***1 SUBJECT: Bail, Magistrates.**

(1) A magistrate may not refuse to release a defendant charged with a noncapital offense on bond if he makes the determination that the defendant constitutes an unreasonable danger to the community. However, if such a determination is made, conditions of release may be imposed.

(2) A determination that a defendant is an unreasonable danger to the community also does not permit a magistrate to refuse to release a defendant charged with an offense triable in the magistrate's court who pursuant to Section 22-5-530 is entitled to deposit money with the magistrate in lieu of entering into a recognizance.

TO: John C. Patrick, III, Esquire
Assistant Director
South Carolina Court Administration

QUESTIONS:

1. May a magistrate refuse to release a defendant on bond if he determines the defendant constitutes an unreasonable danger to the community?
2. May a magistrate refuse to release a defendant pursuant to Section 22-5-530, which provides for the deposit of money by a defendant charged with an offense triable in magistrate's court, if he determines that the defendant constitutes an unreasonable danger to the community?

STATUTES:

[Sections 17-15-10, 22-5-320, Code of Laws of](#)

South Carolina, 1976.

DISCUSSION:

As to your first question, [Section 17-15-10, Code of Laws of South Carolina](#), 1976, provides that an individual charged with a noncapital offense must be released pending trial on his own recognizance without surety unless the court determines that ' . . . such a release will not reasonably assure the appearance of the person as required, or unreasonable danger to the community with result.' If the court makes such a determination, the individual is still entitled to release but the court may impose any one or more of those conditions specified by [Section 17-15-10](#). By such provisions, not only may a surety be required but other restrictions on the individual may be imposed. Therefore, in response to your question, the finding by a magistrate that an individual constitutes an unreasonable danger to the community would not permit the magistrate to refuse to release a defendant charged with a noncapital offense on bond. However, pursuant to [Section 17-15-10](#), he could impose any one or more of the conditions provided by such statute as conditions of release.

In your second question you referenced that pursuant to [Section 22-5-320, Code of Laws of South Carolina, 1976](#), an individual charged with an offense within the jurisdiction of a magistrate is entitled to deposit with the magistrate in lieu of entering into recognizance a sum of money not to exceed the maximum fine provided for the offense with which the individual is charged. You have asked whether the magistrate may refuse to release a defendant pursuant to such provision if he determines that the defendant constitutes an unreasonable danger to the community. Please be advised that in the opinion of this Office inasmuch as there is no provision authorizing a magistrate to refuse to allow a defendant's release pursuant to Section 22-5-530 on the basis that the defendant is an unreasonable danger to the community, a magistrate would not be so authorized. Such section appears to be absolute and inasmuch as it was indicated above that such a determination by a magistrate would not serve as a basis for refusing to release a defendant charged with a noncapital offense pursuant to [Section 17-15-10, supra.](#), such a finding would appear to be inappropriate as to [Section 22-5-320](#).

CONCLUSION:

*2 A magistrate may not refuse to release a defendant charged with a noncapital offense on bond if he makes the determination that the defendant constitutes an unreasonable danger to the community. However, if he does make such a determination, one or more of those conditions of release specified by [Section 17-15-10, supra.](#), may be imposed. A determination that a defendant is an unreasonable danger to the community also does not permit a magistrate to refuse to release a defendant charged with an offense triable in the magistrate's court who pursuant to Section 22-5-530 is entitled to deposit money with the magistrate in lieu of entering into a recognizance.

Charles H. Richardson
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