

1978 S.C. Op. Atty. Gen. 228 (S.C.A.G.), 1978 S.C. Op. Atty. Gen. No. 78-202, 1978 WL 22670

Office of the Attorney General

State of South Carolina

Opinion No. 78-202

December 6, 1978

***1 SUBJECT: Magistrate, Bail**

A magistrate would not have jurisdiction to entertain any bail proceedings concerning a defendant charged with kidnapping where there was no murder.

TO: Neal Forney
Assistant Director
South Carolina Court Administration

QUESTION:

Do Berkeley and Charleston County Magistrates have the authority pursuant to [Section 17-17-10 et seq. of the 1976 Code](#) of Laws to conduct bond proceedings for persons charged in kidnapping cases in which the victim was not murdered?

AUTHORITIES:

[Sections 17-15-10 and 22-5-510 of the 1976 Code](#) of Laws; [Section 16-3-910 of the 1976 Code](#) of Laws, as amended; [Article 1, Section 15 of the South Carolina Constitution](#).

DISCUSSION:

In response to your question, certain statutory and constitutional provisions must be considered. [Section 17-15-10 of the 1976 Code](#) of Laws states in part that:

Any person charged with a noncapital offense triable in either the magistrate's county or circuit court, shall, at his appearance before any of such courts, be ordered released pending trial on his own recognizance without surety in an amount specified by the court, unless the court determines in its discretion that such a release will not reasonably assure the appearance of the person as required, or unreasonable danger to the community will result. If such a determination is made by the court, it may impose any one or more of the following conditions of release. . . .

However, [Section 22-5-510 of the 1976 Code](#) of Laws provides:

(M)agistrates may admit to bail any person charged with any offense the punishment of which if other than death or imprisonment for life, and if any person under lawful arrest on a charge regularly made and not bailable be brought before a magistrate he shall commit the prisoner to jail. But if the offense charged be bailable the magistrate shall take recognizance, with sufficient surety, if the same be offered, in default whereof such party shall be committed to prison unless it shall clearly appear upon examination that the charge is not founded in probability in which case the party may be discharged.

As to bail, [Article I, Section 15 of the South Carolina Constitution](#) provides in part that:

(A)ll persons shall, before conviction, be bailable by sufficient sureties, but bail may be denied to persons charged with capital offenses or offense punishable by life imprisonment . . .

A review of the above provisions results in the conclusion that magistrates have jurisdiction to consider bail for any defendant charged with an offense other than a capital offense, which is by definition an offense where the death penalty may be inflicted, or an offense punishable by life imprisonment.

The offense of kidnapping in which the victim was not murdered is included in [Section 16–3–910 of the 1976 Code of Laws](#), as amended. This section states:

(W)hoever shall unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away any other person by any means whatsoever without authority of law, except when a minor is seized or taken by a parent thereof, shall be guilty of a felony and, upon conviction, shall suffer the punishment of life imprisonment unless sentenced for murder as provided in Section 16–3–20.

*2 Therefore, as stated, in those cases where the circumstances of the offense are sufficient to warrant the charge of kidnapping within the definition of the above-referenced statute but there was no murder as to bring the crime within Section 16–3–20, as amended, the punishment for the offense would be life imprisonment. In answer to your specific question, with reference to [Section 22–5–510](#), a magistrate would not, in the opinion of this Office, have jurisdiction to entertain any bail proceedings concerning a defendant charged with kidnapping where there was no murder inasmuch as the offense is punishable by life imprisonment. The referenced portion of [Section 17–15–10](#) should not be construed to indicate that magistrates have jurisdiction to admit to bail all defendants charged with offenses other than capital offenses inasmuch as Section 22–5–310 specifically limits their jurisdiction to defendants charged with offenses other than those punishable by death or life imprisonment. Instead, [Section 17–15–10](#) indicates that a person charged with a noncapital offense may in some instances be released on his own recognizance without surety.

CONCLUSION:

A magistrate would not have jurisdiction to entertain any bail proceedings concerning a defendant charged with kidnapping where there was no murder.

Charles H. Richardson
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