

1975 S.C. Op. Atty. Gen. 263 (S.C.A.G.), 1975 S.C. Op. Atty. Gen. No. 4222, 1975 WL 22519

Office of the Attorney General

State of South Carolina

Opinion No. 4222

December 22, 1975

*1 If the provisions of § 32–1510.57 of the 1962 Code of Laws of South Carolina, as amended, are applied then no judgment of guilt or imposition of sentence may be rendered at trial.

An indictment comes within the purview of § 32–1510.57 of the 1962 Code of Laws of South Carolina, as amended, and is therefor subject to expungement under this Section.

TO: P. Lewis Pitts, Jr., Esquire
Assistant Public Defender

QUESTIONS:

In the expungement section of § 32–1510.57 does the language ‘withholding sentence’ prevent the Judge from imposing a fine on the defendant?

Is the actual indictment expunged with the other official papers, with the only remaining records being the records held out at SLED?

AUTHORITIES:

§ 32–1510.49 of the 1962 Code of Laws of South Carolina, as amended;

§ 32–1510.57 of the 1962 Code of Laws of South Carolina, as amended;

§ 17–576 of the 1962 Code of Laws of South Carolina (1974 Cum. Supp.) ‘Sentence’ CJS (p. 1042);

41 Am.Jur.2d 895 (§ 24).

DISCUSSION:

Section 17–576 of the 1962 Code of Laws of South Carolina (1974 Cum. Supp.) states that fines and imprisonment are alternate forms of sentencing:

In all cases in this State when a sentence has been imposed by any judge, magistrate, mayor, or intendant of any city or town in the alternative, by fine or imprisonment . . .

Corpus Juris Secundum states that sentence and judgment are synonymous for each other and both are a legal consequence for guilt:

In the technical legal sense ‘sentence’ ordinarily is synonymous with ‘judgment’ and denotes the action of a court of criminal jurisdiction formally declaring to the accused the legal consequence of the guilt which he has confessed or which he has been convicted.

Section 32–1510.57 of the 1962 Code of Laws of South Carolina (1974 Cum. Supp.) states that a judgment of guilt will not be entered:

. . . the court without entering a judgment of guilt and with the consent of the accused, may defer further proceedings . . . (emphasis added)

It would follow that a sentence cannot be imposed until an adjudication of guilt has been rendered by the court and consequently no sentence or partial sentence may be imposed until such an adjudication is made.

Section 32–1510.57 of the 1962 Code of Laws of South Carolina (1974 Cum. Supp.) states that all recordation relating to the indictment shall be expunged except for nonpublic records:

. . . such person . . . may apply to the court for an order to expunge from all official records (other than nonpublic records to be retained as provided in subsection (a) of this section) all recordation relating to his arrest, indictment, trial, finding of guilty, and dismissal and discharge pursuant to this section. (emphasis added)

Once filed with the Clerk of Court, an indictment is a part of the public records of that Court [See 41 Am.Jur.2d 895 (§ 24)].

*2 Since an indictment is a public record and is specifically mentioned in § 32–1510.57, it would seem that the clear statutory intent is that such an indictment be expunged.

CONCLUSION:

It is the opinion of this office that if the provisions of § 32–1510.57 of the 1962 Code of Laws, as amended, are applied then no judgment of guilt or imposition of sentence may be rendered as trial.

Further, it is the opinion of this office that an indictment comes within the purview of § 32–1510.57 of the 1962 Code of Laws of South Carolina, as amended, and is therefore subject to expungement under that Section.

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