

1974 WL 28008 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

November 25, 1974

*1 The Honorable Margaret D. Strickland
Marion County Magistrate
Post Office Box 195
Nichols, SC 29581

Dear Judge Strickland:

You have posed the following question for answer by this Office:

Does a circuit court judge in the State of South Carolina have the authority to set bail in a criminal case in which the magistrate has refused to admit the accused to bail?

In South Carolina Article I Section 20 of the Constitution guarantees to all persons the right to bail before the conviction, except in capital cases where proof is evident and the presumption is great. Bail is a matter of right in all noncapital cases and is fundamental to preservation of the rights of the accused.

Section 17-300 1962 Code of Laws of South Carolina (1973 Cum. Supp.) states:

Any person charged with a noncapital offense triable in either the magistrate's, county or circuit shall, at his appearance before any such courts, be ordered released pending trial . . . (Emphasis added.)

The above cited section of the South Carolina Code provides a mandate for release on recognizance unless such release will not reasonably assure the presence of the accused or such release would impose unreasonable danger to the community. If in the discretion of the court a determination is made that the above factors exist, this section provides conditions under which release may be granted.

It is, therefore, conclusive from a reading of 17-300 with judges of the circuit court have concurrent jurisdiction with magistrates to grant bail in noncapital cases and consequently may do so even in cases where the magistrate has refused to grant bail.

Reference is made in your inquiry to the case of [Gene Ham v. McCleod](#), 255 S.C. 185, 178 S.E.2d 141 (1970), in which the Supreme Court of South Carolina by order denied Ham's application for bail pending his trial. It is probable that the Supreme Court in rendering this decision ruled that an accused admitted to bail for one charge and subsequently charged again, does not have a right to bail on the second charge. Whether or not this is true has no bearing in this case. The court's opinion did not divest the circuit court of the power to grant bail in its discretion, It is, therefore, the opinion of this Office that when an accused is admitted to bail and is subsequently charged with another offense, the circuit court of this State has the power and authority to grant bail for the second offense.

I trust this sufficiently answers your inquiry. If you have further questions, please do not hesitate to contact me.

Very truly yours,

Hutson S. Davis, Jr.
Assistant Attorney General

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