

APRIL 28, 2007

SOUTH CAROLINA

I. Automatic Restoration of Rights:

Right to vote lost if an individual is “serving a term of imprisonment resulting from a conviction of a crime;” or, if an individual has been “convicted of a felony or offenses against the election laws.” S.C. Code Ann. § 7-5-120(B)(2),(3).

Imprisonment results in disqualification even if conviction is for a misdemeanor. Because eligibility for office is contingent on being a qualified voter, S.C. Const. art. XVII, § 1, a person disqualified from voting is also disqualified from office. Both rights are restored automatically upon completion of sentence, including parole and probation. S.C. Code Ann. § 7-5-120(B)(3). Person who is in jail or pre-trial facility and who has not been convicted of any crime is not disenfranchised and should be allowed to register and vote. 1993 Op Att’y Gen. No. 93-23.

The right to hold office after embezzlement of public funds restored by two-thirds vote of General Assembly upon payment in full of principal and interest of sum embezzled. S.C. Code Ann. § 16-13-210. Right to serve on jury restored only by pardon from Probation, Parole, and Pardon Board. §§ 14-7-810(1), 24-21-920.

Handgun privileges lost upon conviction of a violent offense. § 16-23-30(B). There is no provision for restoration other than a pardon.

II. Discretionary Restoration Mechanisms:

A. Executive pardon:

- *Authority*: Governor has authority to grant reprieves and commute death sentences, but all other clemency authority vested by statute in Probation, Parole, and Pardon Board. S.C. Const. art. IV, § 14; S.C. Code Ann. § 24-21-920. (Transferred by constitutional amendment from Governor in 1949. See 26 S.C. JUR. *Probation, Parole, and Pardon* § 28 (2004).) Board has seven members appointed by the Governor to six-year terms, six of whom are appointed from each of the state’s six congressional districts and one at-large. They choose their own chair. S.C. Code Ann. § 24-21-10(B).
- *Eligibility*: For probationers, upon discharge from supervision. For parolees, after successful completion of five years under supervision, or discharge from supervision, whichever comes first. S.C. Code Ann. § 24-21-950(A)(1) through (3). No pardon application will be considered until restitution has been paid in full to victim. § 17-25-322(E). Federal and out-of-state offenders ineligible. See also § 24-21-950(5): The victim of a crime or a member of a convicted person's family living within the State may

petition for a pardon for a person who has completed supervision or has been discharged from a sentence. After denial must wait one year before reapplying. § 24-21-960(B).

- *Effect:* S.C. Code Ann. § 24-21-990: Pardon restores all civil rights, gun rights, and right to be licensed for any occupation requiring a license. *See also* S.C. Code Ann. § 24-21-940: “‘Pardon’ means that an individual is fully pardoned from all the legal consequences of his crime and of his conviction, direct and collateral, including the punishment, whether of imprisonment, pecuniary penalty or whatever else the law has provided.” This provision is so broad that it precludes using pardoned conviction as a predicate offense. *State v. Baucom*, 531 S.E.2d 922, 924-25 (S.C. 2000). *See also Brunson v. Stewart*, 547 S.E.2d 504, 506 (S.C. Ct. App. 2001) (denial of handgun permit an impermissible collateral consequence, relying on reasoning of *State v. Baucom*); Request for Opinion Regarding Pardons and Sex Offender Registry, S.C. Op. Att’y Gen., 2002 WL 1340410 (Apr. 22, 2002) (sex offender no longer required to register, though pardon would not require the removal of his name and other information from the registry). *Cf.* Effect of Pardon on Admission to Criminal Justice Academy, S.C. Op. Att’y Gen., 2002 WL 1340420 (May 16, 2002) (facts underlying a pardoned conviction can still be considered in determining whether an applicant is suitable for admission to the Criminal Justice Academy). A pardon does not expunge record. 1984 S.C. Op. Att’y Gen. No. 84-115 at 268.
- *Process:* Hearing, majority vote. Process of investigation up to hearing takes seven to nine months. Board must hold hearings at least four times a year, at which it is required to allow applicant to appear. S.C. Code Ann. §§ 24-21-30, 24-21-50. Hearings are always before the full Board. Non-unanimous vote referred to full Board to decide by majority. *Id.* An order of pardon must be signed by two-thirds of Board. § 24-21-930. If denied, must wait one year to reapply. *See* § 24-21-960(B). Pardon application package available at <http://www.dppps.state.sc.gov/index.html>. Statutory application fee of \$50 instituted in 1993, recently raised to \$100. S.C. Code Ann. § 24-21-960(A).
- *Frequency of Grants:* Board generally approves about 60% of the 60-80 pardons requests it hears at each quarterly hearing. In 2003, 312 hearings, 184 grants (59%). Few misdemeanants apply. Source: South Carolina Pardon Board.
- *Contact:* Pete O’Boyle, S.C. Pardon Board. 803-734-9267, poboyle@ppp.state.sc.us.

B. Judicial sealing or expungement of adult felony convictions:

- *First-time drug offenders:* Deferred adjudication and probation for first-time minor drug offenders: charges dismissed if probation completed successfully. No conviction results, including for predicate offense purposes. S.C. Code Ann. § 44-53-450(a). If under 25 at time of offense, records of arrest may be expunged. § 44-53-450(b).
- *Youthful Offender Act:* Youthful offenders (between 17 and 25) convicted of non-violent felony that provides for a maximum term of imprisonment of fifteen years or less may be sentenced to probation and treatment. S.C. Code Ann. § 24-19-10 *et seq.*
- *Pretrial Intervention:* S.C. Code Ann. § 17-22-10 *et seq.* – Most non-violent first offenders eligible for pretrial intervention, eventual non-criminal disposition. Standards for admission: § 17-22-60: “Intervention is appropriate only where: (1) there is substantial likelihood that justice will be served if the offender is placed in an intervention program; (2) it is determined that the needs of the offender and the State can better be met outside the traditional criminal justice process; (3) it is apparent that the offender poses no threat to the community; (4) it appears that the offender is unlikely to be involved in further criminal activity; (5) the offender, in those cases where it is required, is likely to respond quickly to rehabilitative treatment; (6) the offender has no significant history of prior delinquency or criminal activity; (7) the offender has not previously been accepted in a pretrial intervention program.” Court receives recommendations from prosecutor and victim. § 17-22-150(a) provides for non-criminal disposition upon successful completion of probation and restitution to victim, and the offender may apply to the court for “an order to destroy all official records relating to his arrest and no evidence of the records pertaining to the charge may be retained by any municipal, county, or state entity.” (Records may be maintained by the government for a two year period, after which they may be “destroyed.”) The effect of the order is “to restore the person, in the contemplation of the law, to the status he occupied before the arrest. No person as to whom the order has been entered may be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of his failure to recite or acknowledge the arrest in response to any inquiry made of him for any purpose.”
- *Magistrates Court offenses:* Records of first offense convictions in magistrate or municipal court may be expunged if no other conviction for 3 or 5 years, S.C. Code Ann. §§ 22-5-910, 34-11-90.

- *First-time misdemeanor offenses:* Records of first misdemeanor offense for failure to stop for a blue light may be expunged if no other conviction for 3 years, S.C. Code Ann. § 56-5-750.
- *Arrest records where charges dismissed or finding of not guilty:* S.C. Code Ann. § 17-1-40: If charges dismissed or person found not guilty, all records must be destroyed and “no evidence of such record pertaining to such charge shall be retained by any municipal, county or State law enforcement agency.”

C. Administrative certificate: N/A

III. Nondiscrimination in Licensing and Employment:

S.C. Code Ann. § 40-1-140: A person may not be refused an authorization to practice, pursue, or engage in a regulated profession or occupation “solely because of” a prior criminal conviction unless the criminal conviction “directly relates” to the profession or occupation for which the authorization to practice is sought. A board may refuse an authorization to practice if it finds the applicant is unfit or unsuited to engage in the profession or occupation.