

Juvenile tried as adult; Youthful Offender Act,

Number: INFORMAL

Date: April 09, 2003

The Honorable Glenn T. Suddaby
United States Attorney for the
Northern District of New York
Post Office Box 7198
100 South Clinton Street
Syracuse, New York 13261-7198

Dear Mr. Suddaby:

You state that your office has been directed by Chief United States District Judge Frederick J. Scullin, Jr., to request the opinion of the Florida Attorney General regarding the convictions of Jerome Crosby.

From the materials supplied to this office, it appears that a question has been raised by Mr. Crosby as to whether he was convicted as an adult on the charge of attempted murder in the second degree in the Circuit Court for the Fifth Judicial Circuit in 1990, since he was sentenced under the Florida Youthful Offender Act (hereinafter "the act").

An order was issued by the court on December 7, 1990, granting the State's Motion for Involuntary Waiver of Jurisdiction and transferring Mr. Crosby to the Criminal Felony Division of the Circuit Court for the Fifth Judicial Circuit for criminal prosecution as an adult.[1] The judgment in the case states that Mr. Crosby was tried and found guilty of attempted second-degree murder and was adjudicated guilty of that crime.[2] The judge presiding over the case has filed an affidavit that the defendant was prosecuted, convicted, and sentenced as an adult and that the term "youthful offender" appearing on the judgment of conviction does not change Mr. Crosby's conviction as an adult.[3]

Such a conclusion is consistent with Florida law. Chapter 958, Florida Statutes, the "Florida Youthful Offender Act," was enacted "to improve the chances of correction and successful return to the community of youthful offenders sentenced to imprisonment by . . . preventing their association with older and more experienced criminals during the terms of their confinement." [4] The Florida Supreme Court has recognized that youthful offender sentencing is an adult sanction. In *State v. Cain*, [5] the Court explained:

"[E]ven when a juvenile is convicted in adult court he is still given special treatment as a juvenile. Before imposing judgment, the trial court must conduct a disposition hearing to determine whether juvenile or adult sanctions are appropriate. . . . [E]ven, if adult sanctions are imposed against a juvenile, he may still enjoy the benefit of the youthful offender act under chapter 958 of the Florida Statutes."

In *State v. Upshaw*[6] the court recognized that adult sanctions include sentencing under the Youthful Offender Act. Similarly, in *State v. Richardson*[7] the court stated that "[a] youthful offender sentence is an *adult* sanction under Chapter 958, Florida Statutes, not a juvenile sanction under Chapter 985, Florida Statutes." (e.s.) While section 958.04, Florida Statutes, has been amended several times since 1990, such changes have not affected the act's purpose as an adult sentencing sanction.[8]

Accordingly, I am of the opinion that the sentencing under the Florida Youthful Offender Act of an individual prosecuted and convicted as an adult does not alter or otherwise affect the defendant's status as a convicted felon; rather, the provisions of the act provide an adult sanction for sentencing.

Regarding the Battery on a Law Enforcement Officer case, it appears that Mr. Crosby pled nolo contendere and the court adjudicated him guilty of the charge.[9] In Florida a "conviction" usually means an adjudication of guilt.[10] Thus, Mr. Crosby, having been adjudicated guilty of the crime of Battery on a Law Enforcement Officer, has been convicted of that crime.

Sincerely,

Charlie Crist
Attorney General

CC/tjw

[1] See Order Granting State's Motion for Involuntary Waiver of Jurisdiction, In the Interest of Jerome Crosby, Case No. 90-1200-CJ (Fla. 5th Jud. Cir., Lake Co., December 7, 1990).

[2] See Judgment, *State v. Crosby*, Case No. 9001765CFA01SO (Fla. 5th Jud. Cir., Lake Co., June 17, 1991). While this office has been advised that imposition of sentence was withheld, that does not alter the adjudication of guilt found by the court. This office has not been advised that the adjudication of conviction has been vacated.

[3] Affidavit of the Honorable Mark J. Hill, Circuit Court Judge, Fifth Judicial Circuit, Florida, dated February 11, 2003.

[4] Section 958.021, Fla. Stat.

[5] 381 So. 2d 1361, 1367 (Fla.1980). See also *Goodson v. State*, 392 So. 2d 1335, 1336 (Fla. 1st DCA 1980), *approved*, 403 So. 2d 1337 (Fla. 1981).

[6] 469 So. 2d 922 (Fla. 3d DCA 1985).

[7] 766 So.2d 1111, 1113 n.1 (Fla. 3d DCA 2000), *citing*, *Crain v. State*, 653 So. 2d 442 (Fla. 2d DCA 1995), *review denied*, 658 So. 2d 990 (Fla. 1995); *Cooper v. State*, 465 So. 2d 1334 (Fla. 4th DCA 1985).

[8] See, e.g., s. 7, Ch. 90-208, Laws of Florida, reenacting s. 958.04(1)(a) without change; ss. 11 and 19, Ch. 90-211, Laws of Florida, rewriting s. 958.04(4)(c), relating to basic training programs and providing that "[e]xcept as otherwise provided herein, this act shall take effect October 1, 1990, and shall apply to offenses committed on or after such date"; s. 11, Ch. 91-225, Laws of Florida, in subsection (2) reenacting the introductory paragraph and paragraph (b) without change "[f]or the purpose of incorporating the amendment to section 944.026, Florida Statutes, in references thereto"; s. 8, Ch. 93-406, Laws of Florida, applicable to sentencing for offenses committed on or after Jan. 1, 1994, substituting in subsection (3) "chapter 921" for "s. 921.001"; s. 101, Ch. 94-209, Laws of Florida, providing for the repeal of subsection (4), relating to a basic training program; s. 22, Ch. 96-312, Laws of Florida, adding in subsection (2)(d), the last sentence, relating to modifications of sentence resulting in reduction of incarceration term, and making a nonsubstantive change; s. 31, Ch. 97-94, Laws of Florida, repealing a former subsection (4), which related to a basic training program for youthful offenders; s. 36, Ch. 97-194, Laws of Florida, substituting in subsection (3) references to the Criminal Punishment Code for references to sentencing guidelines and deleting a reference to s. 924.06; s. 21, Ch. 98-204, Laws of Florida, substituting in subsection (3) "permissible sentence" for "maximum recommended"; and inserting "s. 924.06 or"; s. 61, Ch. 98-280, Laws of Florida, a reviser's bill, making conforming changes to incorporate the reorganization of Ch 39, Fla. Stat.

[9] See Judgment, *State v. Crosby*, Case No. 9100330CFA0160 (Fla. 5th Jud. Cir. Lake Co., June 18, 1993).

[10] See *Burkett v. State*, 518 So. 2d 1363, 1366 (Fla. 1st DCA 1988); *Castillo v. State*, 590 So. 2d 458 (Fla. 3d DCA 1991); *Jay v. State*, 731 So. 2d 774 (Fla. 4th DCA 1999) (appeal of convictions by defendant who pled nolo contendere to charges and was adjudicated guilty). *But see*, s. 775.13, Fla. Stat., relating to the registration of convicted felons, which defines "convicted" to mean, "with respect to a person's felony offense, a determination of guilt which is the result of a trial or the entry of a plea of guilty or nolo contendere, *regardless of whether adjudication is withheld.*" (e.s.)