

OP. NO. 04-066

CRIMES AND OFFENSES GENERALLY: CRIMES AGAINST THE PERSON – ASSAULTS AND BODILY WOUNDINGS — CRIMES INVOLVING HEALTH AND SAFETY – OTHER ILLEGAL WEAPONS.

Deferred finding of guilt related to first-offense assault and battery is considered 'conviction' for purposes of applying § 18.2-57.3 in subsequent proceedings and for purposes of concealed weapons statute during defendant's term of probation. Such 'conviction' terminates once person completes probation and deferred finding proceedings against him are dismissed, except for purposes of applying § 18.2-57.3 in subsequent proceeding under that statute.

The Honorable Gary A. Mills
Judge, Seventh Judicial District
September 27, 2004

Issue Presented

You ask whether a deferred finding of guilt under § 18.2-57.3 constitutes a conviction of assault and battery against a family or household member.

Response

It is my opinion that while a deferred finding of guilt related to first-offense assault and battery under § 18.2-57.3 is not a "conviction" in the legal sense of the word, such a deferred finding is considered a "conviction" for purposes of applying § 18.2-57.3 in subsequent proceedings and for purposes of § 18.2-308 during a defendant's term of probation. It is also my opinion that the person's "conviction" terminates once the person completes probation and the deferred finding proceedings against him are dismissed, except for purposes of applying § 18.2-57.3 in any future proceeding under that statute.

Applicable Law and Discussion

The General Assembly has afforded trial courts the authority to enter deferred findings of guilt as a tool to foster rehabilitation of defendants.¹ Section 18.2-57.3 authorizes trial courts to enter a

deferred finding of guilt when first-time offenders are charged with assault and battery against a family or household member under § 18.2-57.2. Such a deferred finding constitutes a "conviction" only for the purpose of applying § 18.2-57.3 in subsequent proceedings. Additionally, the deferred finding is "treated as a conviction" for purposes of § 18.2-308 during a defendant's term of probation.

Under basic principles of statutory construction, the General Assembly's intent must be determined from the words contained in a statute.² "When the language of a statute is unambiguous, [one is] bound by the plain meaning of that language and may not assign a construction that amounts to holding that the General Assembly did not mean what it actually has stated."³ Further, "[w]hen the General Assembly enacts a statute in language with a long history of definition by [the Supreme] Court [of Virginia,]" the presumption is that the General Assembly intended "that the words carry their historical construction."⁴ "Words in a statute are read according to their common meaning ... unless it is apparent that the legislature intended otherwise."⁵

In Virginia, the term "conviction" has a well-understood meaning. A "conviction" generally includes a determination of guilt and the entry of a final judgment by a court.⁶ In the context of a not guilty plea, a conviction does not exist until the court has entered judgment.⁷ In instances where an individual has pled guilty, however, a conviction exists once the guilty plea is accepted, because a guilty plea is "'a self-supplied conviction,'"⁸ authorizing imposition of a sentence. A deferred finding has none of the characteristics of a "conviction" and, therefore, is not a conviction. When a court enters a deferred finding, such as that contemplated by § 18.2-57.3, no final judgment is entered and sentence may not be imposed, even where a defendant enters a guilty plea. While a deferred finding is not a conviction, it also is not a finding of innocence, even where the defendant successfully completes the term of probation and the charge is dismissed.

Although the Supreme Court of Virginia has not yet construed § 18.2-57.3, it has addressed a similar statute that applies a deferred finding of guilt for drug offenses. Section 18.2-251 provides that, in a proceeding involving a first offense for the illegal possession of drugs, "if the facts found by the court would justify a finding of guilt, without entering a judgment of guilt and with the consent of the accused, [the court] may defer further proceedings and place [the accused] on probation upon terms and conditions." Section 18.2-251 further provides that "[u]pon fulfillment of the terms and conditions, the court shall discharge the person and

dismiss the proceedings against him." Such a dismissal under § 18.2-251 "shall be without adjudication of guilt and is a conviction only for the purposes of applying this section in subsequent proceedings." While the dismissal of the charge obviously concludes the proceeding without a conviction, a 1982 opinion of the Attorney General has determined that such dismissals may not be expunged.⁹ Nevertheless, the General Assembly has inserted specific language in § 18.2-251 that a prior dismissal under that statute is considered a "conviction" in limited circumstances. This language is repeated in other deferred finding statutes enacted by the General Assembly and clearly indicates that the General Assembly intended that a person is to be afforded one chance only to avoid a conviction.¹⁰

Section 18.2-57.3 contains language identical to that used in § 18.2-251. Section 18.2-57.3 provides that "if the facts found by the court would justify a finding of guilt, without entering a judgment of guilt and with the consent of the accused, [the court] may defer further proceedings and place [the accused] on probation upon terms and conditions." Section 18.2-57.3 further provides that "[u]pon fulfillment of the terms and conditions, the court shall discharge the person and dismiss the proceedings against him." Such a dismissal under § 18.2-57.3 "shall be without adjudication of guilt and is a conviction only for the purposes of applying this section in subsequent proceedings." Section 18.2-57.3 differs from § 18.2-251 in that it explicitly bars the expungement of court records¹¹ pertaining to assault and battery charges dismissed pursuant to § 18.2-57.3.

The General Assembly, however, was concerned about individuals who have shown a tendency for violent behavior and included a second situation where a deferred finding of guilt *is deemed* a conviction. Section 18.2-57.3 provides that, "[n]otwithstanding any other provision of this section, whenever a court places an individual on probation upon terms and conditions pursuant to this section, such action shall be treated as a conviction for purposes of § 18.2-308," and the concealed weapons prohibitions of that statute shall be imposed.¹² This language evinces a clear intent to ensure that individuals who receive the benefit of a deferred finding of guilt, which is predicated upon a finding that they have committed an act of violence, do not have the same access to weapons as other citizens of the Commonwealth.

In keeping with the rehabilitative intent of the statute, the General Assembly established that such a deferred finding would be considered a conviction only for applying § 18.2-57.3 while the

defendant is on probation. The plain language of the statute establishes that the deferred finding is a "conviction" only while the defendant is on probation. Once the matter is dismissed, there is no probation, and the deferred finding ceases to be a "conviction" for purposes of § 18.2-308. At this point, the dismissal is considered a conviction only for the purpose of applying the statute in *future* proceedings under § 18.2-57.3. The General Assembly did not attach any other collateral consequences to such a dismissal.

Conclusion

Accordingly, it is my opinion that while a deferred finding of guilt relating to first-offense assault and battery under § 18.2-57.3 is not a "conviction" in the legal sense of the word, such a deferred finding is considered a "conviction" for purposes of applying § 18.2-57.3 in subsequent proceedings and for purposes of § 18.2-308 during a defendant's term of probation. It is also my opinion that the person's "conviction" terminates once the person completes probation and the deferred finding proceedings against him are dismissed, except for purposes of applying § 18.2-57.3 in any future proceeding under that statute.

¹Courts may allow a defendant to be placed on probation, in lieu of entering a judgment of guilt in certain criminal proceedings. See, e.g., Va. Code Ann. § 18.2-251 (LexisNexis Repl. Vol. 2004) (possession of controlled substances); §§ 18.2-61(D), 18.2-67.1(D), 18.2-67.2(D), 18.2-67.2:1(C) (LexisNexis Repl. Vol. 2004) (marital rape, forcible sodomy, object sexual penetration, sexual assault, respectively); Va. Code Ann. § 19.2-303.2 (LexisNexis Repl. Vol. 2004) (misdemeanor crimes against property).

²*Williams v. Commonwealth*, 265 Va. 268, 271, 576 S.E.2d 468, 470 (2003).

³*Id.*

⁴*Quintana v. Commonwealth*, 224 Va. 127, 140, 295 S.E.2d 643, 649 (1982).

⁵*Chappell v. Perkins*, 266 Va. 413, 420, 587 S.E.2d 584, 588 (2003).

⁶See Black's Law Dictionary 335 (7th ed. 1999) (defining "conviction" as "[t]he act or process of judicially finding someone guilty of a crime; the state of having been proved guilty"; "[t]he judgment ... that a person is guilty of a crime"); see *also* *Jewel v.*

Commonwealth, 260 Va. 430, 536 S.E.2d 905 (2000) (interpreting word "conviction" for purposes of impeachment of witness under § 19.2-269).

⁷See *Jewel*, 260 Va. at 432, 536 S.E.2d at 906 (noting that guilty verdict returned by jury remains subject to being set aside by trial court for error committed during trial or for insufficient evidence); see also Va. Sup. Ct. R. 3A:15(b) (allowing court to set aside guilty verdict for error committed during trial or if evidence is insufficient to sustain conviction).

⁸*Id.* (quoting *Peyton v. King*, 210 Va. 194, 196, 169 S.E.2d 569, 571 (1969)).

⁹See 1981-1982 Op. Va. Att'y Gen. 143, 143 (noting that record of dismissals under § 18.2-251 should be maintained, "since they may operate as convictions for the purpose of determining first offender status in subsequent drug prosecution cases").

¹⁰See cites *supra* note 1.

¹¹Section 18.2-57.3 provides that "no charges dismissed pursuant to this section shall be eligible for expungement under § 19.2-392.2." Compare *Commonwealth v. Jackson*, 255 Va. 552, 499 S.E.2d 276 (1998) (reversing order of trial court directing expungement of police and court records related to charge of misdemeanor concealment of merchandise, contending that expungement was not available to defendant who was not innocent as required by § 19.2-392.2) and *Gregg v. Commonwealth*, 227 Va. 504, 316 S.E.2d 741 (1984) (affirming trial court's dismissal of petition to expunge police and court records under § 19.2-392.2, where drug charge against defendant was dismissed under first-offender statute, § 18.2-251, stating that § 19.2-392.2 applies only to innocent persons).

¹²Section 18.2-308 regulates the carrying of concealed weapons in the Commonwealth.

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