

OFFICE OF THE ATTORNEY GENERAL



93-00083

JIMMY EVANS
ATTORNEY GENERAL
STATE OF ALABAMA

JAN - 5 1993

ALABAMA STATE HOUSE
11 SOUTH UNION STREET
MONTGOMERY, ALABAMA 36130
AREA (205) 242-7300

Honorable Joe W. Patterson
Sheriff, Madison County
Madison County Court House
Huntsville, AL 35801

Sheriffs - Pistol Permits -
Licenses and Permits - Felons -
Crimes and Offenses

Theft of property in the third degree constitutes a crime of violence, so as to prohibit one convicted thereof from owning or possessing a pistol, only if the facts of the particular case are substantially identical to the elements of common law larceny.

Dear Sheriff Patterson:

This opinion is issued in response to your request for an opinion from the Attorney General.

QUESTION

Does a conviction for theft in the third degree constitute a crime of violence whereby a person would be prohibited from obtaining a license to own or possess a pistol?

FACTS, LAW AND ANALYSIS

Code of Alabama 1975, § 13A-11-75 provides for the issuance of a license by the sheriff to a suitable person to carry a pistol in a vehicle or concealed on or about his person.

A person who has been convicted of a crime of violence or attempting to commit a crime of violence is forbidden to possess a pistol pursuant to § 13A-11-72. A crime of violence is described at § 13A-11-70(2) as:

"Any of the following crimes or an attempt to commit any of them, namely, murder, manslaughter, (except manslaughter arising out of the operation of a vehicle), rape, mayhem, assault with intent to rob, assault with intent to ravish, assault with intent to murder, robbery, burglary, kidnapping and larceny."

Larceny is named in § 13A-11-70(2) as a crime of violence. However, theft of property replaced larceny as a crime in the Criminal Code enacted as Act No. 607, Acts of Alabama 1977, p. 802. Section 13A-11-70 was not part of the Criminal Code enacted in 1977, but was enacted many years earlier.

Theft of property in the third degree, as found at Code of Alabama 1975, § 13A-8-5, as amended by Act No. 92-682, is a Class A misdemeanor and is defined as:

"(a) Except as provided in subsection (g) of Section 13A-8-4, the theft of property which does not exceed two hundred fifty dollars (\$250) in value and which is not taken from the person of another constitutes theft of property in the third degree."

The Supreme Court of Alabama in Ex parte Cedric Johnson, No. 1901573 (Ala. Sept. 18, 1992) stated:

"For example, it is a mistake to summarily conclude that the newer offense term of 'theft' equates to the 'larceny' that is denominated as a 'crime of violence' in § 13A-11-70(2). 'Larceny,' referred to as a 'crime of violence' in § 13A-11-70(2), has a narrower meaning than could be attributed to it by equating the old term 'larceny' with newer 'theft' offense provisions."

The Supreme Court further indicated in Ex parte Cedric Johnson, supra, that when only the fact of a prior theft conviction is produced as evidence, it is insufficient to show proof on the element of a prior crime of violence.

It was concluded in an opinion of the Attorney General to Sheriff Melvin Bailey, Jefferson County Sheriff's Department, dated January 19, 1982, A.G. No. 82-00141, that theft of property constitutes a crime of violence, so as to prohibit one convicted thereof from owning or possessing a pistol, only if the facts of the particular case are substantially identical to the elements of common law larceny.

It must be noted that under § 13A-11-75, a sheriff has some discretion in determining whether an applicant for a license to carry a pistol is a suitable person to have such a license. Hess v. Butler, 379 So.2d 1259 (Ala. 1980). Thus, a sheriff, in his sound judgment, may refuse to issue a pistol permit to a person if there are circumstances which lead the sheriff to believe that the person should not possess or own a pistol. Hess v. Butler, supra; opinion of the Attorney General to Honorable John R. Phillips, Attorney at Law, Anniston, dated September 25, 1989, A.G. No. 89-00436.

CONCLUSION

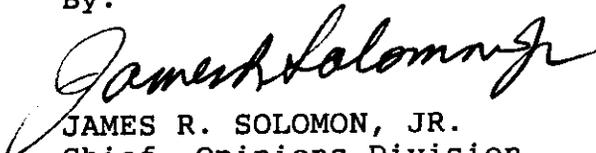
Theft of property in the third degree constitutes a crime of violence, so as to prohibit one convicted thereof from owning or possessing a pistol, only if the facts of the particular case are substantially identical to the elements of common law larceny.

I hope this sufficiently answers your question. If our office can be of further assistance, please do not hesitate to contact us.

Sincerely,

JIMMY EVANS
Attorney General

By:


JAMES R. SOLOMON, JR.
Chief, Opinions Division

JE/LKO/jho

10000