



COMMONWEALTH of VIRGINIA

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The Honorable Michael J. Valentine
Judge, Juvenile and Domestic Relations District Court
Nineteenth Judicial District
4000 Chain Bridge Road
Fairfax, Virginia 22030

Dear Judge Valentine:

I am responding to your request for an official advisory opinion in accordance with § 2.2-505 of the *Code of Virginia*.

Issue Presented

You ask whether a Juvenile and Domestic Relations District Court judge has the authority to reject a plea agreement when an arrest warrant is amended from assault and battery against a family or household member under § 18.2-57.2 to “simple” assault under § 18.2-57.

Response

It is my opinion that a Juvenile and Domestic Relations District Court judge may reject a plea agreement when an arrest warrant is amended from assault and battery against a family or household member under § 18.2-57.2 to “simple” assault under § 18.2-57.¹

Background

You relate that plea agreements are presented to the juvenile and domestic relations district court in which arrest warrants for alleged violations of § 18.2-57.2 are amended to allege violations of § 18.2-57, even though the parties involved are related, have a child in common, or have lived together.² You also relate that you believe such arrest warrants are amended to avoid the dispositional requirements of § 18.2-57.3. You inquire what authority courts have to deny an amendment to an arrest warrant for an

¹If a warrant charging a violation of § 18.2-57.2 is amended to charge a violation of § 18.2-57, that amendment would not affect the jurisdiction of the juvenile court. Section 16.1-241(J) provides the juvenile court with jurisdiction over all offenses in which the defendant and the victim are household members. An amendment to such warrant would change the potential punishment, but not the status of the defendant or the victim. *See infra* notes 6-7 and accompanying text.

²For purposes of this opinion, I will assume that the parties involved meet the statutory definition of family or household member under § 16.1-228. *See* VA. CODE ANN. § 18.2-57.2(D) (2004) (applying definition of “family or household member” in § 16.1-228 to this section).

alleged violation of § 18.2-57.2. In other words, you ask whether a court may refuse to accept a plea agreement involving the amendment of an arrest warrant from § 18.2-57.2 to § 18.2-57.

Applicable Law and Discussion

The General Assembly treats violations of § 18.2-57.2 with great concern.³ A 2004 opinion of the Attorney General concludes that a deferred finding of guilt is considered a conviction for purposes of applying § 18.2-57.3 in subsequent proceedings and for purposes of the concealed weapons statute during a defendant's term of probation.⁴ Additionally, charges dismissed pursuant to § 18.2-57.2 are ineligible for expungement under § 19.2-392.2.⁵

If an accused person is convicted of assault and battery against a family or household member, and he has two previous convictions of a violation of § 18.2-57.2 or other enumerated crimes, he is guilty of a Class 6 felony.⁶ The penalty for a conviction of simple assault, however, does not increase for repeat offenses when the victim is a family or household member, and it does not carry the same dispositional requirements for first time offenders.⁷

In the fact situation you present, the plea agreement would amend the warrant from a charge under § 18.2-57.2, which might result in an increased punishment in a subsequent proceeding,⁸ to a charge under § 18.2-57, which does not increase punishment for a subsequent offense.⁹ A prosecutor has broad discretion in the institution and recommended disposition of criminal charges;¹⁰ however, a court generally has the authority to either accept or reject the plea agreement.¹¹ A court may reject a plea agreement if, after considering "the entire criminal event and ... the defendant's prior criminal record," it determines that the plea agreement does not "enable[] the court to dispose of the case in a manner commensurate with the seriousness of the criminal charges and the character and background of the defendant."¹²

³2005 Op. Va. Att'y Gen. 79, 80.

⁴2004 Op. Va. Att'y Gen. 96, 96.

⁵2005 Op. Va. Att'y Gen., *supra* note 3, at 80.

⁶Section 18.2-57.2(B). The other eligible crimes are (a) malicious wounding in violation of § 18.2-51; (b) aggravated malicious wounding in violation of § 18.2-51.2; (c) malicious bodily injury by means of a substance in violation of § 18.2-52; or (d) an offense under the law of any other jurisdiction which has the same elements of any of the above offenses. *Id.* A conviction of a Class 6 felony is punishable by "a term of imprisonment of not less than one year nor more than five years, or in the discretion of the jury or the court ..., confinement in jail for not more than 12 months and a fine of not more than \$2500, either or both." Section 18.2-10 (Supp. 2006).

⁷*See* § 18.2-57 (Supp. 2006).

⁸*See supra* note 6 and accompanying text.

⁹*See supra* note 7 and accompanying text.

¹⁰*See In re Horan*, 271 Va. 258, 263-64, 2006 Va. LEXIS 23, *12-14 (2006).

¹¹*See* VA. SUP. CT. R. 3A:8(c)(2) ("[T]he court may accept or reject the agreement, or may defer its decision as to the acceptance or rejection until there has been an opportunity to consider a presentence report."); *but see* 1997 Op. Va. Att'y Gen. 80, 80-81 (holding that court could not accept plea agreement that did not comply with statute's plain and unambiguous dispositional requirements).

¹²*State v. Sears*, 542 S.E.2d 863, 867 (W.Va. 2000) (quoting *Myers v. Frazier*, 319 S.E.2d 782, 790-91 (1984)); *see also* *Wilson v. Commonwealth*, 272 Va. 19, 30, 630 S.E.2d 326, 332 (2006) (noting that trial court judge is free to reject terms of plea agreement).

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Conclusion

Accordingly, it is my opinion that a Juvenile and Domestic Relations District Court judge may reject a plea agreement when an arrest warrant is amended from assault and battery against a family or household member under § 18.2-57.2 to “simple” assault under § 18.2-57.¹³

Thank you for letting me be of service to you.

Sincerely,

A handwritten signature in black ink that reads "Robert F. McDonnell". The signature is written in a cursive style with a large, prominent initial "R".

Robert F. McDonnell

6:860; 1/1055; 1:941/06-061

¹³See *supra* note 1.