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June 16, 1972

DEPARTMENT OF LAW LETTER OPINION NO. 72-19-L (R-47)

REQUESTED BY: MR. BOYD H. GIBBONS, JR.
Governor's Highway Safety Coordinator

QUESTION: Can the City Courts and Justice of the Peace Courts take advantage of Sections 13-1741 through 13-1745. Specifically, may a judge of these lower courts under Section 13-1744 allow one convicted of a misdemeanor to withdraw his plea of guilty and have the charges dismissed?

ANSWER: No.

The statute in question grants an opportunity for one convicted of a felony to petition to have his civil rights restored either immediately after he has been discharged from probation or, if he was not on probation but received an absolute discharge from imprisonment, no sooner than two years after his discharge. In either case he may seek to have the accusation or information used to convict him dismissed.

Subsection A of A.R.S. § 13-1742 states, in part, that a person whose rights were lost "by his felony conviction" may have them restored. The city and justice of the peace courts of Arizona do not have jurisdiction to try felony cases. The following section, A.R.S. § 13-1743, does not limit its terms to persons convicted of a felony but states, in part, that a person "may have any civil rights which were lost or suspended by his conviction restored." Again, there is no loss of civil rights in Arizona for the conviction of a crime not a felony so the application of this section of the statute to city and justice of the peace courts is inapplicable.

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Though A.R.S. § 13-1744 refers to "every defendant" without reference to whether his conviction was for a felony or misdemeanor, jurisdiction for the dismissal of the accusation or information or the restoration of civil rights under the article is, by A.R.S. § 13-1745, expressly "in the discretion of the superior court judge by whom the person was sentenced or his successor in office." [Emphasis added.] Consequently, city courts and justice of the peace courts have no jurisdiction to rule on either a petition for restoration of civil rights or a motion to withdraw a guilty plea or to set aside a verdict pursuant to the provisions of this article. No part of the act would apply to such courts.

Respectfully submitted,

Gary K. Nelson
by F.S.

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The Attorney General

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