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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Dorchester County
Honorable Brian M. Gibbons, Circuit Court Judge
Appellate Case Tracking No. 2019-001067

The State, Appellant,

v.

Christopher Huggins, Respondent.

PETITION FOR REHEARING

On August 3, 2022, this Court affirmed the circuit court's decision dismissing the State's appeal from magistrate's court as untimely served and filed. This Court misapprehended or overlooked clear reasons the Legislature may have chosen to establish different time requirements for the State and a criminal defendant, as well as relevant and long-standing case law and statutory construction principals. Accordingly, pursuant to Rule 221(a), SCACR, the Court should grant the petition for rehearing, find the circuit court erred in dismissing the State's appeal as untimely, and find, based on 1) the clear language of section 18-3-30; 2) the Legislature's presumed understanding of the existing statutes and rules when it last amended the section; as well as 3) the clear rationale for the legislative intent behind disparate treatment, the State is entitled to thirty days to serve and file its appeal.

As the South Carolina Supreme Court has made abundantly clear, the appellate courts "do not sit as a superlegislature to second guess the wisdom or folly of decisions of the General Assembly." Keyserling v. Beasley, 322 S.C. 83, 86, 470 S.E.2d 100, 101 (1996). "If a statute is

clear and explicit in its language, then there is no need to resort to statutory interpretation or legislative intent to determine its meaning." Timmons v. S.C. Tricentennial Comm'n, 254 S.C. 378, 401, 175 S.E.2d 805, 817 (1970).

> Under the plain meaning rule, it is **not the court's place** to change the meaning of a clear and unambiguous statute. Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning.

Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000) (emphasis added).

"If the intent of the legislature be clearly apparent from its language, the court may not embark upon a search for it dehors the statute." Abell v. Bell, 229 S.C. 1, 4, 91 S.E.2d 548, 550 (1956). "What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will." Norman J. Singer, *Sutherland Statutory Construction* § 46.03 at 94 (5th ed.1992). "While it is true that the purpose of an enactment will prevail over the literal import of the statute, **this does not mean that this Court can completely rewrite a plain statute.**" Hodges, 341 S.C. at 87, 533 S.E.2d at 582 (emphasis added). As three Justices noted in a concurring opinion:

> If it were true courts have the authority to interpret statutes according to a sense of justice and right, then courts would have the power to rewrite statutes to suit their own personal preferences, regardless of legislative intent. **Courts do not have that power.** . . . There is no principle of statutory interpretation that allows a court to simply do what it thinks is just and right.

Buchanan v. S.C. Prop. & Cas. Ins. Guar. Ass'n, 424 S.C. 542, 553, 819 S.E.2d 124, 130 (2018) (Few, J. concurring) (emphasis added).

The language of the section 18-3-30 is very clear and unambiguous. The Court's opinion even details exactly what the statute requires and then explains how it cannot apply to the State.

While this Court ultimately concludes "the appellant implicitly contemplated is the defendant," the opinion recognizes section 18-3-30 is not written in a way to make it applicable to the State.

This Court notes its ability to interpret the language of a statute, even against its literal meaning in cases where it is "absurd" or "clearly in conflict with the overall intent of the statute." However, this Court misapprehends the cases that allow contrary interpretation. The ability to alter the plain language only occurs when it is **impossible** to fulfill the intention behind the statute itself. The South Carolina Supreme Court articulated the rule many years ago and provided excellent examples that sit in clearly different posture than how this Court is currently attempting to re-interpret section 18-3-30. In Stackhouse v. Rowland, 86 S.C. 419, 68 S.E. 561 (1910), the Court explained:

> However plain the ordinary meaning of the words used in a statute may be, the courts will reject that meaning, when to accept it would lead to a result so plainly absurd that it could not possibly have been intended by the Legislature, or would defeat the plain legislative intention; and if possible will construe the statute so as to escape the absurdity and carry the intention into effect. The cardinal rule, that the courts should in all cases give effect to the obvious intent of the Legislature, and that every technical rule of construction should yield to the clear meaning of the statute, is stated in Endlich on Stat. Inter. § 295. Numerous cases in which clerical errors have been corrected by the courts pursuant to this principle are given in section 319 of the same work.
>
> This rule has been followed in many cases in this and other jurisdictions. In Waring v. Cheraw, etc., Ry. Co., 16 S. C. 416, the word "hereinafter" was read "hereinbefore," when the use of the former would have destroyed the manifest purpose of the statute. In Kitchen v. Southern Ry. Co., 68 S. C. 554, 48 S. E. 4, the word "of" was construed to mean "or," in order to give full effect to the meaning of Lord Campbell's act. In Baldwin v. Travis County, 40 Tex. Civ. App. 149, 88 S. W. 480, the word "taxed" was substituted for "attached," the court holding that the use of the latter word "appears to be improper and inapt, in that it does not appear to definitely express or convey the meaning evidently intended by the Legislature." In California Loan Co. v. Weis, 118 Cal. 489, 50 Pac. 697, it was held that the word "July" which was

> evidently intended, should be read instead of "June," which had been used in the act under consideration. In Re Frey, 128 Pa. 593, 18 Atl. 479, the word "city" was inserted instead of "county," when the court was of opinion that "the section is senseless and absurd as it is written, while the purpose of the Legislature is perfectly obvious and certain."

Id. at 562. Significantly, the Court provided a very clear warning regarding the use of the rule: "While this rule is generally recognized, the courts in applying it should **exercise circumspection to avoid any effort to amend statutes**. The principle depends upon the absurdity being manifest and the legislative intent obvious." Id. (emphasis added). In the instant case, this Court did not alter the language of the statute to address a manifest absurdity.[1] Instead, it rewrote the statute to apply to a party which was never intended to be covered by the statute. This is the function of the Legislature and not the appellate courts.

Further, Chapter 3 of Title 18 explicitly does not apply to the State or a State's appeal. In Section 18-3-10 the Legislature specifically granted a right to appeal only to a "person convicted before a magistrate of any offense whatever and sentenced." S.C. Code Ann. § 18-3-10 (Supp. 2019). The initial section of this Chapter indicates that the provisions of the Chapter apply to a person convicted in magistrate court. Because the following statutes must be read in light of the initial section, the procedures and rules the statutes provide related to an appeal must apply only to a criminal defendant who has been convicted and sentenced. See State v. Prince, 335 S.C. 466, 472, 517 S.E.2d 229, 232 (Ct. App. 1999) ("Statutes must be read as a whole and sections that are part of the same general statutory scheme must be construed together and each given effect, if reasonable."). They cannot, by the very language of the initial section, apply to the State.

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[1] This Court's own language in its opinion indicates the absurdity is not manifest. This Court held: "**we cannot imagine** that the general assembly would not intend for the same ten-day period to apply to both parties." This Court's imagination is insufficient to warrant amendment/re-writing of the statute to apply to the State when the language chosen by the Legislature evinces a different intention.

Additionally, if this Court intends to look beyond the very clear and unambiguous language of the statute, then a look at the original version shows the legislature never intended the statute to apply to the State as appellant. The original version as passed in 1880 reads in relevant part:

> The appellant shall, within five days after sentence, serve a notice of appeal upon the Trial Justice who tries the case, stating the grounds upon which the appeal is founded.
>
> . . . .
>
> That the said appeal shall be heard by the Court of General Sessions upon the grounds of exception made, and upon the papers hereinbefore required, and without the examination of witnesses in said Court. And the said Court may either confirm the sentence appealed from, reverse or modify the same, or grant a new trial as to the said Court may seem meet and conformable to law.

Act No. 403, 1880 S.C. Acts 493. The original statute, especially the latter portion, makes it clear it applied only to a defendant and not the State. Since that time, the statute has been amended 3 times: 1) 1968, which retained the provision requiring the appellant to file within five days of sentence as subsection A, did not include any provision to provide for a time for a State's appeal, and amended the statute to include only a subsection B which was similar to the current subsection B; 2) 1973, which only amended the time to allow for ten days instead of five, but again made no changes to set a time limit for a State's appeal; and 3) 2010, which again did not add any language setting a time limit for a State's appeal, but instead added language which further identified the intent of the statute as applying only to an appealing defendant by requiring the notice of appeal be served "upon the designated agent for the prosecuting agency or attorney who prosecuted the charge".

Undoubtedly, by 2010 the Legislature knew the State had a right to appeal from magistrate's court to the circuit court, notwithstanding the language of Section 18-3-10 which

only provides a statutory right to appeal to a "person convicted before a magistrate of any offense whatever and sentenced." See State v. Belviso, 360 S.C. 112, 116, 600 S.E.2d 68, 70 (Ct. App. 2004) ("This authority provides ample support for the circuit court's ability to hear the State's appeal from the magistrate court's pre-trial rulings dismissing the open container charge and suppressing critical evidence in connection with the charge of driving with an unlawful alcohol concentration.") (citing State v. Jansen, 305 S.C. 320, 408 S.E.2d 235 (1991); State v. Whetstone, 333 S.C. 376, 510 S.E.2d 225 (Ct. App. 1998); State v. Rowlands, 343 S.C. 454, 456, 539 S.E.2d 717, 718 (Ct. App. 2000)); State v. McKnight, 287 S.C. 167, 168, 337 S.E.2d 208, 209 (1985) ("A pre-trial order granting the suppression of evidence which significantly impairs the prosecution of a criminal case is directly appealable under S.C. Code Ann. § 14–3–330(2)(a) (1976)."). The Legislature not only declined to set a time requirement for a State's appeal in 2010, but only amended to the statute to make it even more obviously applicable only to a criminal defendant by requiring service upon the designated agent of the prosecuting agency or the attorney who prosecuted the charge.[2]

Additionally, at the time of the 2010 amendment to section 18-3-30, the Legislature was well aware of other provisions which would apply to State's appeals from magistrate court to circuit court absent a specific statute and instead of section 18-3-30. See State v. Corey D., 339 S.C. 107, 112, 529 S.E.2d 20, 23 (2000) (Finding "there is a basic presumption that the legislature has knowledge of previous legislation as well as of judicial decisions construing that legislation when later statutes are enacted concerning related subjects."). The Legislature had

[2] The addition of this language demonstrates the Legislatures tacit understanding that many of the prosecutions in magistrate court occur without an attorney representing the State—in some counties nearly all prosecutions for DUI occur without an attorney representing the State. Otherwise, there would be little need for the language allowing service on the "designated agent" as opposed to the "prosecuting attorney."

two alternatives for consideration of a time requirement for a State's appeal from magistrate's court—Section 18-7-20 of the South Carolina Code or Rule 74 of the South Carolina Rules of Civil Procedure. As a result, consideration of the 2010 amendment, even if the clear language of the statute alone was insufficient, established the Legislature intended section 18-3-30 to **only** apply to a criminal defendant and not the State.

Section 18-7-20, which applies to appeals to circuit court not otherwise covered in Title 18, indicates when and how appeals should be taken. The provision appears in a Chapter entitled Appeals to Circuit and County Courts in Other Cases. The term "Other Cases" would apply when Title 18 does not already contain a statutory provision providing for an appeal. As Chapter 3 specifically applies only to a criminal defendant's ability to appeal, a State's appeal would qualify as an "Other Case" triggering the provisions of Chapter 7. Accordingly, under section 18-7-20:

> The appellant, within thirty days after written notice of judgment has been given him or his attorney by the magistrate, recorder, or judge of the municipal court, except when the judgment is announced at the trial in the presence of the appellant or his attorney then no written notice is necessary, shall serve a notice of appeal, stating the grounds upon which the appeal is founded.

S.C. Code Ann. § 18-7-20 (Supp. 2019). As a result, applying section 18-7-20 would allow for 30 days for the State to serve its Notice of Appeal. The Legislature, in 2010 when it last amended section 18-3-30, would have been well aware of section 18-7-20 because it has read the same since 1989. See Act No. 20, 1989 S.C. Acts; see also, Shirley's Iron Works, Inc. v. City of Union, 403 S.C. 560, 570, 743 S.E.2d 778, 783 (2013) ("[T]his Court must presume the legislature knew of and contemplated the [prior existing statutes] in enacting [an act]").

Additionally, Rule 74, SCRCP, was put in place effective May 1, 1986, and provided a means and time requirement for a State's appeal absent any other applicable provision. The

provision is applicable, even to appeals from criminal cases in magistrate court, because the appeals are taken to the Court of Common Pleas. See State v. Oxner, 391 S.C. 132, 134, 705 S.E.2d 51, 52 (2011) (finding the Rules of Civil Procedure applicable under Rule 74, SCRCP). This Court clearly overlooked Rule 74 and, in particular, the Editor's Notes to Rules 74 and 75, SCRCP. Rule 74 of the Rules of Civil Procedure states:

> Except for the time for filing the notice of appeal, the procedure on appeal to the circuit court from the judgment of an inferior court or decision of an administrative agency or tribunal shall be in accordance with the statutes providing such appeals. Notice of appeal to the circuit court must be served on all parties within thirty (30) days after receipt of written notice of the judgment, order or decision appealed from. In all such appeals the notice of intention to appeal shall be filed with the clerk of the court to which the appeal is taken and with the inferior court or administrative agency or tribunal within the time provided by the statute, or by this rule when no time is fixed by statute, for service of the notice of intention to appeal.

Rule 74, SCRCP. Significantly, the Editor's Notes to Rules 74 and 75, SCRCP, provide:

> **These Rules 74 and 75 are added to make uniform the procedure on appeals to the Circuit Court where there is no provision by statute.** They do not replace any provisions as to such appeals in Title 18 of the Code, or other statutes providing for appeals from administrative decisions; but are added to supply omissions in these statutes where no provision is made for the time to file notice of intention to appeal, the form of the record on appeal, or how it shall be transmitted.

Clearly, Rule 74 and the allowance of thirty days is intended to apply to the prosecuting agency—the State—because, unless this Court finds section 18-7-20 applies, there is no statute in Title 18 expressly providing for the time in which the State must serve its notice of appeal. Rule 74 is specifically intended to fill that void.

The Legislature would have been aware of both section 18-7-20 and Rule 74, SCRCP, when it chose in 2010 to again not provide for any explicit time requirement for the service of a

State's appeal under section 18-3-30. Berkebile v. Outen, 311 S.C. 50, 53, 426 S.E.2d 760, 762 (1993) ("A basic presumption exists that the legislature has knowledge of previous legislation when later statutes are passed on a related subject."). Accordingly, this Court overlooked both Rule 74, SCRCP, and section 18-7-20 and their applicability to a State's appeal, especially in light of the legislative history surrounding section 18-3-30 which clearly indicates the Legislature has always intended it to only apply to criminal defendants.

Also, this Court overlooked the fact the Legislature clearly knows how to apply a time requirement to both a criminal defendant and the State. S.C. Coastal Conservation League v. S.C. Dep't of Health & Env't Control, 390 S.C. 418, 426, 702 S.E.2d 246, 251 (2010) (Acknowledging: "Had the legislature intended for the time period to begin running from the date a party receives notice of the decision, the statute would have been drafted accordingly." Further, the Court looked to other statutes and explained: "The use of the phrase 'receipt of the decision' in [a separate statute] indicates that had the legislature intended for the fifteen day time period to begin after receipt of notice, the legislature knew how to draft the statute to accomplish this result."). The Court need not look beyond Rule 203 of the South Carolina Appellate Court Rules to determine that the Legislature knew how to draft a time requirement applicable to both a criminal defendant and the State. The Rule includes language similar to section 18-3-30 which clearly relates solely to the criminal defendant: "After a plea or trial resulting in conviction or a proceeding resulting in revocation of probation, a notice of appeal shall be served on all respondents **within ten (10) days after the sentence is imposed.**" Rule 203(b)(2), SCACR (emphasis added). However, the Rule also provides: "In those cases in which the **State is allowed to appeal** a pre-trial order or ruling, the notice of appeal must be served within ten (10) days of receiving actual notice of the ruling or order; provided, however, that the notice of appeal

must be served before the jury is sworn or, if tried without a jury, before the State begins the presentation of its case in chief." Id. (emphasis added). In Rule 203, it was necessary to explicitly indicate the State's time for service of the appeal because otherwise, the Rule would, by its very language, not apply to the State. Additionally, section 18-7-20, which is written very broadly and could apply to any party seeking to appeal, is an example the Legislature could have followed had they intended section 18-3-30 to be broadly construed to cover all possible appealing parties in the criminal case from magistrate's court. Clearly, had the Legislature intended section 18-3-30 to apply to the State, they certainly knew how and could have easily amended the language when they last amended the statute in 2010.

Significantly, this Court clearly overlooks relevant considerations which demonstrate a criminal defendant and the State are not "similarly situated parties" when it comes to a determination on whether or not to appeal from a magistrate court decision. As a result, there are very logical and rational reasons why the Legislature would allow additional time for a State's appeal.

Initially, the calculus regarding a decision to appeal is very different between a criminal defendant and the State. The defendant only has to determine whether it is in his best interest to appeal his conviction and sentence. He does so with full knowledge of the actual facts regarding his guilt or innocence of the charges, the ramification of not appealing, and the possible remedies if he were to succeed on appeal. He does not have to consider any other case or how a ruling in his case may impact anyone else's future trial. As mentioned previously, the Legislature originally believed a defendant needed only five days to make his decision because it was recognized that it should not be a hard decision requiring extended contemplation.

On the other hand, the State, as the Sovereign, has significant considerations to make prior to appealing a ruling. Initially, the State must review the underlying ruling and determine if it meets the standard set forth in McKnight that would even allow the State to pursue the appeal. Considerations regarding the benefit or efficacy of taking the underlying appeal also are much more complicated. While appealing may be best for the individual case, an appeal may or may not be best for all future prosecutions. The State is required to consider the broad ramifications of an appeal prior to bringing the appeal. If the State is successful, that may be beneficial in this particular case, but is it the best outcome for all future prosecutions or will the rule set forth by the Court alter those prosecutions in unintended ways. Additionally, the downside to an appeal may be too great to warrant the appeal in the individual case. The State must be concerned about whether a case has particularly bad facts and the old adage that bad facts make for bad law. See Doggett v. United States, 505 U.S. 647, 659 (1992) (Thomas, J. dissenting) (acknowledging the old adage and commenting: "Just as 'bad facts make bad law,' so too odd facts make odd law."). The State necessarily must consider ramifications far beyond the case before it and do what is in the best interest for the people of South Carolina, including the defendant, and not just one individual. As a result, it is logical and rational that the Legislature would allow additional time for the State to make its determinations.

Additionally, prosecutions in magistrate court frequently have another very significant consideration—the cases are frequently not prosecuted by an attorney for the State who will take part in the ultimate determination on whether or not to seek the appeal. Prosecutions, in particular DUI prosecutions, are frequently handled by the officers making the arrest. A report, written by Clemson University and commissioned by the South Carolina Department of Transportation notes that South Carolina is one of two states in the nation that allow officers to

prosecute their DUI cases. See Applying Successfully Proven Measures in Roadway Safety to Reduce Harmful Collisions in SC, available at https://www.scdot.scltap.com/wp-content/uploads/2017/06/SPR-711-FHWA-SC-17-08-Final-Report.pdf. Further, in their 2020 report, Mothers Against Drunk Drivers indicated that their monitoring of several counties DUI prosecutions revealed numerous cases being prosecuted by officers. The report, which looked at seven counties, found multiple counties primarily had officers prosecute the cases that were monitored. See Mothers Against Drunk Driving South Carolina, COURT MONITORING REPORT, REFUSAL TO CHANGE, available at https://online.flippingbook.com/view/533447/.

When an officer prosecutes a DUI, new difficulties arise for the State in seeking an appeal. First, there may be communication issues between the actual person prosecuting the case and the persons in the agency who will ultimately make the determination on whether to file the appeal. The trooper or other office may not bring the appeal from magistrate's court. Instead, the appeal would need to be initiated and handled by the solicitor's office or the Department of Public Safety. As a result, communication of the nature of the offense, the evidence and arguments presented to the magistrate, and the magistrate's ruling all must take place prior to the State even beginning its analysis on whether to pursue an appeal. Therefore, it is clear that a criminal defendant and the State of South Carolina are not similarly situated parties.[3]

This Court should grant the rehearing; find section 18-3-30 by its clear and unambiguous language does not provide the State a time restriction for its service of a notice of appeal from

[3] I also note that this Court did not specifically rely on an Equal Protection for its ruling, even though it referenced the concept of similarly situated parties. It is clear Equal Protection would not apply. Additionally, even if Equal Protection required the prosecuting agency and the convicted defendant to have the same filing and service requirements, the remedy would not be to arbitrarily subject the State to the ten day requirement of section 18-3-30, but instead would have been to declare the ten-day restriction in 18-3-30 unconstitutional and then the default of 30 days would apply to all.

the magistrate court; conclude either Rule 74, SCRCP, or section 18-7-20 is the appropriate time requirement for the service of the notice of appeal allowing the State thirty days to serve its notice; hold the criminal defendant and the State of South Carolina are not similarly situated parties; and reverse the circuit court's ruling that the appeal was untimely and allow the appeal by the State to go forward.

CONCLUSION

For all of the foregoing reasons, the State requests the panel grant the petition for rehearing, find the circuit court erred in dismissing the appeal because it was timely served and filed under either section 18-7-20 or Rule 74, SCRCP, because section 18-3-30 does not apply to an appeal by the State based on its explicit and unambiguous language. The State asks this Court to publish its opinion, whether rehearing is granted or denied, because the issue is one that is ongoing in appeals from magistrate's court and a binding opinion is necessary to end any confusion.[4]

Respectfully submitted,

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August 18, 2022

[4] See, e.g., Shenoa L. Payne, *The Ethical Conundrums of Unpublished Opinions*, 44 Willamette L. Rev. 723, 728 (2008) ("With such widespread national availability of 'unpublished' opinions, the term 'unpublished' has a new and ironic meaning. . . . Even though a court may wish to prevent a particular opinion from having precedential effect, the court is at least aware that, whether designated 'published' or 'unpublished,' its opinion is 'going to be read, collected, and analyzed.' " (footnotes omitted)).

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PROOF OF SERVICE

I, Caroline Collins, certify that I have served the within Petition for Rehearing by emailing a copy to Respondent's counsel of record, Adam J. Russo, Esquire, at his primary email addresses as provided by the Attorney Information System (AIS).

I further certify that all parties required by Rule to be served have been served.
This 18th day of August, 2022.

CAROLINE COLLINS
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Caroline Collins

From: Caroline Collins
Sent: Thursday, August 18, 2022 2:56 PM
To: 'adamrusso@drennanlawfirm1.com'
Cc: William Blitch
Subject: The State v. Christopher Huggins (2019-001067)
Attachments: HUGGINS Christopher - Petition for Rehearing - 2019-001067 (03079020xD2C78).PDF

Good Afternoon Mr. Russo,

Attached please find a Petition for Rehearing in The State v. Christopher Huggins (2019-001067). This petition will be submitted to the South Carolina Court of Appeals today via the AIS One Drive System.

If you will, please reply to confirm receipt of this email.

Thank you!

CAROLINE COLLINS, Administrative Coordinator
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