

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

APPEAL FROM GREENVILLE COUNTY

COURT OF COMMON PLEAS

2010-CP-23-9791

HONORABLE G. EDWARD WELCHER

DAVID DEWAYNE BENNETT, 100303,

APPELLANT,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT.

EXPLANATION BRIEF

SCACR 243 (C)

DAVID DEWAYNE BENNETT, 100303
EVANS C.I. P-3-B-143 (CHERAW)
610 HWY 9 WEST
BENNETTSVILLE, SC 29012
(APPELLANT PRO-SC)

SOUTH CAROLINA ATTORNEY
GENERAL'S OFFICE
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COLUMBIA, SC 29211
(ATTORNEY FOR RESPONDENT)

STATEMENT OF THE CASE

THE APPELLANT WAS INDICTED BEFORE THE DECEMBER 14 2004 TERM OF GRAND JURY. THE INDICTMENT STATES AS FOLLOWS. THAT WAYNE DAVID BENNETT DID IN GREENVILLE COUNTY BETWEEN THE 1ST DAY OF NOVEMBER, 1990, AND THE 9TH DAY OF NOVEMBER, 1994, ENGAGE IN SEXUAL BATTERY WITH SYLVIA VANHASTIGHT, WHO WAS LESS THAN SIXTEEN YEARS OF AGE AND THAT HE DID SO IN A POSITION OF FAMILIAL, CUSTODIAL, OR OFFICIAL AUTHORITY TO COERCE THE VICTIM TO SUBMIT, AND/OR HE WAS OLDER THAN THE VICTIM. THIS IS IN VIOLATION OF SOUTH CAROLINA CODE OF LAWS SECTION 16-3-655(2) AND (3). THE APPELLANT SUBSEQUENTLY FILED HIS PCR APPLICATION, IN WHICH HE DID NOT RAISE THIS ISSUE BECAUSE IT WAS NOT APPARENT FROM THE RECORD. THE APPELLANT HAS FILED SUCCESSIVE APPLICATIONS. THE APPELLANT DID NOT DISCOVER THIS ISSUE AS IT WAS NOT EVIDENT .

THE "RECORD" REFLECTS THAT THE CONDUCT FOR THIS OFFENSE AS INDICATED BY THE "RECORD" REFLECT'S CONDUCT UP TO THE VICTIMS AGE OF SIXTEENTH BIRTHDAY SPECIFICALLY "9-9-94". SEE (TRR- PG. 9 LNS. 4-13). THIS CLERICAL ERROR IS NOT AN ISSUE OF JUDICIAL DISCRETION BUT A MATTER OF MAKING THE SENTENCING SHEET CONFORM WITH THE RECORD SEE MICHEL V. MICHEL 340 S.E.2d. 730, ALSO, WHITTLE V. MULTIPLE SERVICES, INC. 324 S.E.2d. 62.

DISCUSSION

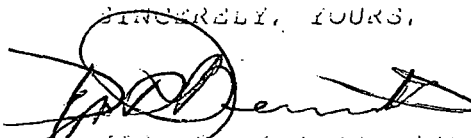
THE ISSUE BEFORE THIS COURT IS AN ISSUE OF CORRECTING A CLERICAL ERROR, AND TO MAKE THIS SENTENCING SHEET CONFORM WITH THE RECORD MICHEL V. MICHEL 345 S.E. 2G. 1G. 732. THE SCOPE OF THE JUDGEMENT IS NOT AT ISSUE BUT RATHER THAT TO MAKE THE SENTENCING SHEET REFLECT WHAT THE TRANSCRIPT OF RECORD REFLECTS. UNLIKE HUNTER V. STATE 244 S.E. 2G. 530, WHERE THE RECORD CLEARLY REFLECTS WHAT HIS SENTENCE WAS, THE APPELLANT WOULD CONTEND THAT THIS CASE, DUE TO THE UNDERLYING NATURE OF THE CLERICAL ERROR. UNLIKE HUNTER WHERE IT WAS CLEARLY KNOWN BY THE APPELLANT WHAT HIS SENTENCE WAS, THE APPELLANT IN THIS INSTANT CASE COULD NOT HAVE KNOWN OF THE CONVERT NATURE OF THIS PROCEDURAL ERROR. THIS ISSUE SHOULD BE SAVED FROM THE DETERMINATION OF SUCCESSIVENESS.

BOTH THE INDICTMENT AND SENTENCING SHEETS INDICATE AND PLACE THIS APPELLANT ON NOTICE THAT THIS CHARGE WAS SPECIFICALLY ADDRESSING CONDUCT FROM 1990 TO 1994, THAT THE APPELLANT WOULD CONCEDE WOULD BE CONDUCT THAT WOULD FIT THE STATUTORY LANGUAGE (I.E. THE ALLEGED VICTIM WAS 12 TO 16 YEARS OLD). THIS INDICTMENT/RECORD/ CONVICTION REQUIRES AS AN EVIDENTIARY FACT THAT A SEXUAL BATTERY THAT HAD OCCURRED AND THE VICTIM IS BETWEEN 12 TO 16 YEARS OLD. (S.C. CODE ANN. § 16-3-655 (2) AND (3).) I THIS CASE THERE IS NO ISSUE TO MODIFY AN EXISTING JUDGEMENT BUT SIMPLE CORRECT A MISTAKE OR CLERICAL ERROR IN IT'S OWN PROCESS TO MAKE IT CONFORM TO THE RECORD. TRIMMER V. THOMSON 19 S.C. 247 (1965) THE COURT WAS IN ERROR IN RULING THAT THE COURT LOST JURISDICTION OR THAT THE ISSUE WAS SUCCESSIVE BECAUSE IT WAS.

UNLIKE HUNTER IN THAT IT WAS NOT CLEAR FROM THE RECORD AND THE APPELLANT DID NOT KNOW OF THIS ISSUE UNTIL WELL AFTER THE APPEAL AND PCR PROCESS HAD LONG PAST, AND , BY THE EXCERCISE OF DUE DILIGENCE, APPELLANT COULD NOT HAVE DISCOVERED THIS WITHIN A TIMELY MANNER. THE ISSUE BEFORE THIS COURT IS THAT THE COURT HAS JURISDICTION TO CORRECT THIS CLERICAL ERROR AND/OR MISTAKE. THE APPELLANT HUMBLY REQUEST THAT THIS COURT GRANT APPELLANT'S EXPLANATION, REMAND APPELLANTS CASE TO THE PCR COURT TO CORRECT THE CLERICAL ERROR. CORRECT THE APPELLANT'S SENTENCING SHEET (2002-GS-23-07954, 16-3-555 (2) (3)) TO REFLECT THE DATE OF OFFENSE UP TO 11-9-94 TO SUPPLANT THE "11-9-96") THE APPELLANT HUMBLY SUBMITS THE ABOVE FOR THEIR CONSIDERATION.

WITH KIND REGARDS...I AM

SINCERELY, YOURS,



DAVID DEWAYNE BENNETT

THIS 6 DAY OF NOVEMBER, 2012.