

State of South Carolina
In The Court of Appeals

Appeal From Chester-Field County
Howard P. King, Circuit Court Judge

The State,

Respondent

v.

Billy Lee Lisenby JR,

Appellant

Appellant's Brief

Billy Lee Lisenby JR, #200273
PRO-SE

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4848 Goldmine HWY.
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Appellate Case NO: 2011-201487

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SC COURT OF APPEALS

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Statement of Issue on Appeal

Did the court err in denying Appellant's motion to reconsider his sentence when Appellant was sentenced to ten years imprisonment for assault with intent to Kill in 2008, and the Omnibus Crime Reduction and Sentencing Reform Act of 2010 subsequently Repealed the offense of assault with intent to Kill?

Statement of The Case

On April 21, 2008, Appellant Billy Lisenby JR; was indicted by the Chesterfield County Grand Jury for: (1) two counts of assault with intent to kill (AWIK); and (2) failure to stop for a blue light. R. 228-233.

On April 21, 2008; Appellant proceeded to trial before the Honorable Mark Hayes and a jury. R. 1. Appellant was represented by Patricia Rivers, and the State was represented by Assistant Solicitors Eric Rowell and J.R. Joyner. R. 1. The jury found Appellant: (1) not guilty on one count of AWIK; (2) guilty on the second count of AWIK; and (3) guilty of failing to stop for a blue light. R. 213, 1. 10-214, 1.3. Judge Hayes then sentenced Appellant to ten years imprisonment on the AWIK conviction and three years imprisonment on the failure to stop for a blue light conviction. R. 222, 11. 1-9. The sentences were to run consecutively for a total of thirteen years. R. 222, 11. 4-5.

On September 2, 2008, the South Carolina Court of Appeals dismissed Appellant's direct appeal after he withdrew his appeal.

On September 19, 2011, the Honorable Howard P. King denied Appellant's motion to reconsider his sentence. R. 226-227. Appellant argued that he should be resentenced because the Omnibus Crime Reduction and Sentencing Reform Act of 2010 (omnibus crime bill) repealed the common law offense of AWIK. See 2010 Act NO. 273 § 7; see also S.C. Code § 16-3-620. The savings clause of the omnibus crime bill prohibits retroactive application to sentences that were entered into prior to the effective date of the bill.

This appeal follows.

Argument

The court erred in denying Appellant's motion to reconsider his sentence when Appellant was sentenced to ten years imprisonment for assault with intent to kill in 2008, and the Omnibus Crime Reduction and Sentencing Reform Act of 2010 subsequently repealed the offense of assault with intent to kill.

The Omnibus Crime Reduction and Sentencing Reform Act of 2010 (Omnibus crime bill) was signed into law and became effective on June 2, 2010. See 2010 Act No. 273. The omnibus crime bill repealed the common law offense of AWIK [S.C. Code §16-3-620] "for offenses occurring on or after the effective date of this act." 2010 Act No. 273, § 7.

Under the new 2010 Bill 1154 Omnibus Crime Reduction and Sentencing Reform Act of South Carolina AWIK which is a common law misdemeanor which would fall under Assault and battery in the second degree, or Assault and Battery in the third degree. Assault and Battery in the 2nd degree carries a sentence of imprisonment for up to a maximum of (3) years, and Assault and Battery in the 3rd degree carries a maximum sentence of 30 days.

Now in the State of South Carolina the maximum you can receive on any misdemeanor assault and battery is 3 years. Due to substantial change in the law and Petitioner's facts undeniably he is entitled to relief.

The Cardinal Rule of Statutory Construction is a court must ascertain and give effect to the intent of the legislature, cite *Charleston County Sch. Dist. v. State Budget and Control Bd.*, 313 S.C. 1, 437 S.E. 2d 6 (1993) what a legislature say in the text of a statute is considered the best Evidence of the legislatures intent we will.

Norman J. Singer, *Sutherland statutory construction* 1 §46.03 AT 94 (5th Ed. 1992). If a statute language is plain, unambiguous, and conveys a clear meaning "the rule of statutory interpretation are not needed and the court has no right to impose another meaning."

In this case, Appellant was convicted of AWIK and sentenced to ten years imprisonment in 2008. R. 213, 1.10-222, 1.9. Appellant argues that the savings clause of omnibus crime bill is unconstitutional and that he should be resentenced pursuant to the current assault and battery statute. R. 226-227; U.S. Const. amend. XIV, § 1; S.C. Const. art. I, § 3 (stating "nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws"); see also 2010 Act No. 273, § 1 (noting that one of the purposes of the omnibus crime bill was to "provide fair and effective sentencing options").

Additionally, a criminal defendant can generally take advantage of changes in the law that reduce his sentencing exposure. See *State v. Griffin*, 315 S.C. 285, 287, 433 S.E. 2d 862, 863-864 (1993) (noting changes in law which do not increase punishment are not ex post facto violations). Therefore, the court erred in denying Appellant's motion to reconsider his sentence under the omnibus crime bill when the savings clause of the bill violates due process. R. 226-227; 2010 Act No. 273, § 7, 65; See U.S. Const. amend. XIV, § 1; S.C. Const. art. I, § 3; see also *Griffin*, 315 S.C. at 287, 433 S.E. 2d at 863-864.

Usually, when there is change in law court applies law in effect at time of decision and not antecedent law, unless so doing would result in manifest injustice or there is statutory direction or legislative history to contrary.

Stovage v. United States 106 S.Ct 65, 474 U.S. 818, 88 L.E. 2d 53

State v. Williams 31 S.C.L (2 Rich.) 418 (1846)

Courts must administer any lesser punishment that becomes effective before an appeal is final. See *State v. Sutcliffe*, 35 S.C.L (4 Strob.) 372, 393-395 (1850); *State v. McCathy* 1 S.C.L (1 Bay) 334 (1793); *State v. Washington*, 1 S.C.L (1 Bay) 120, 157-158 (1791).

Appellant argues his appeal process is not final, so this should apply to him.

Also see *State v. Dickey*, (Op No. 27047 Sept. 26, 2011) and 669 S.E. 2d 917.

Conclusion

For the foregoing reasons, Appellant Billy Lisenby requests that this Court remand this case to the Chesterfield County Court of General Sessions for resentencing.

Respectfully submitted,

Dated: July 31st 2012

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Certificate of Service

The Appellant hereby certifies that a true copy of the Appellant's Brief has been served upon Salley W. Elliott, Esquire at Rembert Dennis Building, 1000 Assembly Street Room 519, Columbia, S.C. 29201; and on The Office of The Attorney General, The State of South Carolina P.O. Box 11549, Columbia, S.C. 29211. This day 31st of July 2012

Billy Lee Lisenby
Billy Lee Lisenby, Jr.
Pro-Se