

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Beaufort County

Honorable Robert J. Bonds, Circuit Court Judge

AARON SCOTT YOUNG, JR.,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2024-000011

PETITION FOR WRIT OF CERTIORARI

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ISSUE PRESENTED

Whether the PCR Court reversibly erred by holding the Appellate Court's ruling in Petitioner's direct appeal case did not violate the *ex post facto* clause where the South Carolina Supreme Court held in Petitioner's case that it was extending the law of mutual combat to apply to an innocent bystander?

STATEMENT

Petitioner Aaron Scott Young, Jr., was indicted on October 30, 2014, by the Beaufort County grand jury for murder,¹ and attempted murder. The charges arose from an incident occurring on September 1, 2012, in Hilton Head, South Carolina. App. 840—App. 843.

On September 1, 2012, Petitioner was outside with his father, Aaron Young, Sr. (Father), at their home on Wild Horse Road in Hilton Head, South Carolina, when Tyrone Robinson (Robinson) drove up, exited his car, and fought with them. Ultimately, Robinson drew his .38 caliber revolver, and pointed it at Petitioner. Father struggled with Robinson for the gun, and it fired. Robinson maintained control over the gun and shot again striking the ground at the feet of Father, and then fled in his car. After Robinson left, Father obtained his own gun, and he drove off in his pickup truck with Petitioner and Jontu Singleton (Singleton) looking for Robinson. App. 248, ll. 12-23; App. 252, ll. 3-12; App. 330, ln. 12—App. 333, ln. 10; App. 336, ln. 1—App. 341, ln. 22. After failing to find Robinson in the Allen Road area, the three returned home and dropped off Singleton. Father and Petitioner later returned to Allen Road and saw Robinson's car parked in a yard. After firing a 9mm pistol into the unoccupied vehicle, Father and Petitioner left to return home. App. 249, ll. 7-24; App. 254, ln. 16—App. 255, ln. 6; App. 269, ln. 19—App. 273, ln. 4; App. 278, ln. 15—App. 281, ln. 18; App. 377, ll. 1-14. As Father

¹ The indictment for murder read as follows:

That in Beaufort County on or about September 1, 2012, [Petitioner] did willfully, unlawfully and with malice aforethought engage in mutual combat with Tyrone Robinson and did thereby cause the victim Khalil S. to be shot and killed in the area of Marshland Drive and Allen Road, Hilton Head, SC, and that Khalil S. did die in Beaufort County as a result thereof on September 1, 2012; in violation of Section 16-3-10 of the South Carolina Code of Laws (1976), as amended.

App. 841.

and Petitioner left the scene and were driving up the road, three shots were fired at their truck by Robinson, one of which tragically struck and killed a minor nearby. App. 250, ll. 3-7; App. 255, ll. 6-11; App. 291, ln. 2—App. 293, ln. 4; App. 474, ll. 13-16.

Petitioner's case proceeded to trial before the Honorable Thomas W. Cooper, Jr., and a jury from February 23rd through 25th, 2015. Petitioner was represented by Roberts Vaux, while the State was represented by Isaac McDuffie Stone, III, and Sean P. Thornton. App. 1—App. 2; App. 175. Although the fatal bullet was fired by Robinson, the State proceeded against Petitioner on the charge of murder based upon a combination of several theories, including mutual combat and transferred intent. App. 500, ln. 1—App. 506, ln. 7; App. 509, ln. 3—App. 511, ln. 14; App. 537, ln. 22—App. 540, ln. 12; App. 555, ln. 11—App. 556, ln. 12. The jury convicted Petitioner of both murder and attempted murder, and the trial court imposed concurrent thirty-year sentences: App. 567, ll. 16-21; App. 585, ll. 21-25; App. 844-45.

Petitioner appealed, and was represented by Frederick Elliott Quinn (Appellate Counsel). Supp App. 1; Supp. App. 19. On direct appeal, Petitioner argued *inter alia* that he was wrongfully held accountable for the actions of Robinson toward a third-party through the State's use of mutual combat and transferred intent. Supp. App. 4-6. On August 22, 2018, the Court of Appeals affirmed Petitioner's conviction by published opinion. Supp. App. 101.

The South Carolina Supreme Court subsequently granted certiorari, and on February 5, 2020, rendered its opinion affirming Petitioner's conviction as well. Supp. App. 101. Specifically, the Court held as follows:

Today, we extend our jurisprudence and hold that each participant who willingly engages in mutual combat may be held accountable for the death or injury of an innocent bystander resulting from that confrontation. As each combatant aids and encourages the others to fire and continue firing the hail of bullets that results in a

victim's death or injury, each may be found guilty under the "hand of one is the hand of all" theory of accomplice liability.

Supp. App. 226-227. On March 12, 2020, the petition for rehearing was denied, and remittitur was sent. Supp. App. 251-253; see also State v. Young, 429 S.C. 155, 166, 838 S.E.2d 516, 522 (2020).

On March 30, 2020, Petitioner filed his post-conviction relief (PCR) application. App. 588. Tommy A. Thomas (PCR Counsel) was appointed to represent Petitioner, and filed three amendments to the PCR application. App. 658; App. 660; App. 662. Among the matters asserted was that the decision of the South Carolina Supreme Court in State v. Young violated the *ex post facto* clauses in Article 1, Section 4 of the South Carolina Constitution, and Article 1, Section 10 cl. 1 of the United States Constitution. App. 658. The State filed its return on July 13, 2020, and the case proceeded to an evidentiary hearing on March 15, 2023, before the Honorable Robert J. Bonds (PCR Court). The State was represented by Danielle Dixon, while Petitioner was still represented by PCR Counsel. App. 674. In his *ex post facto* violation argument to the PCR Court, PCR Counsel asserted that Petitioner had the right to rely upon the law as it was in South Carolina "until it was extended by the Supreme Court," and to hold Petitioner liable before such extension did so without giving him notice. App. 791, ll. 1-20. He further asserted the issue was ripe for the PCR Court to consider pursuant to the PCR Code under South Carolina law. App. 792, ll. 5-10.

On October 2, 2023, the PCR Court filed its order of dismissal. App. 806. It found that "[c]ombining the theories of mutual combat and accomplice liability did not alter the State's burden of proof or the requisite criminal intent." App. 822. The PCR Court further determined that "nothing about this extension was novel or unexpected." Id. Accordingly, it held the

Supreme Court's decision in Petitioner's direct appeal did not violate *ex post facto* clauses. App. 823.

On October 23, 2023, PCR Counsel filed a motion for reconsideration, and again asserted that the Supreme Court opinion in Petitioner's case indeed "changed the interpretation of the State's mutual combat and accomplice liability law" and in so doing created "an *ex post facto* violation." App. 828. Specifically, PCR Counsel argued that, prior to the Supreme Court opinion in the present case, the jurisprudence regarding mutual combat and accessory liability "had not been discussed when the victim is a third-party outsider. Despite this, the Supreme Court issued an opinion extending the doctrine of mutual combat to include liability when a third party becomes a victim." App. 828-829. PCR Counsel further asserted error in that "[t]he order, which defines the doctrine of *ex post facto*, considers only statutory changes rather than alterations to the canon of law that can affect a defendant." App 829. Under the facts of Petitioner's case, "[t]o hold him responsible for [the child's] death by way of a murder conviction and its concordant sentence is not something that would have happened before the Supreme Court issued this ruling." App. 829-830. The State filed its return on November 17, 2023. App. 834. On December 4, 2023, the PCR Court filed a Form 4 order denying Petitioner's motion to reconsider. App. 839.

This petition for writ of certiorari follows.

ARGUMENT

The PCR Court reversibly erred by holding the Appellate Court’s ruling in Petitioner’s direct appeal case did not violate the *ex post facto* clause where the South Carolina Supreme Court held in Petitioner’s case that it was extending the law of mutual combat to apply to an innocent bystander.

The ruling in Petitioner’s direct appeal violated the *ex post facto* clauses of the South Carolina and Federal Constitutions by interpreting legal doctrines to create an extension of mutual combat in South Carolina specifically to cover an area to which it never applied before. Prior to the Court’s opinion, mutual combat had been applied to hold the defendant liable for the death of another participant in the mutual combat itself. However, the doctrine of mutual combat had never been applied to hold a defendant accountable for the death of a third-party bystander at the hands of the person whom he was fighting until the opinion was rendered by the Supreme Court in Petitioner’s direct appeal. Thus, Petitioner was without notice of such liability until the Court rendered its opinion extending the doctrine of mutual combat, and holding him liable for it prior to extending the law violates the *ex post facto* clause.

Article 1, Section 10 of the United States Constitution prohibits State governments from passing an *ex post facto* law. U.S. Const. Art. I, Sec. 10 (United States Constitution (2017 Edition)). Article 1, Section 4 of the South Carolina Constitution likewise prohibits *ex post facto* laws in South Carolina. In essence, these provisions “prohibit the Federal Government and the States from enacting laws with certain retroactive effects.” Stogner v. California, 539 U.S. 607, 610, 123 S.Ct. 2446, 2449, 156 L.Ed.2d 544 (2003) (citing U.S. Const. Art. I, Section 9 cl. 3, and Art. I, Section 10 cl. 1.) “Long ago the Court pointed out that the [*ex post facto*] Clause protects liberty by preventing governments from enacting statutes with ‘manifestly unjust and oppressive’ retroactive effects.” Id. 539 U.S. at 611, 123 S.Ct. at 2449, 156 L.Ed.2d 544 (quoting Calder v.

Bull, 3 Dall. 386, 391, 1 L.E. 648 (1798)). As the United States Supreme Court explained, there are four main categories:

1st. *Every law that makes an action done before the passing of the law, and which was innocent when done, criminal; and punishes such action.* 2d. *Every law that aggravates a crime, or makes it greater than it was, when committed.* 3d. *Every law that changes the punishment, and inflicts a greater punishment, than the law annexed to the crime, when committed.* 4th. *Every law that alters the legal rules of evidence, and receives less, or different, testimony, than the law required at the time of the commission of the offence, in order to convict the offender.* All these, and similar laws, are manifestly unjust and oppressive.

Id. 539 U.S. at 612, 123 S.Ct. at 2450, 156 L.Ed.2d 544 (quoting Calder, 3 Dall. at 390-91, 1 L.E. 648) (emphasis added). In other words, “[a]n *ex post facto* violation occurs when a change in the law retroactively alters the definition of a crime or increases the punishment for a crime.” Jernigan v. State, 340 S.C. 256, 261, 531 S.E.2d 507, 509 (2000); see also Barton S.C. Dep’t of Prob. Parole, 404 S.C. 395, 403, 745 S.E.2d 110, 114 (2013).

Further, such a change in the law need not occur solely from legislative acts. To the contrary, “[t]here can be no doubt that a deprivation of the right of fair warning can result not only from vague statutory language but also from an unforeseeable and retroactive judicial expansion of narrow and precise statutory language. As the Court recognized in Pierce v. United States, ‘judicial enlargement of a criminal act by interpretation is at war with a fundamental concept of the common law that crimes must be defined with appropriate definiteness.’” Bouie v. City of Columbia, 378 U.S. 347, 352, 84 S.Ct. 1697, 1702, 12 L.Ed.2d 894 (1964) (internal citation omitted) (quoting Pierce v. United States, 314 U.S. 306, 311, 62 S.Ct. 237, 239, 86 L.Ed. 226 (1941)).

Under prior South Carolina law, the doctrine of mutual combat was limited in scope, applying to the combatants themselves. For example, in State v. Brown, the defendant and

several others were engaged in a fight during a labor strike at a mill. One of the combatants had a knife, and cut another combatant. Id. 108 S.C. 490, 95 S.E. 61, 62 (1918). Although the defendant himself did not deal the blow, the Brown Court nonetheless affirmed the defendant's conviction of manslaughter for the death of the third-party participant who was cut by another under the theory of mutual combat. Id. 108 S.C. 490, 95 S.E. at 63.

Another application of the doctrine of mutual combat is as an additional set of rules when a defendant seeks to reduce a charge from murder to manslaughter. For example, in State v. McCants, the Court clearly stated that, “[i]n cases of mutual combat, to mitigate a homicide to manslaughter, it is necessary that the occasion should be unpremeditated, and that at the commencement of the contest, the parties should be upon equal terms.” Id. 28 S.C.L. 384, 385-86, 1 Speers 384 (1843). Thus, mutual combat is also a doctrine that could apply at certain times when the defense argues to reduce the severity of a charged offense.

In the present case, the South Carolina Supreme Court undoubtedly expanded the scope of liability for murder by judicially expanding the doctrine of mutual combat:

Today, we extend our jurisprudence and hold that each participant who willingly engages in mutual combat may be held accountable for the death or injury of an innocent bystander resulting from that confrontation. As each combatant aids and encourages the others to fire and continue firing the hail of bullets that results in a victim's death or injury, each may be found guilty under the “hand of one is the hand of all” theory of accomplice liability.

State v. Young, 429 S.C. 155, 166, 838 S.E.2d 516, 522 (2020) (emphasis added). This accountability is beyond the scope of liability for the injury or death of a participating mutual combatant as in Brown, and is certainly not to mitigate or reduce the charge of murder down to manslaughter as in McCants. Therefore, the Court's ruling retroactively expanded liability for murder to apply to Petitioner's conduct, which in turn deprived Petitioner of the right of fair

warning of such “an unforeseeable and retroactive judicial expansion.” Bouie, 378 U.S. at 352, 84 S.Ct. at 1702, 12 L.Ed.2d 894. State and Federal prohibitions against *ex post facto* laws prohibit such “‘manifestly unjust and oppressive’ retroactive effects.” Stogner, 539 U.S. at 611, 123 S.Ct. at 2449, 156 L.Ed.2d 544 (quoting Calder, 3 Dall. at 391, 1 L.E. 648). Accordingly, the Court’s opinion in Young amounted to *ex post facto* clause violations, and the PCR Court’s ruling to the contrary was in error. U.S. Const. Art. I, Sec. 10; S.C. Const. Article 1, Section 4; see also Jernigan, 340 S.C. at 261, 531 S.E.2d at 509.

CONCLUSION

For the foregoing reasons, Petitioner Aaron Scott Young, Jr., respectfully requests that this Court grant his Petition for Writ of Certiorari, reverse the PCR Court, and grant Petitioner a new trial.

s/ Breen Richard Stevens
Breen Richard Stevens
Appellate Defender

ATTORNEY FOR PETITIONER

This 5th day of July, 2024.