STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

ORIGINAL

Appeal to Berkeley County
R. Markley Dennis, Circuit Court Judge

CLIFFORD THOMPSON,
Appellant,

v.

STATE OF SOUTH CAROLINA,
Respondent.

APPEAL

FINAL BRIEF

RECEIVED
JUL 27 2011
Court of Appeals

CLIFFORD THOMPSON
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Pro Se

Case Tracking # 2010161446

INDEX

INDEX 1
ISSUES PRESENTED 2
STATEMENT 4
STATEMENT OF FACTS 5
ARGUMENT 8
CONCLUSION 21

ISSUES PRESENTED

1. Did the lower court commit an error of law in its interpretation of statute in ruling that it is not empowered by S.C. Code § 23-3-430, specifically § 23-3-430 (c)(15) to judicially determine / declare whether or not the evidence represented by the trial transcript of the prosecution's case theory attributing actions to Appellant in Appellant's kidnapping convictions are sexual in nature?

2. Did the lower court commit an error of law in its interpretation of statute in ruling that it is only at the time of the original conviction and sentencing proceedings and it is only the original sentencing judge who is empowered by S.C. Code § 23-3-430, specifically § 23-3-430 (c)(15) to judicially determine / declare whether or not the evidence represented by the trial transcript of the prosecution's case theory attributing actions to Appellant in Appellant's kidnapping convictions are sexual in nature?

3. Did the lower court commit an error of law in ruling that it lacks subject matter jurisdiction to judicially determine the issue of whether or not the trial transcript reflects Appellant's kidnapping offenses are sexual in nature because such judicial determination is exclusively controlled by Al-Shabazz v. State, 527 SE2d 742?

ISSUES PRESENTED (CONT'D)

4. Did the lower court commit an error of law and fact in ruling that Appellant's claims are moot and Appellant's declaratory judgement action is an action for writ of mandamus?

STATEMENT

This appeal involves issues of statutory interpretation, subject matter jurisdiction, mootness doctrine, legislative intent, the scope of Al-Shabazz principles, judicial powers and ripeness to name a few. Some issues involve settled South Carolina case law and legal precedents. Some issues are novel and have yet to have principles established by the South Carolina high court as to how to proceed on these issues. This is a very important appeal that needs to have its issues resolve expeditiously.

STATEMENT OF FACTS

The Appellant, Clifford Thompson, was convicted on May 2, 2001 by Circuit Judge James E. Lockemy in Berkeley County on four (4) counts of kidnapping (indictment numbers 00-GS-08-1100, 01-GS-10-3099, 99-GS-32-896 and 00-GS-40-52302) that stem from a multi-county and multi-jurisdictional negotiated plea agreement to armed robbery charges arising from Charleston County, Lexington County, Richland County and Berkeley County. The disposition of the criminal case is outlined in the case State v. Clifford Thompson, Case No.: 2004-CP-08-1041.

The entire nature of the offenses that the state solicitor's office advanced and the entire evidence the state solicitor's office proffered at the guilty plea proceedings on May 2, 2001 were that the alledged actions of Appellant's use of force that constitutes the four (4) counts of kidnapping were the force necessary to complete the offense counts of armed robbery in these criminal cases. There are no allegation nor evidence proffered that the Appellant's four (4) kidnapping convictions are sexual in nature nor that the four (4) kidnapping convictions have any sexual elements.

The presiding Judge James E. Lockemy did not make a finding on the record whether or not Appellant's four (4) kidnapping convictions are sexual in nature or have sexual elements. The Judge James E. Lockemy is no longer a circuit judge but is now a sitting Court of Appeals judge, the lower court R. Markley Dennis, Jr. took note and acknowledged this fact.

The Appellant filed a Petition for Declaratory Judgement on September 11, 2009. The Respondent State of South Carolina filed Answer and Motion to Dismiss in reply to Appellant's petition. Appellant filed Reply to Respondent's Answer and Motion to Dismiss. A hearing was held in the Berkeley County Court of Common Pleas on November 18, 2009 before Judge R. Markley Dennis, Jr. Appellant Thompson engaged Judge Dennis and respectfully put the Judge Dennis on notice that Thompson timely submitted an Answer to Respondent's Motion to Dismiss prior to the convening of the November 18, 2009 hearing. The Judge Dennis did acknowledge actual receipt of the Answer to Respondent's Motion to Dismiss and Judge Dennis did incorporate the Answer to Respondent's Motion to Dismiss into the record of this case under his order. Judge Dennis, Jr. dismissed the Petition for Declaratory Judgement.

Appellant Thompson timely filed a Rule 59 (e) Motion to Judge Dennis, Jr. on March 23, 2010. Judge Dennis, Jr. denied the Rule 59 (e) Motion. Appellant timely filed Notice of Appeal in this case, This appeal follows.

ARGUMENTS

I.

The Issue #1 and Issue #2 are interwoven and for this Court to resolve one it necessitates analysis of the other, therefore Appellant presents these two issues comprehensively.

The issue of interpretation of a statute is a question of law for the court. Univ. of S. California v. Moran, 365 S.C. 270, 275, 617 SE2d 135, 137 (Ct. App. 2005); See also Catawba Indian Tribe of South Carolina v. State of South Carolina, 372 S.C. 519, 524, 642 SE2d 751, 753 (2007), cert. denied, Oct. 1, 2007; Charleston County Parks & Recreation Comm'n v. Somers, 319 S.C. 65, 67, 459 SE2d 841, 843 (1995).

Section 14-3-330 of the South Carolina Code (Supp. 2006) vests the South Carolina Supreme Court with "appellate jurisdiction for correction of errors of law in law cases..." Section 14-8-200 (a) of the South Carolina Code (Supp. 2007) provides the Court of Appeals "shall apply the same scope of review that the Supreme Court would apply in a similiar case." Citing both section 14-3-330 and South Carolina Constitution, article V, section 5, the supreme court has held an appellate court may decide novel questions of law with "no particular deference to the lower court."

Madison ex. rel. Bryant v. Babcock Ctr., Inc., 371 S.C. 123, 134, 638 SE2d 650, 656 (2006); Clark v. Cantrell, 339 S.C. 369, 378, 529 SE2d 528, 533 (2000); Thompson ex. rel. Harvey v. Cisson Const. Co., 659 SE2d 171, 179. (Ct. App. 2008).

"When an appeal involves stipulated or undisputed facts, an appellate court is free to review whether the trial court properly applied the law to those facts. In such cases, the appellate court is not required to defer to the trial court's legal conclusions." Nationwide Mut. Ins. Co. v. Prioleau, 359 S.C. 238, 242, 597 SE2d 165, 167 (Ct. App. 2004) (quotation and citation omitted). When addressing novel question of law, the appellate court is free to decide the question based on its assessment of which answer and reasoning would best comport with the law and public policies of this state and the court's sense of law, justice and right. Croft v. Old Republic Ins. Co., 365 S.C. 402, 408, 618 SE2d 909, 912 (2005). In a case raising a novel question of law regarding the interpretation of a statute, the appellate Court is free to decide the question with no particular deference to the lower court. I'On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 411, 526 SE2d 716, 718-19 (2000).

The cardinal rule of statutory interpretation is to determine the intent of the legislature. Bass v. Isochem, 365 S.C. 454, 459, 617 SE2d 369, 377 (Ct. App. 2005);

All rules of statutory construction are subservient to the one that legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in the light of the intended purpose of the statute. McClanahan v. Richland County Council, 350 S.C. 433, 438, 567 SE2d 240, 242 (2002); Ray Bell Constr. Co. v. Sch. Dist. of Greenville County, 331 S.C. 19, 26, 501 SE2d 725, 729 (1998). "Once the legislature has made [a] choice, there is no room for the courts to impose a different judgement based upon thier own notions of public policy." S.C. Farm Bureau Mut. Ins. Co. v. Mumford, 299 S.C. 14, 19, 382 SE2d 11, 14 (Ct. App. 1989).

The legislature's intent should be ascertained primarily from the plain language of the statute. State v. Landis, 362 S.C. 97, 102, 606 SE2d 503, 505 (Ct. App. 2004); Stephen v. Avins Constr. Co., 324 S.C. 334, 339, 478 SE2d 74, 77 (Ct. App. 1996). The language must be read in a sense which harmonizes with its subject matter and accords with its general purpose. Mun. Ass'n of S.C. v. AT&T Commc'ns of S. States, Inc., 361 S.C. 576, 580, 606 SE2d 468, 470 (2004); Hitachi Data Sys. Corp. v. Leatherman, 309 S.C. 174, 178, 420 SE2d 843, 846 (1992).

If the language of an act gives rise to doubt or uncertainty as to legislative intent, the construing court may search for that intent beyond the borders of

the act itself. State v. Morgan, 574 SE2d at 207; see also Wade v. Berkeley County, 348 S.C. 224, 229, 559 SE2d 586, 588 (2002). An ambiguity in a statute should be resolved in favor of a just, beneficial, and equitable operation of law. State v. Hudson, 519 SE2d at 582; City of Camden v. Brassell, 486 SE2d at 495; City of Sumter Police Dep't. v. One (1) 1992 Blue Mazda Truck, 498 SE2d 894, 896 (Ct. App. 1998). In construing a statute, the court looks to the language as a whole in light of its manifest purpose. State v. Dawkins, 573 SE2d 783, 785 (2002); Adams v. Texfi Indus., 464 SE2d 109, 112 (1995).

A statute as a whole must receive a practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of the lawmakers. See Liberty Mut. Ins. Co. v. S.C. Second Injury Fund, 611 SE2d 297, 301 (Ct. App. 2005); see also Georgia – Carolina Bail Bonds, 579 SE2d at 336 ("A statute should be given a reasonable and practical construction consistent with the purpose and policy expressed in the statute"). The real purpose and intent of the lawmakers will prevail over the literal import of the words. Browning v. Hartvigsen, 414 SE2d 115, 117 (1992).

Courts will reject a statutory interpretation which would lead to a result so plainly absurd that it could not have been intended by the legislature or would

defeat the plain legislative intention. Unisun Ins. Co. v. Schmidt, 529 SE2d 280, 283 (2000); Kiriakides v. United Artists Commc'ns, Inc., 440 SE2d 364, 366 (1994). A court should not consider a particular clause in a statute as being construed in isolation, but should read it in conjunction with the purpose of the whole statute and the policy of the law. See Liberty Mut. Ins. Co., 611 SE2d at 302; see also Mid-State Auto Auction v. Altman, 324 S.C. 65, 69, 476 SE2d 690, 692 (1996) (stating that in ascertaining the intent of the legislature, a court should not focus on any single section or provision but should consider the language of the statute as a whole).

When interpreting a statute, courts must presume the legislature did not intend to do a futile act. Proctor v. Dep't. of Health and Envtl. Control, 368 S.C. 279, 311, 628 SE2d 496, 513 (Ct. App. 2006). The legislature is presumed to intend that its statutes accomplish something. State v. Long, 363 S.C. 360, 364, 610 SE2d 809, 812 (2005). "A statute should be so construed that no word, clause, sentence, provision or part shall be rendered surplusage, or superflous ..." Matter of Decker, 322 S.C. 215, 219, 471 SE2d 462, 463 (1995) (citing 82 C.J.S. Statutes § 346). See also Pike v. S.C. Dep't of Transp., 332 S.C. 605, 618, 506 SE2d 516, 523 (Ct. App. 1998), aff'd as modified, 540 SE2d 87 (2000).

What is at issue is the proper interpretation of S.C. Code § 23-3-430, specifically § 23-3-430(c)(15). The Appellant, in his initial filing for Declaratory Judgement, petitioned Judge R. Markley Dennis, Jr. for

(1) an order on the record finding that the transcript of the plea in the criminal case <u>State v. Clifford Thompson</u>, Case No: 2004-CP-08-1041 makes it clear there is no sexual element involved in the four (4) kidnapping convictions that Appellant is convicted.

and

(2) an order on the record finding that Appellant does-not qualify for the-Sex Offender Registry and is exempt from the Sex Offender Registry and its mandated requirements.

Then Appellant clarified his position in his Answer to Respondent's Motion to Dismiss to put the Judge Dennis, Jr. on notice that Appellant specifically seeks the judicial determination by the court of the nature of his kidnapping convictions pursuant to § 23-3-430 (c)(15). Judge Dennis ruled that only the original trial Judge James Lockemy has the <u>power</u> to utilize this statute and the only time Judge James Lockemy is empowered to utilize this statute is at the original conviction and sentencing proceedings. (See Transcript of Nov. 18, 2009 hearing pg. 12 line 2 thru line 20, and pg. 14 line 1 thru pg. 15 line 25).

This issue before this Honorable Court is a novel one because the applicability and application, and interpretation of S.C. Code § 23-3-430, specifically § 23-3-430 (c)(15), in a post convict and sentence context has not been considered by this Court as of date. The creation of the statute by the legislation is not and was not an exercise in futility, the legislature fully intended its citizentry to exercise the provisional statutory rights of this code. The scope and breadth of the provisional statutory rights of this code is what this appeal asks this Court to outline clearly without any ambiguity. The Judge Dennis, Jr.'s ruling is erroneous as a matter of law.

II.

The Issue #3 concerns the error of law the lower court committed in ruling that it lacks subject matter jurisdiction to judicially determine, pursuant to S.C. Code § 23-3-430 (c)(15), the issue of whether or not the trial transcript reflects Appellant's kidnapping offenses are sexual in nature because such judicial determination is exclusively controlled by <u>Al-Shabazz v. State</u>, 527 SE2d 742.

<u>Al-Shabazz</u> has meticulously outlined the procedure an inmate must use when seeking review of Department's decision in a non-collateral or administrative matter. The Appellant is not seeking review of any of S.C. Dept. of Corrections decisions, this point is clear in Appellant's pleadings, therefore <u>Al-Shabazz</u> is inapplicable in the present case before the lower court and before this Court.

Futhermore, the original petitioner in <u>Al-Shabazz</u>, Malik Abdul Al-Shabazz, raise claims that his constitutional rights to procedural due process and equal protection were being violated by S.C. Dep't of Corrections and the disciplinary

Adjustment Committee. He also raised claims of the conditions of his imprisonment. The Appellant makes no such claims. The Appellant seeks a judicial determination strictly based upon statutory provisions of § 23-3-430 (c)(15), _Al-Shabazz_ is inapplicable. The Judge Dennis, Jr.'s ruling is erroneous as a matter of law. (See Transcript of Nov. 18, 2009 hearing pg. 20 line 17 thru 20).

III.

The Issue #4 concerns the error of law the lower court committed in ruling that Appellant's claims are moot and Appellant's declaratory judgement action is an action for writ of mandamus,

A case becomes moot when a judgement, if rendered, would have no practical legal effect upon the existing controversy, thus making it impossible for the reviewing court to grant effectual relief. Byrd v. Irmo High School, 321 S.C. 426, 431, 468 SE2d 861, 864 (1996); Cheap-O's Truck Stop, Inc. v. Cloyd, 350 S.C. 596, 603, 567 SE2d 514, 517 (Ct. App. 2002). In Sloan v. Greenville County, 356 S.C. 531, 590 SE2d 338 (Ct. App. 2003), the South Carolina Court of Appeals stated the law of mootness with exactitude. (See Id. at 552, 590 SE2d at 349).

The mootness doctrine is subject to several exceptions, however. In Curtis v. State, 345 S.C. 557, 549 SE2d 591 (2001), our S.C. Supreme Court enunciated the three (3) primary exceptions to the doctrine:

"First, an appellate court can take jurisdiction, despite mootness, if the issue

raised is capable of repetition but evading review. Second, an appellate court may decide questions of imperative and manifest urgency to establish a rule for future conduct in manners of important public interest. Finally, if a decision by the trial court may affect future events, an appeal from that decision is not moot, even though the appellate court cannot give effective relief in the present case."

This honorable Court should find the first and third exceptions applicable, and, thus, refuse to dismiss Appellant's appeal issues as moot.

First, Appellant's infelicitous experience is capable of repetition, yet evades review. In Byrd v. Irmo High School, 321 S.C. 426, 468 SE2d 861 (1996), the South Carolina Supreme Court clarified the capable of repetition but evading review principle, noting an inconsistency in our court's decisions on the subject:

"Some cases have held that under the exception, a court can take jurisdiction only if (1) the challenged action in its duration was too short to be fully litigated prior to its cessation or expiration; and (2) there is a reasonable expectation that the same complaining party will be subjected to the action again."

"Other cases have taken a less restrictive approach in defining the exception, holding that a court can take jurisdiction, despite mootness, if the issue raised is capable of repetition butevading review. In effect, this latter approach differs from the former in that it does not require a reasonable expectation that the same Complaining party be subjected to the action again." Id. at 431, 468 SE2d at 864.

The Court clarified the inconsistency with the pronouncement: "this less restrictive approach is the appropriate standard in determing the applicability of the evading review exception of the mootness doctrine." Id. at 432, 468 SE2d at 864. Applying this articulated standard, it is clear Appellant's appeal qualifies to be heard thoroughly by the S.C. Court of Appeals, under the exceptions to the mootness doctrine.

Since May 2, 2001, the date Appellant was convicted and sentenced for four (4) counts of kidnapping by Judge James Lockemy, there has been at least two hundred (200) convictions for kidnapping in South Carolina where there has been no adjudication / determination on the record whether or not the kidnapping offense are sexual in nature.

This appeal involves issves clearly capable of repitition by at least two hundred (200) South Carolinian litigants. The scope of the issues are such that it is necessary to establish a clear rule of interpretation of S.C. Code § 23-3-430, specifically § 23-3-430 (c)(15) for future conduct in application of this statute because it is important to public interest. The Judge Dennis, Jr.'s ruling is erroneous as a matter of law.

CONCLUSION

WHEREFORE this Appellant prays this Court REVERSE and REMAND the ruling of the lower court as to each claim raised in this appeal and allow Appellant to move forward on the entire merits of his Petition for Declaratory Judgement and to recieve all other relief due Appellant.

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Respectfully Submitted,

Date: July 21, 2011

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STATE OF SOUTH CAROLINA
In The Court of Appeals

Clifford Thompson, Appellant,	)	Case No. 2010161446
v.	)	
State of South Carolina, Respondent.	)	Certificate of Compliance for Final Brief

I, Clifford Thompson, do certify that Final Brief submitted in this appeal does comply with Rule 211 (b). I do certify that the submitted Final Brief complies with South Carolina Rules of Court.

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SWORN and Subscribed before me
this 15 day of Sept 2011.

Eugene Keith
NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires My Commission Expires April 4, 2016

Signed,
[signature]
Clifford Thompson
#274805
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Columbia, SC 29210

STATE OF SOUTH CAROLINA
In The Court of Appeals

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Clifford Thompson,
Appellant,

v.

State of South Carolina,
Respondent.

Case No.: 201016 1446

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CERTIFICATE OF SERVICE

I, Clifford Thompson, do certify that I have served two (2) copies of the Appeal Final Brief, one on the Clerk of Court of Appeals and one on Respondent State of South Carolina by hand delivering both copies to the Broad River Prison mailroom personnel, postage pre paid for U.S. Mail, this 21 day of July 2011. Mailed after addressed to following:

1) S.C. Court of Appeals
P.O. Box 11629
Columbia, SC 29211

2) Attorney General of SC
Dennis Bldg., Box 11549
Columbia, SC 29211

SWORN and Subscribed before me
this 21st day of July 2011.

Eugene Keith Jr.
NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires: My Commission Expires April 4, 2016

Signed,
[signature]
Clifford Thompson
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