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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

On Petition for Writ of Certiorari to
Beaufort County
Honorable Thomas W. Cooper, Trial Judge
Honorable Robert J. Bonds, PCR Judge

Appellate Case No. 2024-000011

AARON SCOTT YOUNG, JR.,

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT.

**RETURN TO PETITION
FOR A WRIT OF CERTIORARI**

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INDEX

INDEX.....i

QUESTION PRESENTED.....1

STATEMENT OF THE CASE.....2

STANDARD OF REVIEW.....4

ARGUMENT.....5

The PCR court properly found Petitioner’s murder conviction did not violate the ex post facto clause when the murder statute and the theories of liability relied upon by the State predated the offense date, and the application of these preexisting legal theories to murder did not aggravate the offense, alter the State’s burden of proof or the requisite criminal intent, or increase the penalty for murder.

CONCLUSION.....9

QUESTION 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?

RESPONDENT'S COUNTERSTATEMENT OF QUESTION PRESENTED

Did the PCR court properly find Petitioner's murder conviction did not violate the *ex post facto* clause when the murder statute and the theories of liability relied upon by the State predated the offense date, and the application of these preexisting legal theories to murder did not aggravate the offense, alter the State's burden of proof or the requisite criminal intent, or increase the penalty for murder?

STATEMENT OF THE CASE

PROCEDURAL HISTORY

Petitioner is presently confined in the South Carolina Department of Corrections serving an aggregate thirty-year sentence. In October 2014, the Beaufort County Grand Jury indicted Petitioner for murder (2012-GS-07-1932) and attempted murder (2014-GS-07-1940). On February 23, 2015, Petitioner proceeded to a jury trial before the Honorable Thomas W. Cooper. Roberts Vaux, Esquire, represented Petitioner. Solicitor Isaac McDuffie Stone and Deputy Solicitor Sean Thornton prosecuted the case. The jury convicted Petitioner as indicted, and Judge Cooper sentenced him to concurrent sentences of thirty years for each charge.

Petitioner filed a timely notice of appeal, which was perfected by F. Elliotte Quinn, IV, and Jennifer K. Dunlap, Esquires. On appeal, Petitioner argued the trial court erred in denying (1) his motion for a directed verdict on the murder charge because the State's mutual combat theory was not supported by South Carolina law or evidence; (2) his request for a jury charge on the end of mutual combat; and (3) his motion for a directed verdict on attempted murder. The Court of Appeals affirmed all issues on the merits. Petitioner filed a motion to reconsider, which was denied. Petitioner filed a petition for a writ of certiorari in the South Carolina Supreme Court, which was granted. Following argument, the Supreme Court issued an opinion affirming. Notably, the Court held "mutual combat can properly serve as the basis for a murder charge for the death of a non-combatant under the 'hand of one is the hand of all' theory of accomplice liability." See State v. Young, 429 S.C. 155, 166, 838 S.E.2d 516, 521-22 (2020) ("Given the Youngs and Robinson's collective actions in carrying out the gun battle, it is reasonable for the law of mutual combat to serve as the foundation of a murder charge—to hold each one responsible for both his own actions and the actions of the others. Because we find the deadly force used in this case was the result of

collective action, we hold the responsibility for the victim's death was collective as well. Accordingly, we hold Young Jr. was properly charged with the victim's murder under the theory of mutual combat.”); *id.* at 162-65, 838 S.E.2d at 519-21 (examining other jurisdictions and concluding the “aiding and abetting approach” used to establish criminal liability for the death of an innocent bystander in a mutual combat situation “dovetails with [South Carolina’s] ‘hand of one is the hand of all doctrine’”). Petitioner filed a petition for rehearing, which was denied. The remittitur was sent March 12, 2020.

On March 26, 2020, Petitioner filed this application for post-conviction relief (PCR). Respondent filed a return requesting an evidentiary hearing. On March 15, 2023, an evidentiary hearing convened before the Honorable Robert Bonds, Jr. Petitioner was present and represented by Tommy A. Thomas, Esquire. Assistant Attorney General Danielle Dixon represented Respondent. On October 2, 2023, Judge Bonds issued an order denying relief and dismissing the application with prejudice. Petitioner filed a motion to reconsider pursuant to Rule 59(e), SCRE, which was subsequently denied.

STANDARD OF REVIEW

The standard of review for post-conviction relief depends on the specific issue before the appellate court. Smalls v. State, 422 S.C. 174, 810 S.E.2d 836, 839 (2018). When reviewing factual findings, appellate courts defer to the PCR court's factual findings and will uphold them if any probative evidence in the record supports them. Buckson v. State, 423 S.C. 313, 320, 815 S.E.2d 436, 440 (2018); Smalls, 422 S.C. at 180-81, 810 S.E.2d at 839-40. However, pure questions of law will be reviewed *de novo* without deference to the PCR court. Id. Appellate courts will reverse the decision of the PCR court when it is controlled by an error of law. Goins v. State, 397 S.C. 568, 573, 726 S.E.2d 1, 3 (2012).

ARGUMENT

The PCR court properly found Petitioner’s murder conviction did not violate the *ex post facto* clause when the murder statute and the theories of liability relied upon by the State predated the offense date, and the application of these preexisting legal theories to murder did not aggravate the offense, alter the State’s burden of proof or the requisite criminal intent, or increase the penalty for murder.

Petitioner contends the ruling of his direct appeal violated the *ex post facto* clauses of the federal and state 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.” He concedes prior South Carolina jurisprudence had applied mutual combat “to hold a defendant liable for the death of another participant in the mutual combat itself” but contends South Carolina had never applied the doctrine “to hold a defendant accountable for the death of a third-party bystander at the hands of the person whom he was fighting.” However, there was no *ex post facto* elevation of an offense here; Petitioner was indicted for *murder*, and the jury concluded that the State submitted evidence to prove the elements of murder beyond a reasonable doubt. Petitioner now attempts to argue that dicta in a Supreme Court opinion somehow created the new offense of murder. This argument patently lacks merit, and the PCR court properly denied relief.

In a PCR action, an applicant bears the burden of proving the allegations. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). The United States Constitution prohibits states from passing *ex post facto* laws. U.S. Const. Art. I § 10. “[A]n *ex post facto* law ‘is an enactment, criminal or penal in nature, which is retrospective and disadvantages the offender affected by it.’” State v. Huiett, 302 S.C. 169, 171, 394 S.E.2d 486, 487 (1990) (quoting United States v. Mest, 789 F.2d 1069, 1071 (4th Cir.1986), Weaver v. Graham, 450 U.S. 24 (1981)). The following constitute *ex post facto* laws:

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 offense, in order to convict the offender.

Id. at 171, 394 S.E.2d at 487 (quoting Calder v. Bull, 3 U.S. 386, 390 (1798)). A statutory change to the rules of evidence that would allow a conviction “upon less proof . . . than was required when the offense was committed, might, in respect to that offense,” violate the provision against *ex post facto* laws. Hopt v. People, 110 U.S. 574, 590 (1884). However, changes that

do not increase the punishment, nor change the ingredients of the offense or the ultimate facts necessary to establish guilt, but—leaving untouched the nature of the crime and the amount or degree of proof essential to conviction—only removes existing restrictions upon the competency of certain classes of persons as witnesses, relate to modes of procedure only, in which . . . the state . . . may regulate at pleasure.

Id.

The PCR court properly found Petitioner’s murder conviction did not violate the *ex post facto* clause. Initially, the criminal statute for murder and both the doctrines of mutual combat and accomplice liability existed prior to the 2012 incident. See Young, 429 S.C. at 160, 838 S.E.2d at 518 (2020) (“The doctrine of mutual combat has existed in South Carolina since at least 1843 . . .”); State v. Condrey, 349 S.C. 184, 194, 562 S.E.2d 320, 324 (Ct. App. 2002) (“Under the “hand of one is the hand of all” theory, one who joins with another to accomplish an illegal purpose is liable criminally for everything done by his confederate incidental to the execution of the common design and purpose.”).

Further, the application of mutual combat here did not elevate Petitioner’s crime. Petitioner was indicted for and convicted of murder. This is not a situation where he was somehow indicted

for a lesser offense and convicted of a greater offense (which, concededly, would be improper). It is simply incredulous to assert that a theory of liability somehow elevated the charged offense.

Likewise, the PCR court properly found the application of mutual combat was not a law applied retroactively to Petitioner's disadvantage. Mutual combat is a theory of liability; it is not a change in the statutory definition of murder. Although the Supreme Court held that it would "extend our jurisprudence" to use mutual combat and transferred intent to reach the death of innocent bystanders, that extension was based on well-established and pre-existing legal theories. In fact, it was well-established that one engaged in criminal activity was criminally liable for the actions of co-defendants, and actors engaged in mutual combat were "presumed to know and intend the consequences that naturally flow from their unlawful acts." Young, 429 S.C. at 161, 838 S.E.2d at 519. Thus, the application of mutual combat to this set of facts did not violate the *ex post facto* clause.

The PCR court also properly found the application of mutual combat did not alter the State's burden of proof or the requisite criminal intent. Rather, the State's burden remained "beyond a reasonable doubt," and the criminal intent remained malice aforethought. Killing an innocent bystander is a consequence that naturally flows from actors engaged in an ongoing gun battle. Combining the theories of mutual combat and accomplice liability did not alter the State's burden or the requisite criminal intent and thus did not violate the *ex post facto* clause. Finally, the application of mutual combat did not increase the penalty. Based on the foregoing, the PCR court properly found the application of mutual combat did not violate the *ex post facto* clause.

Petitioner acknowledges the doctrine of mutual combat has been used "to hold a defendant liable for the death of another participant in the mutual combat itself" but contends South Carolina had never applied the doctrine "to hold a defendant accountable for the death of a third-party

bystander at the hands of the person whom he was fighting.” See State v. Brown, 108 S.C. 490, 95 S.E.2d 61, 62 (1918). It is incredulous to assert that the application of this doctrine *to an innocent bystander* violates the *ex post facto* clause when this doctrine has been applied to hold a defendant liable for the death of another combatant.

Based on the foregoing, the application of mutual combat to this fact pattern did not violate the *ex post facto* clause. The statute upon which Petitioner was indicted predated the underlying offense, and the theories of liability (mutual combat and accomplice liability) predated the underlying offense. Nothing about this extension was novel or unexpected. Ultimately, the Supreme Court’s decision did not “change the ingredients of [murder] or the ultimate facts necessary to establish guilt.” Hopt, 110 U.S. at 590. Thus, the PCR court properly found Petitioner’s murder conviction did not violate the *ex post facto* clause.

CONCLUSION

Based on the foregoing, this Court should deny the Petition for a Writ of Certiorari.

Respectfully Submitted,

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This 18th day of November, 2024.