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THE STATE OF SOUTH CAROLINA MAY 24 2012
In The Supreme Court

S.C. SUPREME COURT

The State,

Respondent,

v

Albert Clayton Smith, II

Appellant.

Appeal From Orangeburg County
Honorable Edgar W. Dixon

Case No. 2010-CP-38-139

PRO SE BRIEF

151 Albert C. Smith, II

Albert C. Smith, II, 333203

McCormick Correctional Facility

386 Redemption Way

McCormick, South Carolina, 29899

Without Prejudice

UCC 1-103, 1-207, 1-308

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Authorities

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Issues

Did the Trial Court and the P.C.R. Court have jurisdiction to hear the Appellant's case under the ruling of Erie Railroad Co. v. Tompkins?

Did the Appellant receive full benefit of the open plea he was convicted and sentenced under?

Statement

Appellant, Albert Clayton Smith, II, was indicted for murder, armed robbery and possession of a pistol or knife during the commission of a violent crime by the grand jury of Orangeburg County. He was represented by Glen Walters, Esq., of the Orangeburg County Bar. The State was represented by Kelley H. Burbage, of the Orangeburg County Solicitor's Office. Appellant was tried before the Honorable James Williams. Upon an open-guilty-plea, the Appellant was convicted. He was sentenced to forty years for murder and thirty years for armed robbery. A timely Notice of Appeal was filed. *State v Smith*

On January 26, 2010, the Appellant filed an Application for Post Conviction Relief in the Orangeburg County Court of Common Pleas. He was represented by Charles Brooks, III, Esq., of the Orangeburg County Bar. The Respondents were represented by Mary S. Williams, The Honorable Edgar W. Dixon. An evidentiary hearing was held on 20. The issues that were raised before the court were:

- 1) Ineffective Assistance of Counsel, and
- 2) Trial Court lacked complete subject matter jurisdiction where it was not operating in its true jurisdiction under common-law.

The P.C.R. Court dismissed the P.R. Application with prejudice on
A 4th Notice of Appeal was filed with
this Honorable Court, in which this appeal
proceeds.

Issue 1

Did the Trial Court and the P.C.R. Court have jurisdiction to hear the Appellant's case under the ruling of Erie Railroad Co. v. Tompkins?

The Appellant would contend that the Trial Court nor the P.C.R. Court had the jurisdiction to hear his case in the manner that it was presented. The Appellant's case was presented as a criminal case, yet it was tried in a civil jurisdiction. See Erie Railroad Co. v. Tompkins, 304 U.S. 64 (1938); Scott v. Sanford, 60 U.S. 393 (1857)

In Erie, supra, the Federal courts were required to apply state law in diversity cases (i.e., cases in which the litigants are from different jurisdictions). Prior to Erie diversity cases were decided on the basis of what was held to be a kind of federal common law, which consisted of the "laws of the several states" plus federal courts' - not states' - interpretations of those laws (Swift v. Tyson, 41 U.S. 1 (1842)). Supporters of this earlier position

believed that a federal common law was conducive to national development, while opponents claimed that it made roughshod over states' rights. In an unprecedented ruling, Justice Louis D. Brandeis declared the earlier Supreme Court decision (*Swift*) unconstitutional, thus changing the course of diversity proceedings. Henceforth there would be no federal "common law" in diversity cases but only federal application of state laws. *Swift v Tyson*, 41 U.S. 1 (1842)

Under Article 3, 52, to the United States Constitution, there are only three legal jurisdictions of venue that the courts within the jurisdiction of the United States may operate in. They are:

- 1.) Admiralty / Maritime
- 2.) Equity
- 3.) Common Law

Admiralty / Maritime jurisdiction is a civil jurisdiction under international law, which carries criminal penalties for breaches of any international contract which has been clearly established and agreed on between two or more parties.

Equity jurisdiction is a completely civil jurisdiction. There are no criminal penalties in this jurisdiction.

Common Law is strictly a criminal jurisdiction in which all criminal offenses are dealt.

When the United States Supreme Court ruled in Erie, supra, Id. that there would be no more applications of Federal common over the states in 1938. The jurisdictions of Equity and Admiralty/ Maritime became the primary operating jurisdictions for all courts to function in. This ruling also created a new change for the handling of criminal matters. Criminal matters were reclassified as civil matters. See Uniform Commercial Code.

"The Code is complimentary to the Common Law, which remains in force, except where displaced by the Code. A statute should be construed in harmony with the Common Law, unless there is a clear legislative intent to abrogate the Common Law. The Code cannot be read to preclude Common

Law action. 11

Issue 2

Did the Appellant receive full benefit of the open-guilty-plea?

The Appellant would show that he did not receive any type of benefit from the open plea that he was convicted and sentenced up. Appellant contends that, where his case was actually tried in a civil jurisdiction; he was made a party to an adhesion contract without his knowledge.

In order to have valid and enforceable contract, there must be meeting of the minds between the parties with regards to all essential and material terms of the agreement. Player v Chandler, 299 S.C. 101, 382 S.E.2d 871 (SC 1989); Patricia Grand Hotel LLC v. MacGwire Enterprises Inc, 372 SC 634, 643 S.E.2d 692 (S.C. App 2007)

The "meeting of the minds" required to make contract is not based on secret purpose or intention on part of party, stored away in his mind and not brought to the attention of the other party, but must be base of

purpose and intention which has been made known from all the circumstances should be known.

In Chandler v. Aero Mayflower Transit Co., 374 F.2d 129 (1967), the Court ruled that an "Adhesion Contract" is a standard printed form contract offered public by industry so powerful, by reason of franchise or otherwise to effectively impose terms. "Contract of adhesion" is generally thought of as a standard form contract offered on a "take it or leave it" basis with non-negotiable terms. Wingard v. Exxon Co. USA, 819 F.Supp. 497 (DSC 1992)

Appellant argues that had he had fully known that he was being subjected to such a contract, and that he would not receive a lesser sentence. One that would have been less than forty or thirty years. He would not have pleaded to the charges.

The primary function of guilty pleas is to allow an accused an opportunity to deal with the charge(s) brought against him/her, without having to go through the stressful routine of a jury trial, in hopes that a lesser sentence of the maximum

penalty allowed. By the trial court operating in both equity and admiralty/maritime jurisdictions, the Appellant should have received a more favorable benefit in this matter.

Not to mention that the Respondents have not, and cannot, shown that there exist an international contract to which the Appellant is a party to and one that he has breached. See Lee v Travelers Ins Co., 173 S.C. 185, 175 SE 429 (S.C. 1934) "Contract" is agreement between two or more parties, preliminary step in making of which is offered by one and acceptance by other, in which minds of parties meet and concur in understanding of terms. Gaskin v. Blue Cross-Blue Shield of S.C., 271 S.C. 101, 245 SE2d 595 (S.C. 1978) See also U.S. v Ringlin, 980 F2d 504 (4th Cir 1993) Plea bargains rest on contractual principles and each party should receive benefit of the bargain, but plea agreement must be analyzed at more stringent level than a commercial contract since rights involved are generally fundamental and constitutionally based. U.S. v Harvey, 791 F2d 294-299 (4th Cir 1986) We held that interpreting a plea agreement both

Constitutional and supervisory concerns require holding that government to a greater degree of responsibility than the defendant (or possibly than would be either of the parties to a commercial contract for impressions or ambiguities in plea agreements).

Conclusion

Where the Trial Court and P.C.R. Court not operating in their proper jurisdiction and the Appellant not receiving a more favorable benefit. The Appellant would pray that this Honorable Court remand his case to the lower courts for a negotiated plea agreement of a lesser sentence

15/ Albert C. Smith II

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Proof of Service

I, Albert C. Smith, II, 333203, do certify that a copy of the Pro Se Brief has been served on the Honorable Daniel E. Shearouse, Clerk of Court, South Carolina Supreme Court, P.O. Box 11330, Columbia South Carolina, 29211 by depositing said copy into the United States mail by delivering it to the McCormick Correctional Facility Mailroom Clerk on the effective date of May 21st, 2012.

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