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OCT. 17 2013

**S.C. SUPREME COURT**

The State of South Carolina  
In The Supreme Court

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Appeal From Chester Field County  
General Sessions

Howard P. King, Circuit Court Judge

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Appellant Case No. 2011-201487

The State,

Respondent

v.

Billy Lee Lisenby JR,

Petitioner.

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Petition For A Writ of Certiorari

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OCT 17 2013

S.C. SUPREME COURT

Billy Lee Lisenby JR, #200273

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Lee Corr. Inst.



Bishopville S.C. 29010

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## Certificate of Counsel

Petitioner certifies that the Petition For Rehearing was made and finally Ruled on by the Court of Appeals.

### Question(s) Presented

Did the Court of Appeals ~~ERR~~ err in not ruling in Petitioner's favor to grant his Motion TO Reconsider his sentence when Petitioner 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for assault with intent to Kill in 2008, and the Omnibus Crime Reduction and Sentencing Reform Act of 2010 subsequently Repealed the offense of assault with intent to Kill?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, Petitioner Billy Lee Kinsby JR, was indicted by the Chesterfield County Grand Jury for: (A) two counts of assault with intent to kill (AWIX); and (B) failure to stop for a blue light. R. 228-233

On April 21, 2008, Petitioner proceeded to trial before the Honorable Mark Hayes and a jury. R. 1. Petitioner was represented by Patricia Rivera, and the state was represented by Assistant Solicitors Eric Rowell and J.R. Joyner. R. 1. The jury found Petitioner: (A) not guilty on one count of AWIX; (B) guilty on the second count of AWIX; and (C) guilty of failing to stop for a blue light. R. 213, 1. 10-214, 1.3. Judge Hayes then sentenced Petitioner to ten years imprisonment on the AWIX 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. 1-5.

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

On September 19, 2011, the Honorable Howard P. King denied Petitioner's motion to reconsider his sentence. R. 226-227. Petitioner 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 AWIX. See 2010 Act No. 213 § 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 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 2<sup>nd</sup> degree carries a sentence of imprisonment for up to a maximum of (3) years, and Assault and Battery in the 3<sup>rd</sup> 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 underlined 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 legislature's intent or will.

Norman J. Singer, *Sutherland statutory construction* 1 §46.03 AT 94 (5<sup>th</sup> 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, Petitioner was convicted of AWIK and sentenced to ten years imprisonment in 2008. R. 213, 1. 10-222, 2.9. Petitioner 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 Petitioner'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, § 89, 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.

*Storage 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 Steub.) 372, 393-395 (1850); *State v. McCarthy* 1 S.C.L (1 Bay) 334 (1793); *State v. Washington*, 1 S.C.L (1 Bay) 120, 157-158 (1791).

Petitioner 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.

Date: Oct. 9<sup>th</sup> 2013

For the Forgoing Reasons, Petitioner Billy Lee Kisenby JR, requests that the Court Remand this case to the Chesterfield County Court of General Sessions for Rehearing.

Conclusion

Respectfully submitted,

Billy Lee Kisenby JR  
Billy Lee Kisenby JR,  
990 Winkley Hwy, X  
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The State of South Carolina  
In The Supreme Court

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Appeal From Chesterfield County

General Sessions

Howard P. King, Circuit Court Judge

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Appellant Case NO: 2011-201487

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The State,

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v.

Billy Lee Lisenby JR;

Petitioner.

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Certificate of Service

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The Petitioner hereby certifies that a true copy of the Petitioner's Brief has been served upon The Office of The Attorney General P.O. Box 11549 Columbia, S.C. 29211. This day 9<sup>th</sup> of Oct. 2013.

Billy Lee Lisenby JR.  
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