

The Supreme Court of South Carolina

The State, Respondent,

v.

Serria Dawson, Appellant.

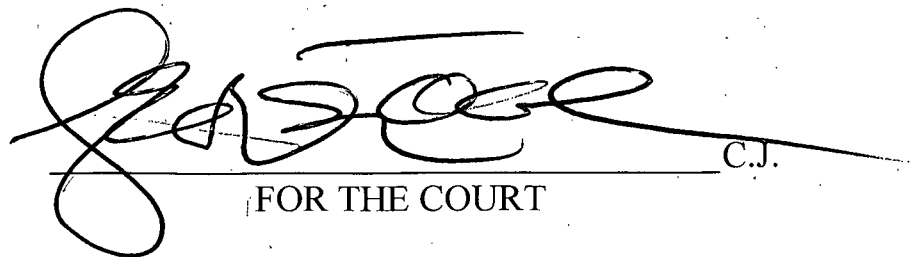
Appellate Case No. 2011-193926

ORDER

Pursuant to Rule 204(b) of the South Carolina Appellate Court Rules, this appeal is hereby certified for review by the South Carolina Supreme Court.

Upon receipt of this order, the Court of Appeals is hereby directed to forward the case file, all records and briefs and any exhibits on file to this Court.

IT IS SO ORDERED.


C.J.
FOR THE COURT

Columbia, South Carolina

July 25, 2012

cc:

Salley W. Elliott

Scarlett Anne Wilson

Mark Reynolds Farthing

Robert M. Pachak

The Honorable Jenny Kitchings

The South Carolina Court of Appeals

The State,

Respondent,

v.

Serria Dawson,

Appellant.

The Honorable Roger M. Young
Charleston County
Trial Court Case No. 2010-GS-10-03567

ORDER

The request for an extension to serve and file Respondent's Initial Brief and Designation of Matter is granted until May 2, 2012. Pursuant to the Supreme Court's order dated March 18, 2009, any further extension request must be based on a showing of good cause.

JOHN CANNON FEW, CHIEF JUDGE

BY *Jenny A. Kitchens*
CLERK

Columbia, South Carolina

cc: Chief Appellate Defender Robert M. Dudek
Assistant Attorney General Mark R. Farthing

FILED

4.10.12 Dw

White, Della

From: COA Extensions
Sent: Tuesday, April 03, 2012 7:23 AM
To: White, Della
Subject: FW: State v. Serria Dawson

1st RLB
4.2.12
5.2.12

From: Ellen DuBois [mailto:EDuBois@scag.gov]
Sent: Monday, April 02, 2012 2:43 PM
To: COA Extensions
Cc: Mark Farthing; FBerry@sccid.sc.gov; rpachak@sccid.sc.gov
Subject: State v. Serria Dawson

Clerk's Office
South Carolina Court of Appeals

RE: State v. Serria Dawson

The Initial Brief of Respondent and Designation of Matter in the above appeal are due to be served April 2, 2012. However, due to a heavy workload, I am requesting a 30 day extension.

This is the **first** extension request in this case, and it is not intended for the purpose of delay. - By copy of this email, I am asking that counsel for Appellant, Robert M. Pachak, Esquire, consent to this extension request.

Sincerely,
Mark R. Farthing
Assistant Attorney General

MRF/erd

White, Della

From: COA Extensions
Sent: Wednesday, April 04, 2012 1:34 PM
To: White, Della
Subject: FW: State v. Serria Dawson

From: Felicia K. Berry [mailto:FBerry@sccid.sc.gov]
Sent: Wednesday, April 04, 2012 10:41 AM
To: Ellen DuBois; COA Extensions
Cc: Mark Farthing; Robert M. Pachak
Subject: RE: State v. Serria Dawson

We consent

Thanks,

Felicia K. Berry

South Carolina Commission on Indigent Defense

Division of Appellate Defense

Post Office Box 11589

Columbia, SC 29211-1589

(803) 734-1330

fax: (803) 734-1397

From: Ellen DuBois [mailto:EDuBois@scag.gov]
Sent: Monday, April 02, 2012 2:43 PM
To: coaextensions@sccourts.org
Cc: Mark Farthing; Felicia K. Berry; Robert M. Pachak
Subject: State v. Serria Dawson

Clerk's Office
South Carolina Court of Appeals

RE: State v. Serria Dawson

The Initial Brief of Respondent and Designation of Matter in the above appeal are due to be served April 2, 2012. However, due to a heavy workload, I am requesting a 30 day extension.

This is the **first** extension request in this case, and it is not intended for the purpose of delay. By copy of this email, I am asking that counsel for Appellant, Robert M. Pachak, Esquire, consent to this extension request.

Sincerely,
Mark R. Farthing
Assistant Attorney General

MRF/erd

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Charleston County
Roger M. Young, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

SERRIA DAWSON,

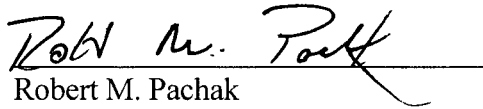
APPELLANT

**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

Appellant proposes the following be included in the Record on Appeal:

- (1) True-billed indictment(s);
- (2) June 2, 2011 transcript
- (3) Memorandum in support of defendant's motion to be sentenced pursuant to the Omnibus Crime Reduction and Sentencing Reform Act of 2010
- (4) Arrest Warrant attached affidavit.

I certify that this designation contains no matter which is irrelevant to this appeal.
February 17th, 2012


Robert M. Pachak
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Charleston County
Roger M. Young, Circuit Court Judge

THE STATE,

RESPONDENT,

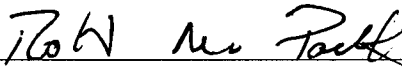
V.

SERRIA DAWSON,

APPELLANT

CERTIFICATE OF SERVICE


The undersigned attorney hereby certifies that a true copy of the Initial Brief of Appellant and Designation of Matter in the above referenced case has been served upon Salley W. Elliott, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; 17th day of February, 2012.



Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 17th day of February, 2012.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: June 21, 2020 .

 ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Charleston County

Roger M. Young, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

SERRIA DAWSON,

APPELLANT

INITIAL BRIEF OF APPELLANT

ROBERT M. PACHAK
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT

RECEIVED
FEB 17 2012
SC Court of Appeals

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TABLE OF AUTHORITIES

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STATEMENT OF ISSUES ON APPEAL

Whether the plea court erred in denying defense counsel's motion to sentence appellant under the newly enacted Omnibus Crime Reduction and Sentencing Reform Act of 2010?

STATEMENT OF THE CASE

On June 2, 2011, appellant appeared before the Honorable Roger M. Young in Charleston County and pled guilty to breach of trust between \$1,000 and \$5,000. She was sentenced under the Youthful Offender Act to a suspended sentence with five (5) years probation plus restitution.

This appeal follows.

ARGUMENT

The plea court erred in denying defense counsel's motion to sentence appellant under the newly enacted Omnibus Crime Reduction and Sentencing Reform Act of 2010.

Appellant was accused of taking from her employer, Wal-Mart, \$1,171.55 between the dates of October 9, 2009 to October 29, 2009. On June 2, 2010, the Breach of Trust law penalties changed in South Carolina under the "Omnibus Crime Reduction and Sentencing Reform Act of 2010" ("the Act").¹ Under the Act sentences were mitigated and appellant's dollar amount since it was under \$2,000 would only subject her up to a 30 day sentence. S.C. Code Ann. §16-13-230 (B) (1) (2010). Under the Act in effect at the time the crimes were committed she would face up to 5 years of incarceration. S.C. Code Ann §16-13-230 (B) (2) (2009). The question becomes is whether defendants with pending charges should receive the benefit of the mitigated penalty under the Act passed in 2010.

In State v. Baucom, 340 S.C. 339, 531 S.E.2d 922 (2000) the Court noted the following:

The cardinal rule of statutory construction is to ascertain and effectuate the legislative intent whenever possible. Strother v. Lexington County Recreation Comm'n, 332 S.C. 54, 504 S.E.2d 117 (1998). "All rules of statutory construction are subservient to the one that the 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." Kiriakides v. United Artists Communications, Inc., 312 S.C. 271, 275, 440 S.E.2d 364, 366 (1994).

340 S. C. at 923, 531 S.E.2d at 342.

¹ The bulk of this argument comes from appellant's Memorandum that was submitted to the lower court prior to sentencing.

In that same case, the Court further noted that “penal statutes are to be strictly construed against the State and in favor of the defendant. 340 S.C. at 344, 531 S.E.2d at 924, citing, State v. Blackmon, 304 S.C. 270, 273, 403 S.E. 2d 660, 662 (1991).

Legislative intent in this case is not difficult to determine. The Act notes its purpose in Section 1 as follows:

This bill may be cited as the “Omnibus Crime Reduction and Sentencing Reform Act of 2010.” It is the intent of the General Assembly to preserve public safety, reduce crime, and use correctional resources most effectively. Currently, the South Carolina correctional system incarcerates people whose time in prison does not result in improved behavior and who often return to South Carolina communities and commit new crimes, or are returned to prison for violations of supervision requirements. It is, therefore, the purpose of this act to reduce recidivism, provide fair and effective sentencing options, employ evidence-based practices for smarter use of correctional funding, and improve public safety.

It is clear that the legislative intent is to reduce the amount of time some prisoners are incarcerated when less serious crimes are involved.

The Act in this case does have a savings clause in Section 65 which reads as follows:

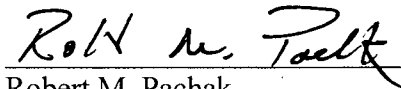
The repeal or amendment by the provisions of this act or any law, whether temporary or permanent or civil or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon, or alter, discharge, release, or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective dated of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.

It is not clear from the savings clause if it applies to an amendment that only substitutes one penalty for another as that is not a substantive change. Also, as stated previously the legislature's clear intent behind the Act is to save money in the criminal justice system with respect to sentencing alternatives and reductions. A change in sentencing does not impair the State's power to prosecute. In fact, when a new statute changes punishment a savings clause is not necessary. State v. Gilliam, 208 S.C. 126, 37 S.E. 2d 299 (1946). Case law is in accord with the view that appellant should be sentenced under the Act's less onerous sentencing scheme. In State v. Varner, 310 S.C. 264, 423 S.E. 2d 133 (1992) the Court held that "a criminal defendant receives the benefit of punishment mitigated by legislative amendment... when the amendment becomes effective before sentence is pronounced." (emphasis supplied). The Act in this case became effective a full year before appellant was sentenced. The Act also became effective before appellant was even indicted.

CONCLUSION

In light of the legislature's clear intent, the maxim that criminal laws are to be construed in favor of defendant, and prior case law, appellant should have the benefit of sentencing under the Act.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Robert M. Pachak", written over a horizontal line.

Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

This 17th day of February, 2012.



ALAN WILSON
ATTORNEY GENERAL

February 25, 2012

Robert M. Pachak, Esquire
South Carolina Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, South Carolina 29201-1589

Re: The State v. Serria Dawson

Dear Mr. Pachak :

This letter is to confirm that our office received Appellant's Initial Brief and Designation of Matter in the above-referenced case and to advise you that I will be representing the State in this appeal. Please forward all future correspondence regarding this matter directly to me.

I look forward to working with you on this case.

Sincerely,

Mark R. Farthing
Assistant Attorney General

MRF/erd

cc: ~~The Honorable Tanya A. Gee~~
Victim Services

RECEIVED

FEB 29 2012

SC Court of Appeals



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

Division of Appellate Defense
1330 Lady Street, Suite 401
Columbia, South Carolina 29201-3332

Post Office Box 11589
Columbia, South Carolina 29211-1589
Telephone: (803) 734-1343
Facsimile: (803) 734-1397

Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender

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DEC 28 2011

SC Court of Appeals

December 28, 2011

The Honorable Tanya A. Gee
Clerk, S.C. Court of Appeals
PO Box 11629
Columbia, SC 29211

Dear Ms. Gee:

The following case falls under the 60 day rule for appeals, and the date we received the transcript is listed to the side.

The State v. Serria Dawson

12/22/2011

I would appreciate you beginning our time limits from the above date, and if you need additional information, or have any questions please contact me.

Thank you for your assistance in this matter.

Sincerely,

Loriene French
Legal Services Coordinator



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

Division of Appellate Defense
1330 Lady Street, Suite 401
Columbia, South Carolina 29201-3332
Post Office Box 11589
Columbia, South Carolina 29211-1589
Telephone: (803) 734-1330
Facsimile: (803) 734-1387

Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender

October 19, 2011

RECEIVED

OCT 19 2011

SC Court of Appeals

Ms. Anne Bouley Meyer
Circuit Court Reporter
P O Box 12093
Charleston, SC 29422

Dear Ms. Meyer:

Please provide us with the following transcript:

The State v. Serria Dawson

Case #:

10-GS-10-03567.

County: Charleston

Date of Trial: June 2, 2011

Presiding Judge: Roger M. Young

To ensure prompt payment, please sign and complete the enclosed CID FORM 3500 and include the original criminal case number (Indictment number) where the space is provided.

Please number the lines on the paper from 1-25, and include any and all recorded motions, pre and post-trial. Additionally, please transcribe the jury selection, and the State and defense counsel's opening and closing arguments.

If you are aware of any co-defendants or if the Attorney General's Office has already requested a transcript, please let us know.

Sincerely,


Lorie French
Legal Services Coordinator

cc: S.C. Court of Appeals
Attorney General's Office



The South Carolina Court of Appeals

TANYA A. GEE
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX (803) 734-1839
www.sccourts.org

October 12, 2011

Chief Appellate Defender Robert M. Dudek
South Carolina Commission
on Indigent Defense
P O Box 11589
Columbia, SC 29211

Re: The State v. Dawson, Serria
2011193926

Dear Counsel:

Please be advised this is an appeal from a guilty plea and will be allowed to go forward. The transcript must be ordered on or before November 11, 2011.

You must provide this Court, opposing counsel, and the Office of Court Administration with all correspondence regarding the transcript. It is also Appellant's responsibility to make satisfactory arrangements (including agreement regarding payment for the transcript) with the Court Reporter for furnishing the transcript. You are reminded of the notification requirements of Rule 207(e), SCACR, also, please advise the Court in writing upon receipt of the transcript.

Very truly yours,

V. Claire Allen
DEPUTY CLERK

VCA/dw

cc: Mary Alison Ford, Esquire
Assistant Deputy Attorney General Salley W. Elliott
Natasha D. Chisolm, Esquire

NINTH CIRCUIT PUBLIC DEFENDER
BERKELEY & CHARLESTON COUNTY

O.F. WALLACE COUNTY OFFICE BUILDING
101 MEETING STREET, 5th FLOOR
CHARLESTON, SC 29401-2214
(843) 958-1850
(843) 958-1860 (fax)
publicdefender@charlestoncounty.org

August 24, 2011

Serria Dawson
1137 Coakley Road
MT. Pleasant, SC 29466

RE: State vs. Serria Dawson
Indictment No.: 2010GS1003567

Dear Ms. Dawson:

Please find enclosed a copy of the Rule 203(d)(1)(B)(iv) Explanation that was filed in connection with the Notice of Appeal in your case. As instructed by the South Carolina Court of Appeals, please provide a written statement within *twenty* (20) days of the date of this letter with regard to any arguable basis of the issues preserved for the aforementioned appeal.

Please mail your written statement to the South Carolina Court of Appeals at the following address:

PO Box 11629,
Columbia, South Carolina 29211

Should you have any questions, please do not hesitate to call me.

Sincerely,

Mary A Ford
Assistant Public Defender

cc: Tanya A. Gee, Clerk
South Carolina Court of Appeals

RECEIVED
AUG 25 2011
SC Court of Appeals

D. Ashley Pennington, Esquire
Ninth Circuit Public Defender

Lorelle D. Proctor, Esquire
Deputy Public Defender

STATE OF SOUTH CAROLINA)
)
IN THE COURT OF APPEALS)
)
State of South Carolina,)
)
-vs-)
)
Serria Dawson,)
)
Defendant.)
)

Indictment No.: 2010GS1003567

NOTICE OF APPEAL

RULE 203(d)(1)(B)(iv) EXPLANATION

Appellant pled guilty to Breach of Trust, Value More Than \$1000 But Less Than \$5000, on June 2, 2011. However, she is appealing the sentence received as a result of this guilty plea.

The Appellant wants to appeal the decision of the judge, The Honorable Roger Young, denying her motion to sentence her under the Omnibus Crime Reduction and Sentencing Reform Act ("Act"). Although Appellant was charged before the Act went into effect, her plea occurred after the Act's passing. While the Act includes a savings clause, Appellant argued that said savings clause did not cover amendments to laws merely affecting sentencing. Had the Act's sentencing ranges been applied to Appellant, she could not have received a sentence of more than 30 days in jail. However, instead she received a sentence of a Youthful Offender Act, suspended upon probation for five years.

Appellant submitted a memo detailing the reasons why the Act should apply to her case. However, the judge denied Appellant's motion during her guilty plea.

RECEIVED
AUG 25 2011
S.C. COURT of APPEALS

Respectfully submitted,

Mary A. Ford
101 Meeting Street
Fifth Floor
Charleston, SC 29401
(843) 958-1850

ATTORNEY FOR SERRIA DAWSON

Charleston, South Carolina

June 13, 2011



The South Carolina Court of Appeals

TANYA A. GEE
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX (803) 734-1839
www.sccourts.org

August 16, 2011

Mary Alison Ford, Esquire
Charleston County Public Defender's Ofc.
101 Meeting St., 5th Floor
Charleston, SC 29401

Re: The State v. Dawson, Serria
2011193926

Dear Ms. Ford:

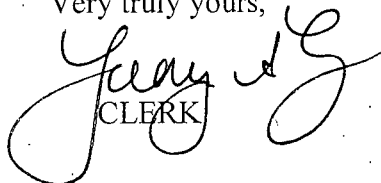
This is our second request.

Please forward your Rule 203(d)(1)(B)(iv) letter to your client, along with a statement that he has twenty (20) days from the date of your transmittal letter to inform this Court in writing of any arguable basis that there are issues preserved for appeal. Please provide him with the Court's address:

South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

Please send your letter to your client within ten (10) days, with a copy to this office. Thank you very much.

Very truly yours,


CLERK

TAG/dw

cc: Chief Appellate Defender Robert M. Dudek
Assistant Deputy Attorney General Salley W. Elliott
Natasha D. Chisolm, Esquire



The South Carolina Court of Appeals

TANYA A. GEE
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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June 21, 2011

Mary Alison Ford, Esquire
Charleston County Public Defender's Ofc.
101 Meeting St., 5th Floor
Charleston, SC 29401

Re: The State v. Dawson, Serria
2011193926

Dear Ms. Ford:

We have received your Notice of Appeal in the case noted above. This case will be docketed in the Court of Appeals and all communications concerning this case, including motions and petitions, initial and final briefs, and the Record on Appeal, should be directed to and filed in this Court. For all filings, please note the requirements of Rule 267(a) of the South Carolina Appellate Court Rules, and be further advised that Court of Appeals policy requires the firm name of any counsel shown must be included in his or her address.

Please be advised that pursuant to Rule 602, SCACR and the order of the Chief Justice dated December 12, 1997, if you expect the Office of Indigent Defense to pursue this appeal, you must provide that office with all information required to proceed with this appeal, failing which, this office will consider you counsel of record.

Since this is an appeal from a guilty plea the timelines for ordering the transcript are held in abeyance.

We suggest that large parcels such as copies of final briefs and the Record On Appeal be sent directly to the Court via the street address: 1015 Sumter Street, Columbia, S.C. 29201. Thank you for your attention to this. Failure to file in the proper court may result in the dismissal of your appeal.

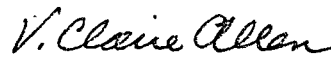
PLEASE BE ADVISED that, pursuant to Rule 207 of the South Carolina Appellate Court Rules, the transcript must be ordered within thirty (30) days of the proof of service of the Notice of Appeal and you must provide this Court, opposing counsel, and the Office of Court

Administration with a response regarding the transcript. It is also Appellant's responsibility to make satisfactory arrangements (including agreement regarding payment for the transcript) with the Court Reporter for furnishing the transcript. You are reminded of the notification requirements of Rule 207(a)(5), SCACR, also, please advise the Court in writing upon receipt of the transcript.

NOTE: If you believe this case has been improperly filed in the Court of Appeals, by reason of the limitations set forth in S.C. Code Ann. Section 14-8-200(b)(1998), as amended June 1, 1999, notify the Clerk's office of the Court of Appeals immediately. The cited Code Section prohibits the Court of Appeals from hearing appeals in seven classes of cases:

- 1) any final judgment from the circuit court which includes a sentence of death;
- 2) any final judgment from the circuit court setting public utility rates pursuant to Title 58;
- 3) any final judgment involving a challenge on state or federal grounds to the constitutionality of a state law or county or municipal ordinance where the principal issue is the constitutionality of the law or ordinance;
- 4) any final judgment from the circuit court involving the authorization, issuance, or proposed issuance of general obligation debt, revenue, institutional, industrial, or hospital bonds of the state, its agencies, political subdivisions, public service districts, counties, and municipalities or any other indebtedness now or hereafter authorized by Article X of the Constitution of this state;
- 5) any final judgment from the circuit court pertaining to elections and election procedure;
- 6) any order limiting an investigation by a State Grand Jury under S.C. Code Ann. Section 14-7-1630;
- 7) any order of the family court relating to an abortion by a minor under S.C. Code Ann. Section 44-41-33.

Very truly yours,



V. Claire Allen
DEPUTY CLERK

VCA/dw

cc: Chief Appellate Defender Robert M. Dudek
Assistant Deputy Attorney General Salley W. Elliott
Natasha D. Chisolm, Esquire



The South Carolina Court of Appeals

TANYA A. GEE
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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www.sccourts.org

June 21, 2011

Mary Alison Ford, Esquire
Charleston County Public Defender's Ofc.
101 Meeting St., 5th Floor
Charleston, SC 29401

Re: The State v. Dawson, Serria
2011193926

Dear Ms. Ford:

This office has received your Notice of Appeal in the above matter. It has been assigned the Case Tracking Number that appears above. Please use this number on all future correspondence relating to this matter.

I do wish to call the attention of the parties to the attached order relating to the inclusion of personal data identifiers and other sensitive information in documents filed with the Supreme Court of South Carolina and the South Carolina Court of Appeals. Please note that the responsibility for insuring that information is redacted or sealed as required by this order rests with counsel and the parties. This office will not review filings for redaction or to determine if materials should be sealed.

Very truly yours,

V. Claire Allen
DEPUTY CLERK

VCA/dw

cc: Chief Appellate Defender Robert M. Dudek
Assistant Deputy Attorney General Salley W. Elliott
Natasha D. Chisolm, Esquire

STATE OF SOUTH CAROLINA)
)
IN THE COURT OF APPEALS)
)
)
State of South Carolina,)
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-vs-)
)
Serria Dawson,)
)
Defendant.)
_____)

Indictment No.: 2010GS1003567

NOTICE OF APPEAL

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JUN 14 2011
SC Court of Appeals

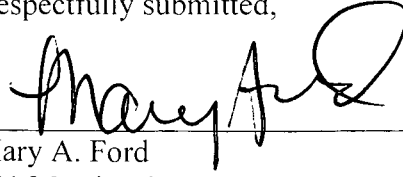
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Appellant submitted a memo detailing the reasons why the Act should apply to her case. However, the judge denied Appellant's motion during her guilty plea.

Respectfully submitted,



Mary A. Ford
101 Meeting Street
Fifth Floor
Charleston, SC 29401
(843) 958-1850

ATTORNEY FOR SERRIA DAWSON

Charleston, South Carolina

June 13, 2011

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM CHARLESTON COUNTY
Court of General Sessions

The Honorable Roger Young, Presiding Judge

INDICTMENT NO.: 2010GS1003567
WARRANT NO.: 1111652

2011193926
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JUN 14 2011

SC Court of Appeals

POS 6-13-11
PM 6-13-11

STATE OF SOUTH CAROLINA, RESPONDENT

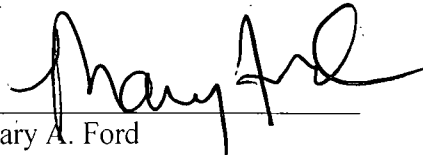
vs.

SERRIA DAWSON, APPELLANT

NOTICE OF APPEAL

Defendant appeals the sentence of the Honorable Roger Young, Presiding Judge, Ninth Judicial Circuit, dated June 2, 2011. As a result of the defendant's plea, she was sentenced to a Youthful Offender Act, suspended upon probation. Defendant had moved to be sentenced according to the law in effect at the time of her sentencing, but this motion was denied.

After consultation, the defendant has requested an appeal of her sentencing.



Mary A. Ford
Attorney for Serria Dawson
Charleston County Public Defender's Office
101 Meeting Street, Suite 500
Charleston, SC 29401

Other counsel of record are:
Natasha Chisolm, Assistant Solicitor
Office of the Solicitor, Ninth Judicial Circuit
O.T. Wallace County Office Building
101 Meeting Street
Charleston, SC 29401
(843) 958-1900

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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APPEAL FROM CHARLESTON COUNTY
Court of General Sessions

The Honorable Roger Young, Presiding Judge

INDICTMENT NO.: 2010GS1003567

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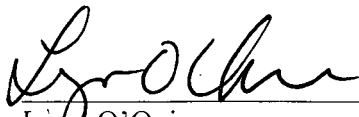
STATE OF SOUTH CAROLINA, RESPONDENT

vs.

SERRIA DAWSON, APPELLANT

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on the Charleston County Clerk of Court, by hand delivering a copy of it to the Charleston County Clerk of Court located at 100 Broad Street, Charleston, South Carolina 29401, on June 13, 2011.



Lynn O'Quinn
Paralegal to Attorney Mary A. Ford
Charleston County Public Defender
O. T. Wallace County Office Building
101 Meeting Street
Charleston, SC 29401
(843) 958-1850

Dated: 6/13/11, 2011.

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED
JUN 14 2011
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APPEAL FROM CHARLESTON COUNTY
Court of General Sessions

The Honorable Roger Young, Presiding Judge

INDICTMENT NO.: 2010GS1003567

WARRANT NO.: I111652

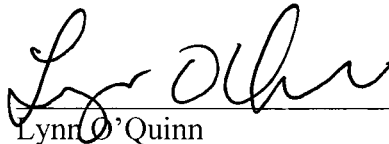
STATE OF SOUTH CAROLINA, RESPONDENT

vs.

SERRIA DAWSON, APPELLANT

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on Natasha Chisolm, Assistant Solicitor for Charleston County, by hand delivering a copy of it to the Charleston County Solicitor's Office at 101 Meeting Street, Charleston, South Carolina 29401, on June 13, 2011.



Lynn O'Quinn
Paralegal to Attorney Mary A. Ford
Charleston County Public Defender
O. T. Wallace County Office Building
101 Meeting Street
Charleston, SC 29401
(843) 958-1850

Dated: 6/13, 2011.

STATE OF SOUTH CAROLINA)
 COUNTY OF Charleston)
 STATE Sierra VS.)
SIERRA DAWSON)
 AKA:)
 Race: BLACK Sex: F Age: 25)
 DOB: 10-14-1985 SS#:)
 Address: COAKLEY RD)
 City, State, Zip: MT PLEASANT, SC 294660000)
 DL#: 100480205 SID#:)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2010GS1003567
 A/W#: 1111652
 Date of Offense: 11/5/2009
 S.C. Code §: 16-13-0260 (2)
 CDR Code #: 0532

RECEIVED

JUN 14 2011

SENTENCE SHEET **SC Court of Appeals**

*CDL Yes No CMV Yes No Hazmat Yes No
 In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS
 TO: Breach / Breach of trust, obtaining property under false tokens, value more than \$1,000, but less than \$5,000

in violation of § 16-13-0260 (2) of the S.C. Code of Laws, bearing CDR Code # 0532
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC §17-25-45
 w/minor 1st or Lewd Act)

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. (defendant's initials)
 The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: Chisolm, Natasha 78426 SC Bar# Sierra Dawson Defendant Mary Ann Attorney for Defendant 13771 SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
 for a determinate term of _____ days/months/years or under the Youthful Offender Act not to exceed 6 years
 and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
 of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for 5

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
 probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on:
 The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
 by the State Department of Corrections.
 The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
 Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP
 Total: \$ _____ plus 20% fee: \$ _____

_____ days/hours Public Service Employment

Payment Terms: _____
 Set by SCDPPPS SC Order

Obtain GED
 Attend Voc. Rehab. or Job Corp. _____

Recipient: _____

May serve W/E beginning _____
 Substance Abuse Counseling

*Fine:		\$
§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$ 500.00
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)		\$ 18.90
TOTAL		\$ 1248.90

Random Drug/Alcohol testing
 Fine may be pd. in equal, consecutive weekly/monthly
 pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund
 Other: _____

Appointed PD or appointed other counsel,
 § 47.12 requires \$500 be paid to Clerk
 during probation.

Clerk of Court/ Deputy Clerk Whitney Lockins
 Court Reporter: Anne M...
 SCCA/217 (03/2011)

Presiding Judge _____
 Judge Code: 2134
 Sentence Date: 6/5/11

**CHARLESTON COUNTY PUBLIC DEFENDER
O. T. WALLACE COUNTY OFFICE BUILDING
101 MEETING STREET
CHARLESTON, SOUTH CAROLINA 29401**

(843) 958-1850

FAX (843) 958-1860

June 13, 2011

RECEIVED
JUN 14 2011

The Honorable Kenneth A. Richstad
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

SC Court of Appeals

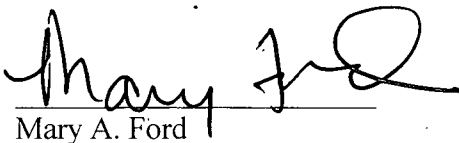
Re: State of South Carolina vs. Serria Dawson
Case No.: 2010GS1003567
Warrant No.: 1111652
Charge: Breach of Trust > \$1000

Dear Mr. Richstad:

Enclosed is the Notice of Intent to Appeal in the above-referenced case, together with appropriate Proof of Service upon the Circuit Solicitor and Proof of Filing with the local Clerk of Court. The Defendant-Appellant was represented by our office as an indigent, pursuant to the Defense of Indigents Act. By copy of this letter, I am forwarding a duplicate set of these documents to the South Carolina Commission of Appellate Defense.

As proof of filing for my records, I would appreciate it if one of your Clerks would clock the enclosed copy of this letter and return it to me in the envelope I have provided. Thank you.

Sincerely,



Mary A. Ford
Attorney for Serria Dawson
Charleston County Public Defender's Office
101 Meeting Street, Suite 500
Charleston, SC 29401

Enclosure(s): As stated above

cc: South Carolina Commission of Appellate Defense

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Charleston County
Honorable Roger M. Young, Sr., Circuit Court Judge

THE STATE,

Respondent,

vs.

SERRIA DAWSON,

Appellant.

**DESIGNATION OF MATTER
TO BE INCLUDED IN THE RECORD ON APPEAL**

In addition to the matter designated by Appellant, Respondent proposes the following to be included in the Record on Appeal:

- (1) Sentencing Sheet; and**
- (2) Arrest Warrant.**

To facilitate the preparation of the Final Brief, Respondent requests that counsel for Appellant retain the page numbers of the trial transcript in the Record on Appeal, in addition to the new page numbers.

The undersigned hereby certifies this Designation contains no matter which is irrelevant to this appeal.


ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

MARK R. FARTHING
Assistant Attorney General

SCARLETT A. WILSON
Solicitor, Ninth Judicial Circuit

BY: 
Mark R. Farthing

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

April 4, 2012

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Charleston County
Honorable Roger M. Young, Sr., Circuit Court Judge

THE STATE,

Respondent,

vs.

SERRIA DAWSON,

Appellant.

PROOF OF SERVICE

I, Ellen R. DuBois, certify that I have served the within Initial Brief of Respondent and Designation of Matter on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Robert M. Pachak, Esquire
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, SC 29211

I further certify that all parties required by Rule to be served have been served.
This 4th day of April, 2012.

Ellen R. DuBois

ELLEN R. DuBOIS

Legal Assistant

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

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APR 04 2012

SC Court of Appeals



ALAN WILSON
ATTORNEY GENERAL

April 4, 2012

Robert M. Pachak, Esquire
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, SC 29211

RE: State v. Serria Dawson

Dear Mr. Pachak:

I am enclosing two (2) copies of the Initial Brief of Respondent and Designation of Matter in the above-referenced case.

Sincerely,

Mark R. Farthing
Assistant Attorney General

MRF/erd
Enclosures

cc: Honorable Jenny A. Kitchings (original and one enclosed)
Victim Services

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APR 04 2012

SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Charleston County
Honorable Roger M. Young, Sr., Circuit Court Judge

THE STATE,

Respondent,

vs.

SERRIA DAWSON,

Appellant.

INITIAL BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

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Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

MARK R. FARTHING
Assistant Attorney General

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ATTORNEYS FOR RESPONDENT

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APR 04 2012

SC Court of Appeals

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Cases:

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STATEMENT OF ISSUE ON APPEAL

The plea judge properly declined to sentence Appellant under the Omnibus Crime Reduction and Sentencing Reform Act of 2010 because Appellant's underlying criminal offense was committed before the effective date of the act and the act contained a savings clause, which precluded retroactive application of the enacted changes and required the plea judge to sentence Appellant under the statute in effect at the time of her crime.

STATEMENT OF THE CASE

In January of 2010, Appellant Serria Dawson was arrested following an investigation into false refunds made at her place of employment. On June 8, 2010, the Charleston County grand jury indicted Appellant for one counts of breach of trust in an amount between \$1,000 and \$5,000. On June 2, 2011, Appellant entered a guilty plea to the indicted offense in the Charleston County court of general sessions before the Honorable Roger M. Young, Sr., circuit court judge. The plea judge accepted Appellant's guilty plea and sentenced her to a sentence under the Youthful Offender Act, which was suspended upon completion of five years of probation, while ordering her to pay restitution to her victim. Additionally, the plea judge ordered Appellant's probation to be terminated upon payment of restitution. Appellant then filed a timely notice of appeal.

STATEMENT OF FACTS

On June 2, 2011, Appellant Serria Dawson appeared in the Charleston County court of general sessions to plead guilty to a charge of breach of trust in an amount between \$1,000 and \$5,000. (Tr. p. 2). During the plea colloquy, Appellant indicated she understood she was facing a maximum potential sentence of a five-year term of imprisonment for the offense. (Tr. p. 2). Appellant further confirmed she understood her rights, wished to waive those rights, and wanted to plead guilty to the indicted offense because she was actually guilty. (Tr. p. 2). Following Appellant's admission of guilt, the plea judge accepted the guilty plea. (Tr. pp. 3-4).

After the plea was accepted, the solicitor recounted the facts related to the indicted charge. (Tr. p. 4). On October 26, 2009, Appellant was observed making false refunds to an accomplice at her place of employment, and the transaction was recorded on surveillance footage. (Tr. p. 4). Thereafter, on November 5, 2009, Appellant gave a written confession to her employer and also confessed to a police officer after waiving her rights. (Tr. p. 4). In her confession, Appellant admitted to using false receipts to facilitate false refunds of merchandise approximately two to three times a week over the course of two to three months. (Tr. p. 4). Appellant admitted approximately \$5,000 was illegally misappropriated during the scheme, and she identified an accomplice who participated in the crime. (Tr. p. 4). The solicitor stated Appellant's employer was requesting \$1,698 in restitution and \$300 in restitution had already been paid. (Tr. p. 4).

Following the recitation of the facts of the crime by the solicitor, defense counsel asked that Appellant be sentenced under the Youthful Offender Act and asserted:

Just for the record, you know, because she has no record I just feel like we needed to ask that she be sentenced under the new law based on what my memo said. I don't believe – there is a savings clause, but I don't think it

clearly saves every single part of the whole act. There are many different parts of the act with different start dates and everything. And I don't believe the language is clear as stated.

(Tr. p. 5). Prior to the plea hearing, defense counsel filed a motion arguing Appellant should be sentenced under the Omnibus Crime Reduction and Sentencing Reform Act of 2010. (Memorandum in Support of Motion, filed June 2, 2011). In the motion, defense counsel conceded Appellant committed the charged offense prior to the effective date of the new act while further conceding the act expressly contained a savings clause. (Memorandum in Support of Motion, filed June 2, 2011). However, defense counsel asserted the savings clause did not apply to sentencing amendments enacted by the new legislation because those changes were allegedly not substantive in nature and did not impair prosecution and because the language of the savings clause was allegedly ambiguous as to its intended efficacy. (Memorandum in Support of Motion, filed June 2, 2011). Defense counsel further argued Appellant should be sentenced under the new act because the intent of the act was to save money. (Memorandum in Support of Motion, filed June 2, 2011). For those reasons, defense counsel argued Appellant should be sentenced under the new act and should only be facing a maximum sentence of a thirty-day term of incarceration. (Memorandum in Support of Motion, filed June 2, 2011).

As the conclusion of the plea hearing, the plea judge sentenced Appellant to a sentence under the Youthful Offender Act, which was suspended upon the completion of five years of probation. (Tr. p. 5). Furthermore, the plea judge ordered the probation to be terminated upon Appellant's payment of restitution to the victim. (Tr. p. 5). The plea judge also specifically denied Appellant's motion to be sentenced under the new act. (Tr. p. 5).

ARGUMENT

The plea judge properly declined to sentence Appellant under the Omnibus Crime Reduction and Sentencing Reform Act of 2010 because Appellant's underlying criminal offense was committed before the effective date of the act and the act contained a savings clause, which precluded retroactive application of the enacted changes and required the plea judge to sentence Appellant under the statute in effect at the time of her crime.

Appellant contends the plea judge erred in refusing to sentence her under the statute in effect at the time she pled guilty. Appellant maintains she was entitled to be sentenced to the reduced penalty authorized by the Omnibus Crime Reduction and Sentencing Reform Act of 2010 ("the Act"), which took effect after Appellant committed her crime, despite the fact the Act specifically contained a savings clause precluding retroactive application of the amendments. Contrary to Appellant's contentions, the plea judge properly declined to sentence Appellant under the newly-amended statute in effect at the time she pled guilty. Based on the plain language of the savings clause contained in the Act, the General Assembly expressed a clear intent that any amendments enacted by the legislation be applied prospectively unless otherwise expressly stated. Accordingly, because the Act's provision amending the statute violated by Appellant did not contain express language requiring retroactive application of the amendments, the amendments to the statute did not apply retroactively to Appellant's case. Appellant's conviction and sentence should be affirmed.

The crime of breach of trust with fraudulent intent is a statutory offense. See S.C. Code Ann. § 16-13-230(A) (2003) ("A person committing a breach of trust with a fraudulent intention or a person who hires or counsels another person to commit a breach of trust with a fraudulent intention is guilty of larceny."). A breach of trust is committed when a person unlawfully misappropriates the lawfully-obtained property of another with

the fraudulent intent to deprive that person of their property. State v. Scott, 330 S.C. 125, 130, 497 S.E.2d 735, 738 (Ct. App. 1998). The penalty a defendant is faced with upon conviction for a breach of trust is dependent upon the amount of property stolen during the crime. S.C. Code Ann. § 16-13-230(B) (2003). At the time Appellant committed the underlying offense, a breach of trust involving property valued at “more than one thousand dollars but less than five thousand dollars” was classified as a felony and was punishable by a term of imprisonment of not more than five years or a fine. S.C. Code Ann. § 16-13-230(B)(2) (2003). However, prior to Appellant’s guilty plea, the legislature amended Section 16-13-230 and altered the property values required to trigger the various levels of the offense along with the potential sentences that could be imposed upon conviction for those different levels. See Act No. 273, § 16.N, 2010 S.C. Acts & Joint Resolutions (amending S.C. Code Ann. § 16-13-230(B)). Accordingly, at the time Appellant entered her guilty plea, a breach of trust involving property valued at “two thousand dollars or less” was classified as a misdemeanor and was punishable by a fine not exceeding \$1,000 and a term of imprisonment not exceeding thirty days. S.C. Code Ann. § 16-13-230(B)(1) (Supp. 2010).

Following a conviction, the common law requires a sentencing judge to punish the convicted individual under the statute in effect at the time of sentencing, unless the punishment is greater than the punishment provided for when the offense was committed or, most critically, unless a controlling statute directs otherwise. State v. Varner, 310 S.C. 264, 265, 423 S.E.2d 133, 133 (1992); see also Pierce v. State, 338 S.C. 139, 148, 526 S.E.2d 222, 226 (2000) (“[A] prosecution for an offense occurring prior to the effective date of [an act amending an earlier statute] should proceed under the former statute.”). For this reason, a criminal defendant receives the benefit of punishment

mitigated by legislative amendment only when the amendment becomes effective before sentence is pronounced **and** a controlling statute does not prohibit retroactive application of the amendment. See Varner, 310 S.C. at 265, 423 S.E.2d at 133 (“**In the absence of a controlling statute**, the common law requires that a convicted criminal receive the punishment in effect at the time he is sentenced, unless it is greater than the punishment provided for when the offense was committed.” (emphasis added))

In State v. Varner, Varner was convicted of kidnapping and sentenced to life imprisonment. Id. at 265, 423 S.E.2d at 133. Following Varner’s conviction and while his appeal was pending, the kidnapping statute was amended to reduce the maximum possible penalty for kidnapping. Id.; see Act No. 273, § 1, 1991 S.C. Acts & Joint Resolutions (amending the kidnapping statute by reducing the maximum potential sentencing range). On appeal, Varner contended he was entitled to resentencing under the new version of the statute. Varner, 310 S.C. at 265, 423 S.E.2d at 133. The Supreme Court disagreed and affirmed Varner’s sentence. Id. The Court found that, in the absence of a controlling statute, a convicted defendant should receive the punishment in effect at the time of sentencing.¹ Id. However, because the pre-amendment kidnapping statute was in effect at the time of Varner’s sentencing, the Court found Varner was properly punished under the former statute and was not entitled to any relief on appeal. Id. at 266, 423 S.E.2d at 134.

¹ Notably, the controlling statute in Varner’s case did **not** include a savings clause or any other language to preclude retroactive application of the reduced sentencing limits to defendants who committed the offense before the effective date of the legislation. See Act No. 117, § 1, 1991 S.C. Acts & Joint Resolutions (containing no savings clause to preclude retroactive application of the reduced penalties for kidnapping).

Thereafter, in State v. Gay, 343 S.C. 543, 541 S.E.2d 541 (2001), Gay committed a murder at a time when the punishment for the crime was life imprisonment or death.² On the day after Gay committed the murder, the murder statute was amended to allow for a defendant convicted of murder to be sentenced to a minimum thirty-year term of imprisonment in addition to death or life imprisonment. Id. at 552, 541 S.E.2d at 546. Gay was convicted after the effective date of the amending legislation, and the trial judge sentenced him to a life sentence, which the trial judge determined was mandatory. Id. at 552-553, 541 S.E.2d at 546. Gay appealed, arguing the trial judge should have considered the new statute in effect at the time of sentencing in light of the Supreme Court's decision in State v. Varner. Id. On appeal, the Supreme Court instructed: "[T]he Varner Court indicated that the Legislature could state its intent for new, lesser penalties to take effect based on the date of the crime rather than the date of sentencing." Id. at 553, 541 S.E.2d at 546. Based on the legislature's inclusion of language stating the statute amending the penalties for murder was to be applied prospectively after its effective date, the Court concluded the general rule articulated in Varner was inapplicable to Gay's case. Id. Accordingly, the Court affirmed Gay's life sentence. Id.

In the legislative act amending Section 16-13-230 along with numerous other criminal offenses, the General Assembly expressly included a savings clause to restrict the effect that the amendments would have on any pending cases. Critically, the legislature specifically included the following statutory language in the Act:

Savings clause

SECTION 65. The repeal or amendment by the provisions of this act or any law, whether temporary or permanent or civil or criminal, does not

² The decision in State v. Gay was subsequently abrogated on other grounds by the United States Supreme Court's decision in Holmes v. South Carolina, 547 U.S. 319 (2001).

affect pending actions, rights, duties, or liabilities founded thereon, or alter, discharge, release, or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.

Act No. 273, § 65, 2010 S.C. Acts & Joint Resolutions; see also Act No. 273, § 66, 2010 S.C. Acts & Joint Resolutions (“Cases and appeals arising or pending under the law as it existed prior to the effective date of this act are saved.”).

“Generally, a savings clause is intended to be ‘a restriction in a repealing act, which is intended to save rights, pending prosecutions, **penalties**, etc., from the annihilation which would result from an unrestricted appeal.’ ” State v. Bryant, 382 S.C. 505, 509, 675 S.E.2d 816, 817 (Ct. App. 2009) (emphasis added and citations omitted). Thus, by including the savings clause in the Act, the General Assembly clearly manifested its intent to preserve the statutes and penalties in effect prior to the statutory amendments and for the amendments to apply prospectively and not retroactively. See, e.g., Warden v. Marrero, 417 U.S. 653, 661 (1974) (referring to general federal savings clause codified under 1 U.S.C. § 109, which contains highly similar language to the savings clause included in the Act, and instructing: “[T]he savings clause has been held to bar application of ameliorative criminal sentencing laws repealing harsher ones in force at the time of the commission of an offense.”).

In the case sub judice, Appellant pled guilty to breach of trust **after** the legislature amended Section 16-13-230. However, based on the plain language of the savings clause contained in the Act, the amendments to Section 16-13-230 did not apply to Appellant’s

crime because the crime was committed **before** the amendments to the statute took effect. Looking to the plain language of the savings clause, the legislature clearly and unambiguously stated: “The repeal or amendment by the provisions of this act . . . does not . . . alter, discharge, release, or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide.” Act No. 273, § 65, 2010 S.C. Acts & Joint Resolutions. Thus, in the absence of language in an amended provision expressly providing for retroactive application, the legislature manifested its clear intention that the amendments be applied only to cases arising after the amendments took effect.

Turning to the statute amended in Appellant’s case, the amended provision did not include any language, express or otherwise, providing that the amendment to the statute should apply retroactively. See Act No. 273, § 16.N, 2010 S.C. Acts & Joint Resolutions (amending S.C. Code Ann. § 16-13-230(B) and containing no language expressly providing that the changes should be applied retroactively). If the General Assembly had intended for the statute to be applied retroactively, it would have included such language in the amended provision in light of the language it used in the savings clause.³ See, e.g., United States v. Fisher, 635 F.3d 336, 339-340 (7th Cir. 2011) (“[I]f Congress wanted retroactive application of the [Fair Sentencing Act], it would have said so. Given the absence of any direct statement or necessary implication to the contrary, we reaffirm our finding that the FSA does not apply retroactively, and further find that

³ Tellingly, the section of the Act amending Section 24-21-645 **did** include an express provision requiring retroactive application of the amended provisions in certain circumstances. See Act No. 273, § 58, 2010 S.C. Acts & Joint Resolutions (amending S.C. Code Ann. § 24-21-645 and including the following language: “This subsection **applies retroactively** to a prisoner who has had a parole hearing pursuant to Section 16–25–90 prior to the effective date of this act .” (emphasis added)); see also Hodges v. Rainey, 341 S.C. 79, 86, 533 S.E.2d 578, 582 (2000) (“The canon of construction ‘expressio unius est exclusio alterius’ or ‘inclusio unius est exclusio alterius’ holds that ‘to express or include one thing implies the exclusion of another, or of the alternative.’”).

the relevant date for a determination of retroactivity is the date of the underlying criminal conduct, not the date of sentencing.”); United States v. Sidney, 648 F.3d 904, 908 (8th Cir. 2011) (“In the end, the fact remains that Congress could easily have included a single sentence in the FSA to give it retroactive effect, but for whatever reason, it did not do so. It is beyond the province of this Court to do so now.”). However, no such language was included by the legislature. See State v. White, 338 S.C. 56, 58, 525 S.E.2d 261, 263 (Ct. App. 1999) (“We, of course, must take the statute as we find it, giving effect to the legislative intent as expressed in its language. We cannot under our power of construction supply an omission in the statute.”). Accordingly, the amendments to the statute did not apply retroactively to Appellant’s case.

Additionally, in the Act’s savings clause, the legislature further stated: “After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for . . . the enforcement of rights, duties, **penalties**, forfeitures, and liabilities as they stood under the repealed or amended laws.” Act No. 273, § 65, 2010 S.C. Acts & Joint Resolutions (emphasis added). Thus, the General Assembly clearly and unambiguously expressed its intention that the penalties existing under the statute prior to any amendments be enforced in cases arising before the effective date of the Act. Accordingly, the statute in effect at the time of Appellant’s crime remained in full force and effect throughout Appellant’s criminal prosecution, including for the purposes of sentencing.

Just as in Gay, the plea judge properly sentenced Appellant under the statute in effect at the time Appellant committed her offense because the legislature expressed a clear intention for any amendments to the statute to apply prospectively as opposed to retroactively through the unambiguous language used in the Act. See State v. Landis,

362 S.C. 97, 102, 606 S.E.2d 503, 505 (Ct. App. 2004) (“The legislature’s intent should be ascertained primarily from the plain language of the statute. . . . This Court must apply clear and unambiguous terms of a statute according to their literal meaning.” (citations omitted)). Appellant contends she should have been sentenced under the amended statute because penal statutes must be strictly construed against the State. Appellant further maintains the savings clause was ambiguous while asserting the clear legislative intent of the Act was to reduce the length of sentences for certain crimes. However, Appellant’s contentions ignore the clear and unambiguous language of the savings clause, which prohibited retroactive application of any amendments without an express provision directing otherwise. See State v. Mills, 360 S.C. 621, 624, 602 S.E.2d 750, 752 (2004) (“Although a penal statute must be strictly construed against the State, when the terms of the statute are clear and unambiguous, [the court] is constrained to give them their literal meaning.”). Based on the plain language of the savings clause, the plea judge was required to sentence Appellant under the statute in effect at the time of her crime. See State v. Morgan, 352 S.C. 359, 366-367, 574 S.E.2d 203, 206-207 (Ct. App. 2002) (“If a statute’s language is plain and unambiguous, and conveys a clear and definite meaning, there is no need to employ rules of statutory interpretation and the court has no right to look for or impose another meaning.”). Therefore, the plea judge did not err in denying Appellant’s motion to be sentenced under the amended statute that took effect after Appellant committed her crime.⁴ Appellant’s conviction and sentence should be affirmed.

⁴ Notably, in Appellant’s case, Appellant was not explicitly sentenced under the breach of trust statute in effect at the time of her crime or in effect at the time of her guilty plea and, instead, was sentenced under the provisions of the Youthful Offender Act. See S.C. Code Ann. § 24-19-50 (providing a trial judge with the discretionary to sentence certain defendants as youthful offenders instead of sentencing them under another applicable penalty provision). Therefore, even if the trial judge erred in determining he could not

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,


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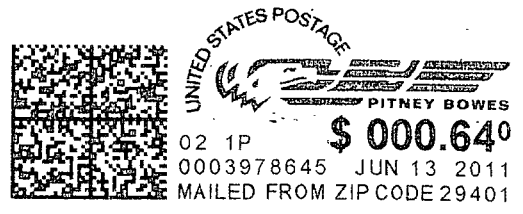
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sentence Appellant under the new Act, any error was entirely harmless. See State v. Sherard, 303 S.C. 172, 176, 399 S.E.2d 595, 597 (1999) (“[An appellate court] will not set aside a conviction due to insubstantial errors not affecting the result.”).

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