STATE OF SOUTH CAROLINA

IN THE COURTS OF APPEALS

Appeal from Richland County

Clifton Newman, Circuit Court Judge

IN THE MATTER OF THE CARE
AND TREATMENT OF TIMOTHY GETER

APPELLANT

APPELLATE CASE NO. 2013-000695

REPLY OF APPELLANT TO ANDERS BRIEF

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STATEMENTS OF ISSUE ON APPEAL

" ISSUE ONE"

Did Trial Court Judge err by charging Jury that there could only be a unanimous decision by the Jury.

"ISSUE TWO "

Did the Trial Court Judge err in making a decision, that they still retained jurisdiction to hold and tried Appellant under the old statutes (§44-48-30). When the new 2012 statutes for §44-48-30 had come out clearly establishing that a Lewd Act upon a Minor was no longer a question under the sexual violent predator act?

"ISSUE THREE "

Did the Court err in classifying defendant as a violence sexual predator, when in fact according to Court records and South Carolina Department of Corrections record, defendant was and still is classified and sentenced as a non-violent offender.

ARGUMENTS

Did Trial Court Judge err by charging Jury that there could only be a unanimous decision by the Jury without properly instructing them on reasonable doubt.

During the deliberation of the Jury, there was numerous question(s) that the Jury had concerns about (TR 257 Court Exhibit #1, 258 Court Exhibit #2, 259 Court Exhibit #3), and repeatedly send notes to the Court for verification. The Judge was short with them because of this action,(TR. 191, 11-15 , TR. 197 8 - 16) in which the Jury wanted and have a right to a clear understanding of the evidence(s) presented in order to return a proper verdict of the case before them. The Court continue along that line and finish by stating to the Jury TR 198 9 - 10 , TR 259 Court Exhibit # 3 "Your verdict must be a unanimous verdict". The Judge didn't give them proper understanding of reasonable doubt, for example Mann: Reasonable doubt instruction should have been clear to including "a cause of reasonable doubt is a person hesitate." It is clear from the transcript that the jury had that reasonable doubt and it was taking away from them with the statement "Your verdict must be a unanimous verdict". The Jury taken this to be further instruction that they must come back with a no choice verdict with limited clarification and hesitation about the case".

Did the Trial Court Judge err in making a decision, that they still retained jurisdiction to hold and tried Appellant under the old statutes (§44-48-30). When the new 2012 statutes for §44-48-30 had come out clearly establishing that a Lewd Act upon a Minor was no longer a question under the sexual violent predator act?

Appellant's Counsel on appeal was overly ineffective, prejudicing this Appellant for failing to appeal the violation for Appellant about the S.V.P Act of (1998) along with the Court.(Hill v.

Lockhart 474 U.S. 52; Mc Mann v. Richardson, 397 U.S. 759; United States v. Gordon, 156 F.3rd 376; ; Venture v. Meachum, 957 F.2nd 1048; Nelson v. Callahan 721 F. 2nd 397; Strickland v. Washington, 466 U.S. 668.

I, became aware on/or about July 2013, that referendums to SVP statute in 2012 disqualified S.C. Code Ann §16-15-140 as no longer being a part of the sexually violent predator statutes. Applying these principle here, the Court should agree that section §44-48-30, read as a whole. No longer show a Lewd Act upon Minor, S.C. Code Ann §16-15-140 as a valid statute for the purpose of Civil Commitment .Thus, the State nor South Carolina Department of Mental Health should not be allowed to hold Appellant, since Lewd Act upon a Minor was use as a primary factor to consider whether Appellant satisfied the definition of a sexually violent predator and at the time of the procedure it was not a requirement by statute for the sexually violent predator act §44-48-10 thru §44-48-170.

The majority opinion should rely of the Fourteenth Amendment of the United States Constitution to conclude that Appellant has sustained a Due Process Violation due to civilly committing and holding him under the sexually violent predator statute, when Lewd Act upon a Minor ---S.C. Code Ann. §16-15-140, is not or was not part of the Statutory Law covered under S.C. Code Ann §44-48-30. **HISTORY:** Amended by 2012 S.C. Acts, Act No. 255 (HB3667)S11 EFF:6/18/2012

Did the Court err in classifying defendant as a violence sexual predator, when in fact according to Court records and South Carolina Department of Corrections (SCDC) record, defendant is classified and was sentenced as a non-violent offender. To SCDC. The Civil Commitment Court lacked subject matter jurisdiction when 16-15-140 was no longer consider or/ as a prerequisite.

The Court pursuant to S.C. Code Ann. §44-48-30 / 100 did not have the subject matter jurisdiction to rewrite South Carolina Legislature intent of S.C. Code (1976) Ann. §16-15-565 into a violent offense. The conflict between S.C. Code (1976) Ann. §16-15-565 as "A non-violent offense" and S.C. Code (1998) Ann. § 44-48-30 (1) (2) as" a violent offense". Appellant classification as a non-violent offender constituted a final order of the Circuit Court TR. 251 State's Exhibit 11. Appellant cannot under the separation-of-powers and Res Judicata Principles , now be re-classified under the provisions of The S.V.P. Act of (1998) Ann. § 44-48-30 (1) (2) with a differing classification as "A Violent Offender".

The State of South Carolina Courts of Appeals should agree that to change Applicants classification from "A Non-Violent Offense" in S.C. Code of Laws (1976) Ann. § S.C. Ann. §16-15-656, and 16-15-395 to " A Violent Offense " in S.C. Code of Laws (1998) Ann. § 44-48-10 Thru 44-48 170 is in violation of the two different branches (Judiciary versus Executive) government.

The Legislatures: "cannot vest authority in the Attorney General nor the General Assembly to re-open and revise the final decision's of a Judge's judgment on the record of the Court as to a defendant(s) classification, Hill v. United States Ex. Rel Wampler. 298 U.S. 460, 56 S.CT. 760 (1936) (Quoting Biddle v. Shirley 16 F. 2nd 566,567 (8th CIR. 1926) See also State v. Bodyke 2010-Ohio-2424, 126 Ohio ST. 3rd 266, 933 N.E. 2nd 753 (2010). To allow the Attorney General to re-classify offender who has already been classified by Court on the record of the Court. It is impermissible instructing the Executive Branch to review past final judgments of the Judicial Branch and thereby violate "The Separation- of Power Doctrine".

In The South Carolina Constitution (2009 Unannotated) it states: In Article XVII, Section 10. Laws now in force: All laws now in force in the State and "Not" repugnant to this Constitution "Shall" remain and be enforced until altered or repealed by The General Assembly, or " Shall"

expire by their own limitations. Appellant, was convicted in 2006 and was sentenced under the (1976) Statues Ann. §16-15-656, And 16-15-395 as a " Non-violent offense" on the record of the Court and listed on Applicant's " sentencing sheet."

"So," at the times of Applicants conviction(s), Ann. § 16-15-656, And §16-15-395 was still in effect as "Non-violent offense(s)", "it was not change to a "violent offense "until June of (2010) and that by and through Attorney General "and the State cannot pass an "Ex Post Facto Law " so at the times of Applicants conviction(s) Ann. § 16-15-656, And §16-15-395 was and still are "Non-violent offense(s)" and cannot be changed to "a violent offense" by any means after trial's end or by Ann. § 44-48-30 (1) (2) of the S.V.P. Act of (1998)! Which is in direct opposition and in violation of the original sentencing order and judgment of the Court(s).

As The Supreme Court of California recently explained : "Judgments cannot be deprived of their "Finality" through statutory conditions not in effect when The Judicial Branch gave it's 'Last word' in the particular case' regardless of the policy behind the Legislation. People v. King (2002) 27 CAL. 4th 20, 115 CAL. RPTR. 2nd 214, 37 P. 3rd 398, Citing Plaut 514 U,S. AT 227,230, 115 S.CT. 1447, 131 L.Ed.2nd 328." A Judgment which is final by the Laws existing when it is rendered cannot Constitutionally be made subject to review by a Statute subsequently enacted*** Plaut, 514 U.S. AT 222, 115 S.CT. 1447, 131 L.Ed. 2nd 328, Quoting the Federalist No. 81 (J. Cooke Ed. 1961) 545(' A Legislature without exceeding it's providence cannot reverse a determination once made in a particular case*****"). "The re-classification provisions violate these bedrock principles"!!!!"

CONCLUSION

The Petition therefore, states a claim this was an fundamental unfair trial and based on the above, the commitment order of the trial court should be vacated, and Appellant should be released.

Respectfully Submitted,

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This 16th day December, 2013