

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

HON. RALPH KING ANDERSON, III

TRIAL COURT CASE #2013-ALJ-15-0005-AP
APPELLATE CASE #2013-001561

GEORGE M. ADAMS, #181283....., APPELLANT,

V.

S.C. DEPT. OF PPPS,....., RESPONDENT.

APPELLANT'S AMENDMENT BRIEF

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1/15, 2014

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SC Court of Appeals

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QUESTION PRESENTED

DID THE ADMINISTRATION LAW COURT ERR IN HOLDING THAT APPELLANT'S SENTENCING STATUTE FOR MURDER, READS IN HARMONY WITH SOUTH CAROLINA DEPARTMENT OF PROBATION, PAROLE AND PARDON SERVICES AUTHORIZING/DENYING PAROLE ELIGIBILITY?

STATEMENT OF THE AMENDMENT

SOUTH CAROLINA DEPARTMENT OF PROBATION, PAROLE AND PARDON SERVICES (DPPPS), ISSUED A FINAL DECISION IN A LETTER TO INMATE INDICATING THAT HE WAS INELIGIBLE FOR PAROLE ON HIS PRESENCE SENTENCE FOR LIFE ON MURDER CONVICTION DUE TO A PRIOR CONVICTION FOR A VIOLENT CRIME ON FIRST DEGREE BURGLARY IN 1991. INMATE WAS SENTENCED TO LIFE FOR MURDER CHARGE IN 1994.

INMATE FILED HIS APPEAL WITH THE ADMINISTRATIVE LAW COURT JUDGE, WHICH WAS AFFIRMED.

THE INMATE PROCEEDED TO FILE HIS APPEAL IN THE SOUTH CAROLINA COURT OF APPEALS. THE CLERK OF COURT ISSUED AN ORDER DISMISSING THE APPEAL BECAUSE OF FAILURE TO PAY THE FILING FEES. NOVEMBER 08, 2013, THE SOUTH CAROLINA COURT OF APPEALS ISSUED AN ORDER GRANTING THE APPELLANT' MOTION TO REINSTATE THE APPEAL, ORDERING THAT THE APPELLANT DO NOT PAY THE FILING FEES, AND IS ENTITLED TO PROCEED WITHOUT OUT COST.

ARGUMENT

DOES SOUTH CAROLINA CODE OF LAW §24-21-640(1992), §16-1-60(1992) AND §16-3-20(A)(1992) STATUTE ARE NOT READ IN HARMONY TO ONE AND ANOTHER?

WHEN APPELLANT WAS SENTENCED IN 1994 THE MURDER STATUE SENTENCING PHASE UNDER §16-3-20(A)(1992), ENTITLED HIM TO RECEIVE PAROLE. THE DPPPS APPLYING §24-12-640(1992) TO DENY APPELLANT PERMANENTLY PAROLE CREATES A MANIFEST REPUGNANCE BETWEEN THE PROVISIONS ON THE OMNIBUS CRIME BILL SETTING PAROLE ELIGIBILITY LANGUAGE. THE MURDER SENTENCING ~~STATUTE~~ FAILS TO REFLECT TERMS IN IT'S LANGUAGE TO REFER TO THE USE OF HIS PRIOR CONVICTION TO PERMANENTLY DENY ANY PRIVILEGES ON THE SENTENCING WHEN CONVICTED FOR MURDER COMMITTED IN 1992 UNDER §16-3-20(A)(1992). IF THE LEGISLATURE INTENT WAS FOR THE READING OF A PRIVILEGED SENTENCING STATUTES TOGETHER WITH ANOTHER RESTRICTED PRIVILEGED STATUES, THEN THE SENTENCING STATUE LANGUAGE WOULD HAVE BEEN AMENDED TO REFLECT THE OTHER STATUES LANGUAGE CONCERNING THAT SAME SUBJECT MATTER. THE SPECIAL ACT BY THE DPPPS OF PERMANENTLY DENYING APPELLANT PAROLE UNDER THESE CIRCUMSTANCES REQUIRES REPEAL OF DPPPS'S GENERAL RULE, WHICH IN THIS CASE HAS CREATED A MANIFEST REPUGNANCY BETWEEN THE TWO STATUTES UNTIL CORRECTED WITHIN THE PROVISIONS OF ALL ACTS, AND WHERE THE LANGUAGES ARE NOT GENERAL IN IT'S TERMS WHEN APPELLANT WAS SENTENCED, AND NO OTHER PARTICULAR STATUTE DEALING WITH THE SAME SUBJECT IN A PARTICULAR WAY OR PARTICULAR PURPOSE, THE TWO CAN NOT BE READ TOGETHER, AND HARMONIZED, IF POSSIBLE, PREVENTING THE ~~STATUTES~~ TO STAND UNDER §16-1-60(1992). APPELLANT IS A pro se INMATE NOT AN ATTORNEY! APPELLANT STATES THAT THE LANGUAGE IN THE ~~STATUTES~~ SHOULD REFLECT TO ONE ANOTHER IN ORDER FOR HIM TO HAVE HAD KNOWLEDGE CONSTITUTIONALLY, THAT THE OTHER APPLY. PROVISION OF THE 1986 OMNIBUS CRIME SETTING PAROLE ELIGIBILITY LANGUAGE FOR A SECOND VIOLENT OFFENDER IMPLIEDLY REPEALED PROVISION OF SENTENCING UNDER §16-3-20(A)(1992), MAKING A CONVICTED DEFENDANT ON THEORY HE

COMMITTED MURDER INELIGIBLE FOR PAROLE PURSUANT TO §24-21-640(1992). APPELLANT ARGUES THAT THE LOWER COURT ERRED BY CONCLUDING THAT §16-3-20(A)(1992) AND §24-21-640(1992) ~~STATUTES~~ SHOULD BE READ TOGETHER IN HARMONY. APPELLANT POINTS OUT THAT THESE TWO STATUTORY PROVISIONS LANGUAGES DOES NOT REFLECT TO ONE ANOTHER IN HARMONY UNDER THE SETTING OF PAROLE FOR A SECOND VIOLENT OFFENDER. BOTH ~~STATUTES~~ SPEAKS OF THE ELIGIBILITY FOR PAROLE, ONE GRANTING PAROLE AND THE OTHER PREVENTING PAROLE FOR A SECOND VIOLENT OFFENDED. THE DIFFERENT LANGUAGES ON THE AMOUNT OF TIME TO BECOME ELIGIBLE AND NON-ELIGIBLE CREATES A CONFLICT IN SENTENCING. THE LAW CLEARLY PROVIDES THAT IF TWO ~~STATUTES~~ ARE IN CONFLICT, THE LATEST STATUTE PASSED PREVAIL SO AS TO REPEAL THE EARLIER STATUTE TO THE EXTENT OF THE REPUGNANCY. IN YAHNIS COASTAL, INC. V. STROH BREWERY, 386 S.E.2d 64 (1984), BECAUSE §16-3-20(A) IS PENAL IN NATURE, IT'S TO BE CONSTRUED STRICTLY AGAINST THE RESPONDENT AND IN FAVOR OF THE APPELLANT. SINCE THE OMNIBUS CRIME BILL LANGUAGE IS NOT FOUND UNDER THE SENTENCING ~~STATUTE~~ §16-3-20(A)(1992) WHEN APPELLANT WAS SENTENCED, THIS COURT CANNOT CONCLUDE THAT THE SENTENCING SECTION FOR PAROLE ON THE MINIMUM OF TWENTY (20) YEARS LIFE WITH THE POSSIBILITY OF PAROLE WAS CONSTITUTIONALLY IMPLICITLY REPEALED BY §24-21-640. IF THE LEGISLATURE HAD WANTED TO EXCLUDE PERMANENTLY ANY POSSIBLE CHANCE OF PAROLE FOR A SECOND VIOLENT OFFENDER UNDER THE SENTENCING ~~STATUTE~~ IN 1994, IT WOULD HAVE DONE SO BY CLARIFYING THE LANGUAGE OF THE PROVISION ON PAROLE. §16-1-60 OMNIBUS CRIME BILL LANGUAGE ON SETTING PAROLE ELIGIBILITY STATES:

"THE ONLY EXCEPTION TO THE JUNE 3, 1986 (PRIOR VIOLENT CRIME)(PRESENT VIOLENT OFFENSE) IS IF AN INMATE COMMITTED A VIOLENT CONVICTIONS THAT CAN BE USED TO SCREEN FOR SUBSEQUENT VIOLENT OFFENDER STATUS ARE PREVIOUS OFFENSES THAT WERE COMMITTED ON OR AFTER JUNE 3, 1986. VIOLENT OFFENSES THAT OCCURRED BEFORE JUNE 3, 1986 CANNOT BE CONSIDERED."

"AFTER JUNE 3, 1986, IF AN INMATE COMMITTED TWO SEPARATE OFFENSES AND WAS SENTENCED MORE THAN 24 HOURS APART FOR THE SEPARATE OFFENSES, THEY ARE SUBSEQUENT VIOLENT OFFENDERS."

THIS COURT HAS STATED IN THE PAST IN LEWIS V. GADDY, 173 S.E.2d 376, 378 (1970)(IT IS, OF COURSE, WELL SETTLED THAT REPEAL BY IMPLICATION IS NOT FAVORED, AND A LAW SHOULD NOT BE CONSTRUED AS IMPLIED REPEALING A PRIOR LAW UNLESS NO OTHER REASONABLE CONSTRUCTION CAN BE APPLIED).IN THIS INSTANCE, §16-3-20(A) CAN SIMPLY OR COULD HAVE BEEN AMENDED TO REFLECT THE LANGUAGE OF 1986 OMNIBUS CRIME BILL SETTING OF PAROLE FOR FIRST OR SECOND VIOLENT OFFENDERS SENTENCING. THIS COURT HAS PROPERLY STATED THE RULE THAT REPEAL BY IMPLICATION IS NOT FAVORED AND CAN BE FOUND ONLY WHERE NO REASONABLE CONSTRUCTION CAN BE GIVEN, ESPECIALLY WHEN DEALING WITH TWO TOTALLY DIFFERENT STATUTES. IN BUSBY V. STATE FARM MUT. AUTO INS. CO., 312 S.E.2d 716, 719 (Ct. App. 1984): THIS COURT HAS STATED THE FOLLOWING: "IT IS WELL ESTABLISHED IN THIS STATE THAT A STATUTE OF A SPECIFIC NATURE ARE NOT TO BE CONSIDERED AS REPEAL IN WHOLE OR IN PART BE A LATER GENERAL STATUTE UNLESS THERE IS A DIRECT REFERENCE TO THE FORMER ~~STATUTES~~ OR THE INTENT OF THE LEGISLATURE TO DO SO IS EXPLICITLY IMPLIED THEREIN.

THE HARMONIOUS READING OF THE ~~STATUTES~~ FROM APPELLANT'S RESEARCH REVEALED THAT OTHER ~~STATUTES~~ HAVE BEEN PASSED SINCE THE OMNIBUS CRIME BILL WHICH CONTAINS SPECIFIC PAROLE ELIGIBILITY REQUIREMENTS FOR THE VIOLATION OF CERTAIN OTHER VIOLENT CRIMES AS DEFINED BY §16-1-60. §16-3-20(A)(1992) WHICH WAS ENACTED AFTER THE OMNIBUS CRIME BILL, CONCERNS THE CRIME OF MURDER SENTENCING PROVISION IN 1994 WHEN THE APPELLANT WAS SENTENCED, BUT §16-3-20(A)(1992) SENTENCING ~~STATUTE~~ IN 1994 ALLOWED PAROLE FOR THOSE WHO WERE CONVICTED OF MURDER, WHO WERE NOT SENTENCED TO DEATH, TO BE ELIGIBLE FOR PAROLE AFTER TWENTY (20)YEARS OF IMPRISONMENT, UNLESS THERE WERE AGGRAVATING CIRCUMSTANCES IN WHICH CASE THE CONVICT WOULD NOT BE PAROLE ELIGIBLE UNTIL HE HAD SERVED THIRTY (30)YEARS. EVEN THOUGH §16-1-60 AND §24-21-640 WERE BOTH IN EXISTENCE AT THE TIME APPELLANT WAS SENTENCED. §16-3-20(A)(1992) MURDER SENTENCING ~~STATUTE~~ DEFINATION CONCERNING ANY POSSIBLE EXCEPTION OF PAROLE ELIGIBILITY IS READ IN ISOLATION FROM S.C. CODE ANN. §24-21-640(1992), BECAUSE THE LEGISLATURE INTENT FOR THE READING OF §16-3-20(A)(1992) SENTENCING STATUTE

TOGETHER WITH §24-21-640, AUTHORIZING DPPPS TO SEND NOTICE AFTER SERVICE OF TWENTY (20) ~~YEARS PERMANENTLY~~ DENYING ELIGIBILITY ON PAROLE, LANGUAGE DOES NOT REFLECT THE LOSS OF LIBERTY INTEREST TO PAROLE, BECAUSE OF THE PRIOR USE OF A VIOLENT CRIME, (BURGLARY FIRST DEGREE §16-11-311). SIMPLY, THE LANGUAGE IN §16-3-20(A)(1992), SENTENCING STATUTE WOULD HAVE BEEN CHANGED GIVEN APPELLANT CONSTITUTIONALLY PROPER NOTICE OF DPPPS USE OF THE PRIOR VIOLENT CRIME TO RESTRICT THE PAROLE PRIVILEGE IN SENTENCING PURSUANT TO §24-21-640(1992). AS §16-1-60 OMNIBUS CRIME BILL REFLECTS §16-11-311 AS VIOLENT. NOT WAITING TWENTY (20) YEARS LATER AFTER IMPRISONMENT TO DISCOVER APPELLANT'S SENTENCE NEEDS TO BE RESTRUCTURED. DPPPS DID NOT KNOW ABOUT THE READING TOGETHER APPELLANT'S SENTENCING STATUTE PRIVILEGE TO PAROLE, UNTIL TWENTY (20) YEARS LATER, AFTER BEING SENTENCED. SO HOW WOULD APPELLANT AS A PRO SE LITIGANT PRISONER WOULD HAVE KNOWN THAT BOTH ~~STATUTES~~ WERE TO BE READ TOGETHER WHEN THERE IS A REPUGNANCY BETWEEN THE TWO STATUTES, (THAT THE TRIAL COURT), DID NOT NOTICE. APPELLANT WAS SCHEDULED TO BE ELIGIBLE FOR PAROLE FEBRUARY 8, 2013, DECEMBER 21, 2013, APPELLANT WAS INTERVIEWED BY SCDPPPS'S OFFICE. DECEMBER 21, 2013, APPELLANT WAS SERVED A NOTICE ON NON-ELIGIBILITY FOR PAROLE. FEBRUARY 5, 2013, APPELLANT WAS THEN MADE AWARE BY DPPPS THAT USE OF THE PRIOR CONVICTION FOR A VIOLENT OFFENSE, REVIEWED WITH THE PRESENCE VIOLENT OFFENSE DENIES HIM ELIGIBILITY ON SENTENCING PRIVILEGE TO PAROLE, AFTER SERVING TWENTY (20) YEARS ON A MANDATORY/MINIMUM LIFE SENTENCE UNDER A MORE SPECIFIC ~~STATUTE~~ WHICH ADDRESSED AND GRANTS PAROLE. SUCH STATUTES IS TO BE GIVEN FULL EFFECT AS LONG AS IT DOES NOT EXPRESSLY CONFLICT WITH IT IS IRRECONCILABLE. PALMETTONET V. SOUTH CAROLINA TAX COM.N., 456 S.E.2d 385 (S.C. 1995). SO IF THE APPELLANT'S PRIOR CONVICTION IN 1991 TRIAL PLEA RECORDS DOES NOT CONSIST OF THE SOLICITOR'S TESTIMONY CONCERNING THE TRIGGERING OF THE OMNIBUS CRIME BILL SETTING PAROLE ELIGIBILITY LANGUAGE, AND ESTABLISHED IN APPELLANT'S 1994 JURY TRIAL CONVICTION, THEN HOW WAS §24-21-640 CONSTITUTIONALLY TRIGGERED TO OVERRIDE §16-3-20(A)(1992) SENTENCING STATUTE WHICH GRANTED PAROLE?

APPELLANT'S MAIN ARGUMENT IS!

THE MURDER STATUTE §16-3-20(A)(1992) SENTENCING PHRASE FOR UNE PRIVILEGE OF PAROLE IS DENIED BY THE MANIFEST REPUGNANCY ON AUTHORIZING DPPPS TO REVIEW APPELLANT'S PRIOR VIOLENT CONVICTION UNDER §24-21-640, AND §16-1-60, BECAUSE §24-21-640(1992) LANGUAGE ON THE USE OF A PRIOR VIOLENT CONVICTION, WHEN SENTENCED FOR A PRESENCE VIOLENT CRIME. TO REFLECT ITS TERM ON THE PRIVILEGE LOSS WHEN SENTENCED UNDER §16-3-20(A)(1992) CONSTRUCTION. NOR DOES §16-3-20(A)(1992), SECTION ON PAROLE REFLECT THE LANGUAGE OR TERMS OF PERMANENT DENIAL OF PAROLE GENERAL LAW IN §24-21-640(1992). THE SPECIAL ACT COMMITTED BY DPPPS OF PERMANENTLY DEPRIVING THE APPELLANT OF PAROLE UNDER THESE CIRCUMSTANCES REQUIRE REPEAL OF DPPPS GENERAL RULE WHICH CREATES A MANIFEST REPUGNANCY BETWEEN ALL THREE PROVISIONS OF THE ACTS, AND WHERE THE LANGUAGES ARE NOT GENERAL IN IT'S TERMS WHEN APPELLANT WAS SENTENCED, AND NO OTHER PARTICULAR STATUE DEALING WITH THE SAME SUBJECT IN A PARTICULAR WAY OR PARTICULAR PURPOSE, THE TWO CAN NOT BE READ TOGETHER, AND HARMONIZED, IF POSSIBLE, PREVENTING §16-3-20(A)(1992); §24-21-640(1992) AND §16-1-60 READING TOGETHER STAND AS APPLICABLE IN THIS CASE.

APPELLANT IS pro se LITIGANT NOT AN ATTORNEY. HUGHES V. ROWE, 101 S.Ct. 173 (1973); ESTELL V. GAMBLE, 97 S.Ct. 285 (1976). APPELLANT STATES THAT THE LANGUAGES IN THE STATUTES SHOULD REFLECT TO ONE ANOTHER IN ORDER FOR A CLEAR UNDERSTANDING TO BE READ BY A DEFENDANT, TO HAVE PROPER KNOWLEDGE TO REFER TO THE OTHER. THEREFORE, THE SENTENCING COURT CORRECTLY APPLIED THE INTENT OF THE LEGISLATURE WHEN SENTENCING APPELLANT IN 1994 FOR THE CRIME COMMITTED ON JUNE 17, 1992. EVEN IF THIS COURT WAS TO REPEAL THE STATUTES ARE LANGUAGES AT THIS POINT BY IMPLICATION, WHICH IS NOT FAVORED, THE STATUTES ARE INCAPABLE OF ANY REASONABLE RECONCILEMENT.

IN CONSTRUING THESE STATUTE STATUTORY LANGUAGE, THE MUST BE AS A WHOLE, AND SECTIONS WHICH ARE PART OF THE SAME GENERAL STATUTORY LAW MUST BE CONSTRUED TOGETHER AND EACH ONE GIVEN EFFECT, IF IT CAN BE DONE BY ANY REASONABLE CONSTRUCTION MADE PRIOR TO SENTENCING THE APPELLANT. THIS COURT IS NOW FACED WITH THE DECISION ON REVIEW TO DETERMINE IF, §16-3-20(A)(1992) MURDER STATUTE AND §24-21-640 (1992) PAROLE STATUTE USES A WORD HAVING A WELL-RECOGNIZED MEANING IN LAW, THE PRESUMPTION IS THAT THE LEGISLATURE INTENDED TO USE THE WORD IN THAT SENSE. SMALLE V. WEED, 360 S.E.2d 531 (S.C. App. 1987). WHEREFORE, IN THIS CASE, REMAND BY THIS COURT IS NEEDED TO CONSIDER THE ISSUE OF WHETHER S.C. CODE ANN. §16-3-20 (A)(1992) AND §24-21-640 (1992) DEPRIVED THE TRIAL COURT OF SUBJECT MATTER JURISDICTION.

CONCLUSION

FOR THE REASONS STATED IN APPELLANT'S ORIGINAL AND AMENDEMENT BRIEFS, APPELLANT ASK THIS COURT TO GRANT THIS APPEAL.

1/15, 2014

RESPECTFULLY SUBMITTED,



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IN THE COURT OF APPEALS

HON. RALPH KING ANDERSON, III

TRIAL COURT CASE #2013-ALJ-15-0005-AP
APPELLANT CASE #2013-001561

GEORGE M. ADAMS, #181283....., APPELLANT,

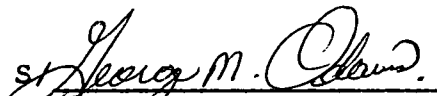
v.

S.C. DEPT. OF PPPS,....., RESPONDENT.

CERTIFICATE OF SERVICE

APPELLANT, GEORGE M. ADAMS, #181283, CERTIFY UNDER OATH, THE REGULAR COMMUNICATION BY MAIL EXIST THROUGHOUT THE SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, THAT THIS IS A PROPER CIRCUMSTANCE OF SERVICE BY MAIL OF THIS APPEAL AMENDMENT BRIEF BY APPELLANT, THAT I HAVE ON BELOW DATE SERVED ON THE RESPONDENT ATTORNEY NAMED BELOW, ONE TRUE COPY OF SAID BRIEF BY WAY OF UNITED STATES MAIL POSTAGE PREPAID.

1/15, 2014


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JANUARY 15, 2014

HON. JENNY A. KITCHINGS
SC Ct. OF Apps., CLERK
PO BOX 11629
COLUMBIA, S.C. 29211-1629

RE: GEORGE .M ADAMS V. SCDPPPS, 2013-001561, etc., ENCLOSURES,
APPELLANT'S RESPONSES TO RESPONDENT'S RETURN, 01/13/2014.

DEAR MS. KITCHINGS:

PLEASE FIND ENCLOSED FOR YOUR FILING THE APPELLANT'S MOTION FOR
LEAVE TO FILE THE BRIEF IN REFERENCE TO THE ABOVE CASE. WOULD YOU
PLEASE FILE UNDER THE ABOVE LISTED APPELLATE CASE NUMBER ON THIS
APPEAL.

THANKING YOU IN THE ADVANCE FOR YOUR TIME AND ATTENTION GIVEN TO
ME IN THIS CRUX MATTERS AND I LOOK FORWARD TO HEARING FROM YOU IN
THIS VERY NEAR FUTURE.

AGAIN THANK YOU!

RESPECTFULLY SUBMITTED ,
Sl. George M. Adams
GEORGE M. ADAMS, #181283

cc: TOMMY EVANS, Jr.
GEN. COUNSEL DPPPS
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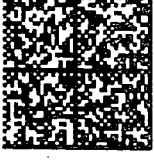
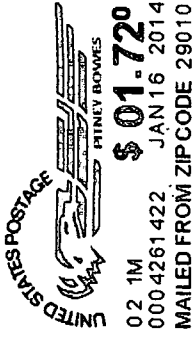
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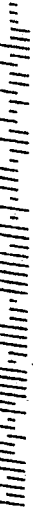
JAN 17 2014

SC Court of Appeals

Hon. Jenny A. Kitchings, Clerk
South Carolina Court of Appeals
Post Office Box 11629
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