

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to the Court of Appeals
Appeal From Greenwood County
Hon. Frank R. Addy, Jr., Circuit Court Judge
Appellate Case Tracking No. 2012-212978

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S.C. Supreme Court

The State,

Petitioner,

v.

Alonzo Craig Hawes,

Respondent.

BRIEF OF PETITIONER

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STATEMENT OF ISSUES ON CERTIORARI

- I. The Court of Appeals erred in affirming the trial court's determination Respondent was entitled to parole consideration under section 16-25-90 of the South Carolina Code.

STATEMENT OF THE CASE

Procedural History

The Greenwood County Grand Jury indicted Respondent on charges of murder and possession of a firearm during the commission of a violent crime. He pled guilty before the Honorable Frank R. Addy, Jr., on January 6, 2011, in Abbeville County to voluntary manslaughter and the possession of a firearm charge. A charge of assault with intent to kill was *not proessed*.

On January 20, 2011, Respondent appeared before Judge Addy in Greenwood County for sentencing on the two charges. The court sentenced him to twenty-two years on the voluntary manslaughter charge and five years, concurrent, on the possession of a firearm charge. The court also heard testimony and admitted evidence regarding the application of section 16-25-90 and whether Respondent should be eligible for parole after serving one-fourth of his prison term. On March 24, 2011, Judge Addy filed an Order finding section 16-25-90 was applicable. This appeal followed from the Order filed March 24, 2011.

The Court of Appeals affirmed the circuit court. See State v. Hawes, 399 S.C. 211, 730 S.E.2d 904 (Ct. App. 2012). The State filed a Petition for Rehearing on August 2, 2012, which was denied by Order filed August 23, 2012. This Court granted the Petition for Writ of Certiorari and this Brief follows.

Factual Background

Respondent pled guilty to voluntary manslaughter in the shooting of his estranged wife, Terry Hawes. After an argument between the couple, Respondent shot Ms. Hawes multiple times because she would not allow him to take the children with him.

According to witness statements, he waited for a child to move from in front of Ms. Hawes before shooting her. (T.64-65; R. 104-105). Respondent had assault with intent to kill charges dropped from a prior incident in which he shot at Ms. Hawes during an argument. (T.30; R. 70).

The circuit court held a hearing to allow Respondent to present evidence to support applying section 16-25-90. At the hearing, Respondent presented the testimony and report of Dr. Donna Schwartz-Watts, a consulting forensic psychologist. Dr. Schwartz-Watts evaluated Respondent and reviewed numerous records. She reported: "The defendant and the victim has a documented history of mutual physical abuse." (Defendant's Exhibit 2, page 2; R. 189). She testified she listened to recordings of some of the couple's arguments in which the parties threatened each other. She testified it was a "mutually abusive relationship." (T.26; R. 66).

Additionally, the circuit court heard from the victim's daughter, Respondent's step-daughter. She testified the couple argued a lot in the house. (T.83; R. 123). She indicated that prior to the incidents for which Respondent was charged the arguments mostly related to Respondent's running around with another woman. (T.83-84; R. 123-124). She testified Respondent was the primary instigator in regards to the arguments and problems. (T.85; R. 125).

There are very few documented incidents of domestic violence involving the parties. The main one is a conviction of both parties for CDV in 1996, roughly 10 years before the incident for which Respondent was charged. The only other documentation was an indictment of the victim for CDV which was *nol prossed* on her death. Finally, the circuit court had tape recordings of communications between the parties in which

both sides made threats, argued, and were responsible for instigating difficulties between them. As described by the court the recordings are “endemic of a deeply dysfunctional relationship.” The court specifically noted the recordings were not evidence of domestic violence between the parties. (Court’s Order dated March 23; R. 1).

ARGUMENT

I. The Court of Appeals erred in affirming the trial court's determination Respondent was entitled to parole consideration under section 16-25-90 of the South Carolina Code.

The Court of Appeals erred in affirming the trial court's Order finding section 16-25-90 of the South Carolina Code applicable under the facts of this case. Respondent failed to present "credible evidence of a history of criminal domestic violence, as provided in Section 16-25-20, suffered at the hands of [his estranged wife, Terry Hawes]." The only evidence presented was that of mutual domestic violence in which Respondent was the primary aggressor. As a result, the legislative intent is completely frustrated by the trial court's application of section 16-25-90 and the trial court abused its discretion in finding Respondent entitled to early parole consideration.

In criminal cases, the appellate court reviews errors of law only. State v. Wilson, 345 S.C. 1, 5-6, 545 S.E.2d 827, 829 (2001). In reviewing the trial court, the appellate court is bound by the factual findings of the trial court unless an abuse of discretion is shown. State v. Laney, 367 S.C. 639, 643-44, 627 S.E.2d 726, 729 (2006).

The statute at issue is section 16-25-90 of the South Carolina Code, providing:

[A]n inmate who was convicted of, or pled guilty or nolo contendere to, an offense against a household member is eligible for parole after serving one-fourth of his prison term when the inmate at the time he pled guilty to . . . an offense against the household member, . . . presented credible evidence of a history of criminal domestic violence, as provided in Section 16-25-20, suffered at the hands of the household member.

S.C. Code Ann. § 16-25-90 (Supp. 2010).

Section 16-25-20 (Supp.2010) states: “It is unlawful to: (1) cause physical harm or injury to a person’s own household member, (2) offer or attempt to cause physical harm or injury to a person’s own household member with apparent present ability under circumstances reasonably creating fear of imminent peril.” “Household member” includes “(1) a spouse; (2) a former spouse; (3) persons who have a child in common; or (4) a male and female who are cohabiting or formerly have cohabited.” S.C. Code Ann. § 16-25-10 (Supp. 2010).

There is very little case law in South Carolina interpreting this statute. In State v. Grooms, this Court found: “Use of the term ‘credible evidence’ indicates the legislature intended the defendant’s evidence to be, in fact, trustworthy, not simply plausible.” State v. Grooms, 343 S.C. 248, 253, 540 S.E.2d 99, 101 (2000). Finally, the Court found the burden of proof is on the defendant to prove the history of criminal domestic violence by a preponderance of the evidence. Id. at 253-253; 540 S.E.2d at 102.

The only other case to address the statute is State v. Blackwell-Selim, in which this Court found: “The circuit court must make specific findings in ruling on parole eligibility or ineligibility under § 16–25–90.” State v. Blackwell-Selim, 392 S.C. 1, 4, 707 S.E.2d 426, 428 (2011). Because the circuit court failed to make specific findings of fact, the Court refused to determine the applicability of section 16-25-90.

Legislative Intent

The Court of Appeals erred in finding the trial court properly considered the legislative intent in reaching its conclusion Respondent was entitled to early parole consideration. Specifically, the Court found: “In this case, however, defining the term is not necessary because we find the circuit court did precisely what the State contends it

failed to do—it considered the legislative intent of section 16-25-90.” The State asserts, however, the trial court utilized an incorrect legislative intent in rendering its decision.

“The cardinal rule of statutory construction is a court must ascertain and give effect to the intent of the legislature.” State v. Scott, 351 S.C. 584, 588, 571 S.E.2d 700, 702 (2002) (citing Charleston County Sch. Dist. v. State Budget and Control Bd., 313 S.C. 1, 437 S.E.2d 6 (1993)).

All rules of statutory construction are subservient to the maxim that legislative intent must prevail if it can be reasonably discovered in the language used. A statute’s language must be construed in light of the intended purpose of the statute. Whenever possible, legislative intent should be found in the plain language of the statute itself.

State v. Pittman, 373 S.C. 527, 561, 647 S.E.2d 144, 161 (2007) (internal citations omitted).

While the trial court found he could consider the “number of prior instances” as well as “the relative severity of the various instances” the court failed to make this determination in light of the legislative history that the statute is to be applied as mitigation for a victim and not a primary aggressor or instigator. The trial court specifically held:

I also note that the Defendant in this case is not asserting the affirmative defense of Battered Spouse’s Syndrome. See Section 17-23-170. I opine that the legislative intent behind Section 16-25-90 may well have been to permit some middle ground for those instances where there would be insufficient evidence of abuse to maintain a defense under 17-23-170, but where sufficient evidence of abuse may exist to mitigate somewhat the usual non-parole nature of a homicide sentence. Put differently, a defendant may possess sufficient evidence of a history of domestic violence to warrant mitigation of his incarceration by allowing him parole eligibility, but he may have insufficient evidence to affirmatively assert the defense of

Battered Spouse's Syndrome. Section 16-25-90 would make allowances for such circumstances.

(R.5). The trial court's holding does not properly consider the full extent of the legislative intent behind the statute.

The clear legislative intent of section 16-25-90 is to provide mitigation of the sentence of someone who committed an offense against their household member after repeatedly suffering domestic violence at the hands of the victim. The statute is not intended to mitigate the sentence of an individual who, as the evidence in this case demonstrated, was the primary instigator and primary aggressor in the arguments that led to domestic violence. The legislative intent of mitigating a sentence of someone who has suffered as the clear victim of domestic violence is frustrated by applying the same statute to someone who was the primary aggressor and instigator in a relationship involving what could at best be defined as mutual violence.

The State asserts if the legislative intent is applied, the fact Respondent was the primary aggressor and instigator of the domestic violence would negate application of section 16-25-90. The circuit court in this case acknowledged: "Finally, viewing the evidence as a whole, and having reviewed the tapes provided by the Defendant, I find that there were times when both parties were primarily responsible for instigating the arguments; based on this and other evidence, it is reasonable to conclude that no one party was solely at fault for many of the marital difficulties this couple experienced." (Order of circuit court page 6; R. 6). The legislature never intended the statute to reward someone who was at best a mutual combatant, and at worst the primary cause of the domestic difficulties.

Further, consideration of the events leading up to the fatal shooting indicate Respondent should not be entitled to consideration for early parole when he fired a shot, resulting in a charge of AWIK against him, and then came back on a subsequent visit and ended an argument by shooting the victim multiple times after waiting for a child to move out of the way. The legislative intent is frustrated, and the statute is abused, by granting early parole eligibility to Respondent.

Abuse of Discretion

The State contends the trial court abused his discretion. The State asserts the Court of Appeals erred in failing to find the trial court abused its discretion by not exercising any discretion in reaching its conclusion. To the extent the trial court exercised discretion, the State asserts the Court of Appeals erred in finding the discretion was supported by evidence in the record.

The circuit court concludes its Order by finding:

This court is called upon to make a ruling based solely on the evidence and the applicable law. That the victim and defendant argued and fought is not, in and of itself, sufficient to warrant application of the section. Coupled, however, with the documented convictions for CDV and the other competent evidence of a mutually violent relationship, and despite (or perhaps because of) the statute's peculiarities as explained . . . , this court is compelled to find that the Defendant has met this burden.

(Circuit court order p.7 (emphasis added); R. 7).

The court was not compelled to find Respondent met his burden. Quite the contrary, he could have considered the clear legislative intent as discussed above and, when juxtaposed to the court's clear finding it was a "mutually violent relationship," he could have found Respondent failed to present credible evidence entitling him to

mitigation of his sentence based on a history of criminal domestic violence, as provided in Section 16-25-20, suffered at the hands of the household member.

The Court of Appeals erred in finding the trial court properly considered all the factors the State asked it to consider in determining whether Respondent is entitled to early parole. The State submits this is not possible in light of the clear misinterpretation of the legislative intent, and the finding by the trial court that what took place was a “mutually violent relationship.” The State submits the circuit court’s clear holding is that because the statute is not clear in its definitions—which the State submits then requires resort to the legislative intent to properly apply the statute—and because there existed some documentary proof of this “mutually violent relationship” the court was **compelled** to find in Respondent’s favor. In effect, the court refused to exercise his discretion and refused to consider the clear legislative intent in making his decision. “The failure to exercise discretion, however, is itself an abuse of discretion.” State v. Mansfield, 343 S.C. 66, 86, 538 S.E.2d 257, 267 (Ct. App. 2000) (citing *inter alia* State v. Smith, 276 S.C. 494, 498, 280 S.E.2d 200, 202 (1981)(“It is an equal abuse of discretion to refuse to exercise discretionary authority when it is warranted as it is to exercise the discretion improperly.”)). The circuit court’s finding, especially in light of his feeling “compelled” to rule in Respondent’s favor merely upon the showing of any evidence or the showing of a mutually violent relationship, is an error of law and an abuse of his discretion that this Court can and should correct.

If the circuit court exercised discretion, its finding is without support in the record. The State asserts Respondent was the primary aggressor and the primary instigator, and because the only testimony presented demonstrated this, he should be

precluded from early parole eligibility under section 16-25-90. There is absolutely no credible evidence in the record indicating Respondent was the primary victim of a history of criminal domestic violence. The sole evidence indicates he was, at best, a mutual combatant and, at worst, the primary cause of the parties' domestic disputes.

The Court of Appeals concludes: "After weighing this evidence that the State asserts the circuit court should consider, the court found Hawes proved a history of CDV suffered at the hands of his wife by a preponderance of the evidence." The trial court only considered half of what the State submitted it should consider in making its determination. The State maintained the trial court had to consider the evidence **and** the legislative intent behind the statute. The State contends the evidence, when viewed in light of the fact the legislative intent is to mitigate the sentence of a victim and not a primary aggressor or instigator of the abuse, does not and cannot support application of section 16-25-90 in this case.

As a result, the Court of Appeals erred in affirming the trial court's determination Respondent is entitled to consideration for early parole under section 16-25-90. The Court erred by allowing the trial court to apply an incorrect, or at least incomplete, legislative intent to the facts of this case. Further, it erred by finding the trial court properly utilized its discretion when it either 1) used no discretion but felt the court was compelled to make its finding, or 2) rendered a decision without evidentiary support. Accordingly this Court should reverse the Court of Appeals' opinion and find Respondent is not entitled to mitigation of his sentence under 16-25-90.

CONCLUSION

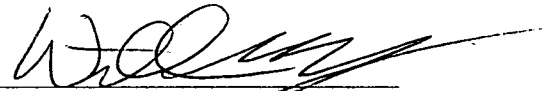
For all of the foregoing reasons, it is respectfully submitted that the Court of Appeals opinion should be reversed and this Court should find Respondent is not entitled to mitigation of his sentence under section 16-25-90.

Respectfully submitted,

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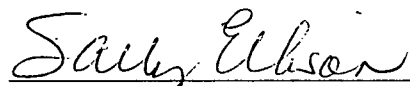
Respondent.

PROOF OF SERVICE

I, SALLY ELLISON, certify that I have served the within Brief of Petitioner by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

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I further certify that all parties required by Rule to be served have been served.
This 26th day of March, 2014.



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