

THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

DeAndrea G. Benjamin, Circuit Court Judge

Unpublished Opinion No. 2012-UP-503  
(Filed 9-5-12)

ISIAH JAMES, JR.

Petitioner,

V.

SOUTH CAROLINA DEPARTMENT OF  
PROBATION, PAROLE AND PARDON  
SERVICES (SCDPPPS),

Respondent.

PETITION FOR WRIT OF CERTIORARI  
TO S.C. COURT OF APPEALS

Other Counsel of Record:

Tommy Evans, Jr.  
General Counsel  
POB 50666  
Columbia, S. C. 29250

Isiah James, Jr., 96883  
RCI, CA-52, POB 2039  
Ridgeland, S. C. 29936  
Pro Per

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JAN 4 - 2013

S.C. Supreme Court

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CERTIFICATE OF PETITIONER

Petitioner hereby certifies that the petition for rehearing was made and finally ruled on by the court of appeals on 12-5-12.

QUESTION(S) PRESENTED

1. Has the Court of Appeals err affirming the circuit court's grant of respondent's motion to dismiss under general statute section 14-6-200(a) of S.C. Code Ann. (2011) which is in conflict and/or contrary to appellate jurisdiction announced in Allison v. A.L. Gore & Associates, 714 S.E.2d 547, 549 (2011) by Supreme Court where the specific statute section 1-23-610(A)(1) of S.C. Code Ann. (2006) had savings clause and ignored In re Memorandum Decision by Court of Appeals, 471 S.E.2d 456 (1993)?

2. Did the Court of Appeals err affirming the circuit court's grant of respondent's motion to dismiss and citing State v. Stahlnecker, 690 S.E.2d 565, 570 (2010) which is in conflict and/or contrary to Supreme Court's decision Chem-Nuclear Systems, LLC v. South Carolina Bd. of Health and Environmental Control, 648 S.E.2d 601, 602, 603 (2007)?

3. Whether Court of General Sessions for Sumter County (June 1979 Term) had (subject matter) jurisdiction to convict and sentence petitioner for armed robbery?

STATEMENT OF THE CASE

Petitioner became eligible for parole release on or about 2-17-88; it was disapproved. He had subsequent application(s) for parole release thereafter when he was denied parole in March 2001, he brought this action (appeal) before the Administrative Law Court

(ALC) raising the claim(s) therein. The ALC issued an order on 5-19-2005 which was timely appealed to the circuit court. (App. pp. 15-16). The circuit court conducted a hearing on 8-31-2011 (App. p. 38); where it entertained respondent's motion to dismiss (App. pp. 33-36)

He filed a timely appeal which was sent to South Carolina Court of Appeals. The court of appeals issued unpublished opinion no. 2012-UP-503 (Filed 9-5-2012), petitioner filed a timely petition for rehearing (App. pp. 71-77). The Court's panel ruled on the petition for rehearing on 12-5-2012; he comes to this Court for relief.

#### ARGUMENT(S)

THE COURT OF APPEALS HAS ERRED AFFIRMING THE CIRCUIT COURT'S GRANT OF RESPONDENT'S MOTION TO DISMISS UNDER GENERAL STATUTE SECTION 14-8-200(a) OF S. C. CODE ANN (2011) WHICH IS IN CONFLICT AND/OR CONTRARY TO APPELLATE JURISDICTION ANNOUNCED IN Allison v. A.L. Gore & Associates, 714 S.E.2d 545, 549 (2011) BY SUPREME COURT WHERE THE SPECIFIC STATUTE SECTION 1-23-610(A)(1) OF S. C. CODE (2006) HAD SAVINGS CLAUSE AND IGNORED IN RE MEMORANDUM DECISIONS BY COURT OF APPEALS, 471 S.E.2d 456 (1993).

The court of appeals erred affirming the circuit court's grant of respondent's motion to dismiss under general statute section 14-8-200(a) of S. C. Code (2011) which is in conflict and/or contrary to appellate jurisdiction announced in Allison v. A.L. Gore & Associates, 714 S.E.2d 547 (2011) where the specific statute section 1-23-610(A)(1) of S. C. Code (2006) had savings clause and ignored In Re Memorandum Decisions by Court of Appeals, 471 S.E.2d 456 (1993). In re Manigo, 728 S.E.2d 32, 35 (2012) ("Statutory interpretation is question of law

Corrected

subject to de novo review.")

The court of appeal's panel issued unpublished opinion no. 2012-UP-503 that declared, "S.C. Code Ann. §14-8-200(a)(Supp. 2011) ("the court of appeals] has jurisdiction over any case in which an appeal is taken from ... a final decision of the [Administrative Law Court] ...")" (App. p. 72) This would be a general statutory law that does not go back to June 2005 when petitioner filed and served a timely notice of appeal. (App. p. 26) While section 1-23-610(A)(1) of S.C. Code was amended under 2006 Act No. 367, §5, eff. July 1, 2006.

*[Handwritten initials]*

Petitioner filed a timely 7 June 2005 notice of appeal after the 19 May 2005 order of the ALJ. Allison v. W.L. Gare & Associates, 714 S.E. 2d 547, 549 (2011) ("We now clarify that the question of compliance with rules, regulations, and statutes governing an appeal is one of appellate jurisdiction, see In re November 4, 2008 Bluffton Town Council Election, 385 S.C. 632, 686 S.E.2d 683 (2009)"). Section 1-23-610(A) of S.C. Code Ann. (2005) which was amended as it is set forth above herein 2006.

It contained a savings clause:

Section 55. The repeal or amendment by this act of any law, whether temporary or permanent or civil or criminal does not affect pending actions, rights, duties, or liabilities founded thereon, or alters discharge, ...

More, unpublished opinion no. 2012-UP-503 failed to comply with IN RE MEMORANDUM DECISIONS BY COURT OF APPEALS, 471 S.E.2d 457 (1993)(it stresses, "the Court of Appeals may only do so when an issue is manifestly without merit").

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Petitioner filed a timely 7 June 2005 notice of appeal after the 10 May 2006 order of the ALJ. Allison v. W.L. Gore & Associates, 714 S.E.2d 547, 549 (2011) ("We now clarify that the question of compliance with rules, regulations, and statutes governing an appeal is one of appellate jurisdiction, see In re November 4, 2008 Bluffton Town Council Election, 385 S.C. 632, 686 S.E.2d 683 (2009)"). Section 1-23-610(A) of S.C. Code Ann. (2005) which was amended as it is set forth above herein 2006..

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II. THE COURT OF APPEALS DID ERR AFFIRMING THE CIRCUIT COURT'S GRANT OF RESPONDENT'S MOTION TO DISMISS AND CITING State v. Stahlnecker, 690 S.E.2d 565, 570 (2010) WHICH IS IN CONFLICT AND/OR CONTRARY TO SUPREME COURT'S DECISION Chem-Nuclear Systems, LLC v. South Carolina Bd of Health and Environmental Control, 648 S.E.2d 601, 602, 603 (2007)

The court of appeals erred affirming the circuit court's grant of respondent's motion to dismiss citing State v. Stahlnecker, 690 S.E. 2d 565, 570 (2010) which is in conflict and/or contrary to Supreme Court's decision Chem-Nuclear Systems, LLC v. South Carolina Bd. of Health and ..., 648 S.E.2d 601, 604 (2007) (noting section 55, savings clause). The panel's unpublished opinion declared, "A change in the law does not violate the ex post facto clause" (App. p.72) James did not raise an ex post facto issue while it cited Stahlnecker.

The court of appeals's decision is in conflict with Chem-Nuclear Systems, LLC supra which was first addressed in the South Carolina Supreme Court. ("We accepted this case in our original jurisdiction to determine the application and effect of Act No. 387, 2006 S.C. Act 387 ("Act 387")" at 602). Moreover, it mentioned, "Generally, the repeal of a statute without a savings clause operates retroactively to expunge pending claims, but a proper savings clause will have the effect of preserving a pending suit". Ibid at 601.

Furthermore, "Section 55 ... ..  
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 date of this act, and for the enforcement of rig-

II. THE COURT OF APPEALS DID ERR AFFIRMING THE CIRCUIT COURT'S GRANT OF RESPONDENT'S MOTION TO DISMISS AND CITING State v. Stahlnecker, 699 S.E.2d 565, 570 (2010) WHICH IS IN CONFLICT AND/OR CONTRARY TO SUPREME COURT'S DECISION Chem-Nuclear Systems, LLC v. South Carolina Bd. of Health and Environmental Control, 648 S.E.2d 601, 602, 603 (2007)

The court of appeals erred affirming the circuit court's grant of respondent's motion to dismiss citing State v. Stahlnecker, 699 S.E. 2d 565, 570 (2010) which is in conflict and/or contrary to Supreme Court's decision Chem-Nuclear System, LLC v. South Carolina Bd. of Health and ... , 648 S.E.2d 601, 604 (2007) (noting section 55, savings clause). The panel's unpublished opinion declared, "A change in the law does not violate the ex post facto clause" (App. p.72). James did not raise an ex post facto issue while it cited Stahlnecker.

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Furthermore, "Section 55 ... ..  
After the effective date of this act, all laws repealed or amended by this act must be taken as if they were not repealed and shall remain in full force and effect for the purpose of sustaining any pending vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rig-

hts, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws." Id. 603.

The 'Order' of the circuit court related, "§1-23-610. Since this case goes beyond the jurisdiction of the Circuit Court it must be subject to dismissal." (App. p. 41) \* In Palmetto Co. v. McMahan, 716 S.E.2d 329, 331 (S.C. App. 2011) the Court of Appeals noted, "The best evidence of legislative intent is the text of the statute."

III. THE COURT OF GENERAL SESSIONS FOR SUMTER COUNTY (JUNE 1979 TERM) ACTED IN EXCESS OF (SUBJECT MATTER) JURISDICTION ON CONVICTION AND SENTENCE FOR ARMED ROBBERY

The Court of General Sessions for Sumter County acted in excess of (subject matter) jurisdiction on armed robbery conviction and sentence at June 18, 1979 term. The unpublished opinion no. 2012-UP-503 of the court of appeals referred, "noting an appellate court need not address remaining issues when the determination of a prior issue is dispositive of an entire appeal". (App. p. 72) So court's panel did not reach issue wrongfully.

The circuit court's 9-26-11 order points, "Appellant alleges that the Circuit Court did not have jurisdiction to hear his 1979 conviction". (App. p. 40) The court of appeals cited State v. Stahl-

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\*The 9-26-11 order references, "S.C. Code Ann. §14-8-200. For judicial review of a final decision of an administrative law judge, a notice of appeal ... must be served and filed with the court of appeals" where the general and specific statutory law(s) are pointed to. (App. p. 41)

necker, 690 S.E.2d 565, 569 (2010) (the High Court held, "We are bound by the trial court's factual findings unless they are clearly erroneous.") Which stands for James's claim about the preliminary motion(s) hearing ruling(s), the proposition Judge Laney did not have authority or power to overrule the other circuit court judge(s) (App. p. 10). See Rule 4(b) of South Carolina Rules of Criminal Procedure (SCRCrIMP).

While he held to the law of the case with Mack (App. p. 4)<sup>2</sup> In Re Brown, 511 S.E.2d 351, 353 (1998) ("is law of the case") and State Barroso, 493 S.E.2d 854, 855 (1997). SCRCrIMP Rule 4(b) commanded "If any motion be made to any judge and be denied, in whole or in part, or be granted conditionally, no subsequent motion upon the same facts shall be made to any other judge in that action." The government did not appeal from the 1 June 1979 motion(s) ruling(s) (App. pp. 6-7)

#### CONCLUSION

Petitioner urges this Court to grant the Writ of Certiorari herein.

This 30 day of December 2012.

s/ *Isiah James, Jr.*  
Isiah James, Jr., 96883  
RCI, CA-52, POB 2039  
Ridgeland, S. C. 29936

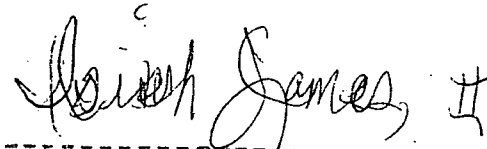
<sup>2</sup>The record(s) illustrates an arraignment; severance was denied thereafter the arraignment. (App. p. 12 ll. 2-10)

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he has caused true and correct copies of the 'PETITION FOR WRIT OF CERTIORARI' to be mailed, postage prepaid, to the parties set forth below herein this 31 day of December 2012.

Tommy Evans, Jr.  
General Counsel, SCDFPPS  
POB 50666  
Columbia, S. C. 29250

Hon. Jenny A. Kitchings, Clerk  
S. C. Court of Appeals  
POB 11029  
Columbia, S. C. 29211

/s/  II

---

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he has caused true and correct copies of the 'corrected' pp. 5 & 6 of the December 2012 petition identified on the reverse side of document to be mailed, postage prepaid, to respondent's attorney who is set forth therein this 19 day of March 2014.

s/ Brian James, Esq.

**RECEIVED**

MAR 21 2014

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

DeANDREA G. BENJAMIN, CIRCUIT COURT JUDGE

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Unpublished Opinion No. 2012-UP-503  
(Filed 9-5-12)  
Appellate Case No. 2013-000028

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ISIAH JAMES, JR.,

PETITIONER,

V.

SOUTH CAROLINA DEPARTMENT OF  
PROBATION, PAROLE AND PARDON  
SERVICES (SCDPPPS),

RESPONDENT.

---

PETITION FOR WRIT OF CERTIORARI TO S.C. COURT  
OF APPEALS OF 12-31-12

Other Counsel of Record:

Tommy Evans, Jr.  
General Counsel  
POB 50666  
Columbia, S.C. 29250

Isiah James, Jr., 96883, PRO PER  
RCI, CA-52, POB 2039  
Ridgeland, S.C. 29936

31 December 2012

Hon Daniel Shearouse, Clerk  
SC Supreme Court  
P.O. Box 11330  
Columbia, S.C. 29211

Re: petition for writ of certiorari of 12-30-12  
unpublish op. no. 2012-UP-503 2011-199967

Dear Mr. Shearouse:

Enclosed please find an original petition for writ of certiorari and motions for processing with your office. Because of the Holiday mailing system, he is sending this one alone as he only has 30 days to get petition submitted. The other document(s) and material(s) are enclosed in another envelope and will be follow probably inter-Agency mail. At least please process this petition filed upon receipt if you could return a clock-stamped copy?

He would be appreciative.

Respectfully submitted,

RECEIVED

JAN 04 2013

S.C. SUPREME COURT

S/ Brian James, II 96883  
Telah James, Jr.  
R&I, CA-52, POB 2039  
Bridgeland, SC 29936

March 17, 2014

**RECEIVED**

MAR 21 2014

S.C. SUPREME COURT

Hon. Daniel Shearouse  
S.C. Supreme Court  
Post Office Box 11330  
Columbia, South Carolina 29211

Dear Clerk:

Enclosed please find a corrected page of the December 2012 petition; he assumes the Court has not acted on the illegal questions; please add it to the file for consideration by the Court.

Respectfully submitted,

S Isiah James, II  
Isiah James, Jr., 96883  
P.O. Box 2039  
Bridgeland, S.C. 29936