

STATE OF SOUTH CAROLINA)
 COUNTY OF LEXINGTON)
 Hayward Leon Rogers, (278510))
 Plaintiff,)
 -VS-)
 Hope Frick, Deputy Clerk,)
 Lexington County clerk of Court,)
 Defendant.)

IN THE COURT OF COMMON PLEAS
 FOR THE ELEVENTH JUDICIAL CIRCUIT

Civil Action No.: 2007-CP-32-141

FILED
 2009 JUL 25
 COPY

ORDER

RECEIVED

FEB 24 2015

SC Court of Appeals

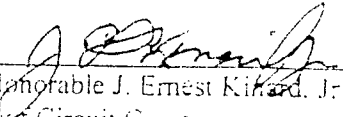
THIS MATTER IS before the Court pursuant to Defendant's Motion to Dismiss pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure. The Defendant also moves to dismiss based on lack of personal service of the lawsuit on the Defendant and the Defendant moves to dismiss based on the fact that Hope Frick, as Deputy Clerk of Court, was named as the Defendant rather than the County of Lexington.

At the hearing, the attorney for the Defendant stated that the Clerk of Court had given the Plaintiff the Grand Jury members and true bills issued by the Grand Jury on the dates requested. The Plaintiff alleged that he had not received those responses and the attorney for the Defendant thereafter gave copies of the above referenced information to the Plaintiff.

Having heard the arguments of the attorney for the Defendant and the argument of the Plaintiff, this Court finds that the Defendant is not a proper party to this action as an individual employee of the Clerk of Court's office, that the Defendant has not been properly served and that the Plaintiff has failed to state a cause of action, all pursuant to Rule 12 of the South Carolina Rules of Civil Procedure.

IT IS THEREFORE ORDERED that the Complaint be dismissed.

IT IS SO ORDERED.


 The Honorable J. Ernest Kirkland, Jr.
 Judge of Circuit Court

J A N U A R Y 1 9 9 9 G E N E R A L S E S S I O N S

MONDAY JANUARY 11, 1999

Presiding Judge: Rodney Peebles
Court convened at 9:00 A.M.

Reporter: Daphne Vann

Grand Jury Vor Dire

Jurors sworn as Grand Jury for 1999:

1. Barbara A. Johnson (H)
2. Frank Williams (H)
- X 3. Susan Matthews (H)
4. Johnette S. Adams (H)
- X 5. Thomas Backman (H)
6. Joseph Rhodes (H) - Foreman
7. Paul Howell
8. Vicki Fecas
9. Jason Lindsay
10. Paula Taylor
11. Kimberly Hook
12. Elizabeth Weed
13. Susan Barefoot
14. Katherine Birnie
15. Michelle Morrow
- X 16. Ryan Ezzell
17. John Lindler Jr.
18. George Thomas Jr.

Alternates:

1. Corey Thornton
2. Katherine Dievendorf
3. Gary Shelton
4. David Parler
5. Sandra Rucker
6. Debra Gunter

98-GS-32-3945

State vs. Tracy Gunn - Attorney General's Office served a true copy of 2 ct direct indictment and his attorney. Attorney General Office represented by Tameka Isaac. Defendant represented by Asst Public Defender.

Bond setting- Bond set at \$10,000.00 Surety or 10% cash on each count separately. Condition of to pay \$1,800 to the Public defender fund. Pay at the rate of \$60 week starting 1-11-99. Def. to at time of sentence for any monies paid to P D Fund. Public defender to write order.

Page - 1

STATE OF SOUTH CAROLINA)

IN THE COURT OF GENERAL SESSIONS

COUNTY OF LEXINGTON)

IN RE:)
REPORT OF LEXINGTON)
COUNTY GRAND JURY)

Exhibit 2

We, the undersigned members of the Grand Jury, do hereby certify that the Grand Jury met on February 22, 1999 and that at least twelve (12) members of the Grand Jury affirmatively voted for the issuance of a true billed indictment in each and every case on the attached list unless otherwise noted.

6 Joe Rhodes
Foreman (Or Acting Foreman)

7 Paul R. Howell
10

1 Estimate Johnson
2

18 George M. Thompson
11

8 Johette Adams
3

17 John J. Smith, Jr.
12

11 James K. Kirk
4

15 Michelle Tol 77 Litchell
13 (1/10/99 on)

5 W. S. Fear
5

13 Steven L. Rufford
14

9 John R. Jenkins
6

2 Frank W. Williams
15

12 Timothy M. Cook
7

16

10 John D. Smith
8

17

14 William H. Brune
9

18

Lexington, South Carolina
February 22, 1999

0291	Heyward Leon Rogers	Strong Armed Robbery	Common Law
0292	John B. Hill	Failure to Appear After Release	
0293	Randall W. Shealy	Forgery	
0294	Lashella Thompson	Distr. Crack Cocaine	
0295	"	"	" w/proximity
0296	"	Conspiracy to Distr.	Crack Cocaine
0297	Lisha Thompson	"	"
0298	"	"	Distr. w/proximity Scho
0299	"	Distr. Crack Cocaine	
0300	Michael Jermain Lyles	Resisting Arrest	
0301	Stanley Williams	Indecent Exposure	
0302	Mark A. Wilmot	Obtaining Signature or Prop. by False	False
0303	Keith Ramon Young	Poss. w/intent to Distr. Marijuana	
0304	"	"	" w/proximity School
0305	Donald W. Jordan	Fraudulent Check	
0306	"	"	"
0307	Juanita Thompson	Fraudulent Check	
0308	Robert S. Waters Sr.	"	"
0309	Sheila Boles	Shoplifting Less 1,000.00	3rd offense
0310	"	"	" or More
0311	Joseph Golson	Murder	
0312	Martin James Sharpe	Burglary First Degree	
0313	"	Criminal Sexual Conduct First Degree	
0314	"	Kidnapping	
0315	"	Ass. & Batt. High & Aggr. Nature	Common Law
0316	"	Burglary First Degree	
0317	"	Criminal Sexual Conduct First Degree	
0318	"	Kidnapping	
0319	"	Ass. & Batt. of High & Aggr. Nature	Common Law

- 0262 Robert D. Lundy Forgery
- 0263 " " " " "
- 0264 Phillip D. McCoy Poss. w/Intent to Distr. ^{Crack} Cocaine
- 0265 " " " Simple Poss. Marijuana _{proximity photo}
- 0266 " " " Poss. w/Intent to Distr. Crack Cocaine
- 0267 Charles McMillon Burglary second
- 0268 " " " Grand Larceny more than 5,000.00
- 0269 Marty Miles Poss. w/Intent to Distr. Marijuana w/proximate
- 0270 " " " " " " " " "
- 0271 Antwan Nelson Count Ten Kidnapping
- 0272 " " " Count Nine "
- 0273 " " " Count eight "
- 0274 " " " Count seven "
- 0275 " " " Count Six Poss. of firearm or knife ^{During Comm. Violent Crime}
- 0276 " " " Count Five Ass. & Batt High & Log. Nature ^{Common Law}
- 0277 " " " Count Four Criminal Conspiracy
- 0278 " " " Count Three Burglary First Degree
- 0279 " " " Count Two Armed Robbery
- 0280 " " " Count One " "
- 0281 Felipe Pena Alfaro Criminal Dom. Violence High + Regg. Nature
- 0282 Albert Richard Robinson Burglary Third Degree
- 0283 " " " Grand Larceny - 5,000 or more
- 0284 " " " " " " " "
- 0285 Hayward Leon Rogers Burglary Second
- 0286 " " " Criminal Sexual Conduct First Degree
- 0287 " " " " " " " "
- 0288 " " " " " " " "
- 0289 " " " Assault w/Intent to Kill ✓
- 0290 " " " Kidnapping

WITNESSES

WCPD

Amodio

ARREST WARRANT NUMBER

F-607506

ACTION OF GRAND JURY

TRUE BILL

Joe Rhodes

Foreperson of Grand Jury

Date: 2/22/99

VERDICT

GUILTY

Frank W. Tyler

Foreperson of Petit Jury

Date: 9/21/01

DOCKET NO. 99-GS-32- 819

The State of South Carolina

County of LEXINGTON

COURT OF GENERAL SESSIONS

FEBRUARY TERM 1999

THE STATE

vs.

HEYWARD LEON ROGERS

CDR# 14

Indictment for
+ Battery CDR
ASSAULT WITH INTENT TO KILL
§16-3-620

DONALD V. MYERS, SOLICITOR

A TRUE COPY

Donald V. Myers
Lex. Co. C.C.C.P., G.S. § 1-202

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

INDICTMENT FOR
ASSAULT WITH INTENT TO KILL
and Battery [^] §16-3-620
COR

At a Court of General Sessions, convened in February 1999 the Grand Jurors of LEXINGTON County present upon their oath:

and Battery COR
ASSAULT WITH INTENT TO KILL

§16-3-620

That HEYWARD LEON ROGERS, did in Lexington County on or about September 28, 1998, with malice aforethought commit an assault and battery upon one Ethel Tillman, with the intent to kill the said victim, in violation of Section 16-3-620 of the

CITE,
PURSUANT TO CLAIR V. STATE, and as in this case, amending
the indictment from ASSAULT WITH INTENT TO KILL / TO
ASSAULT AND BATTERY WITH INTENT TO KILL deprived the
of subject matter jurisdiction because the amendment
INCREASED THE MAXIMUM PENALTY FOR CONVICTION
FROM (10) TEN YEARS - TO (20) TWENTY-YEARS.
IT ALSO CHANGES THE NATURE OF THE OFFENSE.

TRIAL COUNSEL WAS INEFFECTIVE FOR FAILING TO OBJECT.

made and provided.

J. Canell
Ast SOLICITOR

ARGUMENT VI

The lower court erred in sentencing appellant to life without parole via a prior most serious offense which was too remote in time.

The state served notice on appellant under S.C. Code Ann. §17-25-45(A) that a sentence of life without parole was being sought due to his prior most serious conviction of assault and battery with intent to kill from 1979. See Court's exhibit number 6. The defense argued that this prior was over ten years old and too stale and remote in time for LWOP use and that at the time the crime was committed it was not classified as a serious offense. The court overruled the defense's objection and sentenced appellant to life without parole. ROA p. 692, l. 20 – p. 694, l. 25. Inasmuch as Rule 609(b), SCRE, prohibits the impeachment of a witness based on a prior conviction that is more than ten years old; clearly, by analogy, prior crimes that are too remote in time or stale should not be used to trigger an LWOP sentence. Use of such a stale crime as a prior under LWOP is fundamentally unfair and constitutes punishment that is cruel and unusual in violation of the eighth and fourteenth amendments to the United States Constitution and article 1, §15 and §3 of the South Carolina State Constitution.

CONCLUSION

Based on the foregoing argument, appellant's conviction should be reversed and his case remanded to the Lexington County General Sessions Court for a new trial.

Respectfully submitted,



Wanda H. Haile
Senior Assistant Appellate Defender

ATTORNEY FOR APPELLANT

October 30, 2003

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FEB 24 2015

SC Court of Appeals

79-GS-21-326

The State of South Carolina

County of FLORENCE

COURT OF GENERAL SESSIONS

FEBRUARY Term, 1979

THE STATE

vs.

HEYWARD ROGERS

2-1-53

INDICTMENT FOR

BURGLARY and ASSAULT & BATTERY w/ THE INTENT TO KILL

True Paul

of Grand Jury

WELLS PRINTING AND SERVICE CO., COLUMBIA, S. C.

J-AD

Witnesses

ST. DAVID B. HEDGE, FPD Carlos Raines

ST. SALEZBY 12/26/78

Verdict

A TRUE COPY

CLERK OF COURT, C. P. & G. S. FLORENCE COUNTY, S. C. RECEIVED: FEB 24 1979

STATE OF SOUTH CAROLINA COUNTY OF FLORENCE

Now comes the Defendant

Heyward Rogers in open Court and Pleads Guilty to Assault & Battery with Intent to Kill

and consents for said Plea to be entered on record against him. Attest George E. Henry C. C. T. Florence County

THE STATE OF SOUTH CAROLINA) In the Court of General Sessions) JURY OF FLORENCE

The Sentence of the Court is that the Defendant be committed to the custody of the Board of Corrections of the State of S. C. or the Florence Detention Center for a term of 18 months

Date _____ or pay a fine of _____ Presiding Judge

FORM 1

The State of South Carolina

INDICTMENT FOR

DUNGLARY AND

County of FLORENCE

ASSAULT & BATTERY W/ INTENT TO KILL

At a Court of General Sessions, convened on the 25th day of February

1979, the Grand Jurors of Florence County present upon their oath:

COUNT ONE DUNGLARY

That HEYWARD ROGERS

did in Florence County on or about the 28th day of December

1978, in the nighttime, break and enter the dwelling house of another, to wit:

Eva Mae Roberts with intent to commit a felony therein.

COUNT TWO

ASSAULT & BATTERY WITH INTENT TO KILL

That HEYWARD ROGERS

did in Florence County on or about the 28th day of December

1978, with malice aforethought commit an assault and battery upon one Eva Mae Robert

with the intent to kill the said Eva Mae Roberts,

A TRUE COPY

Subscribed and sworn to before me and duly attested in accordance with the statute in such behalf made and provided by the Acts of the General Assembly of the State of South Carolina, this 25th day of February, 1979.

Dudley Salatyre, Jr. Solicitor

RECORDED & INDEXED
FLORENCE COUNTY, S.C.
P.O. # 3

The State of South Carolina

Exhibit A

Pages 1, 2, 3



Office of the Attorney General

I TRAVIS MEDLOCK
Attorney General

REMBERT C DENNIS BUILDING
POST OFFICE BOX 11549
COLUMBIA, S.C. 29211
TELEPHONE 803 734 5577
FACSIMILE 803 251 6231

December 15, 1993

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FEB 24 2015

SC Court of Appeals

The Honorable Clyde N. Davis, Jr.
Clerk, South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

Re: State v. Gene Tony Cooper, Jr.

Dear Mr. Davis:

On January 1, 1993, the Court heard oral arguments in the above referenced death penalty case out of Lexington County. In Argument VII of the Final Brief of Appellant, Appellant maintains that the trial judge erroneously instructed the jury in accordance with State v. Atkins, 293 S.C. 294, 360 S.E.2d 302 (1987), overruled in part, State v. Torrence, 305 S.C. 45, ___, 406 S.E.2d 315, 319-323 (1991) (Chandler, J., concurring in result), which was then controlling precedent. (Final Brief of Appellant at pp. 43-46). His argument is premised upon his convictions for a "series of violent offenses including several armed robberies and a burglary..." (Final Brief of Appellant at p. 43). He maintains that because of this record of convictions for allegedly violent crimes, should he have been sentenced to life imprisonment in the present case, he would have never been eligible for parole as the result of S.C. Code Ann. § 24-21-640 (Supp. 1992). Therefore, he claims that the trial judge's charge concerning parole eligibility was materially incorrect and misleading. (Final Brief of Appellant at 44-45).

In connection with Appellant's seventh argument, the State would like to bring to the Court's attention that the South Carolina General Assembly passed a Crime Classification Act in 1993 which amended the creation of defined violent crimes in 1985. In the pertinent part to this case in Act No. 184, Section 8 provides as follows:

Section 8. Section 16-1-60 of the 1976 Code is amended to read:

Section 16-1-60. (A) For purposes of definition under South Carolina Law a violent crime includes the offenses of murder (§ 16-3-10); armed robbery (§ 16-11-330)...

(B) For a person to be considered guilty of a violent crime, the offense must be defined as a violent crime pursuant to subsection (A) at the time of the commission of the crime. (Emphasis added).

1993 Acts and Joint Resolutions, No. 184, p. 3239. Section 266 of the Act states as follows concerning the prospective application of the Crime Classification Act:

Prospective application of Act. Section 266. ~~All proceedings pending and all rights and liabilities existing, acquired, or incurred at the time this act takes effect are saved. The provisions of this act other than § 16-1-60(B) apply prospectively to crimes and offenses committed after the effective date of the act. The provisions of sub-section 16-1-60(B) apply retroactively to all persons convicted under the laws of this State.~~ All sentences pronounced on or after the effective date of this act must comply with the classification system, except where a penalty greater than the one in effect on the date the offense was committed would be required.

1993 Acts and Joint Resolutions, Act 184, Section 266, p. 3397 (emphasis added). Further, the declared effective date of these sections of the Crime Act is January 1, 1994. 1993 Acts and Joint Resolutions, No. 184, Section 269, p. 3399.

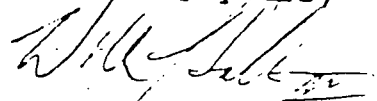
Because § 16-1-60 was not passed until 1986, any crimes committed before that date will no longer be classified as "violent offenses". As a result, the provisions of § 24-21-640 would no longer be applicable to Appellant's murder conviction, had he been sentenced to life imprisonment. Rather, because the armed robberies took place in 1976, he would have been parole eligible after January 1, 1994, if he had been sentenced to life imprisonment for the present murder.

Therefore, the State submits that following January 1, 1994, Appellant cannot show any conceivable prejudice based upon the trial judge's instruction under Atkins.

The Honorable Clyde N. Davis, Jr.
December 15, 1993
Page Three

Thank you very much for your attention to this matter. If there are any questions, please do not hesitate to contact me.

Sincerely yours,



William Edgar Salter, III
Assistant Attorney General

WESIII\aw
CC; David I. Bruck, Esquire