1, State of South Carolina Court of Appeals
Hayward L. Rogers, # 278510 Case No.
Appellant,

Vs.

State of South Carolina,

Respondent.

Brief and memorandum of Law In Support:

Statement of Facts

The Appellate was Illegally Convicted and Sentenced by The Lexington County Court of General Sessions after a Jury Trial. The Lexington County Grand Jury indicted The appellate during The February, 1999 Term of General Sessions, For Kidnapping, First degree Criminal Sexual Conduct, assault with intent To Kill, and Strong armed Robbery; 1999-GS-32-813-814-815-818-819. appellate was Represented at Trial by William Y. Rast, E.S.Q., On September 21, 2001, The honorable Marc H Westbrook, presiding Judge, Sentenced appellate To Life Without parole. A Notice of appeal was Filed on The appellate's behalf, and appeal was perfected by Wand H. Carter, Senior assistant appellate defender. by published opinion, The S.C. Court of Appeals affirmed The appellate's Convictions and Sentences. See, State V. Rogers, 603 S.E. 2d 916 (S.C. App. 2004). Though multiple issues was Raised appellate Counsel did not petition For Rehearing, or Seek Certiorari To The Supreme Court.

ARGUMENT I

The Lower Court erred by Sentencing Appellate To Life without Parole Via a PRIOR MOST SERIOUS offense which was Too Remote In Time and not Classified as Violent.

The State Served Notice on appellate 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 exhibits Submitted with appellant's notice of appeal, also See Courts exhibits No. 6. The defense argued That The prior was over Ten years old and Too Stale and Remote in Time FOR L.w.o.P. Use, and That at The Time The Crime was Committed it was not Classified as "most serious or Violent offense. The Court overruled The defense's objection and Sentenced appellate To Life without parole. R.o.A. p. 692, l. 20 - p. 694, l. 25. Inasmuch as Rule 609(b), S.C.R.E., 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 L.w.o.P. Sentence. Use of Such a Stale Crime as a prior under L.w.o.P. is Fundamentally unfair and Constitutes punishment That is Cruel and unusual in Violation of The eighth and Fourteenth Amendments To The U.S. Constitution, and article 1, Sec. 15 and Sec. 3, of The South Carolina State Const.

3, Findings of Fact and Conclusion of Law

Rogers argues, That The Trial Court abused its discretion When it overruled defense Counsel's objection by failing To apply The Law To Counsel's objection, and The Court Lacked Jurisdiction To Sentence appellate Under 17-25-45(A), on The grounds That appellate's prior Conviction For assault and battery With intent To Kill Was not a Crime Listed as "most serious or Violent" in "1979", and could not be used For Two Strike purposes, as The Crime Took place prior To The Statute becoming effective.

The use of The "1979" prior Violates The Ex Post Facto Laws, and also Violates The separation of powers doctrine, because Rogers sentence of Life without parole Violates The eighth and Fourteenth Amendments To The U.S. Const., and also Violates The ex post Facto Laws because The prior occurred before The passage of The Recidivist Statute, State v. Jones, 543 S.E. 2d 54 (S.C. 2001); Solem v. Helms, ~~[illegible]~~ 103 S. Ct. 3001 (1983), State v. Kiser, 343 S.E. 2d 292 (S.C. 1986); it Violates Due process of The 8th and 14th. amends. and art. 1, Sec. 8.

Section Code 16-1-60 of The 1976-79 Code is amended To Read: S.C. Code Ann. 16-1-60(A), For purposes of definition under South Carolina Law a Violate Crime includes The offense of "assault and battery With intent To Kill", 16-3-620; Section 16-1-60(B), For a person To be Considered Guilty of a Violate Crime, The offense MUST be defined as a Violate Crime pursuant To Subsection A, at The Time of The Commission of The Crime. (Emphasis Added).

4.

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 section 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.

1993 ACTS and Joint Resolutions, ACT No. 184, Section 266, p. 3397 (emphasis added). Further, the declared effective date of these sections of the Crime Classification 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 "most serious or violent offenses." As a result, the provisions of 24-21-640 would no longer be applicable to appellate's assault and battery with intent to kill conviction, had he been sentenced to life imprisonment. Rather, because the crime took place in "1979," Rogers would have been parole eligible after January 1, 1994.

5.

ARGUMENT - 2

The Lower Court erred by wrongfully convicting Appellant Due To The Court being without Jurisdiction To Impose Conviction and Sentence.

Newly discovered evidence of The Grand Jury voir dire and Impanelment documents submitted To The Court supports That appellate is actually innocent of his Conviction For assault and battery with intent To kill; But The Lexington County Grand Jury only indicted The appellate For "assault with intent To kill" at Trial, and without objections by defense counsel, The Solicitor moved To amend The indictment "assault with intent To kill" - To - assault and battery with intent To kill, by adding The word "and battery, To conform with The body of The indictment. The amending of The indictment deprives The Court of General Sessions of Jurisdiction, because it is also without ~~[illegible]~~ presentment by a Grand Jury, and malicious prosecution because appellate was not indicted For That Charge. In Hopkins v. State, 451 S.E.2d 389 (S.C. 1994), The Court held, an amendment That increases The penalty and Changes The nature of The offense deprives The Court of subject matter Jurisdiction. See, Clair v. State, 478 S.E.2d 54 (S.C. 1996), S.C. Code Ann. 17-19-100 (1925). See supporting exhibits.

6. Conclusion

Based upon The Forgoing arguments and Facts The Appellate is entitled To a new Trial and The Case Remanded To The Trial Court.

February 12, 2015 Haywood L. Rogers