HE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT
Shirley C. Robinson
Administrative Law Court Judge

Appellate Case No: 2015-001519

RECEIVED
JUL 23 2015
SC Court of Appeals

James A. Sellers, 243348 — Appellant

v.

South Carolina Department of Corrections — Respondent

INITIAL BRIEF OF APPELLANT

James A. Sellers, #243348
Wateree River CI
P.O. Box 189
Rembert, SC 29128

Pro se Appellant

TABLE OF CONTENTS

Table of Contents i

Table of Authorities. ii

Statement of Issues On Appeal 1

Statement of Case 2, 3

Argument 4, 5, 6, 7

Conclusion 8

TABLE OF AUTHORITIES

CASES

State v. Bixby, 373 S.C. 74, 644 S.E.2d 54 (2007) 5

State v. Blackmon, 304 S.C. 270, 273; 403 S.E.2d 660, 662 (1991). 6

State v. Bynes, 304 S.C. 62, 65, 403 S.E.2d 126, 127 (Ct. App 1991) . . .4, 6

Bryant v. City of Charleston, 295 S.C. 408, 368 S.E.2d 899 (1988) 5

State v. Cutler, 274 S.C. 376, 264 S.E.2d 420 (1980). 5

State v. Curtis, 356 S.C. 622, 591 S.E.2d 600 (2004). 6

State v. DeAngelis, 257 S.C. 44, 183 S.E.2d 906, 909 (1971) 7

State v. Jacobs, 393 S.C. 584, 713 S.E.2d 621 (S.C. 2011) 6

State v. Johnson, 327 S.C. 435, 489 S.E.2d 228, (S.C. App 1997) 4

State v. Lee, 350 S.C. 125, 564 S.E.2d 372, 376 (Ct. App 2002). 4

Polk v. Manning, 224 S.C. 467, 79 S.E.2d 875 (S.C. 1954). 7

State v. Mills, 360 S.C. 621, 624; 602 S.E.2d 750, 752 (2004) 6

State v. Muldrow, 348 S.C. 264, 559 S.E.2d 847 (2002) 6

Nelson v. Ozmint, 390 S.C. 432, 437; 702 S.E.2d 369, 371, (2010). 6

State v. Sellers, Op. NO. 99-MO-79 (S.C. Sup. Ct. filed Nov. 15, 1999). . . 6

State v. Shaffer, 340 S.C. 291, 531 S.E.2d 524 (S.C. 2000). 5

State v. Taub, 336 S.C. 310, 519 S.E.2d 797 (S.C. App 1999) 5, 6

STATUTES

Section 16-1-40 S.C. Code Ann. (1993) 4

Section 16-3-20 S.C. Code Ann. (1996) 4, 5, 6, 7

Section 24-13-100 S.C. Code Ann. 7

Section 24-13-210(B) S.C. Code Ann. 7

Section 24-13-230(B) S.C. Code Ann. 7

STATEMENT OF ISSUE ON APPEAL

I. DID THE SOUTH CAROLINA ADMINISTRATIVE LAW COURT ERR IN THEIR DECISION TO AFFIRM THE SOUTH CAROLINA DEPARTMENT OF CORRECTION'S DETERMINATION THAT APPELLANT'S TWENTY-FIVE (25) YEAR SENTENCE FOR ACCESSORY BEFORE THE FACT TO A FELONY (MURDER) IS NOT ELIGIBLE FOR SENTENCE REDUCTION CREDITS?

STATEMENT OF THE CASE

On 01/06/14 the Appellant filed a Step 1 Grievance (KRCI-0070-14) initiating a challenge to SCDC's calculation of his 25 year sentence for Accessory Before the Fact to a Felony (Murder). That Grievance was denied on 02/27/14. SCDC's response claimed that the Appellant's sentencing Order stated a "mandatory minimum" twenty-five (25) sentence.

The Appellant then filed a Step 2 Grievance in relation to the same issue on 02/28/14. On 10/01/14 the Appellant sent a letter to the Administrative Law Court asking for permission to advance KRCI-0070-14 into the ALC, under Al Shabazz, based on SCDC's failure to respond. The Appellant received a Memorandum from the Clerk's Office and, following their instructions, he filed a Notice of Appeal in connection with KRCI-0070-14. The appeal was assigned to Judge Durden on 11/06/14.

On 11/10/14 Judge Durden issued an Order of Dismissal based on the Appellant's failure to enclose a "... copy of the final decision ..." by SCDC.

On 11/14/14 the Appellant filed, via a letter, a Request for Leave based on SCDC's failure to provide a final decision. Judge Durden issued an Order to Reinstate on 12/02/14, and ordered SCDC to file a return to the Petition for Writ of Mandamus within 15 days. SCDC defaulted on that Order on 12/19/14. The Appellant wrote to Judge Durden on 01/05/15 pointing out SCDC's default, and asking Judge Durden to go ahead with the Writ of Precedendo mentioned in the previous Order.

On 01/29/15 the Appellant was served with a copy of correspondence between SCDC and the ALC. That correspondence contained a copy of SCDC's final decision in KRCI-0070-14. The Apellant was called to KRCI's Grievance Office on 01/31/15, and served with a copy by KRCI's Grievance Coordinator. SCDC's response held that their calculation was per statute.

On 02/02/15, due to the slightly confused nature of the process, the Appellant filed an Initial Brief of Appellant in connection with Docket No.: 14-ALJ-04-0955-IJ to insure that any, and all, filing deadlines were met.

On 02/09/15 Judge Durden issued an Order dismissing Docket No.: 14-ALJ-04-0955-IJ.

On 02/10/15, upon receiving that Order, the Appellant filed a new Notice of Appeal, with a copy of SCDC's final decision, in connection with KRCI-0070-14.

On 02/13/15 the Appellant was served with a copy of the Respondent's Record in connection with Docket No.: 14-ALJ-04-0955-IJ.

On 02/20/2015 the Appellant was notified that Judge Shirley C. Robinson had been assigned, and that the case had been designated as Docket No.: 15-ALJ-04-0078-AP.

On March 6, 2015 the Appellant filed an Initial Brief of appellant in connection with the new docket number.

On April 3, 2015 the Appellant received the State's Record on Appeal in connection with the current appeal.

On May 13, 2015 the Appellant filed a Motion to compel SCDC to include additional information in the Record on Appeal.

On May 20, 2015 the Appellant received a copy of the State's Response, and filed his Reply Brief on May 26, 2015.

On May 28, 2015 the appellant received the State's response to his Motion to include additional information in the Record on Appeal. Their response supplied the requested information, rendering the Motion moot.

On June 15, 2015 the Appellant received a copy of the Order filed by Judge Shirley C. Robinson in connection with Docket No.: 15-ALJ-04-0078-AP. The Order affirmed the Department's decision to deny the Appellant sentence reduction credits towards his twenty-five (25) year sentence for Accessory Before the Fact to a Felony (Murder).

The Appellant filed his Notice of Appeal on July 13, 2015.

ARGUMENT

The Appellate was convicted of Trafficking in Crank, and Accessory Before the Fact to a Felony (Murder). He was sentenced, under the law in effect in May of 1996, to two, concurrent, terms of twenty-five (25) years in prison and a fine of fifty thousand dollars.

The sentences imposed, and the statutes that control them, have been in effect and on the record for almost two decades now. The current argument, and appeal, concern how the Accessory sentence is required to be calculated, and whether the Administrative Law Court Judge erred when she ruled that SCDC officials had correctly done so.

It is agreed that S.C. Code Ann. Section 16-1-40 (1993) required that Accessory Before the Fact to a Felony be "punished in the manner prescribed for the principal offense", and that the Punishment for Murder statute, S.C. Code Ann. Section 16-3-20 (1996), offered only three sentencing options: "by death, by imprisonment for life, or by a mandatory minimum term of imprisonment for thirty years".

Obviously, as a review of the record shows, Judge Floyd chose to ignore the controlling statutes and impose his own sentence. There are cases that call his action a "question of the judge's authority.", but none that adequately clarify the effect on the sentence imposed. State v. Johnson, 327 S.C. 435, 489 S.E.2d 228, (S.C. App 1997), State v. Bynes, 304 S.C. 62, 65, 403 S.E.2d 126, 127 (Ct. App 1991).

The Appellant admits that the 1996 version of §16-3-20 had only been effect for 20 months at the time he was sentenced, but to suggest the Appellant's twenty-five year sentence is a result of any confusion surrounding the recent amendment is a bit of a stretch. It is more likely, and believable, that Judge Floyd chose to match the Accessory sentence to the Trafficking sentence he also imposed. The Department admitted as much in their Response to the Administrative Law Court filing. It should also be noted, even though there was no requirement for a parallel between the sentences, that Judge Floyd sentenced the principal, William Perry, to twenty-five (25) on his plea to Voluntary Manslaughter. Judge Floyd was neither a neophyte, nor ignoramus, where the law was concerned. The twenty-five (25) year sentence, for Accessory Before the Fact to a Felony, is the sentence that he chose to impose, and he did so without objection from the State. Therefore, it is State v. Lee, 350

S.C. 125, 564 S.E.2d 372, 376 (Ct. App. 2002), that best describes the situation "... the underlying sentence was the law of the case."

The 1996 version of S.C. Code Ann. §16-3-20 was, and is, a very unambiguous statute. It sets out clear, and distinct, sentencing options. The first two options, death and life, have garnered the most case law since its implementation. The third option, the "mandatory minimum term of imprisonment for thirty years" has garnered very little case law at all.

The statute's language is very clear "No person sentenced to a mandatory minimum term of imprisonment for thirty years pursuant to this section is eligible for parole or any early release programs, nor is the person eligible to receive any work credits, education credits, good conduct credits, or any other credits that would reduce the mandatory minimum term of imprisonment for thirty years required by this section." It does not, however, explain what happens to sentences that fall outside of the three, very specific, sentencing options.

In State v. Bixby, 373 S.C. 74, 644 S.E.2d 54 (2007), the S.C. Supreme held that Accessory Before the Fact to a Felony (Murder) could not be punished by death, even though it is an option under §16-3-20, because the legislature didn't specifically state that it could be. The logic being the same as in State v. Curtis, 356 S.C. 622, 591 S.E.2d 600 (2004), "... if Legislature had intended certain result in a statute it would have said so." In the present case, if the intent had of been for all sentences to be "mandatory minimum sentences" it would have said just that. In a dissenting opinion under State v. Shaffer, 340 S.C. 291, 531 S.E.2d 524 (S.C. 2000) there is even a question of potential parole eligibility if an individual was sentenced in excess of the " mandatory minimum term of imprisonment for thirty years" required by statute. Both cases showing that situations do arise that aren't neatly covered by the statutes.

The Appellant's twenty-five year sentence, simply put, isn't "a mandatory minimum term of imprisonment for thirty years". To treat it as such is to expand the language of §16-3-20 to cover a sentence completely outside of the statute's guidelines. "In construing a statute words much be given their plain and ordinary meaning, without resort to subtle or forced construction to limit or expand the statute's operation." State v. Taub, 336 S.C. 310, 519 S.E.2d 797 (S.C. App 1999), Bryant v. City of Charleston, 295 S.C. 408, 368 S.E.2d 899 (1988). "words of a statute must be given their plain and ordinary meaning

without resort to subtle or forced construction" State v. Muldrow, 348 S.C. 264, 559 S.E.2d 847 (2002). "When a statute is penal in nature, it must be strictly construed against the state and in favor of the defendent. State v. Blackmon, 304 S.C. 270, 273; 403 S.E.2d 660, 662 (1991); State v. Cutler, 274 S.C. 376, 264 S.E.2d 420 (1980). State v. Taub, 336 S.C. 310, 519 S.E.2d 797 (S.C. App 1999). "What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will, therefore, the courts are bound to give effect to the expressed intent of the legislature." State v. Jacobs, 393 S.C. 584, 713 S.E.2d 621 (S.C. 2011). "... courts must nevertheless interpret a penal statute that is clear and unambiguous according to its literal meanings." State v. Mills, 360 S.C. 621, 624, 602 S.E.2d 750, 752 (2004).

As to SCDC's argument about the South Carolina Supreme Court affirming the Appellant's convictions and sentences on direct appeal in State v. Sellers , Op. NO. 99-MO-79 (S.C. Sup. Ct. filed Nov. 15, 1999)., it doesn't hold weight. Neither the Defense, nor the State, raised any objection at trial concerning the sentence imposed. Therefore it wasn't preserved for appeal, and could not have been raised. State v. Bynes, 304 S.C. 62, 65, 403 S.E.2d 126,127 (Ct. App 1991). The S.C. Supreme Court issued a Memorandum Opinion, so we can't know what they did, or didn't, review in their decision making process, but we do know there were no issues related to sentencing presented to the court.

For their Administrative Law Court Response, SCDC relied heavily on the decision handed down in Nelson v. Ozmint, 390 S.C. 432, 437; 702 S.E.2d 369, 371 (2010), but the situations are separate and distinct. Nelson received a sentence that was clearly within the limits prescribed by the applicable CDV 3rd statute, and therefore could not be reduced through credit eligibility to less than the mandatory 1 year minimum. The Appellant, as SCDC pointed out, started his sentence at five years less than the statutorily mandated amount of thirty years. As mentioned above, the restrictions contained in §16-3-20 are predicated on a sentence of thirty years. The logic in Nelson can't be applied because there are actually statutes enabling the Appellant to earn sentence reduction credits, and nothing barring him but SCDC's reliance on the language in §16-3-20.

The Appellant has never contended that there was an "absence of a provision restricting" his ability to earn sentence reduction credits. He

stated that SCDC is, erroneously, relying on the language from the Punishment for Murder statute, §16-3-20, to bar him from earning credits. The Appellant has contended that that language can't be applied to his twenty-five (25) year sentence because it is specific to a "mandatory minimum term of imprisonment for thirty years".

The Appellant will argue that his twenty-five (25) year sentence on the Accessory charge is eligible to earn sentence reduction credits because he meets the requirements enumerated in S.C. Code Ann. §24-13-210(B), and S.C. Code Ann. §24-13-230(B). His offense is a "no parole offense" as defined by S.C. Code Ann. §24-13-100, and he isn't serving a "life sentence or a mandatory minimum term of imprisonment for thirty years pursuant to §16-3-20".

The Appellant ask that the Court only look to the records in this case. The trial transcript, and sentencing order, show that his Accessory sentence - on its own - raises issues of how it is supposed to be calculated under the law. It does not meet the requirements from §16-1-40, nor does it meet the requirements set forth in §16-3-20. There has long been a doctrine that "Ambiguity or doubts in a sentence should be resolved in favor of the accused." State v. DeAngelis, 257 S.C. 44, 183 S.E.2d 906, 909 (1971). "Uncertainties and ambiguities in sentence will normally be resolved in favor of prisoners." Polk v. Manning, 224 S.C. 467, 79 S.E.2d 875 (S.C. 1954).

CONCLUSION

For the reasons submitted, this Court should reverse the judgement of the Administrative Law Court.

Respectfully Submitted,

Date 7/21/15

James A. Sellers #243348
Wateree River CI
P.O. Box 189
Rembert, SC 29128

THE STATE OF SOUTH CAROLINA
In The Court of Appeals
APPEAL FROM THE ADMINISTRATIVE LAW COURT
Shirley C. Robinson, Administrative Law Court Judge
Appellate Case No. 2015-001519

James A. Sellers, #243348 — Appellant

v.

South Carolina Dept. of Corrections — Respondent

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this date served this Initial Brief of Appellant in the above entitled action upon all parties to the cause by depositing a copy thereof, in the United Stated mail, postage paid, or in the Interagency Mail Service addressed to the party(ies) or their attorneys.

A copy of this has been served on the SCDC, Office of General Counsel at P.O. Box 21787 Columbia, SC 29211-1787.

Date: July 21, 2015

James A. Sellers
WRCI-243348-D2/36x
P.O. Box 189
Rembert, SC 29128

Other Counsel of Record:
Clerk of the S.C. Court of Appeals
P.O. Box 11629
Columbia, SC 29211.

Tuesday, July 21, 2015

James A. Sellers
WRCI-243348-D2/36x
P.O. Box 189
Rembert, SC 29128

Clerk, S.C. Court of Appeals
P.O. Box 11629
Columbia, SC 29211

Re: James A. Sellers v. SCDC
Appellate Case No. 2015-001519

To whom it may concern:

Please be advised that I am in receipt of your letter dated July 17, 2015.

I am enclosing a corrected Certificate of Service, and have served a copy of the same on SCDC, Office of General Counsel.

As to the filing fee of $100.00, SCDC produced the check yesterday, and I sent it to you. There may be an additional problem, apparently our Mailroom had the check issued to SC ALC Clerk of Court. Hopefully it isn't insurmountable. Please understand that I wasn't the one to fill out the form, and was assured it wasn't a problem. Please let me know if it is.

I am also enclosing my Initial Brief of Appellant for filing, as well as my Designation of Matter To be Included In The record on Appeal. Both have been served in the manner you requested.

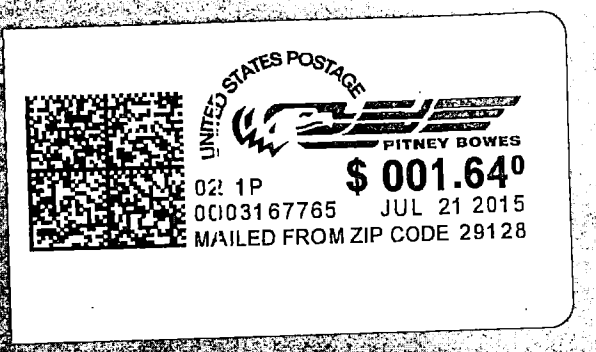
Thank you for your time and assistance.

Sincerely,

James A. Sellers

cc: SCDC, Office of General Counsel

A. Sellers
243348 - D2/36 x
x 189
ct, SC 29128



Clerk, SC Court of Appeals
PO Box 11629
Columbia, SC 29211