

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

 ORIGINAL

THE STATE,

PETITIONER,

V.

CHRISTOPHER BROADNAX,

RESPONDENT

APPELLATE CASE NO. 2013-000615

RECEIVED

AUG - 6 2015

S.C. Supreme Court

Appeal from Richland County

G. Thomas Cooper, Circuit Court Judge

Opinion No. 5071

PETITION FOR REHEARING OR FOR REMAND
TO THE COURT OF APPEALS TO CONSIDER UNADJUDICATED ISSUES

On July 8, 2015, this Court affirmed in part and reversed in part the Court of Appeals opinion issued January 9, 2013. State v. Broadnax, 401 S.C. 238, 736 S.E.2d 688 (Ct. App. 2013). A second opinion was re-filed by this Court on July 29, 2015 again affirming in part and reversing in part the Court of Appeals. Pursuant to Rule 221, SCRAP, Respondent Broadnax moves this Court to reconsider its ruling that the error was harmless in light of the overwhelming evidence of guilt; or in the alternative, to remand his case to the Court of Appeals for a ruling on the three

remaining issues that the Court of Appeals did not address because they had reversed on the first issue.

This Court affirmed the Court of Appeals' finding that armed robbery is not a crime of "dishonesty or false statement" pursuant to Rule 609(a)(2), SCRE. However, this Court reversed the finding by the Court of Appeals that the case should be remanded for a new trial. This Court found that admitting Broadnax's three prior convictions for armed robbery was harmless beyond a reasonable doubt.

The harmless error standard was not proper in Broadnax's case as the admission of the three prior armed robbery convictions was highly prejudicial, especially in light of the fact that he was on trial for armed robbery.

In State v. James, 355 S.C. 25, 583 S.E.2d 745 (2003), the Supreme Court ruled that the trial court erred in admitting seven prior burglary convictions of the defendant in his trial for burglary first degree. The Court found this prejudicial pursuant to Rule 403, SCRE, because the burglary statute for first degree only required two prior burglary convictions for first degree burglary. Therefore, the probative value of all seven prior burglary convictions was outweighed by the "very great potential for prejudice to the defendant regardless of the trial court's limiting instruction."

In State v. Pagan, 369 S.C. 201, 631 S.E.2d 262 (2006) the Supreme Court wrote that an error is harmless beyond a reasonable doubt where it did not contribute to the verdict obtained. The Court continued to write from Pagan, Id. that an insubstantial error not affecting the result of the trial is harmless where guilt has been conclusively proven by competent evidence such that no other rational conclusion can be reached.

The error in admitting three prior convictions **for the same crime** for which he was on trial was not an insubstantial error which this Court established applied in this case. The evidence in

Broadnax's case was not sufficient to overcome the prejudicial impact of the admission of three prior armed robbery convictions. Pursuant to Rule 403, SCRE, the admission of three prior armed robbery convictions was more prejudicial than probative because there was a strong reasonable probability that these prior convictions contributed to the verdict of guilty for armed robbery.

Should this Court affirm its decision, in the alternative, Broadnax asks this Court to remand his case to the Court of Appeals for a ruling on his three remaining issues not reached in their decision. The Court of Appeals wrote:

The determination of this issue is dispositive, and thus, we decline to address Broadnax's remaining arguments relating to a solicitor's discretion in noticing LWOP and the trial court's denial of his request to inform the jury of his potential LWOP sentence.

State v. Broadnax, 401 S.C. 238, 736 S.E.2d 688 (Ct. App. 2013).

The three additional issues raised by Broadnax were that the trial court erred in: (1) denying his motion to withdraw LWOP notice based on the arbitrary use of the prosecution's discretion in the plea bargaining process; (2) denying his motion to withdraw the LWOP notice based on the lack of any standards to guide solicitors regarding when they should seek a sentence of LWOP; and (3) denying his motion that the jury be informed he was facing the mandatory sentence of LWOP.

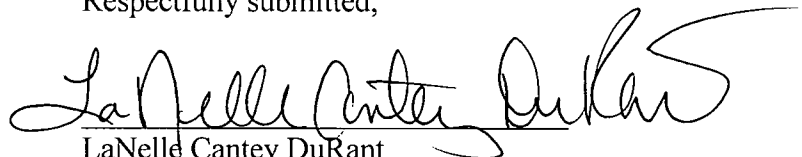
Because this Court found harmless error and reversed the remand for a new trial for Broadnax on this issue, he is requesting this Court to remand his case for a determination of whether he is entitled to relief on these other issues.

In State v. Grovenstein, 335 S.C. 347, 517 S.E.2d 216 (1999), this Court reversed the Court of Appeals decision which had reversed Grovenstein's conviction and remanded his case for a new trial. Because the Court of Appeals had reversed Grovenstein's convictions, it did not address his remaining issues. This Court remanded Grovenstein's case to the Court of Appeals for consideration

of the other issues he raised. The same procedure applied in State v. Pinckney, 339 S.C. 346, 529 S.E.2d 526 (2000).

WHEREFORE, we respectfully request this Court to reconsider its ruling and grant Broadnax a new trial, or in the alternative, to remand Broadnax's case to the Court of Appeals for consideration of his remaining issues.

Respectfully submitted,


LaNelle Cantey DuRant
Appellate Defender

This 6th day of August, 2015.

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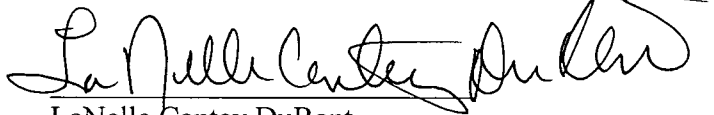
CHRISTOPHER BROADNAX,

RESPONDENT

APPELLATE CASE NO. 2013-000615

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Petition for Rehearing in the above-entitled case has been served upon Mary S. Williams, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, and Mr. Christopher Broadnax #232320, at Lee Correctional Institution, 990 Wisacky Highway, Bishopville, SC 29010, this 6th day of August, 2015.



LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR APPELLANT

SWORN TO BEFORE ME this 6th day
of August, 2015.

_____(L.S.)
Notary Public for South Carolina
My Commission Expires: October 30, 2022.