

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF GENERAL SESSIONS
OF THE FIFTH JUDICIAL CIRCUIT

INDICTMENT NO. 2014-GS-40-7355 /
2014-GS-40-7364 /

STATE OF SOUTH CAROLINA,)

vs.)

EMMANUEL ELLEBY)
DEFENDANT.)

RECEIVED

ORDER DEC 22 2015

SC Court of Appeals

2015 DEC 16 PM 3:58

FILED

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This matter came before the Court on November 9, 2015 as a motion to reconsider the above Defendant's sentence of Life Without the Possibility of Parole (LWOP) as unconstitutional. Counsel for the Defendant argued that South Carolina Code § 17-25-45 violates the Equal Protection Clause of the Fourteenth Amendment and the Eighth Amendment to the United States Constitution. For reasons set forth below, the motion to reconsider the Defendant's sentence is denied.

CONSTITUTIONALITY OF STATUTE

Defendant argues that South Carolina Code § 17-25-45, the LWOP statute, is unconstitutional. The statute states that, "upon a conviction for a most serious offense as defined by this section, a person must be sentenced to a term of imprisonment for life without the possibility of parole is that person has either: (1) one or more prior convictions for: (a) a most serious offense. . ."¹ This is commonly referred to as the "Two Strikes" law.² South Carolina courts have held numerous times that the LWOP statute is constitutional and is not a violation of

¹ S.C. Code Ann. § 17-25-45(A)(1).

² *State v. Standard*, 351 S.C. 199, 201, 569 S.E.2d 325, 327 (2002).

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equal protection nor cruel and unusual punishment.³ Here, a jury found the Defendant guilty of Kidnapping⁴ and Robbery/ Armed Robbery, Robbery While Armed or Allegedly Armed With a Deadly Weapon⁵, both of which are eligible for a life without parole sentence under the Two Strikes law.⁶ Therefore, the Defendant's sentence of a term of imprisonment of LWOP for the two strikes was appropriate, and is not a violation of Fourteenth and Eighth Amendment rights.

Additionally, the Defendant argues the prosecutor in this case arbitrarily chose to pursue LWOP as a sentence recommendation. The South Carolina Constitution and South Carolina case law place the "unfettered discretion to prosecute" solely in their hands. . . and they "may pursue a case to trial, or they may plea bargain it down to a lesser offense, or they may simply decide not to prosecute the offense in its entirety."⁷ It is important to note that the prosecutor's discretion is subject to constitutional constraints and may not base a decision to prosecute on unjustifiable standards such as "race, religion, or other arbitrary classifications."⁸ Further, the Judicial Branch does not have the power to encroach on a prosecutor for exercising this discretion.⁹ The Defendant presented no persuasive evidence to indicate the prosecutor made an arbitrary decision to take the Defendant's case to trial. Because the prosecutor, in her allowed discretion, sought to try the Defendant for two crimes that are under the Two Strikes law, the Defendant's sentence must be LWOP if found guilty in accordance to the statute.¹⁰

³ *State v. Jones*, 344 S.C. 48, 543 S.E.2d 541 (2001); *State v. White*, 349, S.C. 33, 562 S.E.2d 305 (2002).

⁴ S.C. Code Ann. § 16-03-0910

⁵ S.C. Code Ann. § 16-11-0330 (A)

⁶ S.C. Code Ann. § 17-25-45 (C)(1)

⁷ *State v. Needs*, 333 S.C. 134, 146, 508 S.E.2d 857, 863 (1998).

⁸ *Id.*


⁹ *Id.*

¹⁰ S.C. Code Ann. § 17-25-45(A)

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For these reasons, the Defendant's motion to reconsider his LWOP sentence is denied.

IT IS SO ORDERED.



DeAndrea G. Benjamin
Judge, Fifth Judicial Circuit

12-15, 2015

Columbia, South Carolina

FILED
2015 DEC 16 PM 3:28
JEANETTE H. MURPHY
C.C.P. & G.S.

14. 7564

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF GENERAL SESSIONS

Indictment Numbers: 2014A4007355
2014GS4007364

RECEIVED

The State of South Carolina,)
)

DEC 22 2015

vs.)

NOTICE OF MOTION TO RECONSIDER)
SENTENCE AND DECLARE)

60 Court of Appeals

SOUTH CAROLINA CODE §17-25-45)
UNCONSTITUTIONAL)

Emmanuel Elleby,)

Defendant.)

2015 OCT 21 PM 12:48
RICHLAND COUNTY
FILED
JANETTE W. McBRIDE
C.C.P. & G.S.

TO: ASSISTANT SOLICITOR APRIL SAMPSON:
CC: THE HONORABLE DEANDREA BENJAMIN

YOU WILL PLEASE TAKE NOTICE that counsel will move before this Court on November 9, 2015 at 9:30 a.m. or, as soon thereafter as this matter may be heard for a motion to reconsider the defendant's sentence as being pursuant to an unconstitutional state statute. Emmanuel Elleby, through undersigned counsel, asserts that South Carolina Code §17-25-45 violates the Equal Protection Clause of the Fourteenth Amendment and the Eighth Amendment to the United States Constitution. Therefore, Mr. Elleby respectfully moves this Court to reconsider his sentence imposed pursuant to this statute.

This notice is also a formal request for the Solicitor's Office to have the above-named Defendant transported to the Richland County Judicial Center from the South Carolina Department of Corrections.



Adam S. Ruffin
Attorney for Defendant
Richland County Public Defender's Office
P.O. Box 192
Columbia, South Carolina 29202
(803) 765-2592

Columbia, South Carolina

This 20 day of October, 2015