THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT
Shirley C. Robinson

Appellate Case No.: 2015-001519

James A. Sellers, 243348 — Appellant

v.

South Carolina Department of Corrections — Respondent

FINAL REPLY BRIEF OF APPELLANT

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Pro se Appellant

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ARGUMENT

In their Response SCDC admits that Judge Floyd purposely "exercised his discretion and lowered" the Accessory sentence "to 25 years to match the other sentence imposed", and "gave the Appellant a more lenient sentence". This admission warrants a discussion of the "other sentence imposed". The Appellant broached this subject in his Reply Brief to the Administrative Law Court filing. (R.p.25 line 23 - p.24 line 2)

In April of 1999, due to confusion in connection with the "other sentence imposed", SCDC contacted the Horry County Solicitor's Office in order to clarify the service requirement on the Appellate's Trafficking charge. According to SCDC, Judge Floyd, through the Solicitor's Office, provided an amended Sentencing Order directing SCDC to treat the Trafficking charge as a parolable, and therefore credit eligible, sentence. (R.p.10) That clarification resulted in the Appellant's completing the Trafficking sentence in February of 2011; at approximately 57%. The relevance of this is an insight into Judge Floyd's intentions. If he had of intended EITHER sentence to be served as a "mandatory minimum", or a "day fo day" sentence, the necessity of those curative instructions would have been moot.

SCDC has again tried to claim that the "Appellant offers no on-point source of law", while theirs is rather thin and shaky as well. Nelson v. Ozmint, 390 S.C. 432, 702 S.E.2d 369 (2010) does touch on the subject, but discusses credit eligibility for an individual sentenced according to the CDV 3rd statute's allowable range. The Appellant's sentence is clearly outside of the range prescribed by his own statute; thus bringing the argument to surface. As to Dean v. State, No. 2015-UP-176, 2015 WL 1481686 (S.C. Ct. App. April 1, 2015) (unpublished), with rather questionable precedential value, concerns yet another sentence that falls within the range prescribed by statute. The Appellant will admit that at later dates it became practice for sentencing Judges to state that a sentence, under the Punishment for Murder statute, S.C. Code Ann. §16-3-20, was in fact to be served "day for day". Sometimes even marking the sentencing orders to state just that. Back in August of 1997, Judge Floyd did no such thing. That record is quite clear on that. (R.pp.9-12)

The degree of Floyd's leniency, and his apparent intent to craft consistent sentences between the Principal and Accessory, would suggest he never intended the Accessory sentence to be "day for day" or "a mandatory minimum".

The Appellant has offered cases that contain logic compatible to the situation at hand. State v. Lee, 350 S.C. 125, S.E.2d 372, 376 (Ct. App. 2002) discusses a sentence that deviates from the statute's guidelines, and that deviation's ultimate effect to the sentence. The Court held that unchallenged, by either side, "the underlying sentence becomes the law of the case." In the present case that holding would mean that the Appellant's 25 year sentence is separate, and distinct, from a "mandatory minimum term of imprisonment for thirty years". In State v. Bixby, 373 S.C. 74, 644 S.E.2d 54 (2007) the Supreme Court actually reviews the sentencing options available under the Punishment for Murder statute, S.C. Code Ann. §16-3-20, and determines that Death is not an option as a punishment for a conviction as an Accessory before the Fact to a Felony because the Legislature didn't specifically state that it was. If applied, that logic would mean that the Appellant's 25 year sentence could not be a "day for day" because it is not a "mandatory minimum term of imprisonment for thirty years", as the statute is extremely unambiguous about. In State v. Shafer, 340 S.C. 291, 531 S.E.2d 524 (S.C. 2000), we find a dissenting opinion from Chief Justice Finley that actually points out and discusses some ambiguities in §16-3-20. He discusses parole eligibility for individuals sentenced in excess of 30 years under the 1995 version of §16-3-20. Ultimately, he determines that they are barred from parole due to statutes discussing felonies exempt from classification. In his discussion, he states that because §16-3-20 "is silent as to the issue" and that "the general rule controls". That logic is very applicable to the present case. The Appellant's 25 year sentence is CLEARLY not covered by §16-3-20, as it is not one of three very specific options; therefore the general rule would be controlling.

SCDC did attempt to forestall this argument, in their Response, by arguing that the Appellant "cannot fall under the rules governing 'no parole' offenses because 'no parole offenses include a mandatory release to community supervision". Therefore being barred from "any early release program" based on the language in §16-3-20. Again, those restrictions are predicated on a sentence of "a mandatory minimum term of thirty years".

There appears to be a legal distinction between community supervision and early release programs, although the distinction isn't very clear. §16-3-20 bars Life from both, and then only bars "a mandatory minimum term of imprisonment for thirty years" only from early release. Obviously, they are

not the same thing.

When you read S.C. Code Ann. §24-13-100 the Appellant's 25 year does actually meet the requirements, as it is neither a Life sentence nor a "mandatory minimum term of imprisonment for thirty years". When you follow the Community Supervision statute, S.C. Code Ann. §24-13-210(b), the Appellant's 25 year sentence meets those requirements as well. If you go further, S.C. Code Ann. §24-13-100 and S.C. Code Ann. §16-1-10(d) appear to mandate that the Appellant complete a community supervision program. Accessory Before the Fact to a Felony, and Murder appearing on the list.

It should be noted that the 1995 version of §16-3-20, and the community supervision statute :24-13-210, took effect at approximately the same time. The initial interpretation of §24-13-210 did allow for the community supervision period to extend BEYOND the total incarcerative time. It was later court decisions that modified that interpretation. So whether, or not, the 1995 version of §16-3-20 contemplated an offender serving less than the "mandatory minimum term of imprisonment for thirty years" stated in the statute, the legislature did not specifically bar them from participating in a community supervision program. Actually, they appeared to have set a mandate for it.

The Appellant's sentence, as even SCDC admits, clearly falls outside of the language of ANY version of §16-3-20 since 1996. The sentence has stood for almost two decades. The Appellant has never challenged the sentence, the State has never challenged the sentence, so under State v. Lee it is now "the law of the case". The current appeal concerns credit eligibility, and has been properly brought before the Court. To hold it to the restrictions predicated on a "mandatory minimum sentence of thirty years" would be expansion of the language of the statute.

Conclusion

As to SCDC's plea for the Court to "stop the leak", through a favorable decision, the Appellant asks that he be allowed his "day in court" on this issue. It has merit, it is supported by the record in his case, has been brought through the proper steps, and he did give SCDC a chance to correct it first. They chose not to do so.

James A. Lee 10/15/15

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CERTIFICATE OF COUNSEL

The undersigned certified that this Final Reply Brief of Appellant complies with Rule 211(b), SCACR.

Date: 10/15/15

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CERTIFICATE OF SERVICE

This is to certify that the undersigned has this date served copies of this Final Reply Brief of Appellant, in the above entitled action upon, all parties to the cause by depositing one or more copies thereof, in the United States mail, postage prepaid, or in the Interagency Mail Service addressed to the party(ies) or their attorneys.

Fifteen (15) copies of this Final Reply Brief of Appellate has been served on the Clerk of the S.C. Court of Appeals, at 1220 Senate Street, Columbia, SC 291021, and another copy has been served on SCDC's Office of General Counsel at P.O. Box 21787 Columbia, SC 29211-1787.

Date: 10/13/15

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