Petition for A writ of certiorARI
TO The court of APPeals
The state of south Carolina
IN The supreme court

APPeal from Richland County
Robert E: Hood circuit Judge

OPinion NO:2014-000602

Nakia Jones Petitioner

VS.

state of south Carolina Respondent

APPENDIX

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The state of south Carolina
In The court of appeals

Appeal from Richland County
Robert E. Hood Circuit Judge

Case: NO 2014-000602

Nakia Jones Appellant

vs.

state of South Carolina

Respondent

final Briefs

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Tables of contents

Tables of Authorities

"Cases"

Statement of Issues on Appeal

A Did the lower court erred in not ruleing that this case was appropriate for a Declaratory Judgment action.

B. Did the lower court erred in not ruleing that this case was appropriate for a habeas Corpus.

Statement of the case

SEE R. pg D-27 D-26 transcript

1. Procedural History. This case was filed in the Fifth Judicial Circuit Court of common Pleas on may 25, 2012, by the Appellant herein, appearing pro se, under the Uniform Declaratory Judgments Act, §15-53-10, et seq., Code of Laws of South Carolina, 1976 (as amended). The Appellant alleged that his incarceration was unlawful and invoked the habeas corpus provisions of Article 1 §18 of the south Carolina Constitution and S.C. Code §17-17-10, et seq.

Appellant's 1996 Conviction.

The Appellant ("Jones") was accused of committing an Assault and Battery with Intent to kill (ABIK) on January 27, 1995. At the time of the crime, Jones was twenty (20) years old (DOB: 11/28/1974) An arrest warrant (No. E-380837) was issued on January 27, 1995, and Jones was arrested on February 7, 1995. On June 14, 1995, Jones was indicted by the Aichland County Grand Jury (Ind. No.: 95-GS-40-1328) on the charge of ABIK. Jones remained in Jail until he was brought to court on February 29, 1996. on that date, Jones appeared with counsel before the Honorable L. Casey manning and Pled guilty to ABIK. On the date of sentencing, Jones twenty-one (21) years old. Judge manning gave Jones an indeterminate sentence under the Youthful offender Act, however, Jones did not consent in writing to being treated and sentenced as a youthful offender.

Jones did not appeal the sentence and was released by the YOA Parole Board after he had served one(1) year.

Appellant's 1998 Convictions. Jones was accused of committing three(3) armed robberies; possessing a firearm during commission of a violent crime; and failing to stop for a blue light on June 29, 1997. The arrest warrants were issued on July 25, 1997, and Jones was arrested that same day. On May 20, 1998, Jones was indicted indictment nos. 98-GS-40-24551 through-24555. The state served Jones and his attorney with a notice of Intent to seek a sentence of Life without possibility of Parole in accordance with S.C. code §17-25-45(H). On June 16, 1998, Jones' court-appointed attorneys, John E. Shutt, Esquire, and Robert M. Sneed, Esquire, moved to quash the indictments due to the state's failure to comply with Rule 3(C), SCRCrimP. The motion was denied and Jones was brought to trial the same day. A Jury acquitted Jones of the blue light charge but found him guilty on the three(3) Armed Robbery charges and weapon charge. The Honorable H. Dean sentenced Jones to Life without Possibility of Parole. Jones appealed, claiming that the "Two Strikes Law" was enacted after his 1995 conviction and was, therefore, an ex post facto violation; however, the S.C. Supreme Court affirmed his convictions and sentences (Opinion No: 25257, March 12, 2001).

Post-conviction Relief. Jones filed for post-conviction Relief in 2001 (C/A NO: 2001-CP-40-2660) regarding his 1998 convictions, which was denied by order of the Honorable James R. Barber, III, filed may 23, 2003, Jones filed an appeal which was denied. Jones then filed for post-conviction Relief in 2003 (C/A NO: 2003-CP-40-3963) challenging his 1996 conviction, which was denied by order of the Honorable G. cooper. Jr., filed february 22, 2006, Plaintiff filed an appeal which was denied.

Legal ISSues

see A. pg. B-9-B-17 A. Declaratory Judgment: The state argued below that Jones "case should not be treated as a Declaratory Judgment action because it"... would not terminate the uncertainty or controversy giving rise to the proceeding." S.C. Code § 15-53-70. Jones submitted that Declaratory Judgment was appropriate for the following reason:

see A. pg. E-62-EX 1 A. pg. E-64 EX 3 i Jones submitted that his conviction ~~and~~ and sentencing under the youthful offender act violated the statutory requirements of S.C. code §24-19-50(3), which provides, in pertinent part: "... If the offender is twenty-one years of age but less than twenty-five of age, he may be sentenced in accordance with this item IF HE consents in writing..." [Emphasis added]. it is uncontroverted that Jones did not consent in writing; therefore, his sentence did not comply with state law and was void ab initio.

Penal statutes are strictly construed against the state and in favor of the defendant. State v. Morgan, 352 S.C. 359, 574 S.E.2d 203 (Ct. App. 2002); State v. Fowler, 322 S.C. 157, 470 S.E.2d 393 (Ct. APP. 1996). The cardinal rule of statutory construction is to ascertain and effectuate the legislative intent whenever possible. State v. Baucom, 340 S.C. 339, 531 S.E.2d 922 (2000); City of Camden v. Brassell, 326 S.C. 556, 486 S.E.2d 492 (Ct. APP. 1997). All rules of statutory construction are subservient to the one that legislative intent must prevail If it can be reasonably discovered in the language used, and that language must be construed in the light of the intended purpose of the statute. State v. Hudson, 336 S.C. 237, 519 S.E.2d 577 (Ct. APP. 1999). The determination of legislative intent is a matter of law. City of Sumter Police Dep't v. one (1) 1992 Blue Mazda Truck, 330 S.C. 371, 498 S.E.2d 894 (Ct. APP. 1998). The legislature's intent should be ascertained primarily from the plain language of the statute. Stephen v. Avins constr. Co., 324 S.C. 334, 478 S.E.2d 74 (Ct. APP. 1996). Words must be given their plain and ordinary meaning without resorting to subtle or forced construction which limits or expands the statute's operation. Rowe v. Hyatt, 321 S.C. 366, 468 S.E.2d 649 (1996); City of Sumter Police Dep't, 330 S.C. at 375, 498 S.E. 2d at 896. Courts should consider not merely the language of the particular clause being construed,

but the word and its meaning in conjunction with the purpose of the whole statute and the policy of the law. Whitner v. State, 328 S.C. 1, 492 S.E. 2d 777 (1997); see also Stephen, 324 S.C. at 340, 478 S.E. 2d at 77 (Statutory provisions should be given reasonable and practical construction consistent with purpose and policy of entire act). In interpreting a statute, the language of the statute must be construed in a sense which harmonizes with it's subject matter and accords with its general purpose. Hitachi Data Sys. Corp. v. Leatherman, 309 S.C. 174, 420 S.E. 2d 843 (1992); Hudson, 336 S.C. at 246, 519 S.E. 2d at 582. Statutes must be read as a whole and sections which are part of the same general statutory scheme must be construed together and each given effect, if it can be done by any reasonable construction. Higgins v. State, 307 S.C. 446, 415 S.E. 2d 799 (1992). If a statute's language is plain and unambiguous, and conveys a clear and definite meaning, there is no need to employ rules of statutory interpretation and the court has no right to look for or impose another meaning. Paschal v. State Election Comm'n, 317 S.C. 434, 454 S.E. 2d 890 (1995); Brassell, 326 S.C. at 560, 486 S.E. 2d at 494. When the terms of a statute are clear, the court must apply those terms according to their literal meaning. Holley v. Mount Vernon Mills, Inc., 312 S.C. 320, 440 S.E. 2d 373 (1994). However, if the language of an act gives rise to doubt or uncertainty as to legislative intent, the construing court may search for that intent

beyond the borders of the act itself. Hudson, 336 S.C. at 247, 519 S.E.2d at 582. The statute as a whole must receive practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of lawmakers. Brassell, 326 S.C. at 561, 486 S.E.2d at 495. Any ambiguity in a statute should be resolved in favor of a just, equitable, and beneficial operation of the law. City of Sumter Police Dep't, 330 S.C. at 376, 498 S.E.2d at 896. Here, the statute contains no ambiguity - it provides that the defendant must consent in writing.

The circuit Court should have declared that this sentence was improperly rendered and vacate the sentence. This would "terminate the uncertainty or controversy giving rise to the proceeding." SEE A. Exhibit 2 pg. E 63

Jones additionally submits that his 1996 90a sentence did not contain a designation as a "serious offense" or "most serious offense" as those terms are used in S.C. Code §17-25-45(A), and should not have been used as a prior conviction for purposes of Life without Parole sentencing. This would have been an appropriate use of the declaratory Judgment Power by the circuit court.

B. Habeas Corpus. Jones also brought the under lying action under the habeas corpus provisions of S.C. Code §17-17-10, et seq. The State argued that Jones' Petition should be summarily dismissed becouse it "[didn't] support the requested relief," i.e., that the Petition did not allege that Jones had exhausted all available post-conviction relief remedies, as required by Gibson v. State, 329 S.C. 37, 495 S.E.2d 426 (1998) and Simpson v. State, 329 S.C. 43, 495 S.E.2d 429 (1998). Jones' Complaint, however, clearly alleged that he had filed a Post-Conviction Relief action (CIA NO: 2001-CP-40-2660) and an Amended Application on April 24, 2003, which specifically challenged the constitutionality of his 1996 conviction. The State also argued that the Petition had to show why other remedies, such as PCA, were unavailable or inadequate. The Complaint clearly alleged that Jones' PCA action had been denied with prejudice; therefore, Jones had no other adequate remedy at law. Further, as the Court is aware, South Carolina Post-conviction relief is limited to Sixth Amendment (ineffective assistance of counsel) claims. Jones' claim that the YOA sentence was improperly rendered is not a Sixth Amendment claim but, rather, a cognizable challenge to the lawfulness of said sentence.

The purpose of habeas corpus is to test the legality of the prisoner's present detention. McCall v. State, 247 S.C. 15, 145 S.E.2d 419 (1965). A habeas corpus petition must support the requested relief. Hunter v. State, 316 S.C. 104, 447 S.E. 2d. 203 (1994). although the allegations in the petition are to be treated as true (Tillman v. manning, 241 S.C. 221, 127 S.E.2d 721 (1962)). the petition must make out a prima facie case showing petitioner is entitled to relief. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Crosby v. State, 241 S.C. 40, 126 S.E.2d 843 (1962). Petitioner must present sufficient factual allegations to support the petition. Hayes v. State, 242 S.C. 328. 130 S.E.2d 907 (1963). It must allege petitioner has exhausted all other remedies, and it must set out a constitutional claim that meets the standard delineated in Butler v. State, 302 S.C. 466, 397 S.E. 2d 87, cert. denied, 498 U.S. 972. 111 S.Ct. 442. 112 L.Ed. 2d 425 (1990). If the petition, on its face, meets these requirements Petitioner is entitled to a hearing.

Jones assert that his complaint met these requirement. while the state noted that the availability of habeas corpus has been severely limited by the uniform post conviction procedure Act, S.C. Code Ann. §§ 17-27-10, et seq. habeas relief has not been eliminated by that act,

The "Great writ" may Issue when there has been a "violation, which in the setting, constitutes a denial of fundament fairness shocking to the universal sense of Justice!" Habeas corpus continues to be available as a constitutianal remedy provided a petitioner qualifies for this extraordinary relief and clears the procedural hurdles. see S.C. const, art 1§18: Baskins v. moore, 362 F. supp 187 (D.S.C. 1973) (finding the act is a procedural device and does not supplant the constitutional right to seek habeas corpus nor does it unconstitutionally suspend that right).

For these reason, the Appellant believes the Circuit Court's determination was improper.

Date: June 3, 2015

Respectfully submitted,

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