STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of General Sessions
Roger M. Young, Sr., Circuit Court Judge

Appellate Case No. 2014-001462

THE STATE,

Respondent,

v.

ELIAS JAMES WALKER,

Appellant.

INITIAL BRIEF OF RESPONDENT

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ATTORNEYS FOR RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

The plea judge properly ruled Appellant did not qualify as a "household member" for purposes of the statute entitling household members to parole eligibility upon service of one quarter of their sentence, and his ruling did not violate the Equal Protection or Due Process Clauses of the U.S. Constitution.

STATEMENT OF THE CASE

A Charleston County Grand Jury indicted Appellant for murder and possession of a weapon during a violent crime. (R.* Indictments.) On March 21, 2014, Appellant pled before the Honorable Roger M. Young, Sr. Alicia Penn, Esquire, and Beattie Butler, Esquire, represented Appellant, and Solicitor Scarlett A. Wilson, Esquire, represented the State. Judge Young accepted Appellant's negotiated plea of guilty but mentally ill and sentenced him to thirty years' imprisonment, suspended to eighteen, and five years of probation. Appellant argued he was entitled to parole eligibility after serving one quarter of his sentence pursuant to S.C. Code Ann. § 16-25-90. Judge Young asked both parties to submit briefs addressing the issue, and he subsequently issued an order denying application of the statute to Appellant and rejecting Appellant's Equal Protection and Due Process arguments. (Order.)

Appellant filed a timely notice of intent to appeal and subsequently submitted a Brief in support of his appeal. This Brief of Respondent follows.

STATEMENT OF FACTS[1]

On September 17, 2012, shortly after 1:00 a.m., officers were dispatched to a motel in Mount Pleasant, South Carolina. (Tr. 14, lines 16–21.) Appellant, who was twenty-two years old at the time, had called 911 after stabbing his father, Anthony Walker, who later died from the wounds. (Tr. 14, line 22–Tr. 15, line 2.) Officers stated that Appellant appeared calm and originally claimed he was not there when it happened but rather had gone to the store and returned to find the "gory scene." (Tr. 15, lines 5–14.) However, Appellant later admitted he had stabbed his father and claimed his father had been trying to kill him his whole life. (Tr. 15–17.) He further admitted he attacked his father while his father was sleeping and delayed calling 911 for approximately five or six minutes. (Tr. 15, lines 17–21.) The murder weapon, a sword, was recovered at the scene. (Tr. 22–24.) Appellant was arrested and charged with murder and possession of a weapon during the commission of a violent crime. (R. *Indictments.)

At the plea proceeding, the court conducted a standard colloquy with Appellant, establishing he was freely, intelligently, and voluntarily pleading guilty but mentally ill. (Tr. 5, line 17–Tr. 14, lines 13.) The plea court found a substantial factual basis for the plea. (Tr. 16, lines 17–18.) Defense counsel then argued Appellant should be entitled to early parole eligibility under section 16-25-90 because he was a victim of domestic violence at the hand of his father. (Tr. 17, line 13–Tr. 18, line 18.) Counsel noted the statute that defines household member lists spouse, former spouse, persons who have a child in common, and current or prior cohabiting males and females. (Tr. 18, line 19–Tr. 19, line 1.) He argued there were two ways the statute might violate Equal Protection: either the cohabiting male and female language would include a daughter who had killed her abusive father, but not a son, or the statute excludes children

[1] The following facts were recited by the State at Respondent's plea hearing.

altogether when it should be extended to children and spouses. (Tr. 19, lines 2–25; Tr. 40, lines 9–19.) The Solicitor pointed out that the Legislature amended the statute in 2003 to delete parents and children from the definition of household member. (Tr. 39, lines 16–22.) She also stated to the judge that she entered into the negotiated plea based on what she was told about issues of abuse and mental illness and that is why the eighteen-year sentence was negotiated. (Tr. 39, line 23–Tr. 40, line 6.)

The plea judge accepted the plea and imposed the sentence, but he asked both parties to submit briefs on the issue of the early parole eligibility statute. (Tr. 41, lines 3–24; Tr. 44, lines 22–24.) The plea judge sentenced Appellant to thirty years' imprisonment suspended to eighteen, followed by five years' probation for the weapon charge. (Tr. 43, line 1–Tr. 44, line 21.) He later issued an order finding Appellant was not eligible under the statute and rejecting Appellant's Equal Protection and Due Process arguments. (Order.)

ARGUMENT

The plea judge properly ruled Appellant did not qualify as a "household member" for purposes of the statute entitling household members to parole eligibility upon service of one quarter of their sentence, and his ruling did not violate the Equal Protection or Due Process Clauses of the U.S. Constitution.

Appellant argues the plea court erred in ruling no Equal Protection or Due Process violation existed in finding him not eligible for early parole as a "household member" under S.C. Code § 16-25-90. He argues there was no rational basis for treating abused children or abused children of a different gender as non-household members and that such an unintended exclusion of children due to the 2003 amendment makes it an arbitrary and capricious violation of his right to Equal Protection and substantive Due Process of law. However, the Legislature amended the statute to exclude children in 2003 as part of an effort to improve the collection of accurate statistics on domestic violence against intimate partners, so the plea judge's ruling was proper based on the current version of the law. Consequently, no violation of Equal Protection or Due Process exists.

Section 16-25-90 of the South Carolina Code provides:

> Notwithstanding any provision of Chapters 13 and 21 of Title 24, and notwithstanding any other provision of law, an inmate who was convicted of, or pled guilty or nolo contendere to, an offense against a **household member** is eligible for parole after serving one-fourth of his prison term when the inmate at the time he pled guilty to, nolo contendere to, or was convicted of an offense against the household member, or in post-conviction proceedings pertaining to the plea or conviction, presented credible evidence of a history of criminal domestic violence, as provided in Section 16-25-20, suffered at the hands of the household member. This section shall not affect the provisions of Section 17-27-45.

S.C. Code Ann. § 16-25-90 (2015) (emphasis added). According to S.C. Code Ann. § 16-25-10, "Household member" means: (a) a spouse; (b) a former spouse; (c) persons who have a child in

common; or (d) a male and female who are cohabiting or formerly have cohabited. When enacted in 1984, the statute read: "As used in this article, 'family or household member' means spouses, former spouses, parents and children, persons related by consanguinity or affinity within the second degree, and persons cohabitating or formerly cohabitating" and continued to include "parents and children" until 2003. The 2003 amendment deleted the language "parents and children, persons related by consanguinity or affinity within the second degree."

The cardinal rule of statutory construction is to ascertain and give effect to the intent of the legislature. *Charleston Cnty. Sch. Dist. v. State Budget and Control Bd.*, 313 S.C. 1, 5, 437 S.E.2d 6, 8 (1993). Under the plain meaning rule, the court should not alter the meaning of a clear and unambiguous statute. *In re Vincent J.*, 333 S.C. 233, 235, 509 S.E.2d 261, 262 (1998). Furthermore, "[w]hat 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 express intent of the legislature." *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000).

Here, the Legislature was clear. To be considered a household member under the criminal domestic violence article, one must fit into one of the four enumerated categories. S.C. Code Ann. § 16-25-10 (2015). If the Legislature wanted to include parents and children, it knew how to do so. Indeed, as noted above in its 1984–2002 statutory language, the Legislature clearly and unambiguously included not only parents and children but also other relatives. By specifically removing that language from the statute, it is clear the Legislature chose to exclude other family members, including parents and children, from the domestic violence statutes and limit "household member" to married couples, those sharing a child, and those who are cohabiting or have cohabited. The intent of the Legislature is clear.

Appellant argues that "a male and female who are cohabiting or formerly have cohabited" could apply to parents and children so long as they were of the opposite sex and, thus, the amendment that excluded children violated Equal Protection by actually only excluding opposite-sex parents and children. He argues in this case that if he had been a daughter who killed his father, the statute would apply to him because of this language. However, the Legislature did not intend the "cohabiting" language to apply to parents and children. This is apparent based on the fact that in 1984, the statute included both "parents and children" and "persons cohabiting or formerly cohabiting" as separate groups. So even when the statutory language did not specify gender, it still distinguished between the parent/child relationship and the more intimate, romantic cohabiting relationship. And in 1998, the household member definition included both "parents and children" and "male and female cohabiting." If "male and female cohabiting" had been intended to include opposite-sex parents and children, then the Legislature either would not have needed to separately list "parents and children" or it would have needed to list "parents and children of the same gender." The fact that the Legislature did neither of these things and instead listed each as a separate category demonstrates its intent that "male and female cohabiting" not include parents and children. Additionally, if cohabiting only meant "living together" and could apply to the relationship between parents and children—rather than romantic couples—all parents and children would fall into this category because at some point all parents and children live together (except in some unusual circumstances) so all parents and children would have "formerly cohabited." Any other conclusion is nonsensical.

The State concedes that IF the definition of household member were read to include children as victims of domestic violence when the abusing parent is a different gender but to exclude child victims of abuse by same-gender parents, it would violate Equal Protection.

However, this interpretation is not consistent with the plain meaning of the statute because "cohabit" connotes an intimate, romantic relationship. Merriam-Webster's Online Dictionary defines "cohabit" as "to live together and have a sexual relationship; to live together as or as if a married couple."[2] Under its ordinary use, cohabit denotes intimacy and sexual activity. *See E.D.M. v. T.A.M.,* 307 S.C. 471, 415 S.E.2d 812 (1992) (defining cohabitation as including sexual activity or intimacy); *see also* Elizabeth Trainor, *Cohabitation for Purposes of Domestic Violence Statutes*, 71 A.L.R. 5th 285 (1999) (discussion regarding the issue of cohabitation as it relates to domestic violence). Much of Appellant's argument is that there is no reason children who are cohabiting with their parents should not be considered victims of domestic violence for purposes of parole eligibility status. He states, "There is no rational basis why a [cohabiting] child who commits a crime against an abusive parent is not entitled to the same consideration as a spouse or intimate partner who similarly commits a crime against his or her abuser." (App.Br.11.) However, Appellant's argument fails based on the definition of "cohabit." A parent/child relationship is not contemplated by the definition as it requires a sexual and/or married component.

Appellant claims the plea judge erred in finding Appellant had not met his burden of showing that different treatment of children and adults who are abused was not rationally related to a valid state interest and therefore a violation of Equal Protection. Appellant argues the statute is unconstitutional when interpreted to exclude children because it serves no purpose. Specifically, he argues "there is no rational basis why a cohabiting child who commits a crime against an abusive parent is not entitled to the same consideration as a spouse or intimate partner who similarly commits a crime against his or her abuser." (App.Br.11.) As he concedes, the test

[2] Merriam-Webster's Online Dictionary, "cohabit" (last visited June 27, 2016) http://www.merriam-webster.com/dictionary/cohabit.

for whether an Equal Protection violation has occurred is the rational basis test. To prevail under the rational basis standard, a claimant must show similarly situated persons received disparate treatment, **and** that the disparate treatment did not bear a rational relationship to a legitimate government purpose. *Dunes W. Golf Club, LLC v. Town of Mount Pleasant*, 401 S.C. 280, 293-94, 737 S.E.2d 601, 608 (2013).

Here, even if Appellant has shown that similarly situated persons, child victims of domestic violence, received disparate treatment from intimate-partner victims, he has not shown the special treatment of intimate-partner victims is not rationally related to a legitimate government purpose. Indeed, the affidavit he provided shows that legitimate purpose. According to the affidavit of Mary Victoria Bourus, which was filed with Appellant's "Motion to Apply S.C. Code § 16-25-90 Parole Eligibility to Elias Walker," the rationale behind the 2003 amendment—the Domestic Violence Prevention Act of 2003—was to enhance and improve the domestic violence laws of South Carolina. She provided an affidavit in which she averred that she was a lobbyist at the time of the 2003 amendment to the statute and was involved in the discussion and debate of the legislation.[3] She stated that the State was having difficulty determining the exact number of victims of domestic violence who had been intimate partners. As part of a national effort to collect accurate statistics on intimate-partner domestic violence,

[3] Our Supreme Court addressed the inadmissibility of affidavits of persons involved in the drafting of statutes in *Kennedy v. S.C. Ret. Sys.*, 345 S.C. 339, 353-54, 549 S.E.2d 243, 250 (2001), stating, "Moreover, even if the statute was ambiguous, affidavits of drafters of the statute and legislators are not admissible as evidence of legislative intent." Similarly, the United States Supreme Court addressed reliance on comments of legislators in *United States v. Monsanto*, 491 U.S. 600, 610 (1989). "[P]ostenactment views form a hazardous basis for inferring the intent behind a statute; instead, [a legislature's] intent is best determined by [looking to] the statutory language that it chooses." The Court also noted the comments were even further questionable because the legislative body, in this case Congress, had not acted on suggestions to change the statute. While here we have no record on any suggested changes, we do have evidence that the statute has not been amended in thirteen years.

the Legislature removed parents and children and other related persons from the definition of household member. Bourus stated in her affidavit that the supporters of the amendment "believed that other laws protected child victims adequately and there appeared to be no adverse consequence to child victims if they were eliminated from the definition of household members under § 16-25-10." (R. * Bourus's affidavit p. 2.) Bourus averred in her affidavit that "[t]he 2003 amendments provided broader protection for victims rather than less protection." (R. * Bourus's affidavit p. 2.) The statements in her affidavit demonstrate the State's legitimate interest in amending the statute to enhance and improve domestic violence laws in South Carolina, including collecting accurate statistics. And the amendment made in 2003 to limit "household member" to intimate partners only was undoubtedly rationally related to this legitimate government interest. Nothing more was required to survive Appellant's Equal Protection and Due Process challenges.

Additionally, Bourus stated that when the Legislature amended the section in 2003 to remove parents and children, "no thought was given to the impact of this change on the parole eligibility of battered children under 16-25-90" and that the amendment "created an unintended consequence of eliminating the opportunity to seek ¼ parole eligibility for crimes by battered children against their battering parent." However, even if true, this does not change the fact that the State has a legitimate interest in allowing battered spouses and partners early parole eligibility based on Battered Spouse Syndrome. Due to the comparatively low incidence of parents killed by their children, combined with laws governing children that would adjudicate them in the juvenile system rather than a traditional criminal court, the Legislature may have determined there is no need to allow early parole for those children convicted of killing their parents. Or, as Bourus stated, the Legislature may have not even considered that portion of the

statute. However, if it were an unintended consequence, it seems the Legislature would have changed it by now as it has been thirteen years since its enactment.

Our Supreme Court has acknowledged that "[t]he Equal Protection Clause does not prohibit different treatment of people in different circumstances under the law." *Dunes W. Golf Club, LLC v. Town of Mount Pleasant*, 401 S.C. 280, 294-95, 737 S.E.2d 601, 609 (2013) (quoting *Harbit v. City of Charleston*, 382 S.C. 383, 396, 675 S.E.2d 776, 782-83 (Ct. App. 2009)). It does not require a state to choose between attacking every aspect of a problem and not attacking the problem at all. *Dandridge v. Williams*, 397 U.S. 471, 487 (1970) (citing *Lindsley v. Natural Carbonic Gas Co.*, 220 U.S. 61 (1911)). It is sufficient that the state's action be rationally based and free from invidious discrimination. *Dandridge*, 397 U.S. at 487.

Here, it is true that intimate-partner domestic violence victims are eligible for early parole while child domestic violence victims are not. However, this different treatment does not in and of itself violate Equal Protection. *Dunes W. Golf Club*, 401 S.C. at 294-95, 737 S.E.2d at 609. The State and the Legislature addressed the problem of tracking accurate statistics for domestic violence between intimate partners with a rationally-related amendment that limited the definition of household member to only that category of victim. However, simply because this solution did not attack "every aspect" of the problem, the State was not required to then choose not to attack the problem at all. *Dandridge*, 397 U.S. at 487. It is clear that in this situation, the goal of changing the definition of household member to collect accurate statistics on intimate-partner domestic violence is rationally based and is certainly free from purposeful, invidious discrimination. Bourus herself affirmed that all the supporters of the amendment believed child victims were protected by other statutes and that no adverse consequences would result from the elimination of children from the definition. And if one accepts her belief that excluding children

from early parole eligibility was an "unintended consequence," then that refutes any evidence of invidious discrimination.

Appellant also claims the plea judge erred in finding Appellant had not met his burden of showing the statute's inapplicability to him deprived him of Due Process. He argues the 2003 amendment to the statute that excluded children and parents had an "unintended consequence" of excluding children from being eligible for early parole, that the consequence is arbitrary and capricious, and that it violates Due Process.

"The Due Process Clause protects only those fundamental rights and liberties which are, objectively, deeply rooted in this Nation's history and tradition." *State v. Dykes*, 403 S.C. 499, 506, 744 S.E.2d 505, 509 (2013) (internal citations omitted). "In order to prove a denial of substantive due process, a party must show that he was arbitrarily and capriciously deprived of a cognizable property interest rooted in state law." *Harbit v. City of Charleston*, 382 S.C. 383, 394, 675 S.E.2d 776, 782 (Ct. App. 2009) (citing *Sunset Cay, LLC v. City of Folly Beach,*357 S.C. 414, 430, 593 S.E.2d 462, 470 (2004)). "The State's deprivation of the property interest must fall so far beyond the outer boundaries of legitimate governmental authority that no process could remedy the deficiency." *Id.* "Every presumption will be made in favor of the constitutionality of a legislative enactment; and a statute will be declared unconstitutional only when its invalidity appears so clearly as to leave no room for reasonable doubt that it violates some provision of the Constitution." *McMaster v. Columbia Bd. of Zoning Appeals,* 395 S.C. 499, 504, 719 S.E.2d 660, 663 (2011).

Because every presumption will be made in favor of the constitutionality of a legislative enactment, the amendment here is not arbitrary or capricious and does not deprive Appellant of a property interest.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

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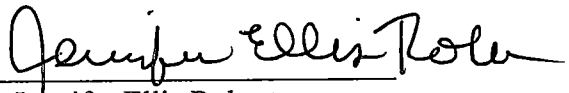
BY: 
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July 13, 2016

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of General Sessions
Roger M. Young, Sr., Circuit Court Judge

Appellate Case No. 2014-001462

THE STATE,

Respondent,

v.

ELIAS JAMES WALKER,

Appellant.

PROOF OF SERVICE

I, Angela Bennett, certify that I have served the within Initial Brief of Respondent and Designation of Matter on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Robert M. Dudek, Esquire
S.C. Commission on Indigent Defense
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I further certify that all parties required by Rule to be served have been served.
This 13th day of July, 2016.

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July 13, 2016

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RE: State v. Elias James Walker
Appellate Case No. 2014-001462

Dear Mr. Dudek,

I am enclosing two (2) copies of the Initial Brief of Respondent and Designation of Matter in the above-referenced case.

Sincerely,

Jennifer Ellis Roberts
Assistant Attorney General
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JER/ab
Enclosures

cc: Honorable Jenny A. Kitchings
(original enclosed)
Victim Services