

State of South Carolina
In the Court of Appeals

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AUG 11 2016

Appeal From Richland County
Court of Common Pleas
De Andrea Benjamin Circuit Court Judge

SC Court of Appeals

Caset Lewis _____ Appellant

v.

State of South Carolina _____ Respondent

Appellate Case No: 2016-000442

Appellant's Reply Brief

Caset Lewis
Pro-Se

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Argument

"Exceptions to res judicata"

There is an exception to res judicata that allow a party to attack the validity of a claim outside of appeals. These exceptions - usually called collateral attack - are typically based on "procedural" or "jurisdictional" issues. In addition in matters involving "due process" (as in appellants case), cases that appear to be res judicata may be re-litigated.

Due process requires that the procedures by which laws are applied must be even-handed, so that individuals are not subjected to the arbitrary exercise of power. Any legal proceeding enforced and sanctioned by law, or custom, or usage, or newly devised in the discretion of the legislative power, which regards and preserves these principles of liberty and justice must be held to due process of law. Procedural due process rules are meant to protect persons not from the deprivation, but from the "mistaken" or "unjustified" deprivation, ~~but~~ from the deprivation of life, liberty, or property.

Thus, the required elements of due process are those that minimize substantively unfair or mistaken deprivations by enabling persons to contest the basis upon which a state proposes to deprive them of protected interests. The neutrality requirement helps to guarantee that life, liberty, or property will not be taken on the basis of an erroneous or distorted conception of the facts or the law. In addition, in matters involving due process, cases that appear to be res judicata may be re-litigated. An example would be people who have had liberty take away (e.g. incarcerated). In this matter, the appellant has been harmed because the judicial interpretation has not been followed by the exact course of the law. This constitutes a due process has also been frequently interpreted as limiting laws and legal proceedings. Even when all the required elements are met, res judicata will not be applied "where it will contravene with legal Statutory expressed Public Policies." John v. John 490 (E) 956, 959; Nelson v. Atty. of South Carolina 100 Opinion No. 9626. Legal Policies used to determine what will be considered a crime and how that crime will be punished.

The Power of the Court is balanced by the legislature's ability to pass new laws and propose constitutional amendments. Legislatures also may have the power to confirm, select or impeach judicial branch officials. However, there are areas in which legislative-judicial conflict may arise. Those include:

- 1). Judicial interpretation
- 2). Legislative intent

Tolentino v. Secretary of Finance, 235 SCA 630.

Declaratory Judgment interpreting Penal/Criminal Statutes

The Courts have been familiar with interpreting Penal/Criminal statutes through the framework of declaratory judgment. Jack L. Hinton Jr. v. S.C. Dept of Probation Parole and Pardon Services, Opinion No. 3727 (Ct. App.); State v. Breech 417 S.E2d 873 (1992). South Carolina has long recognized the principle that Penal Statutes are to be strictly construed against the state and any doubt must be resolved in favor of the defendant. State v. Lewis 139 S.E2d 386; State v. Dwyer 583 S.E2d 437, 446 (Ct. App. 2000). At the same time, the cardinal rule of statutory construction requires that the court endeavor to ascertain and effectuate the intent of the legislature. Branch v. City of Myrtle Beach 532 S.E2d 789, 792 (2000); State v. Boveam 531 S.E2d 912.

Specifically, in the case State v. Breech, by way of Hinton the issue before the court was whether the defendant's prior, out-of-state convictions were within the scope of Section 56-5-2940, which enhanced the penalty for repeat offenders. The version of Section 56-5-2940 in effect when the Supreme Court decided Breech. Noting that the rules of statutory construction required that criminal statutes be construed with ambiguities resolved in favor of the defendant, the Supreme Court determined that the statute did not cover out-of-state convictions because of the explicit language in the statute.

words - terms, - and Court must apply those terms according to their literal meaning

Words or terms must be given their literal meaning within the context of their meaning determined by looking at the other terms used in the statute. S. Mut. Church Ins. Co. v. South Carolina Windstorm and Hail Underwriting Ass'n 412 S.E2d 377, 379 (1991); Cooper v. Moore 519 S.E2d 320, 339 (2002); Dupee 383 S.E2d at 446; Whitner v. State 492 S.E2d 777, 779 (1997); See Stephen v. Arins Constr. Co 479 S.E2d 79, 77 (Ch.App. 1991). The legislatures intent should be ascertained primarily from the plain language of the statute.

The "1999" year version of Statute 16-3-20 reads:

A person who is convicted of, or pleads guilty to murder must be punished by death, by imprisonment for life, or by a mandatory minimum term of imprisonment for thirty years.

Appellant asserts that the word "must" is used to express compulsion, obligation, requirement, or necessity. The word "for" is used as a preposition (prep) meaning through a period of time. The word "or" is a conjunction used as a function word to indicate an alternative. Therefore, the appellant asserts that according to the plain language of the meaning of the words there were only three (3) punishments that must be given to anyone who violates 16-3-20. Those punishments being death (if there's a death penalty case), by imprisonment for life (life meaning the natural life expiration of the violator), or (the alternative sentence to death and life) for thirty (30) years. For being a period of time.

The South Carolina Supreme Court addressed this precise issue in State v. Cox 541 S.E2d 541 (2001), abrogated on other grounds by Holmes v. South Carolina 547 U.S. 319 (2006).

In *Gov* - the defendant maintained that he was entitled to the thirty (30) year alternative sentence to death and life at the time of sentencing.

The 2010 year version of 16-3-20 reads:

A person who is convicted of or pleads guilty to murder must be punished by death, or by a mandatory minimum term imprisonment for thirty years to life.

In the 2010 year version has the word *must*, *or*, *for*, and *to* (committed in the 1999 year version). However, the word *or* is still a conjunction used as a function word to indicate an alternative to death. The word *for* still means through a period of time. The word "to" is in between the words thirty years and life indicating that the alternative sentence to death is any number of years no less than thirty (30) years until the natural life expiration of the violator of statute 16-3-20.


As a matter of clarity the Appellant, Casey Lewis, maintains that the declaratory judgment motion motioned the court to ascertain the legislator's legislative intent of the two (2) opposing versions of 16-3-20. Those versions being the "1999" year version under which the appellant was sentenced and the current 2010 year version. Appellant further asserts that if the 2010 year version meant the same as the "1999" year version, what would have been the reason for changing the statute anyway?

When faced with an undefined statutory term, the court must interpret the term in accord with its usual and customary meaning. Hudson 519 S.E2d 581. The statute's language is plain and unambiguous - and conveys a clear and definite meaning and there is no need to employ rules to impose another meaning. Paschal v. State Election Comm'n 454 S.E2d 890.

Conclusion

For all the foregoing reasons the Appellant asks the Court to overturn Judge Benjamins ruling of res Judicata and interpret the legislatures legislative intent in favor of the plain language according to the words within the statute in accord with the Appellant's assertions.

This Day 8th of August 2016.



Casey Lewis #259254
Ridgeland CI BA #34
PO, Box 2039
Ridgeland, MS 39156

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Casen Lewis Appellant

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Certificate of Service

Appellant certifies that I have served the Best Brief on Attorney General Alan Wilson and to the Honorable Clerk of Court Jenny Abbott Kitchens to be filed with the above-referenced Case No.



Casen Lewis #259254
Richland Co. I BA-#24
P.O. Box 2039
Richland SC 29936

Sworn To and Subscribed Before Me

This 8th Day of August 2016

Deborah Ferguson
Notary Public for South Carolina

MY Commission Expires: 10-1-25

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Post office Box 11629
Columbia S.C. 29211-1629

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SC Court of Appeals

Re: Casey Lewis v. State
Appellate Case No: 2016-000442

Dear Madam Kitchens:

Please find enclosed for filing the original copy of Appellant's Reply Brief to be filed in the above-referenced Case No.

Thank you Madam Kitchens for taking the time out of your busy schedule to review this request. Have a Bless Day.

Sincerely
Casey Lewis

Casely Lewis # 259254
Ridgeland C.I. BA #34
P.O. Box 2029
Columbia S.C. 29936



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