STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Charleston County

Roger M. Young, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ELIAS JAMES WALKER,

APPELLANT

APPELLATE CASE NO. 2014-001462

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the court erred by ruling it was not an equal protection and due process violation to deny appellant, who the court found was abused by his father his entire life, one-quarter parole eligibility as a "household member" under S.C. Code § 16-25-10 and § 16-25-90 since there was no rational basis for treating abused children or abused children of a different gender as non-household members, and such "unintended exclusion" of children by virtue of the 2003 amendment makes such exclusion an arbitrary and capricious violation of appellant's right to due process of law?

STATEMENT OF THE CASE

Appellant Elias James Walker was indicted by the Charleston County Grand Jury for the offenses of murder and possession of a weapon during a violent crime. Supp. R. 1-4. Appellant appeared on March 21, 2014 before the Honorable Roger M. Young, Sr. Beattie Butler and Alicia Penn represented appellant. Scarlett Wilson was the solicitor. R. 1.

Appellant entered a guilty but mentally ill plea to the charge of voluntary manslaughter and to the weapons charge. R. 3, ll. 7-11. Appellant had a history of mental health problems starting at the age of fourteen, as defense counsel explained, when he was diagnosed with "major depressive disorder, conduct disorder, impulse control disorder and stimulant abuse. Currently he has been diagnosed with autism and unspecified psychosis." R. 5, ll. 10-16. Appellant told the judge he did not wish to pursue a defense of not guilty by reason of insanity. R. 9, ll. 9-16.

The judge told appellant that the state agreed to a sentence of thirty years suspended to eighteen years. The only question would be whether appellant was entitled to one quarter parole eligibility as an abused household member pursuant to S.C. Code § 16-25-90. R. 11, l. 9 – 12, l. 4. Appellant was sentenced to thirty years imprisonment, suspended to eighteen years imprisonment, and five years probation. The judge later ruled appellant was not entitled to one quarter parole eligibility rejecting appellant's equal protection and due process arguments. R. 68.

ARGUMENT

The court erred by ruling it was not an equal protection and due process violation to deny appellant, who the court found was abused by his father his entire life, one-quarter parole eligibility as a "household member" under S.C. Code § 16-25-10 and § 16-25-90 since there was no rational basis for treating abused children or abused children of a different gender as non-household members, and such "unintended exclusion" of children by virtue of the 2003 amendment makes such exclusion an arbitrary and capricious violation of appellant's right to due process of law.

Relevant facts

The judge concluded: "The facts of this case are uncontroverted, Elias Walker's father abused him his entire life." R. 69. Solicitor Wilson informed the judge that appellant told the police "his father had been trying to kill him his whole life and [he] admitted that he stabbed him." R. 15, ll. 15-21. Defense Counsel Penn noted that the decedent, appellant's father, was "someone who struggled with mental illness. His entire family has, basically, schizophrenia and did not want to be treated for it . . . it's hard to say where mental health starts and abuse begins but Anthony Walker abused Elias from the time he was little up until September 2012 [when appellant killed him] . . . It was constant threats that he was going to kill them, he was going to hurt them, put them through the wall, but also, very much so physical, abuse, where he would actually beat these women in Elias's life, and he would beat Elias." R. 17, l. 6 – 18, l. 10.

Defense counsel reminded the judge that South Carolina had recognized the Battered Women's Syndrome but had not "yet adopted battered child's syndrome." R. 18, ll. 11-15. Defense counsel noted that S.C. Code § 16-25-90 provided parole eligibility after service of

one-quarter of the sentence for an abused household member. Counsel said the statute provided this parole eligibility for a spouse, former spouse, persons who have a child in common, and a current or prior cohabitating male and female. R. 18, l. 19 – 19, l. 10.

Counsel argued that the plain language of the statute provided that a cohabitating male or female would cover a daughter abused by her father or a son abused by his mother but not a son beaten by his father. "I think that doesn't make any sense at all, and we would ask the court to find on that ground that that violates the [equal] protection [clause], that there is no point to that." R. 19, l. 11 – 20, l. 8. Defense counsel argued that appellant was not a danger to anyone and that he killed his father who had abused him his whole life. They had been staying together "in a motel, in a little room," at the time appellant stabbed his abusive father. R. 20, l. 9 – 21, l. 8.

The defense offered the affidavit and testimony of Mary Bourus on the abuse appellant suffered, and the "unintended effect" of the 2003 amendment excluding "children" from continued coverage by the statute. R. 57. Bourus was a licensed social worker and executive director of the Family Justice Center in Georgetown. R. 21, ll. 14-24. Bourus testified that the decedent was a habitual law-breaker, that he was involved with drugs, he committed felonies, and he dealt in firearms. R. 25, l. 10 – 28, l. 5.

> "I think *this young man has suffered almost every form of abuse chronically over his lifetime that a person could endure: Physical abuse, slapping, pushing, beating with a belt, other objects,* constant environment of threat, awful verbal abuse, terrible ways in which this man talked to his son, continually putting him down, making sure he knew the father was in charge.
>
> He told him he was un-reliant, so this continual kind of verbal putdown, emotional, which is so deprecatory to a child's development; the emotional abuse, witnessing his

> father's violence against his mother and his second wife, living in that environment.
>
> One of the saddest things he said to me was that he never felt like he had a caretaker. He never went to the dentist until he went to the jail last year."

R. 28, l. 12- 29, l. 1. (emphasis added).

Dr. Schwartz-Watts also sent a letter to the Court about appellant being GBMI. She apparently had a conflict on the date the negotiated plea went forward, and a fair reading of this record is that all parties agreed that her letter to the court could substitute for her live testimony. R. 76.

Defense Counsel Penn argued that the statute violated appellant's right to equal protection because it covered a cohabitating male and female but excluded children. There was no rational basis for that distinction and it therefore violated the Fourteenth Amendment to the United States Constitution. R. 40, l. 9 – 41, l. 2.

The judge said he was taking into consideration Dr. Schwartz-Watts letter dated March 18, 2014, reporting a finding of guilty but mentally ill on appellant. However, the judge ultimately ruled it was not an equal protection violation to not give appellant, who unquestionably in the judge's mind was habitually abused by his father, one-quarter parole eligibility pursuant to S.C. Code § 16-25-90. The judge also ruled it did not violate appellant's right to due process of the law.[1] See Order Denying Application of S.C. Code § 16-25-90 to Defendant Elias James Walker at pp. 5-8. R. 68.

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[1] As stated, the judge sentenced appellant to thirty years imprisonment suspended upon eighteen years imprisonment and five years probation. R. 43, l. 1 – 45, l. 8. The judge took appellant's motion to apply S.C. Code § 16-25-90 parole eligibility to Elias Walker under advisement. R. 48. This motion included an affidavit from Mary Victoria Bourus. R. 57.

In his order denying relief the judge found that the term "household member" included "current and former spouses, people with children in common, and a male and female who are cohabitating or formally have cohabitated. It does not expressly include (or exclude) children who have been battered by another household member". R. 68.

The judge wrote:

> "[T]he facts of this case are uncontroverted. Elias Walker's father abused him his entire life. At the time of the events leading to this conviction, the defendant and his father had been living in a small hotel room for several weeks. Without going into the great detail here, I find there is ample evidence in the record of a history of criminal domestic violence against the defendant at the hands of his father as provided in § 16-25-20. As such, the defendant asks the court to find that he meets the definition of a person cohabitating under § 16-25-10. However, I find the defendant does not meet the requirements of the statutory protection provided by § 16-25-90 because § 16-25-10 defines the protected class of "household members" as spouses, former spouses, people who have a child in common with the batterer, and a male and female who are currently cohabitating or have formally cohabitated. **I find that prior to 2003 children were included in the class as defined by § 16-25-10; however, the legislature removed children from the protected class in 2003. Clearly, a court cannot define a class to include someone who used to specifically belong in the class but was later removed from the class by the legislature.**"

R. 69-70. (emphasis added).

Mary Bourus' affidavit outlined her involvement in the 2003 Legislative amendments which "removed children" from the statutory protection of the statute. Bouros wrote that "My observation and belief is that **all the supporters** of the 2003 amendments believed that *other laws protected child victims adequately and there appeared to be no adverse consequences to child victims if they were eliminated from the definition of*

household members under Section 16-25-10 . . . I believe that when the definition of household member was revised, there was an **unintended consequence in that the 2003 amendment to Section 16-25-10 narrowed the definition of household members and therefore eliminated the opportunity for ¼ parole eligibility for child victims of domestic abuse under Section 16-25-90. I have no reason to believe that *any advocate of this legislation believed that it was a good idea to remove the ¼ parole eligibility for child victims of domestic violence.*"** R. 59. (emphasis added).

The judge also wrote that the state had **conceded** that there may be an equal protection violation if the statute were read to include children as victims of domestic violence when their abusing parent *is of a different gender* but excluded child victims of abuse by *same-gender parents*". However, the court found that the statute did not apply "*to any children*, regardless of the gender of their abusive parent." R. 72.

The order further found that the state **was not arguing** that the exclusion of defendants who are victims of child abuse from consideration for early prison release better fulfilled relevant social or penal objectives. R. 72-73. The order concluded that the legislature had chosen to address the more widespread problem of murder among intimate partners and that the statute was not an equal protection or a due process violation because the court found it was not an arbitrary and capricious statute due process purposes. R. 72-75.

Equal protection

The Fourteenth Amendment provides that no person shall be denied equal protection of the law. "The *sine qua non* of an equal protection claim is a showing that similarly situated persons received disparate treatment. Grant v. South Carolina Coastal Counsel, 319

S.C. 348, 352, 461 S.E.2d 388, 391 (1995). When, as here, and alleged equal protection violation does not implicate a suspect class or abridge a fundamental right, the rational basis test is used. Village of Willowbrook v. Olech, 528 U.S. 562, 564 (2000).

To prevail under the rational basis standard, the defendant must show similarly situated persons received disparate treatment, and that the disparate treatment did not bear a rational relationship to a legitimate government purpose. Bibco Corporation v. City of Sumter, 332 S.C. 45, 53, 504 S.E.2d 112, 116 (1998).

As seen, the state conceded that if the statute applied to a son abused by his mother, or a daughter abused by her father, it would constitute an equal protection violation to not protect the same sex child of the parent. However, the state successfully argued that the statute did not apply **to any children, and that was not unconstitutional.** As seen above, Mary Bourus, of the Family Justice Center, provided evidence that this was an unintended consequence of the 2003 amendments, and that **no advocate of this legislation believed that it was a good idea to remove the ¼ parole eligibility for child victims of domestic violence**." R. 59.

The defense in this case noted that the state readily conceded to both child abuse and domestic violence among spouses and people who cohabitate are severe problems in South Carolina and the United States as a whole. R. 52-53. The state nonetheless argued *that abuse of children was different from an abuse by an intimate partner.*.

It would seem obvious that children have much less of an ability to protect themselves against domestic violence than a spouse or partner. The defense argued that appellant would have had protection and been entitled to early parole eligibility under the statute from 1998-2003. "There is no legislative history supporting an intention by the

legislature to remove this protection from battered children who offend against a parent abuser they live with. Domestic violence against children is a horrible and pervasive problem. Although South Carolina law does recognize child abuse as a crime, it does not provide any parole benefit to children who are victims of abuse elsewhere in the Code of Laws. **There is no corresponding law that addresses parole eligibility of children who commit crimes against their abusers**. By including children in this benefit, nothing is taken away from intimate partners who are also the victims of domestic violence. An interpretation that excludes children serves no purpose and makes this statute unconstitutional." R. 51-52. (emphasis added).

Any classification drawn by legislation must be rationally related to a legitimate state interest. City of Cleburne v. Cleburne Living Center, 473 U.S. 432, 440 (1985). The classification in § 16-25-10 is not rationally related to any legitimate state interest. There is simply no reason why cohabitating children who are cohabitating with their parents should not be considered victims of domestic violence for purposes of § 16-25-90 parole eligibility status. There is no rational basis why a cohabitating 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.

As in the affidavit of Victoria Bourus she stated under oath that when the legislature amended § 16-25-10 in 2003 and removed "parents and children" from the definition of "household member" law enforcement and victim's advocates "felt that CDV should be focused on those who were in or had been in an intimate relationship, in order to better track the number of these crimes involving intimate partners. The discussion was that children and parents had other applicable statutes that covered assaults against them and CDV was

redundant. According to Ms. Bourus, no thought was given to the impact of this change on the parole eligibility of battered children under § 16-25-90. Thus, the amendment of § 16-25-10 created **an unintended consequence** of eliminating the opportunity to seek ¼ parole eligibility for crimes by battered children against their battering parent." R. 52-53. (emphasis added).

The trial judge found that the legislature chose to address the larger problem of murder amongst intimate partners. The judge found that appellant had not met his burden of showing this different treatment of children being battered by their parents **was not rationally related to a valid state interest**. Appellant vehemently disagrees with that conclusion given the evidence in this case.

Due Process

The trial judge also found appellant had not met his burden of showing the statute was arbitrary and capricious and therefore a due process violation by clear and convincing evidence. Town of Scranton v. Willoughby, 306 S.C. 421, 422, 412 S.E.2d 424, 425 (1991). The judge found the defense in this case had not shown that there was no reasonable justification of a legitimate government objective by not covering children who were abused by their parent, here appellant's father. City of Orangeburg v. Farmer, 181 S.C. 143, 186 S.E.2d 783, 785 (1936).

Appellant respectfully submits that if this Court finds this statute does not violate appellant's right to equal protection of the law given this "unintended consequence" of the 2003 amendments excluding children from coverage, it should find the arbitrary and capricious consequence is a due process violation.

Amending the statute in the future will not remedy the unconstitutional harm to the very real Appellant Elias Walker in this case, and appellant respectfully urges this Court to find the 2003 statutory amendment excluding children violated appellant's right to equal protection of the law and his right to due process.

CONCLUSION

By reason of the foregoing arguments, this court should find that the statute is both an equal protection violation and a due process violation. In the alternative, this court should find that the statute either violates appellant's right equal protection or violates appellant's right to due process of law.

Respectfully submitted,

Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 1st day of September, 2016.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

September 1st, 2016

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CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant and Designation of Matter in the above referenced case has been served Jennifer Ellis Roberts, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201 this 1st day of September, 2016.

Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 1st day of September, 2016.

(L.S.)
Notary Public for South Carolina
My Commission Expires: April 27, 2026.