

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

REHEARING IN THE COURT OF APPEALS

FORENSIC DNA TESTING Application: TRIAL COURT CASE No.(S)  
1998-6S-42-3569, 1998-6S-42-3570, 1998-6S-42-5180  
APPELLATE CASE No. 2017-001164

EDDIE DEAN DOGAN, JR. . . . . APPELLANT,

- vs -

STATE OF SOUTH CAROLINA . . . . . RESPONDENT.

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JUL 03 2017

SC Court of Appeals

STATEMENT OF CASE

IN MARCH 2<sup>nd</sup> 1999, DOGAN, JR. EDDIE D., WAS TRIED AND CONVICTED OF [CCSCM] CRIMINAL SEXUAL CONDUCT WITH A MINOR. AFTER PLEADING NOT GUILTY, THE TRIAL COURT SENTENCED DOGAN, TO THIRTY YEARS IMPRISONMENT

MEMORANDUM

SECTION §17-28-30(A) STATES: A PERSON WHO PLED NOT GUILTY TO AT LEAST ONE OF THE FOLLOWING OFFENSE, WAS SUBSEQUENTLY CONVICTED OF OR ADJUDICATED DELINQUENT FOR THE OFFENSE, IS CURRENTLY INCARCERATED FOR THE OFFENSE, AND ASSERTS HE IS INNOCENT OF THE OFFENSE MAY APPLY FOR FORENSIC DNA TESTING OF HIS DNA AND ANY PHYSICAL EVIDENCE RELATED TO HIS CONVICTION.

FACT

DOGAN, FILED AN FORENSIC DNA TESTING APPLICATION WITH SUFFICIENT FUNDS OF \$25.00<sup>00</sup> ON APRIL 9, 2014. BASED OFF AN ORDER BY THE STATE UNDER §8-21-310(C)(1)(A) (Supp. 2004), WHICH HAS NOT BEEN RULLED ON, YET, THE COURTS APPARENTLY FAILED TO MENTION THIS APPLICATION THAT WAS PAID FOR, FILED AND TO BE PART OF RECORD, FOR THE APPELLATE COURT

DOGAN FILED ANOTHER FORENSIC DNA TESTING APPLICATION ON MARCH 8, 2017, UNDER §17-28-50(D), INADEQUATELY PAID, & SUCCESSIVE. IN RESPONSE, THE HONORABLE J. MARK HAYES II, ARGUED FOR THE STATE THAT THE DNA APPLICATION BE DENIED PURSUANT TO §17-28-30(B).

STATES ANALYSIS

HONORABLE HAYES II, ASSERTED SECTION §17-28-30(B) STATING: IT APPEARS THAT THE DEFENDANT WAS CONVICTED OF KIDNAPPING, CRIMINAL SEXUAL CONDUCT IN THE FIRST DEGREE, AND CONTRIBUTING TO THE DELINQUENCY OF A MINOR ON MARCH 2, 1999.

HE RECEIVED AN AGGREGATE SENTENCE OF FORTY-FIVE (45) YEARS. IT FURTHER APPEARS THAT ON MARCH 8, 2017, THE DEFENDANT FILED HIS APPLICATION FOR TESTING UNDER THE ACCESS TO JUSTICE POST-CONVICTION DNA TESTING ACT, PURSUANT TO 17-28-30(B), THE APPLICATION MUST BE FILED NO LATER THAN SEVEN (7) YEARS FROM THE DATE OF SENTENCING. THE DEFENDANT'S APPLICATION IS THEREFORE INAPPROPRIATE DUE TO NOT BEING TIMELY FILED.

THE COURT FURTHER STATES 17-28-50(C), Code of LAWS of South CAROLINA, 1976, as amended, THE COURT CONSIDERED THE APPLICATION AND RELATED DOCUMENTS. THE COURT IS SATISFIED ON THE BASIS OF THE APPLICATION AND THE RESPONSE OF THE STATE THAT THE APPLICANT IS NOT ENTITLED TO DNA TESTING.

Judge conclusion; IT IS ORDERED THAT THE DEFENDANT'S APPLICATION IS SUMMARILY DISMISSED AS BEING UNTIMELY [Signed by J. MARK HAYES II, circuit Judge,

### MEMORANDUM OF POINTS

DOGAN CONTENDS THAT THE CIRCUIT COURT ERRED IN APPLYING THE SEVEN (7) YEAR TIME LIMIT FOUND IN §17-28-30(B), WHICH APPLIES TO INDIVIDUALS WHO PLED GUILTY OR NO CONTEST BY ITS CLEAR AND UNAMBIGUOUS LANGUAGE, TO HIS APPLICATION WHEN HE PLED NOT GUILTY, REQUIRING APPLICATION OF SECTION §17-28-30(A), WHICH CONTAINS NO TIME LIMIT

### PRECEDENT CASES

STATUTORY INTERPRETATION IS A QUESTION OF LAW SUBJECT TO DE NOVO REVIEW. TRANSP. INS. CO. v. S.C. SECOND INJURY FUND. 389 S.C. 422, 427, 699 S.E.2d 687, 689 (2010).

QUESTIONS OF STATUTORY INTERPRETATION ARE QUESTIONS OF LAW WHICH WE ARE FREE TO DECIDE WITHOUT ANY DEFERENCE TO THE COURT BELOW. IT IS WELL-ESTABLISHED THAT [T]HE CARDINAL RULE OF STATUTORY CONSTRUCTION IS TO ASCERTAIN AND EFFECTUATE THE INTENT OF THE LEGISLATURE. WHAT 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 EXPRESSED INTENT OF THE LEGISLATURE. THUS WE MUST FOLLOW THE PLAIN AND UNAMBIGUOUS LANGUAGE IN A STATUTE AND HAVE NO RIGHT TO IMPOSE ANOTHER MEANING.

ALSO SEE GRIER v. AMISUB OF S.C. INC. 397 S.C. 532, 535-36, 725 S.E.2d 693, - 695 (2012) (Alteration by court) (Citations and internal quotation marks omitted)

IT IS NOTED THAT IN CONSTRUING STATUTORY LANGUAGE, THE STATUTE MUST BE READ AS A WHOLE AND SECTIONS WHICH ARE A PART OF THE SAME GENERAL STATUTORY LAW MUST BE CONSTRUED TOGETHER AND EACH ONE GIVEN

EFFECT. A STATUTE SHOULD NOT BE CONSTRUED BY CONCENTRATING ON AN ISOLATED PHRASE."

S.C. STATE PORTS AUTH. v. JASPER CNTY., 368 S.C. 388, 398, 629 S.E.2d 624, 629 (2006) (citation omitted). "WORDS IN A STATUTE MUST BE GIVEN THEIR PLAIN AND ORDINARY MEANING WITHOUT RECORTING, TO SUBTLE OR FORCED CONSTRUCTION TO LIMIT OR EXPAND THE STATUTES APPLICATION." EPSTEIN v. COASTAL TIMBER, CO., 393 S.C. 176, 285, 711 S.E.2d 912, 917 (2011)

ORLANDO SMITH, v. STATE, OPINION NO. 5316. Submitted MARCH 4-2015 Filed MAY 13, 2015.  
RESULT(S) REVERSED and REMANDED

### LAST RESORT

DOGAN, CLAIM THE "ACCESS TO JUSTICE ACT", DNA WAS TAKEN FROM MY BODY BY THE SPARTANBURG PUBLIC SAFETY DEPARTMENT BASED ON A JUDGE ORDER §17-13-141, I WAS SIGNED OUT OF THE SPARTANBURG COUNTY DETENTION CENTER BY CITY AGENT, CHERLY A. BOYD, TO EXECUTE ORDER. AND THEN IT WAS SENT TO SLED IN COLUMBIA S.C. YET, MY INNOCENCE IS STILL AT STAKE. IN 2009 THE S.C. SUPREME COURT AS WELL AS, S.C. LEGISLATURE, HAS PROVIDED DOGAN A WAY FOR THE USAGE OF §17-28-30(A) SINCE THE GOVERNMENT AGENTS WITHHELD THE DNA TEST RESULT(S) FROM DOGAN, FOR APPROXIMATELY 7½ SEVEN AND A HALF YEARS AFTER THE TRIAL. AND NOT ALLOWING THEM TO BE RULED ONLY TO CONTINUE TO KEEP DOGAN LIFE IN DANGER THIS 7½. DOES NOT INCLUDE DETECTIVE BOYD HINDERENCE OF DNA RESULT FROM SLED THEY WERE IN HER POSSESSION (10) TEN MONTHS BEFORE A TRIAL. SINCE 4-9-14 THE COURTS IN SPARTANBURG (LOWER COURT) HAVE HAD ME PAY FOR THIS ACCESS - TO JUSTICE ACT. THERE SHOULD NOT BE A REASON FOR ME NOT TO HAVE THIS HEARING BASED ON §17-28-30(A) DNA TESTING OF HIS DNA PHYSICAL OR BIOLOGICAL MATERIAL RELATED TO HIS CONVICTION (Subsection (13)) 16-3-655 4W No. F-654896.

### CONCLUSION

FOREI HAYES II, REFUSAL TO GRANT ME THIS §17-28-30(A). THAT THE LEGISLATIVE PROVIDED THE INNOCENCE WITH OF A DNA STATUTE, TO REAP THE BENEFITS OF LANGUAGE "NO TIME LIMIT, FOR ACTION TO BE BROUGHT BEFORE, A JUDGE FOR AN ADJUDICATION ON RESULT(S) §17-28-100(C), IS IN VIOLATION OF THE LIBERTY CLAUSE AND DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT. FOR THIS REASON, THE STATES MOTION TO DISMISS, BASED ON WRONG CITING §17-28-30(B) SHOULD BE DENIED AND MY CASE SHOULD BE VACATED, BECAUSE THERES NO TIME LIMIT STATED IN §17-28-30(A) WHICH APPELLANT RELIES ON, FOR RELIEF.

A

§ 17-28-30

**APPLICATION TO PROCEED WITHOUT PAYMENT  
OF COSTS AND AFFIDAVIT  
IN SUPPORT THEREOF**

I, Eddie D. Dozeman Jr., hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Eddie D. Dozeman Jr.  
Signature of Applicant

SWORN to and subscribed before me this 9th  
day of April, 2014

S. Outtan (L.S.)  
Notary Public

My Commission Expires: 2/24

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SC Court of Appeals

FILED  
CLERK OF COURT  
SPARTANBURG COUNTY  
2015 APR 14 AM 10:39  
M. HOPE BLACKLEY

**APPLICATION TO PROCEED WITHOUT PAYMENT  
OF COSTS AND AFFIDAVIT  
IN SUPPORT THEREOF**

I, Eldi D. Doymji, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Eldi D. Doymji  
Signature of Applicant

SWORN to and subscribed before me this 3<sup>rd</sup>  
day of Feb., 2017.

[Signature] (L.S.)  
Notary Public

My Commission Expires: Dec. 10, 2024

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SC Court of Appeals



State of South Carolina  
Circuit Court Judge, At-Large, Seat 5

J. MARK HAYES, II  
JUDGE

180 MAGNOLIA STREET, 2ND FLOOR  
SPARTANBURG, SOUTH CAROLINA 29306  
TELEPHONE: (864) 562-4144  
FAX: (864) 562-4142  
E-MAIL: mhayesj@sccourts.org

May 15, 2017

Derrick B. Balsa, Esq.  
Deputy Solicitor Seventh Circuit Solicitor's Office  
180 Magnolia Street  
Spartanburg, South Carolina 29306

Re: DNA Forensic Testing Application for Eddie Dogan 1998-GS-42-3569-70; 5180

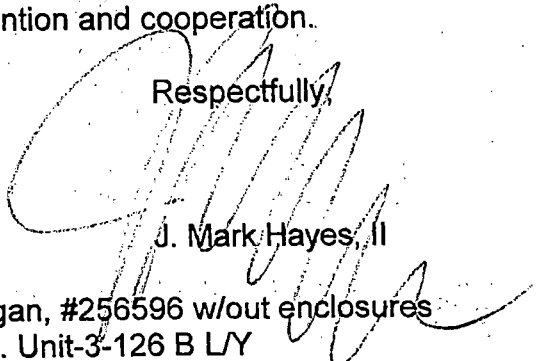
Dear Mr. Balsa:

Attached please find a copy of the Rule 59(e) Motion to Alter or Amend that my office received from Mr. Dogan. I was not sure if your office had received a copy of this motion. Therefore, I am forwarding it to you for an appropriate response.

Also please find a copy of a ten (10) page mailing entitled "Precedent Decision" which my office received today.

Thank you for your attention and cooperation.

Respectfully,

  
J. Mark Hayes, II

CC: Eddie Dean Dogan, #256596 w/out enclosures  
Tyger River Inst. Unit-3-126 B L/Y  
200 Prison Road  
Enoree, South Carolina 29335

Spartanburg Clerk of Court Office w/enclosures  
180 Magnolia Street  
Spartanburg, South Carolina 29306

JMHII/smw

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

COURT OF APPEALS

APPELLATE CASE NO. 2017-001164  
LOWER COURT CASE NO., 1998-GS-42-3569, 1998-GS-42-3570, 1998-GS-42-5190

EDDIE DEAN DOGAN, JR. . . . . APPELLANT

-VS-

STATE OF SOUTH CAROLINA . . . . . RESPONDENT

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SC Court of Appeals

PETITION FOR REHEARING, 242(C)

PROOF OF SERVICE, 4(G) SCRCIV. Proc.

I EDDIE DEAN DOGAN, JR. HEREBY, DECLARE under the Constitution that I have SERVED A TRUE COPY OF THIS PETITION FOR REHEARING BASED ON 242(C), AFTER RECEIVING NOTICE FROM THE S.C. SUPREME COURT, DATED June 21, 2017, BY CHIEF JUSTICE D.W. BEATTY, FOR THE COURTS, DIRECTING ME TO FILE IN THE COURT OF APPEALS FOR RULE 242(C), SCACR. I'M SENDING IT TO S.C. CLERK OF APPEALS COURT MS. JENNY KITCHINGS, P.O. BOX 11629, COLUMBIA, S.C. 29211  
I'm sending this through TYGRI-MAIL ROOM pursuant to PS: 10-08ES.32

1/s/ Eddie D. Dogan Jr.  
Eddie DEAN DOGAN, JR., 286596  
TYGRI-3-B-12644  
200 PRISON ROAD  
ENOREE, S.C. 29335

Sworn To And subscribed before me

This 29<sup>th</sup> DAY of June 2017

[Signature] (L.S.)

NOTARY FOR SCDC AND SC.

MY COMMISSION EXPIRES Dec. 16, 2020

EDDIE DEAN DOGAN, JR. 256596  
TYGRCI-UNIT-3-B-126 44  
200 PRISON ROAD  
ENOREE, S.C. 29335

COVER SHEET

JUNE 29, 2017

HONORABLE CLERK OF COURT  
JENNY ABBOTT, KITCHINGS  
COURT OF APPEALS FOR S.C.  
Post Office Box 11629  
COLUMBIA, S.C. 29211

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JUL 03 2017

SC Court of Appeals

Re: Appellate Case No. 2017-001164  
TRIAL COURT Case No. 1998-GS-42-3569, 70, 5180

Honorable Kitchings

PLEASE FIND ENCLOSED FOR FILING A PETITION FOR REHEARING PURSUANT TO  
RULE 242(C), SCACR. IN THE ABOVE "RE". BELOW ARE THE FOLLOWING CONTENTS

- (1) STATEMENT OF CASE
- (2) MEMORANDUM
- (3) FACT
- (4) STATE ANALYSIS
- (5) MEMORANDUM OF POINTS
- (6) PRECEDENT CASE(S)
- (7) LAST RESORT
- (8) CONCLUSION
- (9) PROOF OF SERVICE OF 4-9-14 DNA APPLICATION DATED STAMP: 4-14-15
- (10) PROOF OF SERVICE OF 2-3-17, DNA APPLICATION
- (11) PRECEDENT DECISION, CREATED BY DOGAN AS OF MAY 8, 2017,
- (12) PROOF OF SERVICE OF PETITION FOR REHEARING 242(C)

Other Counsel of Record  
June 2017

Jenny Abbott Kitchings  
P.O. Box 11629  
COLUMBIA, S.C. 29211

/s/ Eddie Dean Dogan Jr  
EDDIE DEAN DOGAN JR 256596  
UNIT 3-B-126, TYGRCI  
200 PRISON ROAD  
ENOREE, S.C. 29335

EDDIE DEAN DOGAN, JR., 256596  
TYRE I-UNIT-3-B-126 44  
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SC Court of Appeals

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TYRGI MAILROOM

HONORABLE CLERK OF COURT OF APPEALS  
MS. JENNY ABBOTT KITCHINGS  
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COLUMBIA, SOUTH CAROLINA, 29211

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