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THE STATE OF SOUTH CAROLINA

In the Supreme Court

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Appeal From Union County

Court of Common Pleas

John C. Hayes, Circuit Court Judge

RECEIVED  
JUL 11 2017  
SC Court of Appeals

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Case No. 2017 - 000188  
\_\_\_\_\_

Elson Mckanic Jr., #182215.....Appellant

Vs.

State of South Carolina.....Respondant.

\_\_\_\_\_  
INITIAL BRIEF OF APPELLANT  
\_\_\_\_\_

Elson Mckanic Jr. #182215

Perry Correctional Inst.

430 Oaklawn Road - Q1A - 221

Pelzer, S.C. 29669

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Attorney for Respondent  
\_\_\_\_\_

## STATEMENT OF ISSUES ON APPEAL

1. Did the trial judge er in sentencing the appellant to a life sentence when the solicitor failed to provide the appellant and his counsel with any notice to seek such a sentence pursuant to S.C. Code § 17 - 25 - 45 (H

## STATEMENT OF THE CASE

The appellant was indicted by the Union County Grand Jury for armed robbery (91-GS-44-0557), Assault and Battery with intent to kill (91-GS-44-0557) during the 9-26-91 term of General Sessions Court. The appellant went to trial on September 24, 1991, before the Honorable Dean Hall, Judge, and jury. He was represented by Joseph Workman and Jack Flynn, Assistant Solicitors. The jury found the appellant guilty on all charges, and Judge Hall sentenced him to a life without parole pursuant to the solicitor's request for a life sentence under S.C. Code § 17 -25 -45 based upon the appellant's two prior robbery convictions. Trip, 139,23-140, L.I.

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ARGUMENT

1. The trial court lacked authority to sentence the appellant to a life sentence for three (3) consecutive armed robbery convictions pursuant to §17-25-45(A) When the applicant nor his trial counsel was served with a "notice" that the intended to seek a life sentence without parole..... 3

CONCLUSION..... 4

## STATEMENT OF THE FACTS

After the jury found the appellant guilty of armed robbery, the following proceedings took place regarding the imposition of his sentencing for his third armed robbery conviction:

Solicitor Grant: Your honor, ...Elson (appellant) who was convicted...of armed robbery...and has to be sentenced.

Your Honor, at this time I would pass up to the court a document and ask to make it part of the court record. Solicitor's request in section 17 - 25 - 45 state of South Carolina Code of law, for imposition of a life sentence based upon Mr. Elson Mckanic's conviction in 1971, March 15, of 1971 in Spartanburg County for armed robbery. And September 19, 1975, was convicted in Union County on the charge of armed robbery, making it two prior armed robbery or violent crime convictions. And the state would evoke the portion of that statute which requires a life sentence for the person convicted of such crimes, and request the prior record. Trip. 137, L. 13-25.

Court: Mr. Workman, have you seen the copy (of) that prior record?

Mr. Workman: Yes, Sir, I have been aware that Elson has been convicted twice of armed robbery. Trip. 137, L. 3-4.

Here the record clearly shows that the solicitor did not place the appellant and his counsel on "notice" to seek his life sentence until after his current armed robbery conviction in violation §17 - 25 - 45 (H), S.C. Code of law.

## ARGUMENT

THE TRIAL JUDGE ERRED IN SENTENCING THE APPELLANT TO A LIFE SENTENCE WHEN THE SOLICITOR FAILED TO PROVIDE THE APPELLANT AND HIS COUNSEL WITH ANY NOTICE TO SEEK SUCH A SENTENCE PURSUANT TO S.C. CODE, OF LAW 317 - 25 - 45 (H)

(2)

The appellant should be entitled to relief based upon the state's violation of his sixth fourth and tenth amendment rights to a fair trial by the state's failure to provide him and his counsel any "notice" to seek his life sentence pursuant to S.C. Code 17 - 25 - 45 (H). See State Vs. Johnson, 552 S.E. 2nd 333 (S.C. 2001)

S.C. Code ANN, § 17 - 25 - 45 (A) Supp. 2001, paragraph (C) of the statute includes armed robbery as a "most serious offence. Id. § 17 - 25 - 45 (C). The General Assembly has made sentencing provisions of section 17 - 25 - 45 (A) mandatory. Id. § 17 - 25 - 45 (G), regarding the notice requirement, the statute provide: " where the solicitor intends to seek a life sentence against a defendant, he must provide "notice" to the defendant and his counsel not less than ten (10) days before trial. Id. § 17 - 25 - 45 (H)

It is well established that when interpreting a statute, the court's primary function is to ascertain the intention of the legislature. When the terms of a statute are clear and unambiguous, the court must apply them according to their literal meaning. Furthermore, in construing a statute, the words must be given their plain and ordinary meaning without resort to subtle

State and in favor of the defendant. State Vs. Blackman, 403 S.E. 2d 660, 662 (1991); accord Kerr Vs. State, 547 S.E. 2nd 491 (2000); Bryant Vs. State, 683 S.E. 2nd 280 (2008)

Moreover, the S.C. Constitution gives sole legislative power to the General Assembly. S.C. Const., Art. #, § 1 (the "legislative" power of the state shall be vested in two distinct branches: the one to be styled the "Senate" and "legislative" and both together makes up the General Assembly of the State of South Carolina).

Therefore, by its words in the recidivist statute of 17 - 25 - 45 (H), the General Assembly has mandated that the solicitor "must notify the defendant and his counsel in writing not less than ten (10) days prior to trial if he intends to seek a life sentence without the possibility of parole". For the court to dismiss the clear and unambiguous language of the state and merely require the defendant and his counsel to receive a solicitor's notice during or after trial to seek a life sentence without parole would have the affect of amending the statute itself.

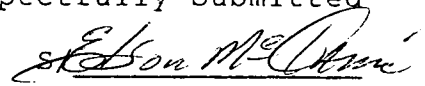
Finally, in as much as the appellant was not served any notice to seek his life sentence under the statutory requirements of 17 - 25 - 45 (H), and in as much as the sentence for his armed robbery conviction has expired, he submits that he should be entitled to appellate review under the miscarriage of justice standard, See, eg., Aice Vs. State, 409 S.E. 2nd 392 (S.C. 1990).

CONCLUSION

Wherefore, for the reasons state, this court should vacate the appellate's illegal life sentence and remand the case for the imposition of the correct sentence for his armed robbery conviction.

Date July - 7 - 2017

Respectfully Submitted



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