

RECEIVED

SEP 29 2017

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

APPEAL FROM SPARTANBURG COUNTY

J. Mark Hayes II, Chief Adm. Judge

2016-CP-42-2252 (Amended Order)

2017-001592

Johnny Burnside, 271070,

APPELLANT,

v.

State of South Carolina,

RESPONDENT.

NOTICE OF APPEAL

I am hereby appealing the Amended Order by the Honorable J. Mark Hayes II dated September 1 2017 and received by me on September 8 2017.

Johnny Burnside, 271070
TCI SA-109
1578 Clarence Coker Hwy.,
Turbeville SC 29162
(APPELLANT PRO-SE)

South Carolina Attorney General
P.O. Box 11549
Columbia, SC 29221-1549
(COUNSEL FOR RESPONDENT)

This 26th Day of September 2017.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED

SEP 29 2017

APPEAL FROM SPARTANBURG COUNTY
J. Mark Hayes II, Chief Adm Judge
2016-CP-42-2252 (Amended Order)

S.C. SUPREME COURT

2017-001592

Johnny Burnside, 271070,

APPELLANT,

v.

State of South Carolina,

RESPONDENT.

PROOF OF SERVICE

I certify that I have served my Notice of Appeal on Respondent's Counsel of Record South Carolina Attorney General's Office, Alan Wilson, Attorney General, Post Office Box 11549, Columbia SC 29221-1549 by depositing the same in the United States Mail, Postage Prepaid on this:

This 26th Day of September 2017.

Johnny Burnside, 271070
TCI SA-109
1578 Clarence Coker Hwy.
Turbeville, SC 29162
(APPELLANT PRO-SE)

South Carolina Attorney General
Alan Wilson, Attorney General
P.O Box 11549
Columbia SC 29221-1549
(COUNSEL FOR RESPONDENT)

Johnny Burnside, 271070
TCI SA-109
1578 Clarence Coker Hwy.
Turbeville, SC 29162

SC 29162
28 SEP '17
PM 2 L



LEGAL MAIL

SOUTH CAROLINA SUPREME COURT
P.O. Box 11330
Columbia, SC 29211

SCDC

AUG 05 2017

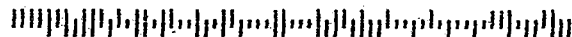
MAIL ROOM

RECEIVED

SEP 26 2017

MAILROOM
TURBEVILLE CI

29211-133030



STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG) FOR THE SEVENTH JUDICIAL CIRCUIT

Johnny Burnside # 271070,) Case No.: 2016-CP-42-2252

Applicant,

v.

AMENDED FINAL ORDER OF DISMISSAL

State of South Carolina,

Respondent.

This matter comes before this Court by way of Applicant's Motion to Alter or Amend Judgment dated July 14, 2017, asking this Court to alter or amend its Final Order of Dismissal denying and dismissing Applicant's application for post-conviction relief.

I.

The record before this Court shows that Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. Applicant was indicted at the November 2000 term of the Spartanburg County Grand Jury for murder (2000-GS-42-2661). Applicant was represented by Michael David Morin, Esquire. Derrick Balsa, Esquire, of the Seventh Circuit Solicitor's Office prosecuted the case. Applicant proceeded to trial and the jury found Applicant guilty on November 29, 2000. The Honorable J. Derham Cole sentenced Applicant to forty (40) years' imprisonment.

A timely notice of appeal was filed on Applicant's behalf by Robert M. Dudek, Esquire. On June 20, 2012, the South Carolina Court of Appeals affirmed the Applicant's conviction and



sentence. State v. Burnside, Op No. 2002-UP-455 (S.C. Ct. App. 2002). The Remittitur was issued on July 23, 2002.

II.

Applicant filed this action on June 17, 2016. Respondent made its Return and Motion to Dismiss on or about May 16, 2017, requesting that the Application be summarily dismissed. Pursuant to this request, and after reviewing the pleadings in this matter and all of the records attached thereto, this Court issued a Conditional Order of Dismissal filed May 18, 2017, provisionally denying and dismissing this action, while giving Applicant twenty (20) days from the date of service of said Order in which to show why the dismissal should not become final. A Certificate of Service along with the Conditional Order of Dismissal was served on June 2, 2017. Respondent submitted a proposed Final Order of Dismissal on July 5, 2017. Applicant filed a document captioned "Applicant's Reply to Respondent's Motion to Dismiss" on June 5, 2017, urging this Court to alter or amend the Final Order to address the issues mentioned or amend Applicant's sentence. This Court issued its Final Order of Dismissal on July 17, 2017, finding that Applicant failed to show a sufficient reason why this Court's Conditional Order should not become final, and dismissed the action with prejudice. Subsequently, Applicant filed his motion to amend the final judgment of this Court.

III.

In his motion, Applicant asserts that the Final Order of Dismissal "distorts the fact that the Applicant contends that the Court does have discretion in sentencing criminal defendants." Applicant argues however, that the discretion of the Court "would have been as the statute [lays] out." Applicant contends that the Court could have only sentenced him to death or to a



mandatory minimum term of thirty years or by imprisonment for life, pursuant to S.C. Code Ann. §16-3-20.

Applicant further asserts that the application was timely because he was unaware of the amendment to S.C. Code Ann. § 16-3-20 because the prison library was not updated until March 2013. Applicant contends that “at the time of the update [became] available in the prison law library Applicant’s case was a Federal Habeas” action but when he found out about the change in the law in 2016, he filed the current action. Applicant argues that his “sentence is illegal.” Similarly, Applicant argues that the “final order failed to address the ex-post facto nature of the application and interpretation of South Carolina Code Ann, §12-3-20 (prior to 2010).

This Court finds it necessary to enter this Amended Final Order of Dismissal to address Applicant’s allegations of *ex post facto* violation. The *ex post facto* clause “protects against retroactive legislative provisions which are disadvantageous to the offender. A mere procedural change in law, not increasing punishment or changing elements of the offense, does not result in an *ex post facto* violation.” Elmore v. State, 305 S.C. 456, 459, 409 S.E.2d 397, 399 (1991). The amendment to S.C. Code Ann. §16-3-20 was merely procedural and did not increase Applicant’s punishment nor did it change any of the elemental requirements of the offense.

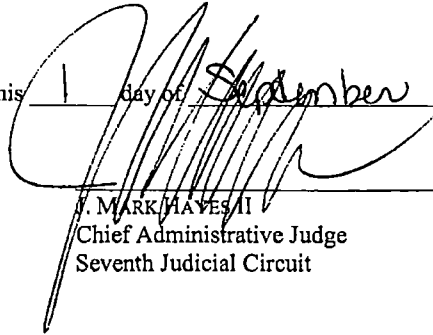
This Court finds that as to all other allegations raised this Court’s Conditional Order of Dismissal and Final Order of Dismissal contain the required findings of facts and conclusions of law as required by Rule 52(a) SCRCP.

Based upon careful reconsideration of the record in this case, including submissions of the parties, this Court has discovered no findings of fact or conclusions of law that have been overlooked or misapprehended, and this Court is not persuaded to alter or amend its judgment.



Further, pursuant to Rule 59(f), SCRCP, this Court further finds oral argument would not aid in the reconsideration of the original judgment.

AND IT IS SO ORDERED this 1 day of September, 2017.



J. MARK HAYES II
Chief Administrative Judge
Seventh Judicial Circuit

Spartanburg, South Carolina.

2017 SEP -1 PM 12:06

Spartanburg County

Spartanburg County Court House
180 Magnolia Street
P. O. Box 3483
Spartanburg, SC 29304-3483



Phone (864) 596-2591
Fax (864) 596-2239

M. Hope Blackley
Clerk of Court

September 1, 2017

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF SPARTANBURG

Glenn Beerside
Applicant #211070

7TH JUDICIAL CIRCUIT

CASE # 2016CP42252

^{VS}
Stall
Respondent

CERTIFICATE OF SERVICE

I certify that, on this date, I served a copy of the Order of Dismissal
In this action dated 9-1-2017 on 9-1-17

By mailing to him/her, at his/her last known address, by depositing it in the U.S. Mail, in an envelope with sufficient postage affixed, addressed as follows:

Lauree Givinski
Glenn Beerside

9-1-17
(Date)

Cassie Seaf
(Signature)