STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT
The Honorable H. W. Funderburk, Jr.

Appellate Case No.: 2017-002343

Dawan Chatman #172972,

Appellant,

vs.

South Carolina Department of Corrections,

Respondent.

INITIAL BRIEF OF APPELLANT

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STATEMENT OF THE CASE

On December 14, 1998, Dawan Chatman (Appellant), an inmate incarcerated with the Department of Corrections (Department), went to trial in Richland County and was found guilty by a jury. He was sentenced by The Honorable James Barber to forty (40) years for Murder and twenty-seven (27) years for Armed Robbery. The statute in effect at the time of the appellants' sentencing (Section 16-3-20) appears to allow only a sentence of thirty (30) years or life imprisonment. The Statute states murder must be punishable by death by imprisonment for life, or by a mandatory minimum imprisonment for thirty years. An amendment to the murder statute went into effect on January 1, 1996 changing the language to "thirty years to Life".

During the grievance process to the department, Appellant argued that his sentence was incorrectly calculated as he should be sentenced for only thirty (30) years. However, Appellant has a forty (40) year sentence for murder. After properly filing grievances with the South Carolina Department of Corrections, Appellant sought relief with the appellate tribunal of the Administrative Law Court.

The Administrative Law Court rendered its opinion on October 11, 2017, denying the Appellant relief. This Appeal follows:

STATEMENT OF THE FACTS

This matter is before the Court pursuant to an appeal of Dawan Chatman. He has been incarcerated with the Department of Corrections since March 25, 1998. Appellant initially filed a Step one grievance on January 6, 2017 stating that his sentence was being interpreted incorrectly, pursuant to §16-3-20 S.C. Code Ann.. This grievance was received on January 6, 2017 and forwarded to the Warden on January 18, 2017. This Grievance was denied.

On March 3, 2017, a Step two Grievance was filed. This grievance was denied on March 3, 2017. The Appellant received a copy of this denial on March 15, 2017. On April 14, 2017, Appellant filed a notice of appeal with the Administrative Law Court. The Administrative Law Court found:

> Appellant was convicted of murder, under S.C. Code Ann. §16-3-20 (A) (Supp. 1998) and was sentenced to a term of imprisonment of forty (40) years. Appellant contends that the statute that went into effect on January 1, 1996 (See versions of S.C. Code Ann. §16-3-20 (A) (Supp. 1995)) "allowed a sentence of thirty (30) years or life imprisonment." That reading is incorrect.
>
> S.C. Code Ann. § 16-3-20 (A) that went into effect on and after January 1, 1996, reads as follows:
>
> > 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. [Emphasis added.]
>
> The trial judge could not impose a sentence **less** than thirty (30) years, and the Department must impose the sentence on the sentencing sheet unless it is ambiguous. Here, it is not, and the ALC has no authority to correct an unambiguous sentence that has been properly calculated and applied. An erroneous or "illegal" sentence would be for another forum.

ARGUMENT

Did the Lower Court err in denying the Appellant's request for relief?

The primary rule of statutory construction requires a determination of the General Assembly's intent. Mitchell v. City of Greenville, 411 S.C. 632, 634, 770 S.E.2d 391, 392 (2015) ("The cardinal rule of statutory interpretation is to ascertain and effectuate the legislative intent whenever possible."). Where the statutes' language is plain and unambiguous, "the text of a statute is considered the best evidence of the legislative intent or will." Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). "A statute as a whole must receive a practical, reasonable and fair interpretation consonant with the purpose, design, and policy of lawmakers." State v. Henkel, 413 S.C. 9, 14, 774 S.E.2d 458, 461 (2015), reh'g denied (Aug. 5, 2015).

The statute in effect at the time of Appellant's sentencing allowed a sentencing of thirty years (30) or life.

This case is complicated by the fact that the Appellant made certain decisions regarding this Plaintiff meaning of the statute. Appellant relied on the thirty year provision of that statute in all decisions relating to his trial in Richland County. Had Appellant known that the statute interpretation would be different, he would not have made various decisions relating to his case strategy. This fact is consistent with the Appellant electing to take this case to trial. As a result of this reliance, Appellant was prejudiced and suffered detriment in the amount of an additional ten year sentence to jail time.

One of the arguments before the Lower Court was that the Respondent would be estopped from applying the fourty (40) year sentence. Often confused with waiver, equitable estoppel focuses on a party's detrimental reliance on another party's conduct while a waiver analysis focuses on a party's "unequivocal intent to relinquish a known right." 7 S.C. Jur. *Estoppel and Waiver* § 17 (1991). Nevertheless, Courts acknowledge that "the distinction between waiver and estoppel is close, and sometimes the doctrines merge into each other with almost imperceptible gradations." Parker v. Parker, 313 S.C. 482, 443 S.E.2d 388, 391 (1994).

The facts in this matter are similar to those found in equitable estoppel cases. In those cases, the elements to find estoppel are: (1) the presence of a promise unambiguous in its terms; (2) reasonable reliance upon the promise by the party by whom the promise is made; (3) the reliance is expected and foreseeable by the party who makes the promise; and (4) the party to whom the promise is made must sustain injury in reliance on the promise. Illinois Valley Asphalt v. J.F. Edwards Construction Co, 45 Ill. Dec. at 878, 413 N.E. (2d) at 211; See Huggins Construction Co. v. Southern Bell Tel., 276 S.C 663; 281 S.E.2d 469 (1981).

The statute prior to the amendment was clear and unambiguous. If the meaning had been unclear, there would have been no reason for an Amendment. Appellant, as a result of this clear language, made a determination that his exposure at trial was 30 years imprisonment or a life sentence. Appellant has now sustained an injury in the amount of an additional 10 years prison time over and above the thirty (30) year mark. As a result, the Appellant argued in the Lower Court that the Respondent should be equitably estopped from imposing the additional sentence.

This court previously addressed this issue in an unpublished opinion of Helen Marie Douglas v. State of South Carolina, 2016-UP-3116, June 22, 2016. In this opinion, the Court considers the cases of State v. Shaffer, 340 S.C. 291, 294, 531 S.E. 2d 524, 526 (2000) and State v. Starnes, 340 S.C. 312, 531 S.E. 2d 907 (2000) as well as the language of the statute. The court states:

> In the pre-amendment statute case of State v.Shafer, the defendant was convicted of murder and sentenced to death. 340 S.C. 291, 294, 531 S.E. 2d 524, 526 (2000), *reversed on other grounds,* Shafer v. South Carolina, 532 U.S. 36 (2001). During deliberations, the jury inquired about potential parole eligibility if the defendant was given a life sentence. *Id.* at 296-97, 531 S.E. 2d at 527. The trial court informed the jury parole eligibility or ineligibility was not a consideration. *Id.* at 297, 531 S.E. 2d at 527. On Appeal, Shafer argued he was entitled to an instruction on parole ineligibility because the State put his future dangerousness at issue. *Id.* Our supreme court stated, "When the State places the defendant's future dangerousness at issue and the only available alternative sentence to the death penalty is life imprisonment without parole, due process entitles the defendant to inform the jury he is parole ineligible." *Id.* at 297-98, 531 S.E.2d at 528. Citing State v. Starnes, 340 S.C. 312, 531 S.E. 2d 907 (2000), it held Shafer was not entitled to such an instruction because "life without the possibility of parole is not the only legally available sentence alternative to death." *Id.* at 298, 531 S.E. 2d at 528. The court noted in a footnote that it had suggested in Starnes that "under the terms of the statute, it is **arguable** (emphasis added) a defendant could be sentenced to more than thirty years and be eligible for parole after service of thirty years." *Id.* at 298 n.7, 531 S.E.2d at 528 n.7. This reference to Starnes relates to a footnote in that case which provides as follows: "The sentencing statute provides for a mandatory *minimum* thirty year sentence. Based on the language of the statute, it is arguable a defendant sentenced to more than thirty years is eligible for parole after service of thirty years." 340 S.C. at 330 n. 17, 531 S.E. 2d at 917 n.17.

The Court stated that the Starnes and Shaffer cases contemplate that a Defendant can be eligible for a sentence of more than thirty years, but less than life. That a thirty year sentence is simply the minimal a defendant could receive for murder. The Court however does note that that the legislature subsequently amended this statute in 2010 to

read that a person who was convicted of murder, must be punished by death or by a mandatory minimum term of imprisonment for "thirty (30) years to life."

The case at hand is distinguishable from the Douglas opinion. In this case, the Appellant was actually sentenced to a term of forty (40) years from the 2001 statute. In Douglas, the question presented was whether trial counsel was ineffective in failing to object to the trial courts sentence in regards to the murder charge. In the *Douglas* case the Defendant was sentenced to Life.

The Appellant would assert that the plain meaning of the Statute in this situation is clear. That the Appellant could not have been sentenced to forty (40) years. It is interesting to note that this "plain meaning" had to be clarified and explained by an amendment to include the words thirty (30) to life.

The Lower Court further finds that the Administrative Law Court has no authority to correct an unambiguous sentence that has been properly calculated. The ALC's jurisdiction to hear this matter is derived from the decision of the South Carolina Supreme Court in Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000). The ALC's Appellate jurisdiction in inmate appeals is limited to state-created liberty interest typically involving: 1) cases in which an inmate contends that prison officials have erroneously calculated his/her sentence, sentence-related credits, or custody status; and 2) cases in which an inmate has received punishment in a major disciplinary hearing because of a serious rule violation. *Id.*

When reviewing the SCDC's decisions in inmate grievance matters, the ALC sits in an appellate capacity. *Id.* At 380, 527 S.E.2d at 756. Consequently, the review in these cases is limited to the record presented. An Administrative Law Judge may not reverse

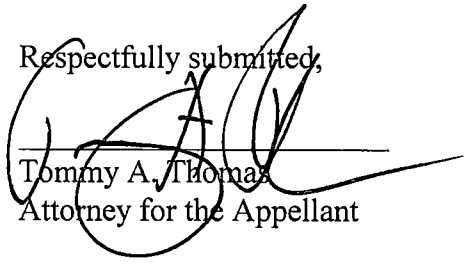
or modify an agency's decision unless substantial rights of the Appellant have been prejudiced because the decision is clearly erroneous in view of the substantial evidence on the whole record, arbitrary, or affected by an error of law, *See* S.C. Code Ann. Section 1-23-380 (5) (Supp. 2016).

It is interesting to note that the Court in *Douglas* also states that the Sentencing statute provides for a mandatory minimum thirty (30) year sentence and that based upon the language of the statute, it is arguable that a Defendant sentenced to more thirty (30) years is eligible for parole after serving thirty (30) years 340 SC 330, 2017, 531 S.E. 2d 917.

Conclusion

For the foregoing reasons, Appellate respectfully submits that the Court should reverse the decision of the Lower Court and grant the Appellant a resentencing hearing.

Respectfully submitted,



Tommy A. Thomas
Attorney for the Appellant

March 12, 2018

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CERTIFICATE OF SERVICE

I, Jacquelyn E. Miller, Secretary to Tommy A. Thomas, Attorney for Appellant certify that I have served an Initial Brief and Designation of Matter on Office of General Counsel for the South Carolina Department of Corrections and the South Carolina Administrative Law Court by depositing a copy of same in the United States Mail, postage prepaid and the return address clearly shown on said envelope to:

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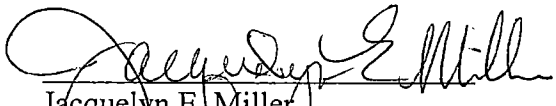

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RE: Dawan Chatman #172972 v. State
Case No.: 2017-002343

Dear Sir or Madam:

Enclosed please find for filing an original and a copy of an Initial Brief, Designation of Matter and Certificate of Service.

Kindly return a clocked copy to me in the enclosed envelope. Should you have any questions, or need any additional information, please do not hesitate to contact me. Thank you.

Yours truly,

Tommy A. Thomas,
Attorney at Law

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cc: Kensey Barrett, Esq. SCDC
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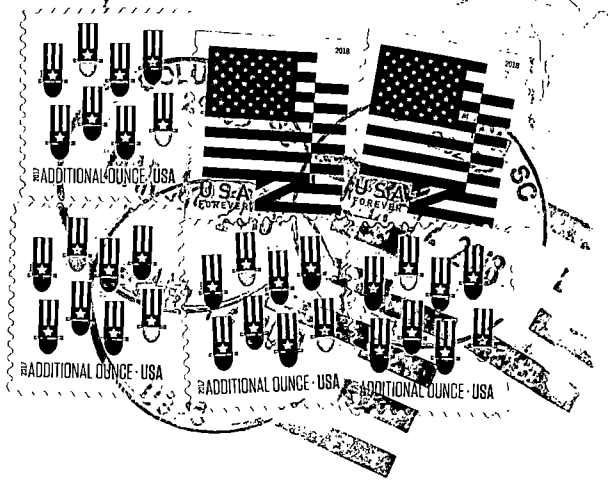

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