

State of South Carolina
In The Court of Appeals

Appeal from Richland County
DeAndrea Bensamin - Court Judge

RECEIVED

SEP 23 2016

State of South Carolina

Respondent

SC Court of Appeals

v.

Casely Lewis

Appellant

Case NO: 2016-000442

Record ON Appeal

Casely Lewis #259154 - Pro Se
Ridgeland C.I.
P.O. Box 2039
Ridgeland - SC 29936

Mr. Alan Wilton - Esquire
P.O. Box 11549
Columbia - SC 29211-1549

Mr. John Applin - Esquire
P.O. Box 11549
Columbia - SC 29211-1549

Mrs. Courtney Lowell - Esquire
1527 Wando Landing Street
Daniel Island - SC 29442

Mr. T. Parkin Hunter - Esquire
P.O. Box 11549
Columbia - SC 29211-1549

INDEX

Affidavit of Case Lewis	1
Order of September 12, 2013	2
Order of October 22, 2013	3
Order of May 14, 2014	4
Order of June 30, 2014	5
Declaratory Judgment	6
Order of February 1, 2016	7
Letter dated May 24, 2011	8
Certificate of Appellant	Index

Affidavit

Affidavit of Case Lewis

Order of September 12, 2013

Judge Young's order of dismissal

Order of October 22, 2013

Judge Young's order dismissing 59(e) motion

Order of May 14, 2014

Court of Appeals's order of dismissal

Order of June 30, 2014

Court of Appeals's order denying rehearing

Declaratory Judgment

Declaratory Judgment Brief

Order of February 1, 2016

Order denying Declaratory Judgment

Letter dated May 24, 2011

Letter from N. Mark Rapoport (Assistant Attorney General) to the Honorable Barry J. Barnett (Solicitor).

Certificate of Counsel

The undersigned hereby certifies that the Record on Appeal contains all materials proposed to be included by any of the parties and not any other material.

September 14, 2016

5/ C. R.

Case Lewis #259254 Pro Se

AFFIDAVIT OF CASEY LEWIS

I, Casey Lewis, do solemnly swear, attest, depose, and say the truth to the following:

On June 23, 1999 I was sentenced and convicted by Judge James E. Brogdon on the charge of murder, and armed robbery and the judge sentenced me to an incarcerated term of Fifty Five (55) years. I objected to the judge myself when he handed down the sentence and I made the objection on the grounds that he sentenced me to a sentence that above and beyond what the law allowed. The judge told me that his sentence is what his sentence is, like it or not. I told my attorney to appeal the sentencing and conviction because my sentence is above and beyond what the law allows. The attorney, Legand Carraway, advised me that an issue on this issue would be meritless because the Murder Statue of 16-3-20 allows for a sentence of Thirty years (30) to Life, meaning the judge can legally sentence me to any determinate number of years between Thirty years (30) to the expiration of my natural life.

This exchange of testimony between I and the judge and I and my attorney at the June 23, 1999 sentencing hearing is illegally omitted from my trial transcript and court records. I have challenged the content and accuracy of my transcript throughout my incarceration and I have been obstructed the state official from obtaining a correct transcript that reflects a true representation of all the testimony and all the occurrences that took place at my criminal proceeding from June 21, 1999 to June 23, 1999. Because the transcript is illegally tampered I have lacked direct proof of this issue of my sentence and conviction exceeding Statutory Law and therefore have been obstructed from fully and fairly and adequately developing and arguing this issue in state and federal filings.

I have become aware through a witness that attorney Legrand Carraway Did not have the legal knowledge to advise me that the 1998 version of Title 16-3-20 is written as thirty years (30) to life. Attorney Legrand Carraway was contacted by phone on February 2013 and in this phone conversation attorney Legrand Carraway was posed the question, is there a difference between the 1998 version of Title 16-3-20 and the 2010 year version of Title 16-3-20 because it seems the 2010 year version allows a sentence of thirty (30) years to life while the 1998 year version seems to only allow a thirty (30) year sentence, or life, or a death sentence. The attorney Caraway answered and gave his legal opinion that the 2010 year version of Title 16-3-20 does allow a sentence of thirty (30) years to life but it is questionable whether or not the 1998 year version of Title 16-3-20 allows a thirty (30) years to life sentence because it's plain language seems to only allow thirty (30)

Exhibit # 1

1

years, or life, or the death penalty. The attorney went on to explain that no S.C. Supreme Court case has yet been ruled upon to clarify this issue. The attorney Carraway gave an overall legal opinion that the 1998 year version of Title 16-3-20 may or may not allow a sentence of years between thirty (30) years to life.

It is after I became aware of this legal opinion of attorney Legrand Carraway that I realized attorney Carraway gave me direct misadvise and misrepresentation regarding my ability to bring a meritorious challenge to my Fifty Five (55)-years-sentence based upon the judges sentence exceeding the Title 16-3-20 sentencing provision, the same issue I personally objected to the judge at the June 23, 1999 sentencing hearing which is illegally being omitted from my trial transcript and court records. I immediately filed the motion to modify and correct my sentence within a short span of time after I discovered the misadvise and misrepresentation on the part of attorney Carraway, my attorney at the time.

Respectfully Submitted

Casey Lewis #259254
B.R.C.I. Wateree b-228
4460 Broad River Rd.
Columbia, South Carolina
29210

State of South Carolina]
County of Richland]

SWORN TO AND SUBCRIBIED BEFORE ME THIS ____ DAY OF ____ 2013

Notary Public For South Carolina
My Commission Expires _____

①

STATE OF SOUTH CAROLINA
COUNTY OF WILLIAMSBURG

) IN THE COURT OF GENERAL SESSIONS
) THIRD JUDICIAL CIRCUIT
) CASE NO.: 1999-GS-45-0018

State of South Carolina,

v.

Casey Lewis,

Defendant.

ORDER

13 SEP 12 PM 12:58
CLERK OF COURT
WILLIAMSBURG, S.C.

This matter comes before the Court by way of a "Motion to Modify and Correct Sentence Pursuant to S.C. RCP Rule 29(b), Rule 60(b)1, Rule 60(b)3, Rule 60(b)4 and §Title 17-23-110" (sic), filed February 11, 2013, with the Williamsburg County Clerk of Court. Mr. Lewis pled guilty before the Honorable James E. Brogdon on June 23, 1999 and was sentenced on that date to fifty-five (55) years for Murder, thirty (30) years for Armed Robbery, and five (5) years for Use of a Weapon During the Commission of a Violent Crime. The sentences on all charges were to be served concurrently. The State was served at the Office of the Attorney General on or about July 23, 2013. The Third Circuit Solicitor's Office filed a response to the motion on August 17, 2013 after receiving a copy of the motion from the Office of the Attorney General. A hearing was convened before this Court on 12 September 2013 at the Williamsburg County Courthouse in Kingstree, SC. Present at the hearing was Mr. Tyler Brown, Assistant Solicitor, on behalf of the State, Mr. Casey Lewis, *Pro Se*. Legrande Carraway, Esq. of the Williamsburg County bar was present as standby counsel for Mr. Lewis. This Court has reviewed the filings of each party and the arguments made at the hearing in making its decision.

The substance of the argument by Mr. Lewis is that the sentence he received for the charge of Murder was illegal as it relates to the statutory scheme under which he was sentenced.

1 93 WGH

②

Mr. Lewis alleges that pursuant to the 1999 version of the statute under which he was sentenced, the only permissible sentences were death, imprisonment for life, or a term of imprisonment of thirty (30) years. See S.C. Code Ann. § 16-3-20 (1999) ("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."). Accordingly, it is his position that a sentence of fifty five (55) years is illegal. Though captioned as a motion pursuant to Rules 29(b) and 60(b)1-4 SCRPC, this Court finds this motion is the type properly brought under S.C. Code Ann. § 17-27-20(1)&(3).

The State argued at the hearing that this motion was untimely, that any claim that there was "newly discovered" evidence was without merit as the "evidence" in this matter was simply a new interpretation of a statute by Mr. Lewis, and that the motion itself was without merit as a plain reading of the statute clearly indicates that a sentence of more than thirty (30) years is permissible but that no sentence of less than thirty (30) years may be imposed upon conviction or guilty plea under the statute.

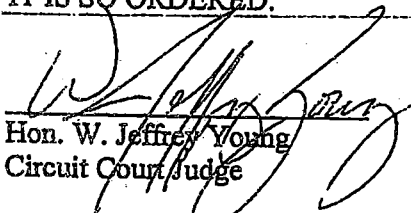
This Court finds that the motion is untimely and must be dismissed. Post-Trial motions following a trial in the Court of General Sessions generally must be filed within ten days of the imposition of the sentence. See Rule 29(a) SCCrimP. In the case of newly discovered evidence, a ~~Post-Trial motion must be made within one (1) year of the discovery of the alleged newly~~ discovered evidence, or within one year of the date upon which that evidence "could have been ascertained by the exercise of reasonable diligence." Rule 29(b) SCCrimP. Similarly, under the Uniform Post Conviction Procedures Act, in order to be timely a Petition for relief must be filed within one year of the imposition of a sentence or the remittitur from an appellate court, or, in the case of alleged newly discovered evidence, the Petition must be filed within one year of the date

on which the evidence could have been discovered by the exercise of reasonable diligence. S.C. Code Ann. §17-27-45(1976, as amended). In this matter, there is no evidence which qualifies as "newly discovered" under the Rules of Criminal Procedure or the Uniform Post Conviction Procedures Act. The alleged newly discovered evidence is a statute that was in existence and available prior to as well as on the date of conviction and imposition of the sentence. This Court finds that this does not amount to newly discovered evidence under any definition of the term. The sentence in this matter was imposed on June 23, 1999. This action was filed on February 11, 2013. Accordingly, this Court finds that this action is untimely and therefore must be dismissed with prejudice.

Next, this Court finds that the allegations made in this action are without merit and must be dismissed with prejudice. A plain reading of the statute under which Mr. Lewis was sentenced clearly indicates that an individual may be sentenced to a term of imprisonment for no less than thirty (30) years and up to life. The sentence of fifty five (55) years handed down to Mr. Lewis in this case is within the range contemplated by the statute and is therefore legal and permissible. Accordingly, this Court finds that this ground is without merit and must be dismissed with prejudice.

THEREFORE, this Court hereby dismisses this action with prejudice as untimely and without merit.

IT IS SO ORDERED.


Hon. W. Jeffrey Young
Circuit Court Judge

September 12, 2013
Kingstree, South Carolina

343

②

STATE OF SOUTH CAROLINA
COUNTY OF WILLIAMSBURG

) IN THE COURT OF GENERAL SESSIONS
) THIRD JUDICIAL CIRCUIT
) CASE NO.: 1999-GS-45-0018

State of South Carolina,

v.

Casey Lewis,

Defendant.

ORDER

2013 OCT 24 AM 10:22
CLERK OF COURT
KINGSTREE, S.C.

This matter comes before the Court by way of a "Motion to Alter or Amend Judgment Pursuant to Rule 59(e) [SCRCP]," filed on or about September 23, 2013. Mr. Lewis appeared before this Court on 12 September 2013 at the Williamsburg County Courthouse in Kingstree, SC. Present at the hearing was Mr. Tyler Brown, Assistant Solicitor, on behalf of the State, Mr. Casey Lewis, *Pro Se*. Legrande Carraway, Esq. of the Williamsburg County bar was present as standby counsel for Mr. Lewis. This Court has reviewed the filings of each party and the arguments made at the hearing in making its decision.

Movant presents no new legal or factual arguments sufficient to compel this Court to amend its Judgment of 12 September 2013.

THEREFORE, this Court hereby DENIES the Motion to Alter or Amend Judgment.

RECEIVED

JAN 17 2014

BRCI
MAILROOM

Oct 22
September 22, 2013
Sumter, South Carolina

IT IS SO ORDERED.

Hon. W. Jeffrey Young
Circuit Court Judge

A CERTIFIED TRUE COPY

Sharon W. Steggers

③

76

The South Carolina Court of Appeals

The State, Respondent,

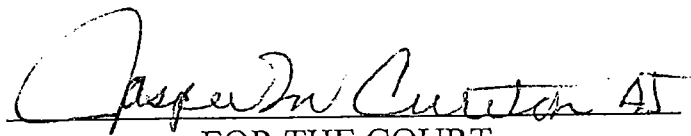
v.

Casey Lewis, Appellant.

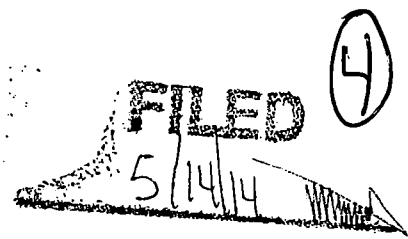
Appellate Case No. 2014-000144

ORDER

Respondent has filed a motion to dismiss this appeal, contending Appellant failed to timely serve the notice of appeal from the denial of the untimely post-trial motion in the Court of General Sessions. After careful consideration of the parties filings, the motion to dismiss is granted. Although a timely and proper Rule 59(e), SCRCF motion would toll the time for the filing of a notice of appeal, Appellant's Rule 59(e), SCRCF motion was not proper in the Court of General Sessions. Thus, the motion did not toll the time for the filing of the notice of appeal. Appellant received written notice of the entry of the denial of his post trial motion on September 12, 2013, and he did not serve the notice of appeal until January 24, 2014. Accordingly, Appellant did not timely serve the notice of appeal and this appeal is dismissed. *See* Rule 203(b)(1) (providing Appellant has only ten days from written receipt of the order on a post-trial motion to serve the notice of appeal); Rule 263(b), SCACR ("The time prescribed by these Rules for performing any act *except the time for serving the notice of appeal under Rules 203 and 243* may be extended or shortened by the appellate court" (emphasis added)).


FOR THE COURT

Columbia, South Carolina



The South Carolina Court of Appeals

The State, Respondent,

v.

Casey Lewis, Appellant.

Appellate Case No. 2014-000144

ORDER

This appeal was dismissed on May 14, 2014, and Appellant has filed what this Court construes as a petition for rehearing. After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

H. B. Wilson J.

A. K. J.

Jasper M. Crutcher A.J.

Columbia, South Carolina

cc:

Casey Lewis, 259254

Alan McCrory Wilson, Esquire

Melody Jane Brown, Esquire

FILED

June 30, 2014

⑤

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

In The Court of Common Pleas
Fifth Judicial Circuit

Casey Lewis #259254,

Case No. _____

Petitioner,

v.

DECLARATORY JUDGMENT

State of South Carolina,

Respondent.

COMES NOW, the Petitioner Casey Lewis #259154, pursuant to the South Carolina Code of Laws § 15-53-10 through § 15-53-20. Respectfully motions this Honorable Court to make A Declaratory Judgment declaring the Statutory Constructions of the S.C. Code of Law § 16-3-20, as it was Codified in the Year "1999" as opposed to its current reading Codified in the Year "2010."

On February 1, 1999, the Petitioner was indicated for the offense of murder under South Carolina Code of Laws § 16-3-10. The Petitioner argues that the statute for the offense of murder during the time of the commission of the offense in "1999" reads verbatim in its most pertinent parts in regards to the sentence range allowed to be imposed on a defendant convicted of this offense is the following:

§ 16-3-20. punishment for Murder: Separate
Sensensing Proceedings to Determine
Whether sentence should be Death of Life
Imprisonment.

A) A person who is convicted 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.

On June 23, 1999 the Petitioner was convicted of and sentenced to murder under statute § 16-3-20 in the County of Williamsburg by presiding Judge Honorable James E. Brogdon. Judge James E. Brogdon ruled not to sentence Petitioner to death, although it is a punishment allowed under § 16-3-20. Judge James E. Brogdon ruled not to sentence Petitioner to life imprisonment, although it was a punishment allowed under § 16-3-20. Instead Judge James E. Brogdon determined and ruled to sentence Petitioner to a determinate number of years of fifty-five (55) years of imprisonment in the South Carolina Department of Corrections. See Exhibit #1(A).

The statute § 16-3-20 allows for only three punishments. Those punishments must be the following: Death, imprisonment for life and or a mandatory minimum term of imprisonment for thirty (30) years. This statute § 16-3-20 is clear and unambiguous with outlining the punishment parameters of the offense of murder. When a statute is clear and unambiguous the doctrine of "Statutory Construction" controls. In the South Carolina Court, the Courts must strictly construe criminal statutes against the states and in favor of the defendant. See Williams v. State, 306 S.C. 89-91, 410 S.E.2d 563-564(1991); State v. Prince, 335 S.C. 466-472, 517 S.E.2d 229-232(Ct.App.1999). However, the Cardinal Rule of Statutory construction is that the Court must ascertain and effectuate the intent of the legislature and interpreting a a statute the court must give their plain and ordinary meaning without resorting to a tortured construction which limits or expands the statute's operation. Mid-state Auto Auction of Lexington Inc. v. Altman, 324 S.C. 65-69, 476 S.E.2d 690-692(1996); Rowe v. Hyatt, 321 S.C. 366-369, 468 S.E.2d 649-50(1996).

6

The Court has stated they would give statutory provisions a reasonable Construction consistent with the purpose of the statute. That the words of the statute must be given their plain and ordinary meaning without resorting to subtle or forced Construction to limit or expand the statute's operation. See Jackson v. Charleston County Sch. Dist., 316 S.C. 177-181, 447 S.E.2d 859-861 (1994).

As a matter of clarity the Petitioner, asks this Honorable Court to take judicial Notice that he was indicted under the "1998" and "1999" Year version of S.C. Code § 16-3-20, and the version of this statute varies significantly from the present day "2010" Year version of S.C. Code § 16-3-20. In its most pertinent parts, the "2010" Year version S.C. Code § 16-3-20, does allow a fifty-five (55) year sentence by virtue of the plain language of the Statute, for example it reads:

" A person who is convicted of or pleads guilty to murder must be punished by death or by a mandatory minimum term of imprisonment for thirty years to life."

The clause of "thirty to life" which is written in the "2010" version of the statute S.C. Code § 16-3-20, makes a fifty-five (55) year sentence constitutionally and statutorily permissible under the sentencing provision of the State. The clause of "thirty to life" is absent in the "1999" Year version of the statute § 16-3-20.

Therefore, the Petitioner contends that his fifty-five (55) year sentence is constitutionally and statutorily prohibited

under the "1999" sentencing provision of the statute in which Petitioner Casey Lewis #259254 was sentenced. The South Carolina Legislator's legislative intent in crafting the "1999" Year version in which Petitioner Casey Lewis #259254 was sentenced limits the determinate years of incarceration for the violation of the statute § 16-3-20 to one specific term of years that being thirty (30) years mandatory incarceration. The S.C. Legislator's legislative intent in crafting the "2010" Year version of Title § 16-3-20 was to expand and broaden the determinate number of years of incarceration for violation of this statute to any number of years between thirty (30) years to the natural life expiration of the violator. This is a very distinctive and significant variation between the "1999" Year version in which Petitioner Casey Lewis #259254 was sentenced and the "2010" year version of Title § 16-3-20. The Petitioner respectfully asks this Honorable Court to take Judicial Notice on this point pursuant to S.C. Rules of Crim. Proc., Rule 201, See Berkely County School Dist. v. South Carolina Dept. of Revenue, 382 S.C. 334, 679 S.E.2d 913, 247 2d.Law Rep., 481 S.C. July 06-2009 (No:26682).

The Petitioner moves this Court to declare on the record that the Petitioner's conviction and sentence is limited to only the provisions outlined in the "1999" Year version of Title § 16-3-20. Additionally, the Petitioner seeks a declaratory ruling that the meaning of Title § 116-3-20 clause "must be punished by death, by life imprisonment or by a mandatory minimum term of imprisonment for thirty (30) years." Is to mean exactly as it is written and that any determinate number of years above thirty (30) years can not be legally imposed by a South Carolina Court.

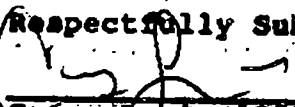
6

There is at least eight hundred (800) South Carolina convicted individuals currently serving a term of incarceration or parole who are impacted by the resolution of the Statutory Construction of this particular Penal Statute. It is foreseeable that this issue will be raised to this Court again repetitively and postured in the same manner. Therefore, it is in the best interest of Judicial Economy and for the sake of public interest to resolve the controversy in this case at this time. See Pond Place partners, Inc. v. Poole, (S.C.App.2002) 351 S.C. 1, 567 S.E.2d 881; Holden v. Campbell, (S.C.1997) 326 S.C. 208, 486 S.E.2d 1; Graham v. State Farm Mut Auto, Inc. Co., 319 S.C. 69-71, 459 S.E.2d 844-845-46 (1995); Lennon v. S.C. Coastal Council, 330 S.C. 414-415, 498 S.E.2d 906 (Ct. App.1998).

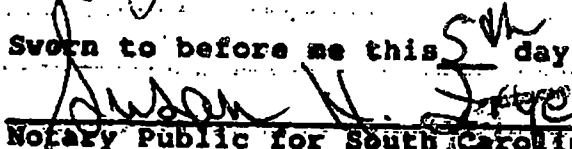
Petitioner asserts that it is within the authority of the Courts to review Criminal Statutes brought forth under Declaratory Judgment. See Rainey v. Haley, 404 S.C 320, 745 S.E.2d 81, S.C. June 12, 2013 (No.2012-211048-27269); Stardancer Casino Inc. v. Stewart, 347 S.C. 377, 556 S.E.2d 357, S.C. Nov 9, 2001 (No:25335).

WHEREFORE, the Petitioner asks this Honorable Court to make a ruling on each issue outlined in this Declaratory Judgment.

Respectfully Submitted


Casey Lewis #259254

Sworn to before me this 5th day of February 2015.


Notary Public for South Carolina

My Commission Expires:

My Commission Expires
March 5, 2018

FEB 04 2015

VED

COM

6

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2015-CP-40-01104

Casey Lewis #259254

State of South Carolina

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____

Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit);
☐ Rule 43(k), SCRPC (Settled); ☐ Other _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk :

The motion to dismiss is granted due to res judicata. The same issues in this case regarding the Defendant's sentence were heard and ruled by Judge Hood on September 12, 2013.

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		\$
		\$
		\$

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

Judge Code 2161

Date

2-1-16

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this 5 day of Feb, 2016 to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

Clerk of Court

Jeanette W. McBride

SCANNED

7



ALAN WILSON
ATTORNEY GENERAL

May 24, 2011

The Honorable Barry J. Barnette
Solicitor
Seventh Judicial Circuit
Spartanburg County Courthouse
180 Magnolia Street
Spartanburg, SC 29306

Dear Solicitor Barnette:

We received your opinion request concerning the pending resentencing trial of a defendant in a capital murder case in your judicial circuit. By way of background information, you state the defendant was convicted in 1995 for murder and possession of a weapon during the commission of a violent crime. He received a sentence of life imprisonment. The defendant was later convicted of a second murder committed under the law prior to the 1996 amendments to S.C. Code Ann. §16-3-20. He was sentenced to death. The death sentence was subsequently overturned following a post-conviction relief hearing. You request this office to address the following issues regarding the resentencing trial of the defendant:

1. Is the defendant entitled to the benefit of the sentencing changes to §16-3-20 after he committed the murder?
2. Is the defendant ineligible for parole pursuant to §24-21-640 if he receives a life sentence?

Law/Analysis

At the time the defendant committed the second murder,¹ §16-3-20 (A) provided that:

[a] person who is convicted of or pleads guilty to murder must be punished by death or by imprisonment for life and is not eligible for parole until the service of twenty years; provided, however, that when the State seeks the death penalty and an aggravating circumstance is specifically found beyond a reasonable doubt pursuant to subsections (B) and (C), and a recommendation of death is not made, the court must impose a sentence of life imprisonment without eligibility for parole until the service of thirty years . . .

¹Upon information and belief, the second murder was committed by the defendant on April 16, 1995.

8

In 1995 Acts No. 83, §10, the statute was amended to provide the following:

[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. If the State seeks the death penalty and a statutory aggravating circumstance is found beyond a reasonable doubt pursuant to subsections (B) and (C), and a recommendation of death is not made, the trial judge must impose a sentence of life imprisonment. For purposes of this section, "life imprisonment" means until death of the offender. No person sentenced to life imprisonment pursuant to this section is eligible for parole, community supervision, or any early release program, nor is the person eligible to receive any work credits, education credits, good conduct credits, or any other credits that would reduce the mandatory life imprisonment required by this section. No person sentenced to a mandatory minimum term of imprisonment for thirty years pursuant to this section is eligible for parole or any early release program, nor is the person eligible to receive any work credits, education credits, good conduct credits, or any other credits that would reduce the mandatory minimum term of imprisonment for thirty years required by this section.

We note that this Act which amended §16-3-20 specifically addressed its effective date. Section 62 states that the Act "takes effect January 1, 1996, and applies prospectively to all crimes committed on or after that date . . ." 1995 Acts No. 83, §62 [Emphasis added].

In interpreting a statute, the primary purpose is to ascertain the intent of the Legislature. State v. Martin, 293 S.C. 46, 358 S.E.2d 697 (1987); Multi-Cinema, Ltd. v. South Carolina Tax Comm'n., 292 S.C. 411, 357 S.E.2d 6 (1987). The legislative intent must prevail if it can be reasonably discovered in the language used, which must be construed in the light of the intended purpose of the statutes. Gambrell v. Travelers Ins. Co., 280 S.C. 69, 310 S.E.2d 814 (1983).

We have repeatedly advised that the retrospective operation of a statute is not favored by the courts. Ops. S.C. Atty. Gen. May 20, 2003; August 21, 2000; January 22, 1996 [citing Sutherland, Statutory Construction, §41.04 (4th ed. 1986)]. Statutes are presumed to be prospective in effect. State v. Davis, 309 S.C. 326, 422 S.E.2d 133, 139 (1992), *overruled on other grounds by*, Brightman v. State, 336 S.C. 348, 520 S.E.2d 614 (1999). Accordingly, the South Carolina Supreme Court has frequently recognized that "[a] statute is not to be applied retroactively unless that result is so clearly compelled as to leave no room for doubt." Am. Nat. Fire Ins. Co. v. Smith Grading and Paving, 317 S.C. 445, 454 S.E.2d 897, 899 (1995).

The South Carolina Supreme Court addressed this precise issue in State v. Gay, 343 S.C. 543, 541 S.E.2d 541 (2001), *abrogated on other grounds by* Holmes v. South Carolina, 547 U.S. 319 (2006). In Gay, the defendant was charged with a December 31, 1995, murder. He was convicted in 1997, and the trial court sentenced him to mandatory life imprisonment. On appeal, the defendant maintained that

8

The Honorable Barry J. Barnette
Page 3
May 24, 2011

because the statute in effect at the time of sentencing allowed a thirty-year sentence, whereas the statute in effect at the time of the crime mandated life imprisonment, the trial court should have considered the statute in effect at the time of sentencing. Gay, 541 S.E.2d at 546. Specifically, the defendant relied on the Court's decision in State v. Varner, 310 S.C. 264, 423 S.E.2d 133 (1992), where the Court stated that "[i]n the absence of a controlling statute, the common law requires that a convicted criminal receive the punishment in effect at the time he is sentenced, unless it is greater than the punishment provided for when the offense was committed." Id., 423 S.E.2d at 133. However, the Gay Court explained that in Varner, it indicated the Legislature could state its intent for new, lesser penalties to take effect based on the date of the crime rather than the date of sentencing. Gay, 541 S.E.2d at 546 [citing Varner, 423 S.E.2d at 134 n. 3]. Because the Legislature expressly stated in 1995 S.C. Acts No. 83, §62, its intent for prospective application based upon the date of the crime's commission, the Court held the general rule of Varner did not apply. The crime in Gay was committed on December 31, 1995, one day before the amended statute's effective date; therefore, the Court concluded the trial court correctly sentenced defendant to a mandatory term of life imprisonment. Gay, 541 S.E.2d at 546.

We also note that in 1986 Acts No. 462 (the Omnibus Criminal Justice Improvements Act of 1986), the Legislature amended §24-21-640 concerning circumstances warranting parole so as to provide that parole is not authorized to any prisoner serving a sentence for a second or subsequent conviction for a violent crime as defined in §16-1-60. Violent crime is defined to include, *inter alia*, the offense of murder. Therefore, if any prisoner is convicted of the above crime for a criminal event that occurred after June 3, 1986, and has a prior conviction at any time (before or) after June 3, 1986 (the effective date of the 1986 Act) for one of the specified crimes, that prisoner is not eligible for parole consideration on the recent conviction and must complete service of his entire sentence.² See Ops. S.C. Atty. Gen. July 20, 1989; October 9, 1986; see also State v. Dingle, 376 S.C. 643, 659 S.E.2d 101, 105 (2008) [holding that in order to trigger the no-parole language in the parole statute, a defendant must not only have a separate sentencing hearing, but he or she must also have a separate conviction].

Conclusion

In summary, based on the foregoing, we conclude that a defendant convicted or pleading guilty to murder under the circumstances presented in your letter must be punished by death or by imprisonment for life pursuant to the provisions of §16-3-20 (A) on the date that he committed the offense. In addition, such defendant would be ineligible for parole consideration on the murder conviction in accordance with

²We also concluded in our opinion on October 9, 1986, that there were no *ex post facto* problems in the application of the provision, citing McDonald v. Massachusetts, 180 U.S. 311 (1901), where the United States Supreme Court indicated that an enhancement statute's "punishment is for a new crime only . . . The statute imposing a punishment on none but future crimes is not *ex post facto*." Id., 180 U.S. at 313; see also Sullivan v. State, 331 S.C. 479, 504 S.E.2d 110, 110 (1998) [finding a defendant, who had a prior conviction for assault and battery with intent to kill, could be denied parole following subsequent conviction for voluntary manslaughter under statute that provided that parole could not be granted to or authorized for any prisoner serving a sentence for a second or subsequent conviction for a violent crime, even though assault and battery with intent to kill was not classified as a violent crime at time of prior conviction].

8

The Honorable Barry J. Barnette

Page 4

May 24, 2011

§24-21-640, because of his previous murder conviction. We cannot, of course, predict how a trial or appellate court facing this issue would decide the matter. Ops. S.C. Atty. Gen., November 10, 2004; August 13, 2001. This office further adheres to its long-standing policy that prosecution of a particular individual is a matter within the discretion of the Circuit Solicitor. Ops. S.C. Atty. Gen., October 29, 2004; April 20, 2004; February 3, 1997. You, as the Solicitor, are the person who can weigh the strength or weakness of a particular case. Op. S.C. Atty. Gen., August 14, 1995. Thus, while this office has provided to you the relevant law in this area, we must defer to your judgment regarding the prosecution of the individual in question.

If there are any further questions, please advise.

Very truly yours,



N. Mark Rapoport
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Deputy Attorney General

8

State of South Carolina
In The Court of Appeals

RECEIVED

Appeal from Richland County
DeAndrea Benjamin - Court Judge

SEP 23 2016

SC Court of Appeals

State of South Carolina

Respondent

v.

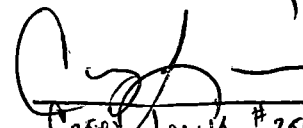
Casel Lewis

Appellant

Case No: 2016-000442

Certificate of Service

The Appellant, Casel Lewis #259254, hereby certifies that the record on Appeal has been corrected to comply with Rule 267 (d) - SCACR and forwarded to the Court of Appeals Clerk.



Casel Lewis #259254
Richland C.J. BA-#34
PO Box 2039
Richland S.C. 29936

State of South Carolina

Sworn to and subscribed before me this 14 day of September 2016.

Deborah Ferguson
Notary Public for South Carolina

MY Commission Expires: 10-1-25

RECEIVED

SEP 23 2016

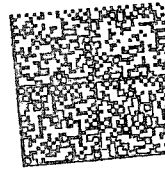
SC Court of Appeals

South Carolina Court of Appeals

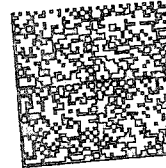
Jenny ABBOTT Kitchens - Clerk

Post office Box 11629

Columbia - South Carolina 29211



UNITED STATES POSTAGE
02 1P
0000879463 SE
MAILED FROM ZIP C



UNITED STATES POSTAGE
02 1P
0000879463
MAILED FROM ZIP

