STATE OF SOUTH CAROLINA
In the Court of Appeals

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Appeal from Richland County
Court of Common Pleas
DeAndrea Benjamin, Circuit Court Judge

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Casey Lewis,

Appellant,

v.

The State of South Carolina,

Respondent.

Appellate Case No.: 2016-000442

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# FINAL BRIEF OF RESPONDENT

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ALAN WILSON
Attorney General

J. ROBERT BOLCHOZ
Chief Deputy Attorney General

THOMAS PARKIN HUNTER
Senior Assistant Attorney General

ATTORNEYS FOR RESPONDENT

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## APPELLANT'S STATEMENT OF ISSUES ON APPEAL

1). Whether the Court of Common Pleas – Mrs. BenJamin – was Correct in dismissing Appellant's Declaratory Judgment under the Doctrine of Res Judicata

2). Whether the Court of Common Pleas did an analysis and Made a full determination established by South Carolina Jurisprudence Concerning the Court's Authority to determine the legislature legislative intent as it relates to S.C. Code § 16-3-20 as it was codified in the Year "1999" as opposed to its Current reading Codified in the Year "2010."

(BOA, "Statement of the Issue on Appeal").

## RESPONDENT'S COUNTER STATEMENT OF ISSUE ON APPEAL

Whether the trial judge properly dismissed Appellant's action for declaratory judgment under the doctrine of *res judicata* where Applicant sought interpretation of the statutorily set sentencing range for murder which he had previously challenged in a motion for new trial that was dismissed as untimely and for lack of merit by Order of the Honorable W. Jeffrey Young dated September 12, 2013?

## RESPONDENT'S STATEMENT OF THE CASE

Appellant, Casey Lewis, appeals from the denial of his motion for declaratory judgment. He had previously filed a post-rial motion in 2013 in the Court of General Sessions in regard to his 1999 conviction and sentence seeking essentially the same determination on the same sentencing issue. Judge Benjamin dismissed the motion for declaratory judgment under *res judicata.*

*Procedural History*

Appellant is currently incarcerated in the South Carolina Department of Corrections pursuant to orders of commitment from the Clerk of Court of Williamsburg County. Appellant was indicted in February 1999 for murder, armed robbery, possession of a weapon during the commission of a violent crime, and carrying a pistol onto premises or business selling alcoholic liquors, beers or wines for consumption. Legrand Carraway, Esq., Public Defender for Williamsburg County, represented Appellant on the charges. A jury trial on the charges of murder, armed robbery, and possession of a weapon, began on June 21, 1999, before the Honorable James E. Brogdon. On June 23, 1999, Appellant informed the court that he wished to enter a guilty plea. Judge Brogdon accepted the plea, and sentenced Appellant to fifty-five (55) years for murder, thirty (30) years for armed robbery, and five (5) years on the weapons charge. The remaining charge was dismissed. Appellant, through counsel, attempted to file a notice of appeal; however, the appeal was filed late and rejected by this Court, which then issued the remittitur on January 4, 2000.

On May 26, 2000, Appellant filed an application for post-conviction relief ("PCR"). At the conclusion of the circuit court proceedings, the Honorable Howard P. King found Appellant had not voluntarily waived his right to appeal and granted partial relief to obtain review of any

direct appeal issues; however, Judge King denied relief on all remaining grounds raised in the action. On April 8, 2004, the Supreme Court of South Carolina allowed the review of direct appeal issues, but denied relief.[1] *Lewis v. State*, Memorandum Opinion No. 2004-MO-016 (S.C.Sup.Ct. filed April 8, 2004). The Court issued the remittitur on April 26, 2004.

Appellant filed a second PCR action on June 30, 2004, which was dismissed as untimely and successive on January 29, 2007.

Appellant also sought federal habeas relief. That action was filed on December 7, 2006. On January 10, 2008, the District Court dismissed the action as untimely. (See C/A 3:06-cv-03463-DCN, ECF #27, accepting report and recommendation finding same, ECF #20 at 12)).

On or about February 11, 2013, Appellant filed a document titled "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" with the Williamsburg County Clerk of Court in his General Sessions Case Number 99-GS-45-18. (Supp. R., Document 1, pp. 1-5). On August 17, 2013, the State filed a Motion to Quash Defendant's Motion to Modify and Correct Sentence.

A hearing on the State's motion was held September 12, 2013, before the Honorable W. Jeffrey Young. Judge Young heard the motion and issued, that same day, an Order dismissing the action as untimely: "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." (R., Document 2, p. 2). Judge Young, rejecting the assertion of "newly discovered evidence under any definition of the term," concluded: "The sentence in this matter was imposed on June 23, 1999. This action was filed on February 11, 2013. Accordingly, this Court

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[1] Respondent notes that within the PCR appeal, Appellant attempted to raise a *pro se* issue that the murder statute did not support his fifty-five (55) year sentence. The *pro se* filing was dated June 19, 2003.

finds that this action is untimely and therefore must be dismissed with prejudice." (R., Document 2, p. 3).

On September 23, 2013, Appellant filed a document, again in his General Sessions Case Number 99-GS-45-18, titled "Motion to Alter or Amend Pursuant to Rule 59(e)." On October 22, 2013, Judge Young denied the motion to alter or amend his ruling. (R., Document 3, p. 1).

On or about January 21, 2014, Appellant served the Attorney General's Office with a notice of appeal and filed a copy of the notice with the Williamsburg Clerk of Court and with the Court of Appeals. Respondent moved to dismiss the appeal as untimely. By Order dated May 14, 2014, this court dismissed the appeal as untimely. Appellant sought rehearing which this Court denied on June 30, 2014. All filings are part of the prior action in this Court, Appellate Case No.: 2014-000144.

Appellant also sought review from the Supreme Court of South Carolina by petition filed July 22, 2014. The State made its return on September 2, 2014. The Supreme Court denied the petition on October 23, 2014. The filings and orders in the Surpeme Court as referenced herein are in Appellate Case No.: 2014-001564. This Court subsequently issued the remittitur on October 30, 2014.

*The Instant Action and Appeal*

On February 20, 2015, Appellant filed a document titled, "Declaratory Judgment" in Richland County in the Court of Common Pleas. (R., Document 6, pp. 1-5). Appellant sought a determination whether the pre-2010 version of S.C. Code § 16-3-20 in effect at his sentencing allowed for only three sentencing options: death, life without parole, or a term of thirty (30) years. (R., Document 6, p. 4). On September 29, 2015, the State moved to dismiss the action. (Supp. R., Document 2, pp. 1-9). By Order dated February 1, 2016, the Honorable DeAndrea

Benjamin granted the motion to dismiss, finding the action barred by *res judicata* noting the September 12, 2013 Order in the prior Rule 60 motion. This appeal follows.

## ARGUMENT

The trial judge properly granted the State's motion to dismiss Appellant's action for declaratory judgment based upon *res judicata* where the matter had been previously raised and addressed in Appellant's post-trial motion.

"To state a cause of action under the Declaratory Judgment Act, a party must demonstrate a justiciable controversy." *Sunset Cay, LLC v. City of Folly Beach*, 357 S.C. 414, 423–24, 593 S.E.2d 462, 466–67 (2004). "A justiciable controversy is a real and substantial controversy which is appropriate for judicial determination, as distinguished from a dispute or difference of a contingent, hypothetical or abstract character." *Power v. McNair*, 255 S.C. 150, 154, 177 S.E.2d 551, 553 (1970). "[A] declaratory judgment should not deal with moot or abstract matters or constitute a merely advisory opinion...." *Waller v. Waller*, 220 S.C. 212, 223, 66 S.E.2d 876, 882 (1951).

"Res judicata is the branch of the law that defines the effect a valid judgment may have on subsequent litigation between the same parties and their privies. Res judicata ends litigation, promotes judicial economy and avoids the harassment of relitigation of the same issues." *Plum Creek Dev. Co. v. City of Conway*, 334 S.C. 30, 34, 512 S.E.2d 106, 108–09 (1999) (quoting J. Flanagan, *South Carolina Civil Procedure* p. 642 (1996)). "Res judicata may be applied if (1) the identities of the parties are the same as in the prior litigation, (2) the subject matter is the same as in the prior litigation, and (3) there was a prior adjudication of the issue by a court of competent jurisdiction." *Catawba Indian Nation v. State*, 407 S.C. 526, 538, 756 S.E.2d 900, 907 (2014) (citing *Johnson v. Greenwood Mills, Inc.*, 317 S.C. 248, 250–51, 452 S.E.2d 832, 833 (1994)).

Judge Bejamin properly applied *res judiciata* in this instance where the parties and subject matter was the same and a prior adjudication of the claim was made in the General Sessions action. In particular, Respondent notes that Judge Young denied the post-trial motion "as untimely *and without merit*." (R., Document 2, p. 3) (emphasis added). Judge Young found in relevant part:

> ...A plain reading of the statute under which Mr. Lewis was sentenced clearly indicates that an individual may be sentenced to a term of imprisonement 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. ...

(R., Document 2, p. 3).

For these reasons, Judge Benjamin's ruling is well-supported by the facts of record and should be affirmed. Appellant's argument to the contrary should be rejected. Additionally, Respondent offers the following sustaining grounds under Rule 208(b)(2), SCACR.

*Additional Sustaining Ground One*

The action was not properly brought under the Declaratory Judgment Act as the action sought redress of a sentencing issue. Respondent asserts that the requested declaratory judgment – a civil remedy – was not proper in regard to sentencing.

The statute governing declaratory judgments is in Title 15 of the Code of Laws. See 15-53-10 et seq. That title outlines civil remedies and procedures. Further, Rule 57, SCRCP, also provides that rules of civil procedure apply. Consequently, this civil remedy applies only to construction of statutes of a civil nature. *See Thompson v. State*, 415 S.C. 560, 564, 785 S.E.2d 189, 191 n. 3 (2016) (determining declaratory judgment "appropriate vehicle" to raise issue regarding sex offender registry as the "registry is a civil requirement separate and apart form the criminal punishments").

Appellant's "right" at issue in his declaratory judgment action is actually a challenge to appropriate sentencing under the criminal statute. Post-conviction relief is the proper vehicle for seeking address sentencing concerns, not a declaratory judgment action. See S.C. Code § 17-27-20 (B) (The Uniform Post–Conviction Procedure Act intended to "comprehend[] and take[] the place of all other common law, statutory or other remedies heretofore available for challenging the validity of the conviction or sentence" and "shall be used exclusively in place of them."). *See also Thompson, supra. Accord Pruitt v. Campbell*, 429 F.2d 642, 645 (4th Cir. 1970) ("We have specifically held in *Hurley v. Lindsay*, 207 F.2d 410 (4th Cir. 1953) that a district court has no jurisdiction to entertain a declaratory judgment action as a substitute for post conviction remedies under 28 U.S.C. § 2255, which must include habeas corpus since relief granted under 28 U.S.C. § 2255 is broader in scope."); *Hurley v. Lindsay*, 207 F.2d 410, 410–11 (4th Cir. 1953) ("If there was any irregularity in the sentence or orders under which appellant was held, and we do not intimate that there was, appellant's remedy was a motion in the sentencing court under 28 U.S.C. § 2255, not a petition for a declaratory judgment in another court."); *Clark v. Memolo*, 174 F.2d 978, 981 (D.C. Cir. 1949) ("The Declaratory Judgment Act was designed to provide a remedy in a case or controversy while there is still opportunity for peaceable judicial settlement. It was the primary purpose of the act to have a declaration of rights not therefore determined, and not to determine whether rights theretofore adjudicated have been properly adjudicated.").[2] Thus, the action could also have been dismissed for lack of jurisdiction and/or pursuant to Rule 12(b)(6), SCRCP, for failure to state a claim upon which relief may be granted.

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[2] Respondent notes this authority should be particularly persuasive given the following provision of the Act: "This chapter shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact substantially identical legislation and to harmonize, as far as possible, with Federal laws and regulations on the subject of declaratory judgments and decrees." S.C. Code Ann. § 15-53-140.

*Additional Sustaining Ground Two*

As a final argument, Respondent submits that the matter, even if heard, would not afford relief. Appellant contends that the prior statute – the statute in effect at the time of the crime – allowed for only three sentences, thirty years, life without parole, or death. Our Supreme Court has rejected such an interpretation.

In *State v. Starnes*, 340 S.C. 312, 330, 531 S.E.2d 907, 917 n. 17 (2000), the Supreme Court of South Carolina, in discussing the possibility of parole in a capital case for purposes of deciding jury instructions, noted that the language in the statute allowed for a defendant to be sentenced in excess of thirty years given the statute indicated "a mandatory *miminum*' of thirty years. 340 S.C. at 330, 531 S.E.2d at 917 n. 17 (emphasis in original).

Further, in *State v. Morgan*, 367 S.C. 615, 618–19, 626 S.E.2d 888, 889 (2006), the Supreme Court reviewed the statute's wording in resolving a term of years greater than thirty could be obtained:

> We therefore look to § 16-3-20(A) for guidance on how a person convicted of murder and who is not subject to the death penalty should be sentenced. Section 16-3-20(A) provides that "[a] person who is convicted of ... murder must be punished by ... imprisonment for life, or by a mandatory minimum term of imprisonment for thirty years." Therefore, on remand, the trial court may receive additional evidence on the question of whether appellant is entitled to receive a sentence less than life imprisonment and decide on a sentence that ranges from a mandatory minimum imprisonment term of thirty years to life imprisonment.

In fact, the text read: "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." S.C. Code § 16-3-20 (Supp. 1998).[3] The described "minimum" term indicates another term of years is allowable. *See generally Matter of Decker*, 322 S.C. 215, 219, 471 S.E.2d 462, 463 (1995) ("'A statute should be so construed that no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous....'" (quoting 82 C.J.S. Statutes § 346).

Appellant's interpretation not only conflicts with the Supreme Court's comments on the plain language, but also offers a reading that eliminates meaning for the word "minimum" which is at odds with the standard rules of statutory construction. *Id. See also Postell v. Bodison*, No. CIV.A. 8:09-3232, 2010 WL 4923108, at *13 (D.S.C. Sept. 13, 2010), *report and recommendation adopted*, No. CIV.A. 8:09-3232-HFF, 2010 WL 4922688 (D.S.C. Nov. 29, 2010), *dismissed*, 442 F. App'x 833 (4th Cir. 2011) ("To read this code section as the Petitioner suggests, would read several words out of the phrase 'a mandatory minimum term of imprisonment for thirty years to life.' A statute should be so construed that no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous. If the legislature had wanted to provide that a defendant could only be sentenced to thirty years, it could have easily and clearly done so.") (internal citation omitted). Consequenlty, even if the action could be heard, the plain wording of the statute simply does not support the result urged by Appellant. Thus, the action could also have been dismissed for lack of merit.

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[3] This language is from the 1995 Act which became effective January 1, 1996. See S.C. Code § 16-3-20 (History); *Starnes, supra.*

## CONCLUSION

For all the foregoing reasons, Respondent, the State, submits Judge Benjamin's ruling dismissing the action should be affirmed.

Respectfully submitted,

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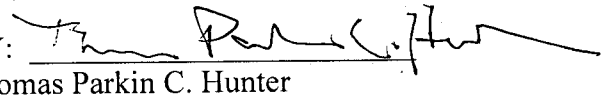
BY: 
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**CERTIFICATE OF COMPLIANCE**

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The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the April 15, 2014, Order of the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

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