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STATE OF SOUTH CAROLINA
In the Supreme Court

S.C. SUPREME COURT

On Petition for Writ of Certiorari to the South Carolina Court of Appeals
Appeal from Richland County
Court of Common Pleas
DeAndrea Benjamin, Circuit Court Judge

Casey Lewis.....Petitioner,

v.

The State of South Carolina.....Respondent.

Appellate Case No.: 2018-000556

RETURN TO PETITION FOR WRIT OF CERTIORARI

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PETITIONER'S STATEMENT OF QUESTIONS PRESENTED

- I. Whether the Court of Common Pleas Honorable Judge Ms. Benjamin, was correct in dismissing Petitioner's Declaratory Judgement under the doctrine of *res judicata*?
- II. Whether the Court did an analysis and made a full determination established by South Carolina jurisprudence concerning the Court's authority to determine the Legislature's legislative intent as it relates to S.C. Code Section 16-3-20 as it was codified in the Year "1999" as opposed to its current reading codified in the Year "2010?"
- III. Did the Court fail to consider the numerous exceptions to the application of *res judicata* enhancing the constitutional magnitude of punishment attached to S.C. Code of law Section 16-3-10 codified in "1999" creating an *ex post facto* violation?
(Petition, p. 2).

RESPONDENT'S COUNTER STATEMENT OF QUESTIONS PRESENTED

Whether the Court of Appeals erred in affirming the trial judge's dismissal of Petitioner's action for declaratory judgment under the doctrine of *res judicata* where Petitioner 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, in *State of South Carolina v. Casey Lewis*, Case No. 199-GS-45-0018 (the "First Young Order"), and affirmed by Order of the Honorable DeAndrea Benjamin dated February 1, 2016, in *Casey Lewis #259254 v. State of South Carolina*, Case No. 2015-CP-40-01104 (the "Benjamin Order")?

RESPONDENT'S STATEMENT OF THE CASE

Petitioner, Casey Lewis, petitions this Court to issue its *writ of certiorari* to the South Carolina Court of Appeals to review its decision filed on December 6, 2017, Appellate Case No.

2016-000442, which was an appeal from the denial of Petitioner's motion for declaratory judgment. He had previously filed a post-trial 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*. See the Benjamin Order.

Procedural History

Legrand Carraway, Esq., Public Defender for Williamsburg County, represented Petitioner 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, Petitioner informed the court that he wished to enter a guilty plea. Judge Brogdon accepted the plea, and sentenced Petitioner 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. Petitioner, 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, Petitioner filed an application for post-conviction relief ("PCR"). At the conclusion of the circuit court proceedings, the Honorable Howard P. King found Petitioner 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. Petitioner

¹ Respondent notes that within the PCR appeal, Petitioner 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.

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

Petitioner 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, 2013², Petitioner filed a document titled “Motion to Modify and Correct Sentence Pursuant to S.C. RCP Rule 29(b), Rule 60 (b)l, 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. 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.” Judge Young, rejecting the assertion of “newly discovered evidenced 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 finds that this action is untimely and therefore must be dismissed with prejudice.”

On or about September 23, 2013, Petitioner 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. On or about January 21, 2014, Petitioner served the Attorney General's Office with a notice of appeal and

² Note that the document is notarized with a February 4, 2012 date.

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. Appellate Case 2014-0000144. Petitioner sought rehearing which this Court denied on June 30, 2014.

Petitioner also sought review from the Supreme Court of South Carolina by petition filed July 22, 2014. The Supreme Court denied the petition on October 23, 2014. Appellate Case 2014-001564.

The Instant Action and Appeal

On February 20, 2015, Petitioner filed a document titled, “Declaratory Judgment” in Richland County in the Court of Common Pleas. Petitioner 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. Civil Action No. 2015-CP-40-01104. On September 29, 2015, the Respondent moved to dismiss the action. By Order dated February 1, 2016, the Honorable DeAndrea Benjamin granted the motion to dismiss, finding the action was barred by *res judicata* noting the September 12, 2013 Order in the prior Rule 60 motion. Benjamin Order.

Court of Appeals

The Court of Appeals reviewed the circuit court's dismissal of Petitioner’s appeal of the Benjamin Order and affirmed the Benjamin Order finding that the action below was barred by the doctrine of *res judicata*. The Court of Appeals further found that the remaining issues of legislative intent and statutory interpretation did not require review because the first finding of the *res judicata* bar was dispositive of all remaining issues. *Casey Lewis v. State of South Carolina*, Unpublished Op. No. 2017-UP-451 (S.C. App. Filed December 6, 2017).

ARGUMENT

The trial judge properly granted the Respondent's motion to dismiss Petitioner's action for declaratory judgment based upon *res judicata* where the matter had been previously raised and addressed in Petitioner's post-trial motion. The record supports there are no "special or important reasons" to grant *certiorari* review. See Rule 242(b), SCACR. The Petition should be dismissed.

"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 Benjamin properly applied *res judicata* in this instance where the parties and subject matter were 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” (Appendix Tab 3, 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 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. . . .

First Young Order, p. 3.

For these reasons, Judge Benjamin's ruling is well-supported by the facts of record and was properly affirmed. Petitioner'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, as it did in the Court of Appeals, 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, SCRCR, 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 from the criminal punishments”).

Petitioner'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, 410-1 1 (4th Cir. 1953) ("If there was any irregularity in the sentence or orders under which Petitioner 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.")³ Thus, the action could also have been dismissed for lack of jurisdiction and/or pursuant to Rule 12(b)(6), SCRCPP, for failure to state a claim upon which relief may be granted.

³ 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, as it did in the Court of Appeals, that the matter, even if heard, would not afford relief. Petitioner 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 minimum’ 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).⁴ The described “minimum” term indicates another term of years is allowable. See generally *Matter of Decker*, 322 S.C. 215, 219, 471

⁴ This language is from the 1995 Act which became effective January 1, 1996. See S.C. Code § 16-3-20 (History); *Starnes*, *supra*.

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).

Petitioner'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 1442 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). Consequently, even if the action could be heard, the plain wording of the statute simply does not support the result urged by Petitioner. Thus, the action could also have been dismissed for lack of merit.

CONCLUSION

For all the foregoing reasons, Respondent, the State, submits that the petition for *writ of certiorari* should be denied.

Respectfully submitted,

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Casey Lewis, Petitioner,

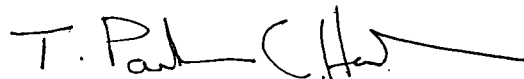
v.

The State of South Carolina, Respondent.

CERTIFICATE OF SERVICE

I hereby certify that I served the **RETURN TO PETITION FOR WRIT OF CERTIORARI** of the Respondent State of South Carolina on the Petitioner in the above-captioned matter by depositing a copy of said document in the United States mail, postage prepaid, on April 17, 2018, addressed to:

Casey Lewis, #259254
Ridgeland Correctional Institution
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