

STATE OF SOUTH CAROLINA RECEIVED
IN THE SUPREME COURT APR 23 2018

S.C. SUPREME COURT

APPEAL FROM CHARLESTON COUNTY

KRISTI LEA HARRINGTON Chief Administrative Judge

APPELLATE CASE NO: 2018-000530

LOWER COURT CASE NO: 2015-CP-10-5718

THE STATE

RESPONDENT,

V.

ALTON M. CHISOLM

APPELLANT

RECORD ON APPEAL

ALTON M. CHISOLM-6645
CORRECT CARE
1700 ST. ANDREWS, TERRACE BLDG. A
COLUMBIA, SOUTH CAROLINA 29210

OFFICE OF THE ATTORNEY GENERAL
ATTN: RASHEEDA CLEVELAND, ESQUIRE
P.C.R. DIVISION 9TH CIRCUIT
P. O. BOX 11549
COLUMBIA, SOUTH CAROLINA 29211

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TABLE OF AUTHORITIES.

CASE LAWS

- 1 MCCOY V. UNITED STATES, 266 F.3D 1245 (11 CIR, 2001).
 - 2 REED V. ROSS, 468, US 1, 16, 104 S.C.T. 2910, 82 L. ED 2D (1984).
 - 3 SMITH V. DOE, 538 U.S. 84 (2003) 123 S.C.T. 1140, 155 L. ED 164, 71, US.WL 4182.
 - 4 HYNES V. TOMEI, 42 N.Y. 2d 613, 629, 684, N.Y.S. 2d 177, 706 N.E. 2d 1201 (1998)
 - 5 PEOPLE V. CORTES, 80 N.Y. S 2d 201, 211, 890 N.Y.S. 2d 9, 604 N.E. 2d 71 (1992)
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STATEMENT OF ISSUE ON APPEAL

SHOULD APPELLANT'S CONVICTIONS BE VACATED BECAUSE OF: ACTUAL INNOCENCE AND JURISDICTIONAL DEFECTS, CLAIM: IT'S NOT RULED ON BY THE LOWER COURT.

STATEMENT OF THE CASE

APPELLANT PLED GUILTY TO TWO COUNTS OF LEWD ACT UPON A MINOR DURING THE AUGUST 2003 TERM OF CHARLESTON COUNTY COURT OF GENERAL SESSIONS BEFORE THE HONORABLE JUDGE DEADRA JEFFERSON AND WAS SENTENCED TO CONCURRENT TERMS OF CONFINEMENT TOTALING EIGHT YEARS. THE COURT ALSO REVOKED THREE YEARS OF A PRIOR SUSPENDED SENTENCE, CONCURRENT TO THE INSTANT CHARGES,

APPELLANT APPEALS. THIS BRIEF FOLLOWS.

ARGUMENT

APPELLANT'S CONVICTIONS SHOULD BE VACATED BECAUSE OF: ACTUAL INNOCENCE AND JURISDICTIONAL DEFECT CLAIM HAS NEVER BEEN RULED ON BY THE LOWER COURT

IT HAS BEEN NOTED THAT A JURISDICTIONAL ACTUAL INNOCENCE AND JURISDICTIONAL DEFECT CLAIM CANNOT BE WAIVED OR PROCEDURALLY DEFAULTED AND THAT A DEFENDANT NEED NOT SHOW CAUSE AND PREJUDICE TO JUSTIFY "HIS" FAILURE TO RAISE ONE. MCCOY V. UNITED STATES, 266 F.3D 1245 (11 CIR. 2001). IT IS TRUE THAT AND "SUPREME COURT, DECISIONS" FROM: "THE TIME REFLECTS THAT AN ACTUAL INNOCENCE AND JURISDICTIONAL DEFECT CLAIM WAS A UNIQUE CONSTITUTIONAL CLAIM"

IN ORDER TO SHOW "A MISCARRIAGE OF JUSTICE" IS THAT WILL EXCUSE A PROCEDURAL BAR. A PETITIONER MUST MAKE A COLORABLE SHOWING OF "ACTUAL INNOCENCE." PETITIONER CAN DO THIS BEYOND A REASONABLE DOUBT AND THE COURT NEEDS TO ADDRESS A PREJUDICE CAUSE OF ACTION BECAUSE, ALTON M. CHISOLM CAN ESTABLISH, CAUSE. IN REED V. ROSS, 468, US 1, 16, 104 S.C.T 2910, 82 LED 20 (1984). THE THE SUPREME COURT HELD: THAT WHERE A CONSTITUTIONAL

CLAIM IS SO NOVEL, THAT IT'S LEGAL BASIC IS NOT REASONABLY AVAILABLE TO COUNSEL A DEFENDANT HAS CAUSE FOR HIS FAILURE TO RAISE THE CLAIM IN ACCORDANCE WITH ACCEPTABLE STATE PROCEDURES.

IN ORDER TO ESTABLISH THE NOVEITY OF A CONSTITUTIONAL CLAIM TO SUFFICIENT TO PROVIDE CAUSE; A DEFENDANT MUST INITIALLY DEMONSTRATE THAT "HIS" SITUATION IS ONE WHERE A COURT HAS ARTICULATED A CONSTITUTIONAL PRINCIPLE THAT HAS NOT BEEN PREVIOUSLY RECOGNIZED BUT, WHICH HAS BEEN HELD TO HAVE RETROACTIVE APPLICATION, IT'D BE SUFFICIENTLY CLEAR BREAK WITH THE PAST, SO THAT AN ATTORNEY REPRESENTING THE DEFENDANT WOULD NOT REASONABLY HAVE HAD THE TOOLS FOR PRESENTING THE CLAIM IN STATE COURT [ID AT 16-17, 104 S. CT AT 2910-11]

... HERE THE LEGAL BASIC FOR THE RIGHT LATER RECOGNIZED IN MCCOY V. STATE (OPINION NO. 27214, FEB. 6, 2013 AND SMITH V. DOE, 538 U.S. 84 (2003) 123 S. CT. 1140, 155 L. ED. 764, 71 U.S. WL 4182; WAS NOT AVAILABLE AT THE TIME OF ALTON M. CHISOLM-SENTENCE AND EARLIER, P. C. R.'S.

CONCLUSION

SUCH PRECEDENT CONTROLS AND THE COURT ARE BOUND TO FOLLOW IT, HYNES V. TOMEI, 92 N.Y. 2d 613, 629, 684 N.Y.S. 2d 177, 906 N.E. 2d 1201 (1998) (STATE COURTS ARE BOUND THE FEDERAL CONSTITUTION TO FOLLOW CONTROLLING SUPREME COURT PRECEDENT), CERT. DENIED, 527 U.S. 1015, 119 S. CT 2359, 141 L. ED. 2ND (1999); PEOPLE V. CORTES, 80 N.Y.S. 2d 201, 211, 590 N.Y.S. 2d 9, 604 N.E. 2d 71 (1992) (TRIAL COURT BOUND TO FOLLOW EXISTING), PRECEDENT.

FOR THE FOREGOING REASONS, APPELLANT SHOULD BE RELEASED FROM CONFINEMENT.

April 17, 2018

RESPECTFULLY SUBMITTED,

Alton M. Chisolm
ALTON M. CHISOLM
PRO-SE APPELLANT

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM CHARLESTON COUNTY

APPELLATE CASE NO: 2018-000530
LOWER COURT CASE NO: 2015-CP-10-5718

ALTON M. CHISOLM APPELLANT,
V.

STATE OF SOUTH CAROLINA RESPONDENT.

PROOF OF SERVICE

I CERTIFY THAT I HAVE SERVED THE NOTICE OF APPEAL ON THE STATE BY MAILING A COPY OF IT TO THE ADDRESS OF RECORD, THE SUPREME COURT OF SOUTH CAROLINA, DANIEL E. SHEAROUSE, CLERK OF COURT, POST OFFICE BOX 11330, COLUMBIA, SOUTH CAROLINA 29211, APRIL, 2018.

APRIL 17, 2018

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ALTON M. CHISOLM-6645
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COLUMBIA, SOUTH CAROLINA 29210

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RASHEEDA CLEVELAND, ESQUIRE, ASSISTANT ATTORNEY GENERAL, P.C.R.
DIVISION-9TH CIRCUIT, P.O. BOX 11549, COLUMBIA, S.C. ON APRIL 2018
29211

APRIL 17, 2018

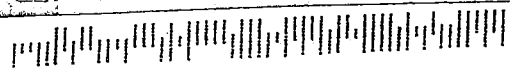
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11. CHS00M-0643
Direct Care
c/o Andrews, Terrace Bldg. A
Columbia, South Carolina 29210



COLUMBIA SC 292
THU 19 APR 2018 PM

The Supreme Court of South Carolina
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Columbia, South Carolina 29211