

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

ORIGINAL

Appeal from Pickens County
Honorable Letitia H. Verdin, Circuit Court Judge

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

BOYCE DEREK LOWRANCE,

APPELLANT

APPELLATE CASE NO 2017-001070

INITIAL BRIEF OF APPELLANT

ROBERT M. PACHAK
Appellate Defender

South Carolina Commission on Indigent Defense
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ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the plea court erred in re-sentencing appellant with a more onerous sentence based on conduct that occurred after his original sentence as this sentence violated the double jeopardy clauses of the United States Constitution and the South Carolina Constitution?

STATEMENT OF THE CASE

On April 17, 2017, appellant appeared before the Honorable Letitia H. Verdin in Pickens County for a resentencing hearing on the charge of domestic violence of a high and aggravated nature. Appellant was originally sentenced to ten (10) years suspended upon service of three (3) years with two (2) years' probation thereafter. Eighteen months of the 3 year sentence was to be served at the department of corrections and the balance was to be served at home incarceration.

The court told appellant that he was being resentenced because he violated the court's order to have no contact with the victim. (Tr. p. 6, line 21-p. 7, line 8). Appellant was sentenced to three (3) years at the department of corrections without the benefit of home incarceration. However, after 18 months appellant would be reviewed with the possibility of home detention being reinstated.

This appeal follows.

ARGUMENT

The plea court erred in re-sentencing appellant with a more onerous sentence based on conduct that occurred after his original sentence as this sentence violated the double jeopardy clauses of the United States Constitution and the South Carolina Constitution.

On March 29, 2017, appellant appeared before the court of general sessions in Pickens County and pled guilty to domestic violence first degree. (March 29 tr. p 6, lines 9-12, tr. p. 7, line 23-p. 8, line 4). According to the assistant solicitor appellant assaulted the mother of his children in the early morning hours. He awoke her with a knife and struck her in the face. The victim had a deep cut in her arm during the assault. The victim waited for appellant to go to work and then she and her five year old son went to live with her parents. She allowed appellant to pick up her son from school but he refused to bring him back. That's is when she called the police. (March 29 tr. p. 25, lines 6-25).

The plea court agreed with the assistant solicitor's recommended sentence of ten years suspended to three years with 18 months in SCDC and then 18 months at home detention with probation for two years thereafter. There was also to be no victim contract. (March 29 tr. p. 26, lines 6-23).

On April 17, 2017, appellant again appeared in court for resentencing on the charge he had already pled guilty to and was sentenced on. It appeared appellant tried to make contact with the victim. (April 17, tr. p. 4, lines 11-16). Counsel for appellant objected on grounds of double jeopardy. (April 17, tr. p. 6, lines 8-10). The trial court said it was going to amend its sentence to three years without the benefit of in home detention. After eighteen months the court would look at appellant's behavior to determine if he could have in home detention (April 17, tr. p. 10, lines 11-18).

Counsel for appellant appealed the resentencing noting that it violated double jeopardy. In Collins v. Youngblood, 497 U.S. 37, 110 S.Ct. 2715 (1990) the Supreme Court of the United

States wrote:

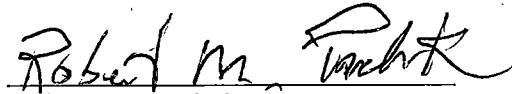
Although the Latin phrase “*ex post facto*” literally encompasses any law passed “after the fact,” it has long been recognized by this Court that the constitutional prohibition on *ex post facto* laws applies only to penal statutes which disadvantage the offender affected by them. *Calder v. Bull*, 3 Dall. 386, 390-392, 1 L.Ed. 648 (1798) (opinion of Chase, J.); *id.*, at 396 (opinion of Paterson, J.); *id.*, at 400 (opinion of Iredell, J.). See *Miller v. Florida*, 482 U.S. 423, 430, 107 S.Ct. 2446, 2451, 96 L.Ed.2d 351 (1987). As early opinions in this Court explained, “*ex post facto* law” was a term of art with an established meaning at the time of the framing of the Constitution. *Calder*, 3 Dall., at 391 (opinion of Chase, J.); *id.*, at 396 (opinion of Paterson, J.). Justice Chase’s now familiar opinion in *Calder* expounded those legislative Acts which in his view implicated the core concern of the *Ex Post Facto* Clause:

“1st. Every law that makes an action done before the passing of the law, and which was *innocent* when done, criminal; and punishes such action. 2d. Every law that *aggravates a crime*, or makes it *greater* than it was, when committed. 3d. Every law that *changes the punishment*, and inflicts a *greater punishment*, than the law annexed to the crime, when committed. 4th. Every law that alters the *legal rules of evidence*, and receives less, or different, testimony, than the law required at the time of the commission of the offence, *in order to convict the offender*.” *Id.*, at 390 (emphasis in original).

Appellant in this case was given a greater punishment than was originally given. The original sentence imposed must be reinstated.

CONCLUSION

Appellant's original sentence should be reinstated.

A handwritten signature in black ink, appearing to read "Robert M. Pachak". The signature is written in a cursive style with a horizontal line underneath it.

Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

This 4th day of May, 2018.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Pickens County

Honorable Letitia H. Verdin, Circuit Court Judge

THE STATE,

RESPONDENT,

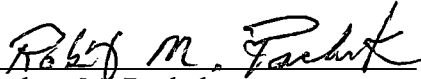
V.

BOYCE DEREK LOWRANCE,

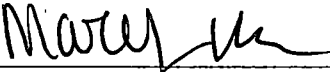
APPELLANT

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Initial Brief of Appellant and Designation of Matter in the above referenced case has been served upon J. Benjamin Aplin, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Initial Brief of Appellant and Designation of Matter have been served on Boyce Derek Lowrance, at 325 John Holliday Rd., Six Mile, SC 29682; this 4th day of May, 2018.


Robert M. Pachak
Appellate Defender
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 4th day of May, 2018.



Notary Public for South Carolina (L.S)
My Commission Expires: May 12, 2027.