

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM GREENWOOD COUNTY
R. KNOX MCMAHON
CIRCUIT COURT JUDGE

WHITNEY SPAN # 351494
APPELLANT

VS

THE STATE

RESPONDENT

APPELLATE CASE NO: 2012-212578

PRD, SE BRIEF



WHITNEY SPAN #351494
LEE CORRECTIONAL INST
990 WISACKY HWY
BISHOPVILLE S.C. 29010
APPELLANT PRD, SE

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CASES

- JACKSON V. WHETSEL, 388 Fed. Appx 795
U.S. V. JONES, 68 M.J. 465
MORGAN V KRENKE, 72 F. SUPP. 2d 980
VASQUEZ V. VAUGHN, 454 F. SUPP 194
MILDWOOD V. CUNNINGHAM, 432 F. SUPP 814
SALINAS V. U.S. 277 F 2d 914
FREEMAN V. MOORE, 303 Fed Appx 285
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STATEMENT OF ISSUE ON APPEAL

1. DID THE APPELLANT'S CONVICTION OF THE LESSER INCLUDED OFFENSE OF ATTEMPTED MURDER AS ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED NATURE CONVICTION DID VIOLATED THE APPELLANT'S RIGHTS UNDER THE DUE PROCESS CLAUSE
2. THE TRIAL COURT JUDGE DID ABUSE HIS AUTHORITY AND VIOLATED THE STATE OF SOUTH CAROLINA CODE OF LAW WHEN SENTENCING THE APPELLANT TO MORE TIME THAN THE CRIMINAL OFFENSE CARRY BY THE REQUIREMENTS OF THE LAW IN THE STATE OF SOUTH CAROLINA

STATEMENT OF THE CASE

THE APPELLANT WAS INDICTED BY A GREENWOOD COUNTY GRAND JURY ON ONE COUNT OF ATTEMPTED MURDER AND ONE COUNT OF POSSESSION OF A FIREARM DURING THE COMMISSION OF A VIOLENT CRIME ON JULY 9, 2012. THE APPELLANT PROCEEDED TO TRIAL BEFORE A JURY AND THE HONORABLE R. KNOX MCMAHON. AT THE CONCLUSION OF THE TRIAL THE JURY FOUND THE APPELLANT NOT GUILTY OF ATTEMPTED MURDER BUT GUILTY OF THE LESSER INCLUDED OFFENSE OF ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED NATURE. IT ALSO FOUND THE APPELLANT GUILTY OF POSSESSION OF A FIREARM DURING THE COMMISSION OF A VIOLENT CRIME. THE JUDGE MCMAHON SENTENCED THE APPELLANT TO TWELVE YEARS IMPRISONMENT FOR THE ASSAULT AND BATTERY CHARGE AND FIVE YEARS CONCURRENT FOR THE WEAPON CHARGE WHICH THE APPELLANT'S ATTORNEY FILED AN DIRECT APPEAL THAN ON AUGUST 23, 2013 AN ANDERS BRIEF OF APPELLANT AND A PETITION TO BE RELIEVED AS COUNSEL WAS FILED THAN THIS PRO,SE BRIEF FOLLOWS

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ARGUMENTS

1. DID THE APPELLANT'S CONVICTION OF THE LESSER INCLUDED OFFENSE OF ATTEMPTED MURDER AS ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED NATURE DID VIOLATED THE APPELLANT'S RIGHTS UNDER THE DUE PROCESS CLAUSE
2. THE TRIAL COURT JUDGE DID ABUSE HIS AUTHORITY AND VIOLATED THE STATE OF SOUTH CAROLINA CODE OF LAW WHEN SENTENCING THE APPELLANT TO MORE TIME THAN THE CRIMINAL OFFENSE CARRY BY THE REQUIREMENTS OF THE LAW IN THE STATE OF SOUTH CAROLINA

STATEMENT OF FACTS

1. THE APPELLANT WAS CONVICTED OF THE LESSER INCLUDED OFFENSE OF ATTEMPTED MURDER AS ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED NATURE WHICH THE APPELLANT WAS NOT CHARGE WITH THE LESSER INCLUDED OFFENSE OF ATTEMPTED MURDER AS ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED NATURE THAT THE JURY WAS CHARGE AND CONVICTED THE APPELLANT OF THE OFFENSE OF ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED NATURE WHICH INVOLVES AN ADDITIONAL ELEMENT OF PHYSICAL CONTACT WITH THE VICTIM THAT ATTEMPTED MURDER DOES NOT CONTAIN THE ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED NATURE WAS

NOT NOTICED IN THE APPELLANT'S ORIGINAL INDICTMENT UNDER THE DUE PROCESS CLAUSE OF THE U.S. CONSTITUTION THAT THE APPELLANT COULD NOT BE CONVICTED OF THE OFFENSE OF ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED NATURE OFFENSE NOT NOTICED IN THE APPELLANT'S ORIGINAL INDICTMENT WHEN THE APPELLANT DID NOT WAIVE NOTICE OF THE CHARGE OF THE OFFENSE OF ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED NATURE.

2. THE TRIAL COURT JUDGE R. KNOX MCMAHON ABUSE HIS AUTHORITY AND VIOLATED THE STATE OF SOUTH CAROLINA CODE OF LAW WHEN THE JUDGE SENTENCE THE APPELLANT TO (12) TWELVE YEARS IMPRISONMENT FOR THE CONVICTION OF ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED NATURE WHICH WAS TWO(2) YEARS MORE THAN THE OFFENSE OF ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED NATURE CARRY WHICH BY THE LAW OF SOUTH CAROLINA THE JUDGE R. KNOX MCMAHON ONLY COULD HAVE SENTENCE THE APPELLANT TO TEN(10) YEARS IMPRISONMENT FOR THE CONVICTION OF ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED NATURE.

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CONCLUSION

FOR THE FOREGOING REASONS THAT THE
APPELLANT REQUEST FOR THE COURT TO VACATE
THE APPELLANT'S SENTENCE AND CONVICTION

RESPECTFULLY SUBMITTED



WHITNEY SPAN# 351494

LEE CORRECTIONAL INST

990 WISACKY HWY


BISHOPVILLE S.C. 29010

APPELLANT PRO, SE

THIS 18 DAY OF SEPT, 2013

CERTIFICATE OF SERVICE

THE APPELLANT HEREBY CERTIFY THAT A TRUE COPY OF
THE APPELLANT'S PRO. SE BRIEF HAS BEEN SERVED
UPON SALLEY W. ELLIOTT, ESQUIRE AT THE REMBERT
DENNIS BUILDING 1000 ASSEMBLY STREET, ROOM 519,
COLUMBIA S.C. 29201, THIS 18 DAY OF SEPT, 2013


BY WHITNEY SPAN

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WHITNEY SPAN # 351494
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990 WISACKY HWY
BISHOPVILLE S.C. 29010

Sept. 18 2013

JENNY ABBOTT KITCHINGS, CLERK

SOUTH CAROLINA
COURT OF APPEALS

P.O. BOX 11629

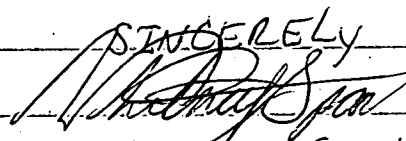
COLUMBIA S.C. 29211

RE: WHITNEY SPAN V THE STATE

APPELLATE CASE NO: 2012 - 212578

DEAR KITCHINGS:

PLEASE FIND ENCLOSE FOR
FILING THE APPELLANT'S PRO, SE BRIEF IN THE
ABOVE CAPTIONED CASE

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