

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Pickens County

Honorable Letitia H. Verdin, Circuit Court Judge

 ORIGINAL

THE STATE,

RESPONDENT,

V.

BOYCE DEREK LOWRANCE,

APPELLANT

APPELLATE CASE NO. 2017-001070

FINAL BRIEF OF APPELLANT

RECEIVED
OCT 12 2018
SC Court of Appeals

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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 three 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. (R. 46, l. 21 – 47, l. 8). Appellant was sentenced to three (3) years at the Department of Corrections without the benefit of home incarceration. However, after eighteen 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. (R. 6, ll. 9-12, R. 7, l. 23 – 8, l. 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 is when she called the police. (R. 25, ll. 6-25).

The plea court agreed with the assistant solicitor's recommended sentence of ten years suspended to three years with eighteen months in SCDC and then eighteen months on home detention with probation for two years thereafter. There was also to be no victim contact. (R. 26, ll. 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. (R. 44, ll. 11-16). Counsel for appellant objected on grounds of double jeopardy. (R. 46, ll. 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 (R. 50, ll. 11-18).

Counsel for appellant appealed the resenting noting that it violated double jeopardy. In Collins v. Youngblood, 497 U.S. 37 (1990) the Supreme Court of the United States wrote:

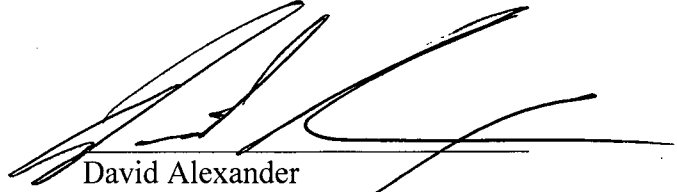
Although the Latin phrase “*ex post facto*” literally encompasses any law passed “after the fact,” it has long been recognized by this Court that the constitutional prohibition on *ex post facto* laws applies only to penal statutes which disadvantage the offender affected by them. *Calder v. Bull*, 3 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. 2^d. Every law that *aggravates* a *crime*, or makes it *greater* than it was, when committed. 3^d. 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 'DAVID ALEXANDER', written over a horizontal line.

David Alexander
Appellate Defender

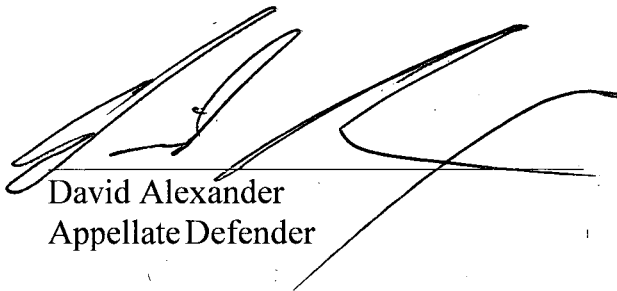
ATTORNEY FOR APPELLANT

This 12th day of October, 2018.

CERTIFICATE OF COUNSEL

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

October 12, 2018



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