

STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM SUMTER COUNTY
Court of Common Pleas
The Honorable R. Ferrell Cothran, Jr.

RECEIVED

MAR 11 2020

SC Court of Appeals

Case No.: 2019-001476

David Caesar,

Petitioner,

vs.

State of South Carolina,

Respondent.

INITIAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did the circuit court err in dismissing Petitioner's declaratory judgment action regarding the constitutionality of using his armed robbery conviction, for which he was sentenced under the Youthful Offender Act, to enhance later convictions because he believed the petition was neither properly brought nor meritorious?

STATEMENT OF THE CASE AND OF FACTS

Petitioner David Caesar is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Sumter County Clerk of Court. Petitioner received his first conviction in 1994 when he was found guilty of armed robbery. He was sentenced to 15 years suspended to a Youthful Offender Act (“YOA,” S.C. Code Ann. §24-19-10, *et seq.*) sentence of three to six years. In 2001, he was indicted by the Sumter County Grand Jury for two counts of armed robbery and one count of possession of a weapon during the commission of a violent crime (2001-GS-43-0543). He proceeded to trial before the Honorable Thomas W. Cooper, Jr. and a jury that found him guilty of one count of armed robbery and possession of a weapon during the commission of a violent crime. Petitioner was sentenced to life imprisonment without the possibility of parole for the armed robbery due to enhancement under S.C. Code Ann. §17-25-45 and five years for the firearms charge. A notice of appeal was filed with an Anders brief submitted on Petitioner’s behalf. The South Carolina Court of Appeals dismissed the action by an order dated February 27, 2004. Petitioner filed post-conviction relief applications in 2005, 2008, and 2016, as well as a state habeas corpus action in 2011. All of these were dismissed or denied without relief.

STANDARD OF REVIEW

“A judge must be permitted to consider any and all information that reasonably might bear on the proper sentence for a particular defendant. A sentence will not be overturned absent an abuse of discretion when the ruling is based on an error of law or a factual conclusion without evidentiary support.” In re M.B.H., 387 S.C. 323, 326, 692 S.E.2d 541, 542 (2010) (citations omitted).

ARGUMENT

The circuit court erred in dismissing Petitioner's declaratory judgment action regarding the constitutionality of using his armed robbery conviction, for which he was sentenced under the Youthful Offender Act, to enhance later convictions because the petition was both properly brought and meritorious.

Petitioner appeals the grant of the State's motion to dismiss his declaratory judgment action in which he alleged that his armed robbery conviction, for which he was sentenced under the Youthful Offender Act ("YOA," S.C. Code Ann. §24-19-10, *et seq.*), was improperly used to enhance his later convictions under S.C. Code Ann. §17-25-45, thus causing him to be sentenced to life imprisonment without the possibility of parole.

The threshold issue for which this action was dismissed is that it should have been brought before the court as an application for post-conviction relief under the Uniform Post-Conviction Relief Act ("PCR Act," S.C. Code Ann. §17-27-10, *et seq.*). Respondent's argument for this was that post-conviction relief has taken the place of all other remedies formerly available for challenging the validity of a conviction or sentence. Specifically, the order of dismissal cites S.C. Code Ann. §17-27-20(B): "[The PCR Act] comprehends and takes the place of all other common law, statutory or other remedies heretofore available for challenging the validity of the conviction or sentence. It shall be used exclusively in place of them."

However, not every case dealing with the ramifications of a sentence is properly under the PCR Act. In Thompson, the South Carolina Supreme Court reviewed a declaratory judgment action that requested the petitioner's requirement to register as a sex offender be removed, as the kidnappings for which he was convicted were not sexual in nature. Thompson v. State, 415 S.C. 560, 785 S.E.2d 189 (2016). Thompson argued that the case was ripe and proper because he was experiencing harm while incarcerated due to that classification, as he could not receive certain

services through the Department of Corrections. Additionally, this type of relief is clearly considered in the Uniform Declaratory Judgments Act:

Courts of record within their respective jurisdictions shall have power to declare rights, status and other legal relations whether or not further relief is or could be claimed. No action or proceeding shall be open to objection on the ground that a declaratory judgment or decree is prayed for. The declaration may be either affirmative or negative in form and effect. Such declarations shall have the force and effect of a final judgment or decree.

S.C. Code Ann. §15-53-20.

Thompson can be analogized to the case at bar because Petitioner may not be incarcerated today if it were not for the enhancement from his first offense. Petitioner's 2001 armed robbery conviction carried a sentence of 10-30 years, with parole eligibility after service of seven years. See S.C. Code Ann. §16-11-330(a). Even with the additional five years for the weapons charge, Petitioner could have been released on parole in 12 years when, instead, he is serving his eighteenth year. Petitioner is clearly suffering a harm of such nature that a judicial declaration of his rights is proper as considered in Thompson, and for which he should not be limited to filing under the PCR Act. For these reasons, this action was properly brought as a declaratory judgment and the order of dismissal must be reversed for consideration of Petitioner's arguments.

In the order of dismissal, the court reviewed Petitioner's allegations as if he had filed a post-conviction relief application and held that his application would have been dismissed due to filing beyond the statute of limitations and filing a successive application. Such findings are improper in the context of this order because, as Respondent repeatedly noted, this is not a post-conviction relief action. Such findings prejudice any future review of Petitioner's claims and should not be considered by this court or any future court.

Regarding the merits of this action, Petitioner urges the court to reconsider its stance on using crimes sentenced under the YOA being used to enhance under South Carolina's strike statute

(S.C. Code Ann. §17-25-45). The United States Supreme Court and South Carolina Supreme Courts have already taken the stance that it is unconstitutional to have a mandatory scheme that would sentence a juvenile to death or life imprisonment without the possibility of parole. See Aiken v. Byars, 410 S.C. 534, 765 S.E.2d 572 (2014); Miller v. Alabama, 567 U.S. 460, 132 S. Ct. 2455 (2012). While Byars mostly considered how South Carolina would implement the higher decision, Miller clearly held that a sentence of death or life imprisonment without the possibility of parole was a violation of the Eighth Amendment. Id., 567 U.S. at 465, 132 S.Ct. at 2460.

In making this determination, the justices called upon earlier cases that considered the age of defendants in sentencing - Roper v. Simmons, 543 U.S. 551, 125 S. Ct. 1183 (2005) and Graham v. Florida, 560 U.S. 48, 68, 74, 130 S. Ct. 2011 (2010). These earlier opinions separately considered the imposition of the death penalty or life imprisonment without the possibility of parole and made changes due to the effect that age has on a human brain.

[Roper and Graham] establish that children are constitutionally different from adults for purposes of sentencing. Because juveniles have diminished culpability and greater prospects for reform, we explained, “they are less deserving of the most severe punishments.” Those cases relied on three significant gaps between juveniles and adults. First, children have a “lack of maturity and an underdeveloped sense of responsibility,” leading to recklessness, impulsivity, and heedless risk-taking. Second, children “are more vulnerable . . . to negative influences and outside pressures,” including from their family and peers; they have limited “contro[l] over their own environment” and lack the ability to extricate themselves from horrific, crime-producing settings. And third, a child's character is not as “well formed” as an adult's; his traits are “less fixed” and his actions less likely to be “evidence of irretrievabl[e] deprav[ity].”

Miller, 567 U.S. at 471, 132 S.Ct. at 2464.

These considerations, though given a nod by the YOA, are not fully taken into account. The fact that the YOA exists is evidence that the South Carolina legislature, with influence and input of the judiciary and legal communities, recognizes that younger people need consideration. “The original YOA provided a sentencing alternative for most young first time offenders with the

theory that more rehabilitative treatment would result in a lower recidivism rate. See S.C. Code § 55-392(e) (Supp. 1969).” FEATURE: THE LEANER AND MEANER YOUTHFUL OFFENDER ACT, 9 S. Carolina Lawyer 15, 15. Be that as it may, the YOA does not fully recognize the vulnerability of a young brain. Even worse, the YOA has been amended to include a narrower category of individuals in terms of age and offense than under its first iteration.

Although these offenders are not juveniles who would be included under the protections of Miller or Byars, they are barely removed from that qualification. The law recognizes that these individuals are in need of special treatment and consideration in sentencing, yet there is no differentiation between their underlying convictions from this age and any other conviction. If young individuals get relief in sentencing, why should their conviction not be entitled to the same relief? The recognition that young individuals are unable to conform their behavior led to the creation of the aforementioned legislation regarding sentencing. Should they not receive the same benefit if they reoffend? Petitioner avers that youthful convictions should be removed from any consideration of enhancement or multiple offenses. As such, his sentence should be reduced and no longer qualify for enhancement under S.C. Code Ann. §17-25-45.

CONCLUSION

For the above stated reasons, Appellant respectfully requests that this Court vacate the circuit court's order of dismissal, thus allowing consideration of the issues at hand.

Respectfully submitted,

TOMMY A. THOMAS

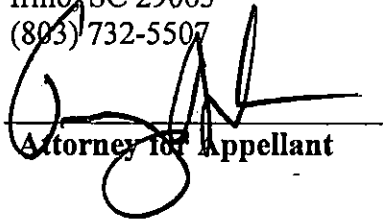
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R. Ferrell Cothran, Jr., Circuit Court Judge

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State of South Carolina,Respondent.

CERTIFICATE OF SERVICE

I, Jacquelyn E. Miller, secretary to Tommy A. Thomas, Attorney for the Applicant hereby certify that I placed in the United States Mail, a copy of an Initial Brief and Designation of Matter with postage prepaid and the return address clearly shown on said envelope to Harley L. Kirkland, Esq. of the Attorney General's Office, at:

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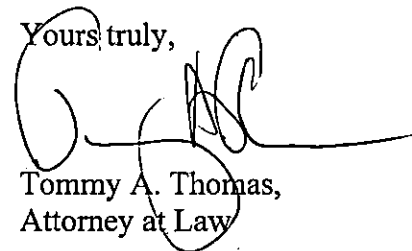
RE: David Caesar v. State
Appellate Case No.: 2019-001476

Dear Sir or Madam:

Enclosed please find an original and a copy of the Initial Brief of Appellant, Designation of Matter and Certificate of service for filing in the above referenced matter.

Kindly return a clocked copy to me in the enclosed envelope. Thank you. Should you have any questions, or need any additional information, please do not hesitate to contact me.

Yours truly,



Tommy A. Thomas,
Attorney at Law

TAT/jem
cc: Harley Kirkland, Esq.
David Caesar #217220