THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SUMTER COUNTY
Court of Common Pleas

R. Ferrell Cothran, Jr., Circuit Court Judge

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SC Court of Appeals

APPELLATE CASE NO.: 2019-001476

David Caesar,.. Appellant,

vs.

State of South Carolina, ...Respondent.

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA COUNTY OF SUMTER	)	IN THE COURT OF COMMON PLEAS THIRD JUDICIAL CIRCUIT
David Caesar, Petitioner, v. State of South Carolina, Respondent.	)	Case No.: 2018-CP-43-00852 **ORDER OF DISMISSAL**

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DEPUTY CLERK OF COURT SUMTER COUNTY SOUTH CAROLINA

This matter is before this court on the State of South Carolina's Motion to Dismiss, filed on March 15, 2019. Plaintiff filed a declaratory judgment action on May 14, 2018. A hearing was held on the State of South Carolina's Motion to Dismiss on June 24, 2019, at the Sumter County Courthouse. The Plaintiff's attorney, Mr. Tommy A. Thomas, appeared and argued on Plaintiff's behalf. Assistant Attorney General Harley L. Kirkland appeared and argued on behalf of the State of South Carolina. The court has considered the pleadings, exhibits, and oral argument offered by both parties. Accordingly, the motion filed by the State of South Carolina is **GRANTED**, and the case is hereby **DISMISSED.**

BACKGROUND

In 1994, Mr. Caesar was convicted of Armed Robbery and sentenced pursuant to the Youthful Offender's Act. In 2001, Mr. Caesar was convicted of two counts of Armed Robbery and one count of Possession of a Weapon during a violent crime. His 1994 Armed Robbery conviction was used to enhance his 2001 sentence because his 1994 conviction was considered a "serious" or "most serious" offense under S.C. Code Ann. Section 17-25-45. As a result, Mr.

Caesar was sentenced to life imprisonment, without the possibility of parole. Seventeen years later, Mr. Caesar filed this action for declaratory judgment, alleging that his sentence violates various constitutional provisions. Ultimately, he asks the court to set aside his conviction and sentence.

I. Mr. Caesar must bring his claims in a PCR

Mr. Caesar first asks the court to declare that his sentence violates various constitutional provisions. After that declaration, he wants the court to set aside his conviction and sentence. Because Mr. Caesar is ultimately challenging the constitutional validity of his conviction and sentence, he must make his constitutional claim in a post-conviction relief action. S.C. Code Ann. §17-27-20(A)(1). PCR has taken the place of all other remedies formerly available for challenging the validity of a conviction or sentence, including actions for declaratory judgment. S.C. Code Ann. §17-27-20(B) ("Except as otherwise provided in this chapter, [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.*") (Emphasis added)); *see also Simpson v. State*, 329 S.C. 43, 46, 495 S.E.2d 429, 431 (1998). Because Mr. Caesar is challenging his conviction and sentence in this action for declaratory judgment rather than a PCR, he has failed to state facts sufficient to constitute a cause of action. Consequently, the court dismisses this case under Rule 12(b)(6).

II. Statute of Limitations

To the extent the court could consider this declaratory judgment case as a PCR, it is beyond the statute of limitations. This court finds Mr. Caesar has failed to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. Specifically, the act requires as follows:

> An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision on appeal, whichever is later.

S.C. Code Ann. § 17-27-45(A).

The South Carolina Supreme Court has held the statute of limitations shall apply to all applications filed after July 1, 1996. *Peloquin v. State*, 321 S.C. 468, 469 S.E.2d 606 (1996). Mr. Caesar was convicted in June of 1998. Any post-conviction relief action regarding his sentence or conviction was therefore due to be filed on or before on June of 1999. This action was filed on May 22, 2019, nearly twenty years later and well beyond the statutory filing period. Therefore, this court finds Mr. Caesar failed to file action within the statutory time mandated by the Uniform Post-Conviction Procedure Act and therefore this claim must be dismissed.

III. Successiveness

To the extent the court could consider this declaratory judgment case as a PCR, it is also barred as successive. This court finds Mr. Caesar's claims regarding the constitutionality of his sentence and conviction must be summarily dismissed as successive to Mr. Caesar's previous applications. Courts disfavor successive applications and place the burden on applicants to establish that any new ground raised in a subsequent application could not have been earlier raised in a previous application. *Foxworth v. State*, 275 S.C. 615, 274 S.E.2d 415 (1981); *Arnold v. State*, 309 S.C. 157, 420 S.E.2d 834 (1992). Section 17-27-90 of the South Carolina Code states:

> All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental, or amended application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily, and intelligently waived in the proceeding that resulted in the conviction or sentence or in any other proceeding the applicant has taken to secure relief, may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which for sufficient reason was not asserted or was inadequately raised in the original, supplemental, or amended application.

for sufficient reason was not asserted or was inadequately raised in the original, supplemental, or amended application.

Under this statute, successive post-conviction relief applications are forbidden unless an applicant can indicate a "sufficient reason" why new grounds for relief were not raised or were not properly raised in previous applications. *Aice v. State*, 305 S.C. 448, 409 S.E.2d 392 (1991). Any new ground raised in a subsequent application is limited to those grounds that "could not have been raised . . . in the previous application." *Id.* at 450. If the applicant could have raised these allegations in a previous application, then the applicant may not raise those grounds in successive applications. *Id.* Applicant bears the burden of showing the allegations could not have been previously raised. *Land v. State*, 274 S.C. 243, 262 S.E.2d 735 (1980).

This court finds Mr. Caesar could have raised his constitutional claims as grounds for relief in his prior post-conviction relief application. Raised now, this claim would have to be supported by sufficient reasons why it could not have been raised in the previous post-conviction relief Application. Mr. Caesar has presented no such reason. Therefore this court finds this claim must be dismissed.

IV. Mr. Frazier's Conviction and Sentence are Constitutional

If the court was able to consider Mr. Caesar's arguments, the court would find that Mr. Caesar's conviction and sentence are constitutional. The fact that Mr. Caesar was convicted under the Youthful Offender Act does not change the character of his subsequent conviction and sentence under the Life without Parole statute. Mr. Caesar contends that his sentence is unconstitutional under both the Eighth and Fourteenth Amendments. First, he contends that it is cruel and unusual punishment, in violation of the Eighth Amendment, to enhance his current sentence with a prior conviction under the Youthful Offender Act. Second, he contends that his sentence results in an equal protection violation, wherein one class of youthful offenders (those

sentenced under the Youthful Offender Act) is provided protection not afforded to another class of youthful offenders (those sentenced under the Life without Parole statute). Both of these contentions are without merit.

A. Cruel and Unusual Punishment

"The Eighth Amendment to the United States Constitution, which applies against the States by virtue of the Fourteenth Amendment, provides: 'Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.' The Eighth Amendment prohibits not only barbaric punishments, but also sentences that are disproportionate to the crime." *State v. Harrison*, 402 S.C. 288, 293, 741 S.E.2d 727, 729 (2013) (citing U.S. Const. amend. VIII; *Solem v. Helm*, 463 U.S. 277, 284 (1983)).

> [O]ur courts have recognized that "what constitutes cruel and unusual punishment, and thus, what violates the Eighth Amendment, is determined by 'evolving standards of decency that mark the progress of a maturing society.' " *State v. Pittman*, 373 S.C. 527, 562, 647 S.E.2d 144, 162 (2007), *cert. denied*, 552 U.S. 1314 (2008) (quoting *State v. Standard*, 351 S.C. 199, 204, 569 S.E.2d 325, 328 (2002)). In implementing this test, the court looks to objective evidence of how our society views a particular punishment today. *State v. Wilson*, 306 S.C. 498, 509-10, 413 S.E.2d 19, 26 (1992). Legislation enacted by the country's legislatures is the "clearest and most reliable objective evidence of contemporary values." *Pittman*, 373 S.C. at 563, 647 S.E.2d at 162. "[T]he Constitution requires the court's own judgment to be brought to bear on the issue by 'asking whether there is reason to disagree with the judgment reached by the citizenry and its legislators.'" *Id.* at 563, 647 S.E.2d at 163 (quoting *Atkins v. Virginia*, 536 U.S. 304, 313 (2002)). It is not the burden of the state to establish a national consensus approving what their citizens have voted to do; rather, it is the heavy burden of the defendant to establish a national consensus against it. *Wilson*, 306 S.C. at 510, 413 S.E.2d at 26.
>
> Additionally, the "'proportionality' bedrock of Eighth Amendment jurisprudence" is equally important a principle as the "evolving standards of decency," and "'it is a precept of justice that punishment for crime should be graduated and proportioned to [the] offense.'" *Pittman*, 373 S.C. at 564-65, 647 S.E.2d at 163 (quoting *Atkins*, 536 U.S. at 311). In order to establish that evolving standards of decency preclude his punishment, appellant bears the "'heavy burden' of showing that our culture and laws emphatically and well nigh universally reject it." *Id.* at 565, 647 S.E.2d at 164 (quoting *Harris v. Wright*, 93 F.3d 581, 583 (1996)).

State v. Williams, 380 S.C. 336, 346–47, 669 S.E.2d 640, 646 (Ct. App. 2008).

Here, Mr. Caesar fails to carry the "heavy burden" of showing that a sentencing enhancement supported by his prior Youthful Offender Act conviction violates the Eighth Amendment. First, he provides no persuasive or controlling authority in support of his position. Rather, he merely recites and paraphrases the Eighth Amendment along with asserting in a conclusory manner that the imposition of such a sentence is "excessive and in violation of the Eighth Amendment." This, without more, is not convincing. Further, Mr. Caesar's arguments on the subject fall well short of establishing that "a national consensus" exists against using such a youthful offender conviction to enhance a subsequent adult conviction. This failure to articulate the "standards of decency" have "evolved," does not support that Mr. Caesar's sentence is "barbaric punishment" contrary to "contemporary values." Lastly, he provides no evidence that "our culture and laws emphatically . . . reject" the use of a youthful offender conviction for a subsequent sentencing enhancement. Thus, there has been no demonstration that the alleged harm resulted in an unconstitutionally disproportionate sentence. In short, Mr. Caesar has simply failed to carry his heavy burden of proof, and this court declines to make an *ex cathedra* pronouncement as to constitutionality in light of this deficiency.

B. Equal Protection

"To satisfy the Equal Protection Clause, a classification must (1) bear a reasonable relation to the legislative purpose sought to be achieved, (2) members of the class must be treated alike under similar circumstances, and (3) the classification must rest on some rational basis." *Lee v. S.C. Dep't of Nat. Res.*, 339 S.C. 463, 467, 530 S.E.2d 112, 114 (2000). "A legislative enactment will be sustained against constitutional attack if there is 'any reasonable hypothesis' to

support it." *Id.* (quoting *Thomas v. Spartanburg Ry., Gas & Elec. Co.,* 100 S.C. 478, 85 S.E. 50 (1915)).

Here, Mr. Caesar fails to allege an equal protection violation for several reasons. First, Mr. Caesar confuses the statutory right under the Youthful Offender Act with a fundamental right, which would warrant the heightened standard of strict scrutiny. Stated differently, "[t]he statutory right to youthful offender treatment is simply not a fundamental right. . . . Thus, the state need show no more than a rational basis for this distinction in treatment of offenders." *State v. Johnson*, 276 S.C. 444, 447, 279 S.E.2d 606, 607 (1981). Here, such a rational basis exists for the separate use of the Youthful Offender Act and the Life without Parole statute:

> We think the classification is reasonably and rationally related to the achievement of legitimate state goals. Society as well as the criminal has an interest at stake under the Youthful Offenders Act. The legislature has determined that society's interest, the public safety and welfare, is best protected by extending the cloak of the act to these offenders it deems most likely to profit from the act's rehabilitative purpose. The gravity of the offense involved justifies the legislature in serving this interest.

Id. at 447. Any attempt to conjure up an Equal Protection violation from the Youthful Offender Act fails because any classifications it creates between offenders are reasonably related to legitimate state goals and its legislative purpose. *See Craft v. State*, 281 S.C. 205, 207, 314 S.E.2d 330, 331 (1984) ("The purpose of the Youthful Offenders Act is to provide treatment and supervision designed to correct the antisocial tendencies of youthful offenders so as to protect the public."). Furthermore, Mr. Caesar received the benefit of a youthful offender sentence for his 1994 conviction. After receiving that benefit, Mr. Caesar then committed more crimes in 2001. To argue now, that his sentence in 2001 is unconstitutional because it was enhanced by a prior conviction, where he received the *benefit* of a YOA sentence, is not meritorious. Accordingly,

Mr. Caesar fails to establish that his sentence is unconstitutional under the Fourteenth Amendment.

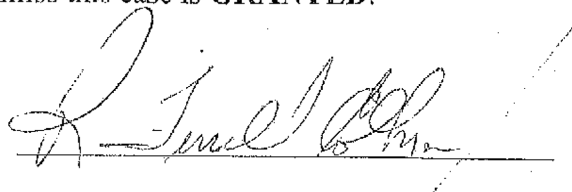
V. Conclusion

Mr. Caesar is challenging the constitutional validity of his conviction and sentence; hence, this challenge must occur in a PCR, not this action for declaratory judgment. To the extent the court could construe this action as a PCR, it is barred by the statute of limitations and is successive. To the extent the court could consider Mr. Caesar's arguments, this court finds that his conviction and sentence are not unconstitutional under the Eighth or Fourteenth Amendments.

THEREFORE, THE COURT ORDERS THE FOLLOWING:

The State of South Carolina's motion to dismiss this case is **GRANTED**.

AND IT IS SO ORDERED.



R. Ferrell Cothran, Jr.
CIRCUIT COURT JUDGE

Manning, South Carolina
July 26, 2019

9

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
) THIRD JUDICIAL CIRCUIT
COUNTY OF SUMTER)
) CASE NO.: _____-CP-_____-_____

RECORDED
2018 MAY 14 AM 9:28
JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

DAVID CAESAR) **MOTION AND ORDER INFORMATION**
Plaintiff,) **FORM AND COVERSHEET**

vs.)

STATE OF SOUTH CAROLINA) 2018-CP-43-882
Defendant.)

Plaintiff's Attorney: Tommy A. Thomas, Bar No. 5536 Address: P.O. Box 88, Irmo, SC 29063 Phone: 803-732-5507Fax 803-781-4226 E-mail: thomaslaw@me.comOther: jackie@paroleme.com	Defendant's Attorney: Sumter County Solicitor's Office, Bar No. _____ Address: 141 N. Main Street Sumter, SC 29150_____ Phone: _____ Fax_____ E-mail: _____Other: _____

☒ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
☐ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**
☐ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion: Declaratory Judgment
Estimated Time Needed: 45 minutes Court Reporter Needed: ☒ YES/☐ NO

SECTION II: Motion/Order Type

☒ Written motion attached
☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

____________________________ April 27, 2018
Signature of Attorney for ☒ Plaintiff /☐ Defendant Date submitted

SECTION III: Motion Fee

☐ PAID – AMOUNT: $________________
☐ EXEMPT: (check reason)
☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter: _____
☒ Other: Inmate Petition

JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other:	JUDGE CODE _____ Date: _____

CLERK'S VERIFICATION

Collected by:_____ Date Filed: _____
☐ MOTION FEE COLLECTED: $ _____
☐ CONTESTED – AMOUNT DUE: $ _____

RECORDED
2018 MAY 14 AM 9:28
JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, SC

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
	) FOR THE THIRD JUDICIAL CIRCUIT
COUNTY OF SUMTER	CASE NO.:
DAVID CAESAR,	Petition for Declaratory Judgment
Petitioner,)	with Memorandum
vs.)	
)	(Non-jury)
The State of South Carolina,)	
Respondent.)	2018-CP-43-852

Statement of the Case

Petitioner David Caesar is presently confined the SC Department of Corrections pursuant to orders of commitment of the Clerk of Court of Sumter County. Petitioner was indicted at the 2001 term of the Sumter County Grand Jury for two counts of Armed Robbery and one count of Possession of a Weapon during a violent Crime. (2001-GS-43-0543). Petitioner was sentenced to 15 years suspended to a Youthful Offender's Act (SC Code Ann. Section 24-19-10) sentence of 3 to 6 years for Armed Robbery in 1994. Petitioner believes his current sentencing is in error in that his violation under the youthful offender act in 1994 was used to enhance his sentence in 2001 to a sentence of life without parole. His youthful sentence was considered a "serious" or "most serious" offense under S.C. Code Ann. Section 17-25-45.

Declaratory Judgment

Petitioner seeks a declaratory judgment from this Court. Thus, the Uniform Declaratory Judgments Act ("the Act") is implicated. S.C. Code Ann. §§15-53-10 to 140 (2005). Section 15-53-20 of the South Carolina Code identifies the purpose of the Act and provides that courts "shall have power to declare rights, status and other legal relations whether or not further relief is or could be claimed." S.C. Code Ann. §15-53-20 (2005); see Rule 57, SCRCP ("The procedure

for obtaining a declaratory judgment pursuant to Code §§ 15-53-10 through 15-53-140, shall be in accordance with these rules, and ... [t]he existence of another adequate remedy does not preclude a judgment for declaratory relief in cases where it is appropriate." The Act is to be liberally construed and administered to achieve its intended purpose "to settle and to afford relief from uncertainty and insecurity with respect to rights, status and other legal relations." S.C. Code Ann. § 15-53-130 (2005). "A suit for declaratory judgment is neither legal nor equitable, but is determined by the nature of the underlying issue." Felts v. Richland County, 303 S.C. 354, 356, 400 S.E. 2d 781, 782 (1991). This case primarily involves the interpretation of statues, which are questions of law. Charleston County Parks & Recreation Comm'n v. Somer, 319 S.C. 65, 67, 459 S.E. 2d 841, 843 (1995).

Standing/Jurisdiction

Petitioner asserts that he has standing to assert his Petition pursuant to the decision of McDuffie v. State **276 S.C. 229 (1981)**.

In McDuffie, the complainant alleged that he suffers from the consequences of a 1966 conviction that he already served. He was convicted of assault and battery of a high and aggravated nature in South Carolina in 1966. He served the sentence and was unconditionally released. At the time of the pleadings, McDuffie was serving a prison sentence in North Carolina on an unrelated charge. McDuffie at 229. McDuffie alleged in his application for relief that the 1966 South Carolina conviction was being used to adversely affect his current sentence in North Carolina, to wit, (1) enhance his sentence; (2) reduce prison privileges; and/or (3) reduce his possibility of parole. McDuffie at 230. McDuffie pursued an action under the post-conviction relief statute and his action was dismissed because he lacked standing. However,

the Supreme Court of South Carolina stated that the trial court's reliance on the Finklea v. State, 273 S.C. 157, 255 S.E. (2d) 447 (1979) decision dismissing his request is misplaced because "McDuffie does not allege in his application that he is incarcerated because of his 1966 conviction. Rather, he asserts he still suffers from the results of it." McDuffie at 231. The McDuffie court ultimately stated that where an applicant for post conviction relief alleges in his application that the results of his prior conviction still persist, even though the sentence has been fully served, he is entitled to an evidentiary hearing to determine whether or not he has been prejudiced. The court remanded the case for an evidentiary hearing on the issue of whether he is prejudiced by his 1966 Conviction. Id.

Similarly, the Petitioner contends that his sentencing under the Youthful Offender Act based upon his 1994 conviction affects his current sentence that was enhanced as a result thereof. Therefore, Petitioner prays for an evidentiary hearing on the issue of whether he is prejudiced by his 1994 conviction to determine the Constitutionality of his enhancement and sentence and the proper relief that he may be entitled.

Arguments

Eighth Amendment

The Eighth Amendment's prohibition of cruel and unusual punishment guarantees individuals the right not to be subjected to excessive sanctions, which right flows from the basic precept of justice that punishment for crime should be graduated and proportioned to both the offender and the offense. U.S.C.A. Const.Amend. 8.

Petitioner contends that this interpretation of the Life without Parole Statute (SC Code Ann. Section 17-25-45) is a Violation of the Eighth amendment. The Defendant's requiring the

Plaintiff to serve a sentence for Life Without Parole based upon his prior conviction as a Youthful Offender is an infliction of cruel and usual punishment in violation of Petitioner's right under the Eight amendment to the constitution applicable to the State of South Carolina through the Fourteenth Amendment which states that Excessive bail shall not be required, nor excessive fines, imposed, nor cruel and unusual punishments inflicted. Because Petitioner's conviction in 1994 under the Youthful Offenders Act (SC Code Ann. Section 24-19-10) has been used to enhance his sentence under the Life without Parole Statute SC Code Ann. Section 17-25-45, Petitioner contends that his sentencing is excessive and in violation of the Eighth Amendment to the US Constitution.

Fourteenth Amendment

The Fourteenth Amendment to the US Constitution, Section I. provides: [No state shall] deny to any person within its jurisdiction the equal protection of the laws. The State of South Carolina, by enacting the Youthful Offender statute, yet failing to enact a similar provision with regard to a youthful offender in the Life without Parole statute, impermissibly extended an unwarranted benefits to one class (Youthful Offenders), while failing to extend the same benefits to the class of Youthful offender s that are sentenced to Life without Parole, thereby denying the Petitioner the equal protection of the laws.

The Youthful Offender Act created a specific protected class for youthful offenders. However, this protected class is not given protection when they are subject to the Life without Parole Statute. In this instant case, Petitioner's sentenced was enhanced without any regard to his protected status. Petitioner contends that the State of South Carolina has established no rational

basis reasonably tied to a governmental interest for its distinction and that the distinction is patently absurd on its face.

Petitioner, to serve Life without Parole in part for a conviction as a youthful offender is fundamentally unfair in his fact situation, and is in violation of the Equal Protection of Laws. As the Supreme Court recognized in the Penry decision, life without parole is an unconstitutional penalty for "a class of defendants because of their status"—*i.e.*, juvenile offenders whose crimes reflect the transient immaturity of youth, Penry v. Lynaugh, 492 U.S. 330 (1989). The State of South Carolina made youthful offenders a particular class by enacting the YOA statute. Therefore, not giving the offenders the benefit of their class when applied to the Life Without Parole statute, would be a violation of their equal protection. Therefore, Petitioner is entitled to an Order of the Court concluding the provision of the Life Without Parole statute, as applied to the Youthful Offenders statute, is in violation of Plaintiff's rights to equal protections of the law under the Fourteenth Amendment because of the state's unequal and unconstitutional distinction between "most serious" or "serious offense language" and the Youthful Offender statute.

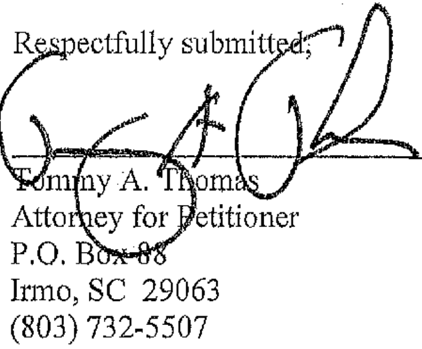
Conclusion

Wherefore, Petitioner prays this court for an Order:

1. Declaring Petitioner's sentence of Life without Parole impermissible as a result of an unconstitutional enhancement from a previous YOA conviction.
2. Declaring a distinction between the Life Without Parole statute and Youthful Offender status and a violation of Petitioner's constitutional rights;
3. Order that the Petitioner's conviction and sentencing be set aside;

4. And for such other and further relieve as may be deemed appropriate.

Respectfully submitted,



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4/08, 2018

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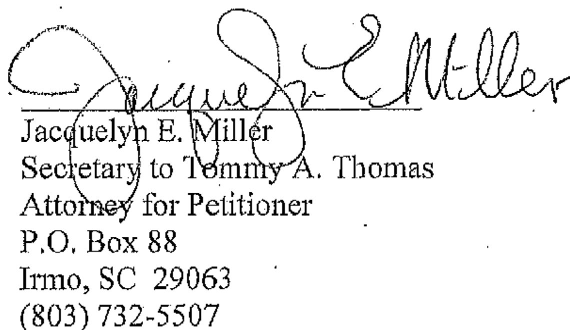
STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
) FOR THE THIRD JUDICIAL CIRCUIT
COUNTY OF SUMTER) CASE NO:

DAVID CAESAR,)
) CERTIFICATE OF SERVICE
Petitioner,)
vs.)
) 2018CP-43-852
The State of South Carolina,)
Respondent.)

RECORDED 2018 MAY 14 AM 9:28 JAMES C. CAMPBELL CLERK OF COURT SUMTER COUNTY, S.C.

I, Jacquelyn E. Miller, secretary to Tommy A. Thomas, Attorney for the Petitioner, hereby certify that I placed in the United States Mail, a copy of THE Petition for Declaratory Judgment, with postage prepaid and the return address clearly shown on said envelope to the Sumter County Solicitor's Office at:

Sumter County Solicitor's Office
141 N. Main Street
Sumter, SC 29150



Jacquelyn E. Miller
Secretary to Tommy A. Thomas
Attorney for Petitioner
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(803) 732-5507

Irmo, SC
May 10, 2018

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS THIRD JUDICIAL CIRCUIT
COUNTY OF SUMTER	)	Case No.: 2018-CP-43-00852
David Caesar, Petitioner,	)	**MOTION TO DISMISS AND MEMORANDUM IN SUPPORT**
v.	)	
State of South Carolina, Respondent.	)	

Under Rule 12(b)(2), (4), (5) and (6), and without waiving any other jurisdictional or other defense available, the State asks this court to dismiss Petitioner's case.

BACKGROUND

In 1994, Mr. Caesar was convicted of Armed Robbery and sentenced pursuant to the Youthful Offender's Act. In 2001, Mr. Caesar was convicted of two counts of Armed Robbery and one count of Possession of a Weapon during a violent crime. His 1994 Armed Robbery conviction was used to enhance his 2001 sentence because his 1994 conviction was considered a "serious" or "most serious" offense under S.C. Code Ann. Section 17-25-45. As a result, Mr. Caesar was sentenced to life imprisonment, without the possibility of parole. Seventeen years later, Mr. Caesar filed this action for declaratory judgment, alleging that his sentence violates various constitutional provisions. Ultimately, he asks the court to set aside his conviction and sentence.

Mr. Caesar's complaint should be dismissed.

I. The Petitioner did not serve a summons, which deprives this court of personal jurisdiction over the State.

The failure to serve a summons deprives a court of personal jurisdiction. *BB&T v. Taylor*, 369 S.C. 548, 551, 633 S.E.2d 501, 503 (2006). The Petitioner did not file or serve a summons in this case. Therefore, the court does not have personal jurisdiction over the State. The court should dismiss this case under Rule 12(b)(2).

II. The Petitioner did not file a summons, which provides grounds for dismissal under Rule 12(b)(4)

The Petitioner did not file or serve a summons, which is a violation of both Rule 4(a) and Rule 4(b), SCRCP. The failure to satisfy the requirements of Rule 4 enables dismissal under Rule 12(b)(4), SCRCP; thus, the court should dismiss this action for insufficiency of process.

III. The failure to serve a summons violates Rule 4(b), which, under Rule 12(b)(5), provides ground for dismissal of the case.

As stated above, the Petitioner did not serve a summons. Consequently, the court should dismiss this case under Rule 12(b)(5). Wright & Miller, *Fed. Prac. & Proc. Civ.* §1353 (3d ed.) (April 2018 update) ("Rule 12(b)(4) is proper only to challenge noncompliance with the provisions of Rule 4(b) or any applicable provision incorporated by Rule 4(b) that deals specifically with the content of the summons...An appropriate objection under Rule 12(b)(5) would be the nonreceipt by the defendant of a summons.").

IV. Petitioner must bring his claims in a PCR

Mr. Caesar first asks the court to declare that his sentence violates various constitutional provisions. After that declaration, he wants the court to set aside his conviction and sentence. Because Mr. Caesar is ultimately challenging the constitutional validity of his conviction and

sentence, he must make his constitutional claim in a post-conviction relief action. S.C. Code Ann. §17-27-20(A)(1). PCR has taken the place of all other remedies formerly available for challenging the validity of a conviction or sentence, including actions for declaratory judgment. S.C. Code Ann. §17-27-20(B) ("Except as otherwise provided in this chapter, [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.*") (Emphasis added)); *see also Simpson v. State*, 329 S.C. 43, 46, 495 S.E.2d 429, 431 (1998). Because Mr. Caesar is challenging his conviction and sentence in this action for declaratory judgment rather than a PCR, he has failed to state facts sufficient to constitute a cause of action. Consequently, the court should dismiss this case under Rule 12(b)(6). [1]

Mr. Caesar relies on the *McDuffie* case to support his contention that a court may entertain a challenge to a conviction and sentence under the Declaratory Judgment Act. (Petitioner's Complaint, pp. 2-3). His reliance is misplaced; in fact, *McDuffie* actually supports the State's motion to dismiss. In *McDuffie*, the Court reversed the dismissal of a PCR. *McDuffie v. State*, 276 S.C. 229, 229, 277 S.E.2d 595, 595 (1981). The case did not involve a challenge to a conviction and sentence under the Declaratory Judgment Act—and the case does not say a person may challenge his conviction and sentence under any other statute besides the Uniform Post-Conviction Relief Act.

Additionally, *McDuffie* only concerns the so-called "in custody" and "collateral consequences" requirements. Before a court would hear the merits of his challenge, a PCR applicant used to have to satisfy those requirements. But they now no longer exist, making them irrelevant to Mr. Caesar's challenge to his conviction and sentence. *See Brown v. State*, Op. No.

[1] Mr. Caesar is presumably aware that a PCR is the exclusive remedy for these claims as he raised them previously in 2010-CP-31-160.

27796 (S.C. Sup. Ct. filed May 8, 2018) ("It is not necessary that the PCR applicant demonstrate any collateral consequences to his conviction, even if he has completed serving his sentence.").

V. Conclusion

Mr. Caesar did not file or serve a summons. This failure enables the court to dismiss the case under Rules 12(b)(2), (4), and (5). Ultimately, however, Mr. Caesar is challenging the constitutional validity of his conviction and sentence; hence, this challenge must occur in a PCR, not this action for declaratory judgment. Although the State does not waive any of its defenses, the court should dismiss this case under Rule 12(b)(6).

[Signature page to follow.]

Respectfully Submitted,

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By: Harley L Kirkland

ATTORNEYS FOR THE STATE OF SOUTH CAROLINA

MARCH 13, 2019.
COLUMBIA, SOUTH CAROLINA.

STATE OF SOUTH CAROLINA COUNTY OF SUMTER David Caesar, Petitioner, v. State of South Carolina, Respondent.	)	IN THE COURT OF COMMON PLEAS THIRD JUDICIAL CIRCUIT Case No.: 2018-CP-43-00852 **CERTIFICATE OF SERVICE**

I hereby certify that I served the foregoing Motion to Dismiss, in the above-referenced matter, by placing a copy of said document in the United States mail, first class postage prepaid and addressed to:

Tommy A. Thomas
P.O. Box 88
Irmo, SC 29063

Mailed 3/13/ , 2019 from Columbia, South Carolina.

By: Harley Littleton Kirkland
Harley Littleton Kirkland
Assistant Attorney General
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STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
) FOR THE THIRD JUDICIAL CIRCUIT
COUNTY OF SUMTER) CASE NO.: 2018-CP-43-00852

RECORDED
2019 MAR 29 PM 2:00
JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

DAVID CAESAR,

Petitioner,) RETURN TO STATE'S MOTION TO DISMISS
vs.)
)
The State of South Carolina,)
)
Respondent.)
)

On March 13, 2019, the State filed a Motion to Dismiss pursuant to certain alleged deficiencies in the Petition. Failure to attach a Summons to the Petition as well as Failure to Service the Office of the Attorney General. The Petitioner contends that the Petition was properly filed and served upon the Solicitor of Sumter County. The Petitioner is informed and believes that it is not necessary to attach a Summons or to serve the Attorney General. However, these alleged deficiencies have been corrected.

Now the Respondent moves for a dismissal. The Petitioner filed a Petition for Declaratory Judgement asking the Court to grant declaratory relief regarding the use of a prior YOA Conviction to enhance a subsequent violent offense. The Petitioner in 1994 was convicted of Armed Robbery and sentenced pursuant to the Youthful Offender Act. In 2001, Mr. Caesar was convicted of two counts of Armed Robbery and one count of Possession of a Weapon during a violent crime. His 1994 Armed Robbery conviction was used to enhance his 2001 sentence because his 1994 conviction was considered a "serious" or " most serious" offense under S.C. Code Ann. Section 17-25-45.

The Petitioner filed this action for Declaratory relief alleging that such enhancement violates the 8th and 14th Amendment of the U.S. Constitution. That the State of South Carolina,

by enacting the Youthful Offender Statute, created a specific protective class for Youthful Offenders.

The Respondent's Motion contradicts their argument. In fact they argument demonstrates that there is a cause of action. The State argues that the cause of action as stated in the Petition must be made as a Post-Conviction Relief Action, SC Code 17-27-20 (a)(1) arguing that the PCR Act takes the place of all other Common Law, Statutory or other remedies available for challenging the validity of a conviction or sentence.

The Uniform Declaratory Judgement Act, South Carolina Code Annotated 15-53-10 – 140, provides that the Court shall have the power to declare rights, statutes and other legal relationship whether or not further relief is or could by claimed.

Petitioner seeks a declaratory judgment from this Court. Thus, the Uniform Declaratory Judgments act is implicated. S.C. Code Ann. §§ 15-53-10 to -140. Section 15-53-20 of the South Carolina Code identifies the purpose of the Act and provides that Courts "shall have power to declare rights, status and other legal relations whether or not further relief is or could be claimed. " S.C. Code Ann. § 15-53-20 (2005); see Rule 57, SCRCP ("The procedure for obtaining a declaratory judgment pursuant to Code §§ 15-53-10 through 15-53-140, shall be in accordance with these rules, and ... [t]he existence of another adequate remedy does not preclude a judgment for declaratory relief in cases where it is appropriate.") The Act is to be liberally construed and administered to achieve its intended purpose "to settle and to afford relief from uncertainty and insecurity with respect to rights, status and other legal relations." S.C. Code Ann. § 15-53-130 (2005). " A suite for declaratory judgment is neither legal nor equitable, but is determined by the nature of the underlying issue." <u>Felts v. Richland County</u>, 303 S.C. 65, 67,

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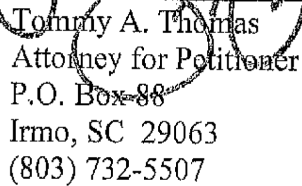
459 S.E. 2d 841, 843 (1995). Thus a Petition for Declaratory Judgement may be brought regarding a criminal matter.

Had this action been brought as a Post Conviction Relief Action, the Respondent would then be arguing that this cause of action should be dismissed as untimely and/or successive. leaving the Petitioner without any ability to have this issue heard.

The Petitioner is informed and believes that the Respondent's Motion should therefore be denied and this matter proceed to an evidentiary hearing.

Respectfully submitted,



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March 27, 2019

1 STATE OF SOUTH CAROLINA

2 COURT OF COMMON PLEAS

3 COUNTY OF SUMTER

4 -------------------------x

5 DAVID CAESAR,)

6 Plaintiff,)

7 vs.) Transcript of Record
2018-CP-43-852

8 STATE OF SOUTH CAROLINA,)

9 Defendant.)

10 -------------------------x

11 June 24, 2019

12 STATE'S MOTION TO DISMISS

13 B E F O R E:

14 The Honorable P. Ferrell Cothran, Jr., Presiding Judge

15

16 A P P E A R A N C E S:

17 Tommy A. Thomas, Esq.
Attorney for the Plaintiff

18

19 Harley L. Kirkland, Esq.
Attorney for the Defendant

20

21

22

23

24 Transcribed by Bobbi Fisher, RPR, CET, from DCRP,

25 Digital Court Reporting Project

I N D E X

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E X H I B I T S

(None.)

1 P R O C E E D I N G S

2 (Whereupon, the following proceedings started at 10:33 a.m.)

3 THE COURT: Okay. Whose motion is it?

4 MS. KIRKLAND: Good morning, Your Honor. My name is

5 Harley Kirkland. I represent the State in this case, and it's

6 our motion for dismiss.

7 THE COURT: Okay.

8 ARGUMENT ON BEHALF OF THE STATE

9 MS. KIRKLAND: If it please the Court, I'll start with

10 just a little bit of background about this case. It's a

11 declaratory judgment action in which Mr. Caesar is asking the

12 Court to say that his life sentence is unconstitutional and

13 ultimately asking the Court to set aside this conviction and

14 sentence.

15 In 1994, Mr. Caesar was convicted of armed robbery, and

16 he was sentenced according to the Youthful Offender Act in

17 1994. Then in 2001, he was convicted of two counts of armed

18 robbery and one count of possession of a weapon during a

19 violent crime. He got a life sentence for those

20 second-in-time convictions using the 1994 conviction to

21 enhance this sentence. So he ended up with a life without

22 parole sentence in 2001 that was enhanced by his '94

23 conviction that was where he was sentenced under the Youthful

24 Offender Act. And we're saying that the case should be

25 dismissed.

1 There are few procedural grounds in our motion, which I'm
2 not sure if they have been cured or not. Initially, this did
3 not have a summons. There's a summons that's been filed now.
4 I'm not sure if that actually complies with the rules since
5 they weren't filed and served together. But, regardless,
6 just -- I have to make those to keep them on the record.
7 But our main argument, it's under 12(b)(6), he has to
8 bring these claims in a PCR action. Essentially, he's asking
9 the Court to declare his sentence is unconstitutional and then
10 he wants the Court to set aside his conviction and sentence,
11 which is ultimately challenging the validity of the
12 sentencing. He has to do that in a post-conviction relief
13 action. The PCR statute says, "Except as otherwise provided
14 in this chapter, a PCR act comprehends and takes the place of
15 all other common law and statutory or other remedies
16 heretofore available for challenging the validity or the
17 conviction of the sentence, it shall be used exclusively in
18 place of them," which means that you can't bring claims that
19 are properly made in a PCR action through a declaratory
20 judgment.
21 Additionally, here are the Lyles and McDuffie case to
22 support his contention that the Court can entertain a
23 challenge to his conviction sentence under the Declaratory
24 Judgment Act. I think that that is misplaced. If you look at
25 the McDuffie case, the Court reversed a dismissal of a PCR

1 that didn't involve a challenge under a declaratory judgment
2 action, and it doesn't in any way say that you can challenge
3 your conviction since, under a declaratory judgment action, it
4 just says you can do it through a uniform postconviction
5 relief action.
6 Additionally, it raises concerns about in-custody and
7 collateral consequences requirements. It used to be a
8 requirement to bring a PCR. It's no longer a requirement now,
9 so that's not really something that's in existence or relevant
10 to this challenge.
11 So, I guess, essentially our argument is this just has to
12 be made in a PCR claim. It can't be made in a declaratory
13 judgment. I understand declaratory judgments can be very
14 broad for settling disputes between the parties and that
15 there's language in the statute that says that it can be,
16 like, interpreted broadly, but I don't think that that means
17 that it can supplant an exclusive remedy.
18 So the only remedy that you have for challenging your
19 conviction sentence is in a PCR. You can't then loop into it
20 a declaratory judgment action. I provided Your Honor earlier
21 a stack of cases essentially dismissing PCRs filed as
22 declaratory judgments. They're all just persuasive. They're
23 circuit court and unpublished Court of Appeals cases; I
24 couldn't find a Supreme Court case on the issue. But I do
25 think that there can be some guidance as to -- I think two of

1 those cases in there are talking about habeas corpus. People
2 have a constitutional right to habeas corpus, and the PCR act
3 as even a bridge for that, so you can't file a state habeas
4 corpus anymore. You can only file a habeas corpus in the
5 original jurisdiction of the Supreme Court, and I think that's
6 instructive when you're looking at whether or not you can seek
7 PCR relief through a declaratory judgment. You can't even
8 have a habeas in circuit court because a PCR act supplants
9 that. So I think truly you can't have a declaratory judgment
10 in the state court either.
11 Another thing that's barring Mr. Caesar from raising this
12 issue in the original jurisdiction of the Supreme Court as a
13 habeas petition, in my final argument, Your Honor, one more
14 packet that I passed up previously is a Lee County PCR from
15 2010. And I believe if you kind of flip through that, you'll
16 see that he essentially raised these very claims in 2010 in a
17 PCR action. It was dismissed and appealed, and the Supreme
18 Court denied the appeal and sent a remittitur back to the
19 lower court.
20 So he's had the opportunity that he was supposed to have
21 to have this claim reviewed. He filed a successive PCR and
22 the Court dismissed it as successive, and the Supreme Court
23 essentially put their seal of approval on that when they
24 denied the appeal.
25 I understand it's frustrating for him not to be able to

1 raise this issue now, but there is one bite at the apple,
2 policy in South Carolina for how you challenge your
3 convictions, and challenging this one 17 years after the fact,
4 just isn't going to cut it. Thank you.
5 THE COURT: Thank you.
6 ARGUMENT ON BEHALF OF THE PLAINTIFF
7 MR. THOMAS: Your Honor, may it please the Court.
8 THE COURT: Yes, sir.
9 MR. THOMAS: There's not -- well, actually, there's no
10 case law that I have been able to find. There may be
11 something out there, but I haven't been able to find it and
12 certainly nothing in South Carolina that deals with the issue
13 really, which is can a YOA conviction be used to enhance.
14 I reviewed Mr. Caesar's stuff. I'm familiar with the
15 post conviction that he filed previously. That can be
16 distinguished in that that PCR where, one, I'm not sure that
17 it was this the issue that was raised. It's a little
18 different, says I completed A of my YOA sentence. And then,
19 two, the Court never reached that point. What the Court did
20 was dismiss based upon it being successive and untimely and
21 etc.
22 So I don't think that it has any res judicata effect at
23 all. What the State -- and I don't mean this discouragingly.
24 What the State is arguing is that, basically, Mr. Caesar has
25 no remedy. If you want to say that this is a post-conviction

1 relief action, I guess you could stretch and say it's a
2 constitutional issue. It's certainly not being argued as an
3 ineffective assistance of counsel issue, but it's an automatic
4 win for the State.
5 It's excessive. It's untimely. It's barred by latches.
6 I mean, it just -- the list goes on and on. So there is no
7 remedy. And I'm sure that the State would like to have this
8 categorized as a post-conviction relief issue, but it's not.
9 It is an action -- a petition for declaratory judgment. And
10 in the notes to declaratory judgment statute, one of them says
11 liberal construction. And the purpose -- what they say, the
12 purpose of the declaratory judgment is basically a speedy and
13 inexpensive method of deciding a legal dispute. And that's
14 exactly what we have.
15 The State likes to cloud it just a little and say he's
16 asking for relief. He's asking that his sentence be
17 overturned. Well, in looking at the statute for a declaratory
18 judgment, you can ask for that. You can ask -- it's
19 two-prong. You can say we'd like for the Court to issue a
20 legal opinion on this issue, and if it effects some sort of
21 judgment or whatever, then the Court has the authority to
22 grant that relief.
23 We have no intention -- and we put that in our pleadings,
24 but we had no intention to try to, you know, circumvent
25 anything by saying, if we win this post -- if we win this

1 declaratory judgment, that we automatically believe that his
2 sentence is going to be set aside. That may be a second
3 prong, but I think that, if you say -- strictly say, "Well,
4 that's exactly what they're trying to do," then it tries to
5 give more credence to their argument that it should be a
6 post-conviction relief matter, and it's not.
7 The declaratory judgment -- he has a previous YOA
8 conviction, and they use that previous YOA conviction to
9 enhance an armed robbery and a possession of a weapon during
10 the commission of a crime in 2001 and gave him life without
11 parole. What I have been able to find -- and this is what my
12 argument is, and I think the Court has the ability to render
13 this decision -- and not necessarily overturn his
14 conviction -- is that the YOA is a protected class. I mean,
15 if we think about it logically, why would the legislature set
16 up a provision for youthful offenders? You have to come to
17 the conclusion that the purpose is to treat these youthful
18 offenders differently than the adults or there would be no YOA
19 statute.
20 So if we get that far and we say they should be treated
21 differently, then what we're doing, by using that enhancement,
22 we're saying that what -- what I like to argue is that we're
23 saying that they are a protected class, and they're being
24 protected for some reason. And the reason for that protection
25 is that they're youthful.

1 And the YOA statute goes on talking about rehabilitation
2 and all these other things that charges the Department of
3 Corrections to provide facilities for them, to provide
4 services for them, saying that they are young and they are --
5 there is a possibility of saving these young folks, for lack
6 of a better word, where maybe we have more of a hardened
7 criminal as an adult.
8 But, anyway, if they are a protected class, then why does
9 it make any sense to come along and say, Okay, you have got a
10 YOA. We understand that the legislative intent was to protect
11 you as a youthful offender, but we're going to use this to
12 enhance you as an adult.
13 So we're going to take this -- you don't have anything
14 else that we can enhance you with, but we can enhance you with
15 this why? And, to me, it flies straight into the face of both
16 the youthful offender statute, and it sets itself directly up
17 for argument as far as declaratory judgment.
18 I believe that the provisions of the -- excuse me. I
19 think that -- you know, if we're going to do a post
20 conviction, I think that -- I think it's outside of that
21 range. And I think we're certainly entitled to ask the Court
22 for a declaratory judgment on it. And it says -- and I was
23 looking at my notes, if I can beg the Court's indulgence -- I
24 think that the Court has great latitude for making a decision.
25 What we would ask the Court to do today is allow us to go

1 forward, to deny their motion for a summary dismissal, and
2 allow us to present to the Court the merits of this issue and
3 argue why we believe that he's entitled to a decision in
4 regards to the enhancement, Your Honor.
5 THE COURT: Okay.
6 MR. THOMAS: Yes, sir.
7 THE COURT: Thank you.
8 MR. THOMAS: Yes, sir.
9 THE COURT: Was the issue raised on appeal in this case?
10 MR. THOMAS: Not that I'm aware of, Your Honor.
11 THE COURT: That YOA couldn't enhance this sentence?
12 MR. THOMAS: No, Your Honor. And in all --
13 THE COURT: Is that raised on a PCR that they turned --
14 the appellant counsel didn't raise it?
15 MR. THOMAS: It is raised in post conviction but the
16 Court never gets to the merits of it. Beg the Court's
17 indulgence, Your Honor. It's pro se and it's raised as an
18 issue of "I was improperly enhanced because I completed my YOA
19 sentence."
20 My argument would be -- he argues and it's "The State
21 used a completed YOA sentence for enhancement." And,
22 basically, the conditional order of this dismissal, and is
23 followed up with a final order of dismissal, basically says
24 that it's untimely, it's excessive, and so the Court never
25 reaches the merits of that issue. Even if it had been

1 appealed by appellate defense, the issue wasn't preserved.
2 The Court never got there and made a ruling on it, so the only
3 thing that they could have argued would have been that it was
4 maybe newly discovered evidence, Your Honor.
5 THE COURT: Okay.
6 MR. THOMAS: Yes, sir.
7 THE COURT: All right. Anything else?
8 FURTHER ARGUMENT ON BEHALF OF THE STATE
9 MS. KIRKLAND: Just briefly, Your Honor. I don't think
10 we have reached the question in this case either. I think the
11 law is clear. PCR act is the exclusive remedy, and he did
12 have an opportunity -- he could have filed a timely PCR and
13 raised it there. That's why there's a disfavor of successive
14 and untimely PCR applications.
15 And, additionally, you just can't circumvent an exclusive
16 remedy through the declaratory judgment act, I don't think.
17 And if you look at his complaint, in the conclusion, you'll
18 say declare Petitioner sentence, declare his sentence
19 unconstitutional, declare a distinction between LWOP and
20 youthful offenders violates his constitutional rights, order
21 Petitioner's conviction and sentence to be set aside.
22 But then he tried to draw a distinction between, well,
23 we're just asking for a declaration that this is
24 unconstitutional, and we're not asking the Court to do
25 anything about it. It doesn't really hold water when you look

1 at what he's asking. He's not asking for just a blanket order
2 that it's unconstitutional to do this. He's asking for, as it
3 applies to him, and if not for -- I just can't see a
4 (indiscernible) would want that order but to challenge your
5 conviction and your sentence here.
6 And, also, I think it's -- I just have a hard time
7 wrapping my head around saying that he's a protected class
8 because he had the benefit of a YOA sentence. So he was
9 sentenced -- convicted and sentenced under YOA, and he got all
10 of the benefits of that. And then he turned around and
11 committed three more crimes, and now, he wants to come to the
12 court, after having had the benefit of the YOA and committed
13 more crimes, and say that somehow that YOA should protect him
14 when he was already given the benefit from it, that that
15 should somehow come back in and make it so that he can't be
16 charged after the fact -- that this sentence can't be enhanced
17 after the fact. I think if anyone says it can be enhanced
18 after the fact, that someone got a more lenient sentence to
19 start with, with opportunities to try to do better in life
20 without the break that the legislature is trying to give
21 youthful offenders.
22 So I find that argument maybe just a little difficult to
23 wrap my head around, that somehow they can't use a YOA to
24 enhance when someone's gotten a ton of benefit from a YOA
25 conviction as intended by the legislature and then say that,

1 when they commit three more crimes, they can't be used to
2 enhance it.
3 THE COURT: Okay. Thank you.
4 All right.
5 MR. THOMAS: Your Honor, may I briefly?
6 THE COURT: Yes, sir.
7 FURTHER ARGUMENT ON BEHALF OF THE PLAINTIFF
8 MR. THOMAS: I think it's interesting, the State is
9 arguing that, you know, we're trying to circumvent the
10 post-conviction relief statute. My argument is that, through
11 their defense, they're trying to circumvent the declaratory
12 judgment statute that, you know, this is a remedy that you
13 have, and you had it, but you're not going anywhere for it --
14 with it because it's going to shut everything down. So, in
15 other words, we're going to give you no opportunity to have
16 that issue about the YOA used to enhance to be resolved. It's
17 never going to be heard and rendered if we take the State's
18 position.
19 In the pleadings in the alternative, the -- it does say
20 that you can ask for relief, and we, of course, in an
21 abundance of caution, asked for that relief. But if that is a
22 problem, I think the Court certainly has the ability to just
23 be able to render a decision on the declaratory judgment. And
24 the next step, of course, to that would be, if the Court does
25 find that the YOA can't be used to enhance, then, of course,

1 at some point in time, he could petition and ask that he be
2 given a new trial.
3 THE COURT: Okay. Thank you.
4 MR. THOMAS: Yes, sir, thank you.
5 MS. KIRKLAND: Just very briefly if I may. To do that
6 would open the Court to hundreds of thousands of additional
7 petitions from PCR inmates. No one is entitled to a
8 declaratory judgment action. PCR is the exclusive remedy for
9 this.
10 THE COURT: Okay. Thank you. I'll read this and let
11 y'all know something.
12 MR. THOMAS: Thank you, Your Honor.
13 (At 10:52 a.m., the above hearing concluded.)
14
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25

1 CERTIFICATE OF TRANSCRIBER

2 CASE/NO.: David Caeser v. State of South Carolina

3 2018-CP-43-00852

4 DATE OF PROCEEDING: June 24, 2019

5

6 I, Bobbi J. Fisher, do hereby certify that the
7 foregoing transcript is a true and correct record of the
8 recorded proceedings; that said proceedings were transcribed
9 to the best of my ability from the audio recording and
10 supporting information; and that I am neither counsel for,
11 related to, nor employed by any of the parties to this case,
12 and I have no interest, financial or otherwise, in its
13 outcome.

14

15

17 ____________________________

18 Bobbi J. Fisher, RPR, CET

19 NCRA Registered Professional Reporter (RPR)

20 AAERT Certified Electronic Transcriber No. CET-1148

21 Prepared: October 8, 2019

22

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SUMTER COUNTY
Court of Common Pleas

R. Ferrell Cothran, Jr., Circuit Court Judge

RECEIVED
Apr 20 2020
SC Court of Appeals

APPELLATE CASE NO.: 2019-001476

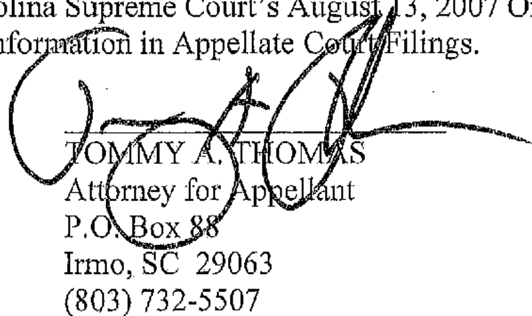
David Caesar,................................... Appellant,

vs.

State of South Carolina, ...Respondent.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record of Appeal complies with Rule 210 (g), SCACR, and also complies with the South Carolina Supreme Court's August 13, 2007 Order on Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings.



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April 20, 2020