

STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC Court of Appeals

APPEAL FROM SUMTER COUNTY
Court of Common Pleas

The Honorable R. Ferrell Cothran, Jr., Circuit Court Judge

Appellate Case No. 2019-001476

David Caesar, Appellant,

v.

State of South Carolina, Respondent.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

1. Whether the circuit court properly dismissed Mr. Caesar's declaratory judgment action for failure to state a claim because his challenge must be brought under the Uniform Post-Conviction Procedure Act?
2. Whether life without the opportunity for parole is cruel or unusual punishment?
3. Whether the circuit court properly dismissed Mr. Caesar's declaratory judgment action because he was not sentenced to life imprisonment without the opportunity for parole as a juvenile?

STATEMENT OF THE CASE

On May 14, 2018, Mr. Caesar filed a Petition for Declaratory Judgment in the Sumter County Court of Common Pleas. (2018-CP-43-00852). On March 15, 2019, Respondent filed a Motion to Dismiss, and Mr. Caesar filed his Return to State's Motion to Dismiss on March 29, 2019. A hearing was held on June 24, 2019, and Respondent's Motion was granted and the case dismissed by order of the circuit court on August 9, 2019. Then on September 4, 2019, Mr. Caesar filed a Notice of Appeal.

In 1994, Mr. Caesar was convicted of armed robbery and sentenced to fifteen years suspended under the Youthful Offender Act to a sentence of three to six years. (1994-GS-31-00311A). After completing his sentence, in 2001, Mr. Caesar 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 crime. (2001-GS-43-00543). He was found guilty of one count of armed robbery and possession of a weapon during the commission of a crime. Under the Two Strikes Law, his sentence was enhanced, and he was sentenced to life imprisonment without the opportunity for parole. A direct appeal was filed and dismissed by the Court of Appeals on February 27, 2004. *State v. Ceasar*, No. 2004-UP-138, 2004 WL 6249211 (Ct. App. Feb. 27, 2004).

Mr. Caesar also filed post-conviction relief actions in 2005 (2005-CP-43-00045), 2008 (2008-CP-43-02805), and 2016 (2016-CP-43-00050), along with a state habeas corpus claim in 2010 (2010-CP-31-00160). Each of these actions was dismissed or denied without relief.

STANDARD OF REVIEW

“This [c]ourt reviews all questions of law de novo.” *Lollis v. Dutton*, 421 S.C. 467, 477, 807 S.E.2d 723, 728 (Ct. App. 2017) (quoting *Fesmire v. Digh*, 385 S.C. 296, 302, 683 S.E.2d 803, 807 (Ct. App. 2009); see also *Clardy v. Bodolosky*, 383 S.C. 418, 425, 679 S.E.2d 527, 530 (Ct. App. 2009) (“Questions of law may be decided with no particular deference to the trial court.” (quoting *S.C. Dep’t of Transp. v. M & T Enters. of Mt. Pleasant, LLC*, 379 S.C. 645, 654, 667 S.E.2d 7, 12 (Ct. App. 2008))). Whether the circuit court erred by granting Respondent’s motion to dismiss is a question of law; therefore, the proper standard of review is *de novo*.

ARGUMENT

A. The circuit court properly dismissed Mr. Caesar's declaratory judgment action for failure to state a claim because his challenge must be brought under the Uniform Post-Conviction Procedure Act.

In his declaratory judgment action, Mr. Caesar asked the circuit court to declare that his sentence violates the Eighth and Fourteenth Amendments.¹ After that declaration, he wanted the court to set aside his conviction and sentence. Pet. for Declaratory J. 5-6 (R. pp. 14-15). The Uniform Post-Conviction Procedure Act, S.C. Code Ann. §§ 17-27-10 to -160 [hereinafter PCR Act], 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) (“In this case, the allegations raised in appellant’s habeas corpus petition clearly are cognizable under the [PCR] Act.”). The PCR Act explicitly applies to constitutional challenges to convictions and sentences. S.C. Code Ann. § 17-27-20(A)(1). Mr. Caesar challenges the constitutional validity of his criminal sentence, Pet. for Declaratory J. 5 (R. p. 14); Petitioner’s Brief 8-10, so Mr. Caesar must make his claim in an action for post-conviction relief. Because Mr. Caesar is challenging his conviction and sentence in this action for declaratory judgment rather than an action brought under the PCR Act, the circuit court correctly dismissed the action for failure to state facts sufficient to constitute a cause of action.

¹ Mr. Caesar does not address the equal protection claim in his brief, so the Respondent has not addressed it, except in this footnote to say that we believe circuit court properly dismissed it.

Mr. Caesar attempts to rely on *Thompson v. State*, 415 S.C. 560, 785 S.E.2d 189 (2016), for the proposition that the PCR Act does not preclude the filing of a declaratory judgment action. Petitioner’s Brief 7-8. However, the two cases are not analogous. Mr. Caesar is challenging the constitutionality of his criminal sentence. *See* Pet. for Declaratory J. 5 (R. p. 14) (“Mr. Caesar prays for an evidentiary hearing on the issue of whether he is prejudiced by his 1994 conviction to determine the [c]onstitutionality of his enhancement and sentence”). In contrast, Mr. Thompson was challenging the civil requirement that he register as a sex offender. *Thompson*, at 563, 785 S.E.2d at 190. Footnote 3 in *Thompson* highlights this distinction:

Section 23–3–430 is found in the portion of the South Carolina Code encompassing South Carolina’s sex offender registry. As we have repeatedly stated, the sex offender registry is a civil requirement separate and apart from the criminal punishments associated with sexual offenses in this state. *State v. Nation*, 408 S.C. 474, 481, 759 S.E.2d 428, 432 (2014) (citing *In re Justin B.*, 405 S.C. 391, 394, 404-08, 747 S.E.2d 774, 775, 781-83 (2013)). As such, a declaratory judgment, and not post-conviction relief (PCR), is the appropriate vehicle in which to address this matter. *Cf. Williams v. Ozmint*, 380 S.C. 473, 671 S.E.2d 600 (2008) (stating that PCR is intended to address constitutional violations related to the criminal conviction (citing S.C. Code Ann. § 17–27–20(a) (2007))).

Thompson v. State, at 564, n.3, 785 S.E.2d at 191, n.3 (2016). Mr. Caesar is not challenging a civil requirement separate from his criminal conviction; he is challenging the constitutionality of his criminal sentence. *See* Pet. for Declaratory J. 5 (R. p. 14). Therefore, the PCR Act provides his exclusive remedy,² and this court should affirm the decision of the circuit court.

² Respondent acknowledges that this case is not an action for relief under the PCR Act, but Respondent nonetheless points out that should the case be construed as such it would be untimely and successive. *See* S.C. Code Ann. §§ 17-27-45(A), -90.

B. This court should affirm the dismissal of Mr. Caesar’s declaratory judgment action because imprisonment for life without the opportunity for parole is not cruel or unusual punishment.

Mr. Caesar asserts it is cruel and unusual punishment to use a prior conviction, for which he was sentenced under the Judge William R. Byars Youthful Offender Act, S.C. Code Ann. §§ 24-19-05 to -160 [hereinafter YOA], as the basis for a sentence enhancement under the Two Strikes Law, S.C. Code Ann. § 17-25-45. South Carolina’s appellate courts “have rejected the argument that it is cruel and unusual punishment to use prior convictions for offenses committed as juveniles for sentencing enhancement under section 17-25-45.” *State v. Green*, 412 S.C. 65, 86, 770 S.E.2d 424, 435 (Ct. App. 2015) (citing *State v. Standard*, 351 S.C. 199, 204, 569 S.E.2d 325, 328 (2002); *State v. Williams*, 380 S.C. 336, 345-46, 669 S.E.2d 640, 645 (Ct. App. 2008)). *A fortiori*, using an adult conviction for the basis of a sentence enhancement—even if sentenced under the YOA—should not constitute cruel and unusual punishment.

Furthermore, as was thoroughly explained by the circuit court, Mr. Caesar made no showing in support of this claim that life imprisonment without the opportunity for parole is cruel or unusual punishment. Order of Dismissal 5-6 (R. pp. 5-6). Mr. Caesar provided “no persuasive or controlling authority in support of his position,” and instead “merely recited[d] and paraphrase[d] 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.’” Order of Dismissal 6 (R. p. 6). In his appeal, Mr. Caesar fails to point to arguments or authority which contradicts this statement by the circuit court. Mr. Caesar bears the burden in demonstrating his sentence was cruel or unusual and has failed to even address that burden. As a result, this court should affirm the decision of the circuit court.

C. This court should affirm the dismissal of Mr. Caesar’s declaratory judgment action because Mr. Caesar was not sentenced as a juvenile to life without the opportunity for parole.

Couched as an Eight Amendment challenge, the majority of Mr. Caesar’s appeal focuses on the constitutionality of sentencing juveniles to imprisonment for life without the opportunity for parole. Petitioner’s Brief 8-10.³ To the extent that the issue has been properly preserved, Mr. Caesar’s argument belies the relevant facts in this case. Mr. Caesar is currently serving a sentence imposed under the Two Strikes Law, S.C. Code Ann. § 17-25-45, not the YOA. The validity of the YOA has no bearing on Mr. Caesar’s current sentence and is not relevant to this case.⁴ Mr. Caesar concedes that “there is no differentiation between their underlying convictions from this age and any other conviction.” Petitioner’s Brief 10. He is correct. The fact that Mr. Caesar was sentenced under the YOA does not change the conviction, or preclude it from being used to enhance a subsequent conviction. *See State v. Green*, 412 S.C. 65, 84-85, 770 S.E.2d 424, 435-36 (Ct. App. 2015). Moreover, Mr. Caesar points this court to *Aiken v. Byars*, 410 S.C. 534, 765 S.E.2d 572 (2014) and *Miller v. Alabama*, 567 U.S. 460 (2012). Petitioner’s Brief 9. Both of these cases address whether juveniles may be sentenced to life imprisonment without the opportunity for parole. At the time of his conviction and sentencing, Mr. Caesar was not a juvenile. Therefore, these cases also lack relevance to Mr. Caesar’s current sentence.

³ While Mr. Caesar did raise an Eighth Amendment challenge in his Brief, he did not articulate this particular argument below. *See* Pet. for Declaratory J. (R. pp. 10-15); Petitioner’s Return to State’s Motion to Dismiss (R. pp. 23-25). As such, Mr. Caesar did not raise this issue before the circuit court and the circuit court was not given an opportunity to rule on it. Issues not raised and ruled upon in the trial court will not be considered on appeal. *Linda Mc Co., Inc. v. Shore*, 390 S.C. 543, 556-57, 703 S.E.2d 499, 506 (2010) (“It is well settled that, but for a very few exceptional circumstances, an appellate court cannot address an issue unless it was raised to and ruled upon by the trial court.” (quoting *Lucas v. Rawl Family Ltd. P’ship*, 359 S.C. 505, 598 S.E.2d 712 (2004))). Thus, the issue has not been preserved for appeal.

⁴ This statement should not be construed to indicate that Respondent doubts the constitutionality of the YOA.

Lastly, Mr. Caesar asks two questions: 1) If young individuals get relief in sentencing, why should their convictions not be entitled to the same relief? And 2) should they not receive the same benefit if they reoffend? Petitioner's Brief 10. The answer is clear: the law does not provide any such relief. If Mr. Caesar desires to change the law, then he must do so through the legislature not through this action. Furthermore, a Youthful Offender sentence is not a "free pass." Mr. Caesar received the benefit of a Youthful Offender sentence. Then, after receiving that benefit, Mr. Caesar decided to re-offend. To argue that he deserves more of a benefit after squandering the initial YOA benefit and re-offending is not logical or meritorious.

CONCLUSION

The PCR Act provides the exclusive vehicle for the relief Mr. Caesar seek; therefore, dismissal of his Petition for Declaratory Judgment for failure to state a claim was proper. Moreover, his sentence is neither cruel nor unusual. A sentence enhancement triggering life imprisonment without the opportunity for parole is not cruel or unusual punishment, and his arguments regarding sentences of life imprisonment without the opportunity for parole for juveniles are simply not relevant to this case. As such, the circuit court's order of dismissal should be affirmed.

[Signature page to follow]


Respectfully Submitted,

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CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief complies with Rule 211(b), SCACR. Minor formatting changes have been made and typographical errors have been corrected as allowed by Rule 211(b), SCACR.

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