RECEIVED
Jul 10 2020
SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Dorchester County
Honorable Brian M Gibbons, Circuit Court Judge
Appellate Case Tracking No. 2019-001068

The State, Appellant,

v.

Tyler James Evans, Respondent.

INITIAL BRIEF OF RESPONDENT

Tara L. Frost
Jack Frost

P.O. Box 1986
Summerville, SC 29484
(843) 419-6653 (phone)
(843) 419-6674 (fax)
tara@frostlawgroupsc.com
jack@frostlawgroupsc.com

ATTORNEYS FOR RESPONDENT

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

STATEMENT OF ISSUES ON APPEAL

I. The Circuit Court did not err as a matter of law when it dismissed the appeal of the magistrate's ruling filed by the State as untimely, as the State clearly filed its appeal beyond the time limit of ten (10) days from the magistrate's ruling, as required by §18-3-20 and §18-3-30 of the South Carolina Code. Further, while the Circuit Court did not rely on Equal Protection to find that the State had to file its appeal within ten (10) days, had it so relied, this would have been proper

STATEMENT OF THE CASE

On December 15, 2016, Tyler James Evans, the Respondent, was arrested and charged with DUI 1st Offense. During the course of this arrest, Respondent was issued Uniform Traffic Ticket (hereinafter "UTT") 5102P0676001. At a pretrial hearing on June 27, 2017, before the Honorable Tera S. Richardson, Respondent moved to dismiss the case on the basis that the State failed to comply with §56-5-2953 of the South Carolina Code. (Magistrate's Return; R. __). On June 28, 2017, Magistrate Richardson granted Respondent's motion and dismissed UTT 5102P0676001. (Respondent's Motion to Dismiss Appeal; R. ___).

Subsequently, the State authored an appeal on July 18, 2017, which it caused to be filed in Dorchester County on July 21, 2017, twenty (20) days subsequent to Magistrate Richardson's dismissal of UTT 5102P0676001. (Respondent's Motion to Dismiss Appeal; R. ___). Magistrate Richardson issued her return on October 11., 2017. (Magistrate's Return of Appeal; R.___). Respondent filed a Motion to Dismiss Appeal on December 21, 2017. (Respondent's Motion to Dismiss Appeal; R. ___).

The hearing on the Appeal was continued numerous times by the State, without objection by the Respondent, in reference to *State v. Dudley*, No. 2015-001785, 2018 WL 2979768, at*1 (Ct. App. June 13, 2018). The state was unsuccessful in this appeal. Subsequently, on May 28, 2019, a hearing on the State's appeal and Respondent's Motion to Dismiss took place before the Honorable Brian M. Gibbons. (5/28T.1; R.___). The State, in its statement of the case, incorrectly asserts that Respondent asserted that the appeal should be dismissed based on a failure to file the Notice of Appeal within 10 days pursuant to §18-3-30 of the South Carolina Code. Rather, the Respondent relied on both §18-3-20 and §18-3-30 in conjunction with the rest

of Title 18. The State countered that the statute did not apply and the Notice of Appeal needed to be served and filed within 30 days pursuant to Rule 74, SCRCP. The Court granted Respondent's motion and issued a Form 4 Order, wherein he found "Appeal is hereby denied. Not timely filed." (Form 4 Dismissal Order; R.___). The State served and filed a Motion for Reconsideration. This motion was denied on June 18, 2019, by Form 4 Order. (Form 4 Denial of Motion to Reconsider; R.___).

The State served its Notice of Appeal to the Court of Appeals on June 26, 2019. On August 13, 2019, Respondent made a motion to dismiss the appeal with the Court of Appeals, citing Rule 260, SCACR which was denied on November 7, 2019. The State exchanged the file from the Department of Public Safety to the Attorney General's Office in December 2019. This appeal followed and was filed on April 21, 2020.

ARGUMENT

I. The Circuit Court did not commit an error of law in dismissing the appeal of the magistrate's ruling filed by the State as untimely, as the State clearly filed its appeal beyond the time limit of ten (10) days from the magistrate's ruling, as required by §18-3-20 and §18-3-30 of the South Carolina Code. Further, while the Circuit Court did not rely on Equal Protection to find that the State had to file its appeal within ten (10) days, had it so relied, this would have been proper.

The circuit court was correct in finding the State had to serve and file its Notice of Appeal to the circuit court within ten days pursuant to §18-3-20 and §18-3-30 of the South Carolina Code. The South Carolina Code of Laws Title 18, Chapter 3 is specifically titled "Appeals from Magistrates in Criminal Cases" which provides instructions on how to appeal a decision from a magistrate court as it relates to a criminal charge. By its express terms, §18-3-20 requires that "[a]ll" appeals from "criminal causes" in Magistrate court "shall" be taken and prosecuted according to that "chapter". Likewise, the language of §18-3-30 refers to an "appellant" having 10 days to file and serve the notice of appeal. The court was correct in not applying §18-7-20 and Rule 74, SCRCP, as they are either more general statutes than §18-3-20 and §18-3-30, or they do not apply in the manner that the state suggests. Finally, there is no evidence that the court relied on equal protection in its analysis and decision at the circuit court level; however, if it did, then it did so properly.

1. The Application of §18-3-20 and §18-3-30

"The cardinal rule of statutory construction is to ascertain and give effect to the intent of the legislature. *State v. Pittman*, 373 S.C. 527, 561, 647 S.E.2d 144, 161 (2007). In interpreting statutes, the Court looks to the plain meaning of the statute and the intent of the legislature. *State v. Gaines*, 380 S.C. 23, 32, 667 S.E. 2d 728, 733 (2008). A statute's language must be construed in light of the intended purpose of the statute. *Id.* at 33. Statutes which are part of the same

legislative scheme should be construed together. *Stardancer Casino, Inc. v. Stewart*, 347 S.C. 377, 556 S.E.2d 357 (2001). In construing statutory language, the statute must be read as a whole, and sections which are part of the same general statutory law must be construed together and each one given effect, if it can be done by any reasonable construction. *State v. Alls*, 330 S.C. 528, 500 S.E.2d 781 (1998). Furthermore, the court should not consider the particular clause being construed in isolation but should read it in conjunction with the purpose of the whole statute and the policy of the law. *South Carolina Coastal Council v. South Carolina State Ethics Comm'n*, 306 S.C. 41, 44, 410 S.E.2d 245, 247 (1991).

Title 18 of the Code of Laws of South Carolina is entitled "Appeals" and it contains only four (4) chapters. Chapter 1 is entitled "General Provisions", Chapter 3 is entitled "Appeals from Magistrates in Criminal Cases", Chapter 7 is entitled "Appeals to Circuit and County Courts in Other Cases", and Chapter 9 is entitled "Appeals to Supreme Court and Court of Appeals". From the titles of the Chapters alone, it becomes clear that the legislature had a specific and clear intent for Title 18 as it relates to Appeals. In fact, the legislature was clear in §18-1-10 of the South Carolina Code by stating "[t]he only mode of review a judgement or order in civil or criminal action, . . ., shall be prescribed by this title" and then further defines the parties under §18-1-120 "the party appealing shall be known as the appellant and adverse party as the respondent." The legislature again had a specific and clear intent for Title 18, Chapter 3: to govern magistrate's criminal appeals. The language of various statutes within the Title makes it even clearer. Section 18-1-30 indicates that any "party aggrieved" may appeal "in the cases prescribed in this title". §18-3-20 reads:

> **All** appeals from magistrates' courts in criminal causes **shall** be taken and prosecuted as prescribed in **this chapter**."

(Emphasis added.) Section 18-3-30(A) reads, in pertinent part:

> The **appellant, within ten days** after sentence, shall file notice of appeal with the clerk of court and shall serve notice of appeal on the magistrate who tried the case and upon the designated agent for the prosecuting agency or attorney who prosecuted the charge[...]." S.C. Code Ann. § 18-3-20 (Supp. 2019).

(Emphasis added.) Based upon the language of §18-3-20 and §18-3-30, when read in conjunction with one another and §18-1-30, along with the structure of the Chapters within the title, it is clear that the intent of the legislature with regards to Chapter 3 was to have it govern the structure of all criminal appeals from magistrate's court, including those originating with the state. This is clarified further in *State v. Belviso*, 360 S.C. 112, 600 S.E.2d 68 (2004). The *Belviso* court recognized that affirming the State's right to appeal adverse outcomes from magistrate court was "consistent with the intent of the Legislature, especially when our statutory law is considered in its entirety [. . .] [i]n construing the statutory scheme as a whole, we 'escape the absurdity' and give efficacy to the manifest intention of the General assembly. [. . .] In doing so, our judicial decisions addressing the 'right of appeal' are in accord with legislative intent." *Id.* at 116-117. Therefore, the court in *Belviso* didn't bar the State's ability to appeal it's issue merely because §18-3-10 say's "[e]very person convicted before a magistrate . . ."(where the appeal was based on a pre-trial ruling and not a conviction), it considered other sections of Title 18, to recognize that the intent of the legislature is to govern the way that all appeals from criminal cases in magistrate court are prosecuted via Title 18.

In this case, the magistrate issued a pre-trial ruling and therefore the State had the 'right of appeal' under Title 18 in that "[a]ny party aggrieved may appeal the cases prescribed in this title" pursuant to SC Code §18-1-30 which also required it to comply with §18-3-30 in that, the

State, as an appellant pursuant to definition under §18-1- 120 had ten days to file the notice of appeal. The State, however, is requesting that this Court to issue an order indicating that the intention of the Legislature, in enacting Title 18, Chapter 3, is to ignore other pertinent statutes under Title 18, apply it only to criminal defendants thereby allowing the State move about and selectively pick a from specific and unavoidable statutes to either general or clearly non-applicable ones that fit within their notice timeline.[1]

Since the court in *Belviso* determined that the legislative intent was for all parties to receive the benefits under Title 18 then the State should also be subject to the requirements under Title 18, including notice under section 18-3-30, and not to ensure that the court doesn't allow a "nonsensical view of legislative intent" that the State is arguing. Quoting *Belviso*, 360 at 117.

Further, language specific to 18-3-30 should not be used to disqualify it from controlling the timing of the state's appeal, as this language is specific guidance set up to aid a rather peculiar type of litigant common to magistrate court: the pro se litigant. Summary courts in South Carolina handle the vast majority of all criminal cases created within its borders, and upon information and belief, the majority of those individuals who appear in magistrates court on criminal matters (including traffic tickets) are pro se. Thus, statistically speaking, it is likely that a defendant who would be interested in appealing his case would be pro se. While it is not difficult for an experienced prosecutor to quickly ascertain the method to perfect his appeal, a pro se defendant, attempting to perfect service on one of the many various departments, organs, and permutations of the State may have trouble, even in a less populous county. Thus, the language about serving prosecuting agencies and prosecutors is meant to ensure that a pro se

[1] The State's role is typically that of a prosecuting agency and therefore is fully aware that the notice timeline for any post criminal adjudication is ten (10) days. See, SCRCrimP 29(a), SCACR 203(b)(2), SC Code §14-25-95(2013)

defendant is clearly and adequately guided so as to know what and whom needs to be given notice that they are appealing. See generally, *State v. Brown*, 344 S.C. 302, 543 S.E.2d 568 (S.C. App. 2001), where S.C. Code Ann §18-3-30 (1985) failed to mention service of notice of appeal on State therefore pro se litigant only served notice upon the magistrate who tried the case.

2. The Court was correct in not applying §18-7-20 or Rule 74, SCRCP.

It is a fundamental canon of statutory construction that "where there is one statute addressing an issue in general terms and another statute dealing with the identical issue in a more specific and definite manner, the more specific statute will be considered an exception to, or a qualifier of, the general statute and given effect. *Denman v. City of Columbia*, 691 S.E.2d 465, 468 (S.C. 2010). In this case, while urging the Court to apply section 18-7-20 to Respondent's appeal, the initial brief of the Appellant literally calls that code section a "general provision". (Initial Brief of Appellant, at 8). As such, given the specificity of §18-3-20 and §18-3-30, those statutes would control in the event that the court held there was a conflict.

Further, the State misstates the application of Rule 74, SCRCP to criminal cases originating in magistrate's courts. SCRCP Rule 74 specifically states **"[e]xcept for the time for filing the notice of appeal**, the procedure on appeal to the circuit court from the judgment of an inferior court or decision of an administrative agency or tribunal shall be in accordance with the statutes providing such appeals . . .[i]n all such appeals the notice of intention to appeal shall be filed with the clerk of court to which the appeal is taken and with the inferior court or administrative agency or tribunal within in the time provided by **the statute**, or by this rule when no time is fixed by statute" (emphasis added) Furthermore, the main purpose of Rule 74, SCRCP as it relates to an appeal in criminal cases from magistrate's court is to supply omissions in Title 18 where there is not a provision as it relates to the appeal process. *See Eagles v. South Carolina*

Nat'l Bank, 301 S.C. 402, 392 S.E.2d 187 (Ct.App.1990); quoting S.C.R.CIV.P. 74 and 75 notes ("These Rules 74 and 75 are added to make uniform the procedure on appeals to the [c]ircuit [c]ourt where there is no provision by statute. They do not replace any provisions as to appeals in Title 18 of the Code, ... or other statutes providing for appeals from administrative decisions...."). In this case, S.C. Code Ann. §18-3-30 provides the specific time in which the appellant is to file their notice of intent to appeal, ten (10) days.

The State misstates the *Oxner* court as it relates to the specific time for filing a notice of intent to appeal. While the *Oxner* found that the Rules of Civil Procedure applies to appellate proceedings because §18-3-10 give the Court of Common Pleas the jurisdiction for criminal appeals from magistrate courts, Rule 74 specifically states that "the procedure on appeal . . . shall be in accordance with the statutes providing such appeal. 391 S.C. 132, 134, 705 S.E.2d 51, 51. Therefore, the *Oxner* court recognizes two very specific notions which are damaging to the state's case: first, that appeals from magistrate's courts proceed based on the statutes located in Title 18, and that the SCRCP only apply to the circuit court sitting in appellate jurisdiction – not to the origination of the appeal from magistrate's court itself.

Since §18-7-20 is a general provision that applies to appeals to circuit courts in other cases it would only apply in a case where there wasn't a more specific provision. In this matter, since §18-3-30 is specific to appeals from magistrates in criminal cases, §18-7-20 has no application in this matter.

3. The Circuit Court did not rely on Equal Protection Principles, in Granting Respondent's motion to Dismiss, or in the alternative, if it did, Doing so was Proper.

While there is no indication in any of the Form 4 orders that the Circuit court relied on equal protection principles in granting Respondent's motion to dismiss, in the event that it did, it did so properly. The State argues that there is no application for the equal protection clause in this analysis unless there is some implication of a suspect class or an abridgment of a fundamental right. However, in *Griffin v. Illinois*, the US Supreme Court has held that "due process and equal protection both call for procedures in criminal trials which allow no invidious discrimination [. . .] Appellate review has now become an integral part of the [. . .] trial system for finally adjudicating the guilt or innocence of a defendant. Consequently, at all stages of the proceedings, the Due Process and Equal Protection Clauses protect persons like petitioners from invidious discriminations." 76 S.Ct. 585, 590 (1956). Therefore, failing to equate the defendant and the state does abridge the fundamental right to be treated equally in a court of law, and thus, in the event that the circuit court did mean to implicate the equal protection clause in its granting of Respondent's motion to dismiss, it did so properly.

CONCLUSION

For the foregoing reasons, Respondent respectfully requests that this Court affirm the decision from the Circuit Court, finding that the State's appeal was not filed in a timely manner pursuant to the South Carolina Code.

Respectfully Submitted,

TARA L. FROST

P.O. Box 1986
Summerville, SC 29484
843-419-6653
tara@frostlawgroupsc.com

ATTORNEY FOR RESPONDENT

July 10, 2020

RECEIVED
Jul 10 2020
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM DORCHESTER COUNTY
The Honorable Brian M. Gibbons,
The Honorable Brian Gibbons, Circuit Court Judge in Appellate Capacity

---

Appellate Case No. 2019-001068

Tyler Evans. . . . . Respondent,

v.

The State of South Carolina . . . . . Appellant.

PROOF OF SERVICE

I, Diana Fielding, do hereby certify that I have served the Respondent's *Initial Brief and Designation of Matter* in the above -captioned action, by depositing it in the United States Mail, postage prepaid, on this 10th day of July 2020, addressed to:

William M. Blitch, Jr., Esq.
Office of the Attorney General
Post Office Box 11549
Columbia South Carolina 29211

Diana Fielding

Diana Fielding, Paralegal
Frost Law Group, LLC
PO Box 1986
Summerville, SC 29484
O: (843) 419-6653
F: (843) 419-6675

July 10, 2020
Summerville, South Carolina

FROST LAW GROUP, LLC
126 E. 2ND NORTH ST.
SUMMERVILLE, SC 29483
MAIL: PO BOX 1986
SUMMERVILLE, SC 29484
P: (843) 419-6653
F: (843) 419-6674
WWW.FROSTLAWGROUPSC.COM

TARA FROST (ATTORNEY):
TARA@FROSTLAWGROUPSC.COM

JACK FROST (ATTORNEY):
JACK@FROSTLAWGROUPSC.COM

July 10. 2020

Sent via: Fax to 843-734-1839 and US Mail
The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

Re: The State of South Carolina, Appellant v. Tyler J. Evans, Respondent
Appellate Case No.: 2019-001068

Dear Clerk:

Enclosed for filing is the original and six (6) copies of *Initial Brief of Respondent, Designation of Matter, and Proof of Service* in the above referenced matter. Please file these documents and return any extraneous clocked copies to us in the enclosed self-addressed stamped envelope.

Please do not hesitate to reach out to our office with any questions or concerns.

Best regards,

Diana Fielding
Paralegal

Cc: Office of the Attorney General (via email and U.S. Mail)
William M. Blitch, Jr., Esq.
Senior Deputy Assistant Attorney General
Post Office Box 11549
Columbia South Carolina 29211