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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 J. Evans, Respondent.

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

I. The Circuit Court committed an error of law in dismissing the appeal of the magistrate's ruling filed by State as untimely when it was clearly filed within thirty days and section 18-3-30 of the South Carolina Code, which requires an appeal after a sentence to be filed within ten days, does not apply to an appeal filed by the State. Further, the Circuit Court committed an error of law to the extent it relied on Equal Protection to find the State had to file its appeal within ten days.

STATEMENT OF THE CASE

In December 2016, Respondent was ticketed for DUI. (UTT 5102P0676001; R.9). 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 the video recording statute, section 56-5-2953 of the South Carolina Code. (5/28T.6-10; Magistrate's Return of Appeal; R.7). On June 28, 2017, Magistrate Richardson dismissed the case. (Magistrate's Return of Appeal; Respondent's 12/19/17 Motion to Dismiss Appeal; R.64).

On July 18, 2017, the State served Respondent's counsel with a Notice of Appeal to the Circuit Court. The Notice of Appeal was filed on July 21, 2017, which was the day both Respondent's counsel and Magistrate Richardson received the appeal. (State's Notice of Appeal and Appeal; Respondent's 12/19/17 Motion to Dismiss Appeal; R.64). The State's Notice of Appeal was served twenty days from the magistrate's order and filed 23 days after the order. Judge Richardson filed her Return on October 11, 2017. (Magistrate's Return of Appeal; R.7). Respondent filed a Motion to Dismiss Appeal on December 21, 2017. (Respondent's 12/19/17 Motion to Dismiss Appeal; R.64).

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.40). At the hearing, the State maintained the dismissal by the magistrate was improper. Respondent asserted the appeal should be dismissed based on the failure to file the Notice of Appeal within 10 days pursuant to section 18-3-30 of the South Carolina Code. 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 issued a Form 4 Order in which he found: "Appeal is hereby Denied. Not timely filed." He further found: "Respondent's Motion to Dismiss is hereby Granted, the Appeal was not

timely filed." (Form 4 Dismissal Order; R.34). The State served and filed a Motion for Reconsideration maintaining the appeal was timely, or in the alternative, seeking a formal written order setting forth the grounds for the Court's dismissal of the appeal. (State's Motion to Reconsider; R.69). Judge Gibbons denied the motion on June 18, 2019, by Form 4 Order. (Form 4 Denial of Motion to Reconsider; R.37).

The State served and filed its Notice of Appeal to the Court of Appeals on June 28, 2019. This brief follows.

ARGUMENT

I. The Circuit Court committed an error of law in dismissing the appeal of the magistrate's ruling filed by State as untimely when it was clearly filed within thirty days and section 18-3-30 of the South Caroline Code, which requires an appeal after a sentence to be filed within ten days, does not apply to an appeal filed by the State. Further, the Circuit Court committed an error of law to the extent it relied on Equal Protection to find the State had to file its appeal within ten days.

The circuit court erred in finding the State had to serve and file its Notice of Appeal to the circuit court within ten days pursuant to section 18-3-30 of the South Carolina Code. By its express terms, the statute does not apply to the State's appeal. The circuit court should have considered the appeal timely filed pursuant to section 14-3-330 of the South Carolina Code, section 18-7-20 of the South Carolina Code, and Rule 74, SCRCP. Finally, to the extent the circuit court relied on Respondent's argument that equal protection required application of section 18-3-30 to the State's Notice of Appeal, the Court committed an error of law. This Court should find the Notice of Appeal was timely filed and remand to the circuit court to consider the State's appeal from the magistrate's decision dismissing the case.

Initially, it should be noted that the State's right to appeal is not controlled by section 18-3-10 et seq., but instead is controlled by case law. The State's right to appeal has been found in instances where a judge's pre-trial ruling significantly impacts the State's ability to prosecute the appeal or when it finally decides the action. See e.g., State v. McKnight, 287 S.C. 167, 337 S.E.2d 208 (1985); S.C. Code Ann. § 14-3-330 (Supp. 2019). This Court addressed the right of the State to appeal in State v. Belviso, 360 S.C. 112, 600 S.E.2d 68 (2004), and found that it was not tied to the statutory scheme found in Chapter 3 of Title 18. As a result, this Court should not be looking to 18-3-30 for the right of the State to appeal or the timing of the State's appeal.

I. Application of Section 18-3-30

The circuit court erred in its interpretation and application of section 18-3-30 as the section, based on its own express language, does not apply to a notice of appeal filed by the State. 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, 667 S.E.2d at 733. Whenever possible, legislative intent should be found in the plain language of the statute itself. Id.

"Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning." Pittman, 373 S.C. at 561, 647 S.E.2d at 161. However, the statute must also be read as a whole and in harmony with its purpose. State v. Sweat, 386 S.C. 339, 350, 688 S.E.2d 569, 575 (2010). Accordingly, "[a] statute as a whole must receive a practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of the lawmakers." Browning v. Hartvigsen, 307 S.C. 122, 125, 414 S.E.2d 115, 117 (1992).

Chapter 3 of Title 18 is entitled "Appeals from Magistrates in Criminal Cases". See S.C. Code Ann. § 18-3-10 thru -70 (Supp. 2019). Section 18-3-10 states: "Every person convicted before a magistrate of any offense whatever and sentenced may appeal from the sentence to the Court of Common Pleas for the county." S.C. Code Ann. § 18-3-10 (Supp. 2019). The initial section of this Chapter makes indicates that the provisions apply to a person convicted in magistrate court. Section 18-3-20 then states: "All appeals from magistrates' courts in criminal causes shall be taken and prosecuted as prescribed in this chapter." S.C. Code Ann. § 18-3-20

(Supp. 2019). It is followed then by section 18-3-30, which appears to be the primary section relied upon by the circuit court to determine the State's appeal was untimely:

> (A) The appellant, **within ten days after sentence**, shall file notice of appeal with the clerk of circuit court and **shall serve notice** of appeal upon the magistrate who tried the case and **upon the designated agent for the prosecuting agency or attorney who prosecuted the charge**, stating the grounds upon which the appeal is founded.
>
> (B) A person convicted in magistrates court who pays a fine assessed by the court does not waive his right of appeal and, upon proper notice, may appeal his conviction within the time allotted in this section.

S.C. Code Ann. § 18-3-30 (Supp. 2019). The language used in the statute makes it clear the provision applies only after a person is sentenced. The fact it applies to a defendant convicted and sentenced in magistrate's court is further highlighted by the fact that it explicitly requires service upon the prosecuting agency or prosecuting attorney. If the legislature intended the statute to apply in every criminal case no matter whether the defendant, a city, a county, or the State is the appealing party, it would have worded the statute significantly different. It could have provided that all appeals from a criminal case be made within ten days of sentence or judgment, and it could have simply provided for service on the opposing party. Instead, it specifically determined only one party had a ten day requirement, a defendant who has been sentenced, and expressed a requirement that the defendant serve the prosecuting agency.

This Court should not rewrite the statute as the circuit court did in an attempt to apply it to an appeal by the State of a pretrial procedural dismissal. See Brown v. S.C. Dep't of Health & Envtl. Control, 348 S.C. 507, 515, 560 S.E.2d 410, 414 (2002) ("An appellate court cannot construe a statute without regard to its plain meaning and may not resort to a forced interpretation in an attempt to expand or limit the scope of a statute."). As three justices frankly

reiterated in a recent case: "If it were true courts have the authority to interpret statutes according to a sense of justice and right, then courts would have the power to rewrite statutes to suit their own personal preferences, regardless of legislative intent. **Courts do not have that power**." Buchanan v. S.C. Prop. & Cas. Ins. Guar. Ass'n, 424 S.C. 542, 553, 819 S.E.2d 124, 130 (2018) (Few, J. concurring) (emphasis added). The circuit court erred in interpreting section 18-3-30 in a way not intended by the express language chosen by the legislature and in rewriting the statute to make it apply to the State's Notice of Appeal. This Court should construe section 18-3-30 consistent with the clear unambiguous language chosen by the legislature and find it is intended to only apply to a criminal defendant who is appealing, an interpretation consistent with the entirety of the Chapter.

II. Appropriate Time for Service and Filing of Notice of Appeal

As discussed, section 18-3-30 does not apply to the State's Notice of Appeal. As a result, this Court should look to other statutes or rules for a determination of the State's deadline for service and filing of its Notice of Appeal. The two main provisions which would be applicable to the State's Notice of Appeal are section 18-7-20 of the South Carolina Code and Rule 74 of the South Carolina Rules of Civil Procedure.

Because there is no specific statute setting forth the time frame in which the State as the prosecuting agency must file and serve its Notice of Appeal, one should look to the general statutes and rules addressing appeals from magistrate court to circuit court. First, Chapter 7 of Title 18 addresses all appeals not otherwise covered in the Title. Specifically, section 18-7-20 states:

> The appellant, within thirty days after written notice of judgment has been given him or his attorney by the magistrate, recorder, or

> judge of the municipal court, except when the judgment is announced at the trial in the presence of the appellant or his attorney then no written notice is necessary, shall serve a notice of appeal, stating the grounds upon which the appeal is founded.

S.C. Code Ann. § 18-7-20 (Supp. 2019). This general provision would apply to any appeal not otherwise covered, which would mean it would apply to any appeal filed by someone other than a criminal defendant who has been convicted and sentenced.

Additionally, Rule 74 of the Rules of Civil Procedure states:

> Except 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. Notice of appeal to the circuit court must be served on all parties within thirty (30) days after receipt of written notice of the judgment, order or decision appealed from. In all such appeals the notice of intention to appeal shall be filed with the clerk of the court to which the appeal is taken and with the inferior court or administrative agency or tribunal within the time provided by the statute, or by this rule when no time is fixed by statute, for service of the notice of intention to appeal.

Rule 74, SCRCP. Significantly, the Editor's Notes to Rules 74 and 75, SCRCP, provide:

> These Rules 74 and 75 are added to make uniform the procedure on appeals to the Circuit Court where there is no provision by statute. They do not replace any provisions as to such appeals in Title 18 of the Code , or other statutes providing for appeals from administrative decisions; but are added to supply omissions in these statutes where no provision is made for the time to file notice of intention to appeal, the form of the record on appeal, or how it shall be transmitted.

The South Carolina Supreme Court has also found Rule 74 to be applicable to appeals from magistrate court. See State v. Oxner, 391 S.C. 132, 134, 705 S.E.2d 51, 51 (2011). Clearly, Rule 74 and the allowance of thirty days is intended to apply to the prosecuting agency—the State—because there is no statute in Title 18 providing for the time to file and Rule 74 is specifically intended to fill that void. Accordingly, the circuit court erred in applying section 18-

3-30 when it does not apply to the prosecuting agency, and should have applied either section 18-7-20 or Rule 74, SCRCP, to allow 30 days for service and filing of the Notice of Appeal.

III. Equal Protection is Not Applicable

Finally, equal protection does not require the State to be held to the same ten day service and filing requirements after a pre-trial ruling as a defendant who has been convicted and sentenced. Application of section 18-3-30 as it is written to apply only to a criminal defendant who has been convicted and sentenced does not violate the Equal Protection Clause.

The South Carolina Supreme Court has stated:

> This Court has a very limited scope of review in cases involving a constitutional challenge to a statute. All statutes are presumed constitutional and will, if possible, be construed so as to render them valid. A legislative act will not be declared unconstitutional unless its repugnance to the constitution is clear beyond a reasonable doubt.

State v. Harrison, 402 S.C. 288, 292-293, 741 S.E.2d 727, 729 (2013) (internal citations omitted). The Equal Protection Clause of the United States Constitution provides: "No State shall . . . deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV, § 1. The South Carolina Constitution provides no "person shall be denied the equal protection of the laws." S.C. Const. art. I, § 3. "The *sine qua non* of an equal protection claim is a showing that similarly situated persons received disparate treatment." Grant v. S.C. Coastal Council, 319 S.C. 348, 354, 461 S.E.2d 388, 391 (1995).

Not all classifications are unconstitutional, however, for "[t]he equal protection clause only forbids irrational and unjustified classifications." Bodman v. State, 403 S.C. 60, 69, 742 S.E.2d 363, 367 (2013). Further, "[t]he equal protection clause is not an independent limit on the action of the state. It only forbids legislative enactments which transgress the equal protection

rights of persons." Hibernian Soc'y v. Thomas, 282 S.C. 465, 472, 319 S.E.2d 339, 343 (Ct. App. 1984) (internal citations omitted). Notably, the equal protection clause does not operate to remedy situations that are merely unfair. See Davis v. County of Greenville, 313 S.C. 459, 465, 443 S.E.2d 383, 386 (1994) ("The fact that [a government] classification may result in some inequity does not render it unconstitutional."). Instead, any perceived unfairness in filing deadlines should be remedied by legislative measures.

As long as the statute "does not implicate a suspect class or abridge a fundamental right, the rational basis test is used" to determine whether the classification falls into the prohibited group. Id. (citing Denene, Inc. v. City of Charleston, 359 S.C. 85, 91, 596 S.E.2d 917, 920 (2004)). "A classification does not violate the Equal Protection Clause if: (1) the classification bears a reasonable relation to the legislative purpose sought to be effected; (2) the members of the class are treated alike under similar circumstances and conditions; and (3) the classification rests on some reasonable basis." Curtis v. State, 345 S.C. 557, 574, 549 S.E.2d 591, 599-600 (2001) (citing Whaley v. Dorchester County Zoning Bd. of Appeals, 337 S.C. 568, 524 S.E.2d 404 (1999)). "A classification will survive rational basis review when it bears a reasonable relation to the legislative purpose sought to be achieved, members of the class are treated alike under similar circumstances, and the classification rests on a rational basis." Bodman, 403 S.C. at 69, 742 S.E.2d at 367. The classification will be upheld if there is "any reasonably conceivable state of facts" that would provide a rational basis for it. F.C.C. v. Beach Communications, Inc., 508 U.S. 307, 313 (1993).

As the Supreme Court explained in Bodman:

> We give great deference to the General Assembly's decision to create a classification. Consequently, those who challenge the validity of one under rational basis review must "negate every conceivable basis which might support it." Furthermore, "it is

> entirely irrelevant for constitutional purposes whether the conceived reason for the challenged distinction actually motivated the legislature." The classification also does not need to completely achieve its purpose to withstand constitutional scrutiny. Moreover, "[t]he fact that the classification may result in some inequity does not render it unconstitutional."

Id. at 69-70, 742 S.E.2d at 367-368 (internal citations omitted). "Accordingly, [this Court's] entire equal protection inquiry revolves around interplay between the specific classification created and the purported basis for it, with a challenger coming under rational basis review facing a steep hill to climb." Id. at 70, 742 S.E.2d at 368.

In the instant case, the classification of a criminal defendant filing an appeal versus the prosecuting agency such as the State filing an appeal does not involve a suspect class. Inherently suspect classifications include those based on factors "such as race, religion, or alienage." Sunset Cay, LLC v. City of Folly Beach, 357 S.C. 414, 429, 593 S.E.2d 462, 469 (2004). The classification in the instant case does not involve any of the suspect classifications.

Further, the classification setting forth a specific time for service and filing of the notice of appeal does not impact a fundamental right. Fundamental rights are those guaranteed by the United States Constitution, and are not implicated by the classification in this case. See e.g., Bullock v. Carter, 405 U.S. 134, 92 S.Ct. 849, 31 L.Ed.2d 92 (1972) (right to vote); Shapiro v. Thompson, 394 U.S. 618, 89 S.Ct. 1322, 22 L.Ed.2d 600 (1969) (right of interstate travel); Williams v. Rhodes, 393 U.S. 23, 89 S.Ct. 5, 21 L.Ed.2d 24 (1968) (rights guaranteed by the First Amendment); Skinner v. Oklahoma ex rel. Williamson, 316 U.S. 535, 62 S.Ct. 1110, 86 L.Ed. 1655 (1942) (right to procreate). Because the defendant still has the right to an appeal, the timing required for exercising that right does not implicate a fundamental right.

In addition, members of the same class are treated similarly. All those similarly situated to Respondent, meaning all criminal defendants convicted and sentenced in magistrate court,

have the same requirement of a ten day time for filing and serving the Notice of Appeal. As a result, there is not disparate treatment between like individuals. There are no arbitrary rules treating one convicted and sentenced appellant different from another. The statute sets forth one time frame for all convicted and sentenced individuals seeking to appeal to the circuit court. The Legislature chose to treat differently situated entities, the prosecuting agencies, differently because of having different requirements and considerations prior to filing a Notice of Appeal.

The classification in the case *sub judice*, therefore, must only satisfy the rational basis test. The classification of allocating a different time for filing of a Notice of Appeal between a criminal defendant and the prosecuting agency meets the rational basis test. The defendant has an interest in having his appeal begun quickly because he has been convicted and sentenced. Further, the prosecuting agency's determination of whether to appeal may be a more complicated question. The agency will need to determine whether it can even appeal under the Mcknight standard or pursuant to section 14-3-330. The agency will have to determine whether it is best to not appeal in certain situations—the saying bad facts make bad law is a prime example of the type of consideration that must be made.

Significantly, there may be communication issues between the actual person prosecuting the case and the persons in the agency who will ultimately make the determination on whether to file the appeal. The South Carolina Supreme Court has approved law enforcement officers prosecuting cases in magistrate court. In these circumstances, it will need to be an attorney and not the law enforcement officer who must make the decision whether to appeal from magistrate court to circuit court where the solicitor or other attorney on behalf of the State will appear. This is vastly different than for a criminal defendant who knows the outcome and is the one to make the decision on whether to appeal. There is clearly a rational basis why the Legislature would

believe ten days is sufficient for a criminal defendant who has been convicted and sentenced to determine whether to appeal, while giving a broader time frame for the prosecuting agency which must communicate at multiple levels and take into account much more than just the specific case and its ruling.

Accordingly, because the distinction between a ten-day filing requirement for a convicted and sentenced criminal defendant and the thirty-day requirement for the prosecuting agency has a rational basis, the circuit court—to the extent it relied on an equal protection argument to reach its conclusion—erred as a matter of law in finding the State was required to meet a ten-day service and filing requirement.[1]

[1] It should be noted that even if Equal Protection required the prosecuting agency and the convicted defendant to have the same filing and service requirements, the remedy would not be to arbitrarily subject the State to the ten day requirement of section 18-3-30, but instead would have been to declare the ten-day restriction in 18-3-30 unconstitutional and then the default of 30 days would apply to all. However, as the State asserts there is no Equal Protection violation, there is no need for any remedy and the case should be remanded for consideration of the timely appeal in circuit court.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the decision of the circuit court finding the State's appeal was untimely should be reversed and this case remanded to the circuit court to consider the merits of the State's appeal.

Respectfully submitted,

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STATE OF SOUTH CAROLINA

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CERTIFICATE OF COMPLIANCE

The undersigned certifies that the Final Brief of Appellant filed August 5, 2020, complies with Rule 211(b), SCACR, and does not include, or partially redacts, personal data identifiers, Re Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings, 407 S.C. 607, 607, 757 S.E.2d 421 (2014) (requiring redaction of social security numbers, names of minor children, financial account numbers, home addresses, and date of birth).

This 5th day of August, 2020.

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