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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Charleston County
Court of Common Pleas
The Honorable Robert Hood, Post-Conviction Relief Judge
The Honorable Deadra J. Jefferson, Plea Judge

Appellate Case No. 2020-000188

ANTHONY A. JONES, II, #370783, Petitioner,

vs.

STATE OF SOUTH CAROLINA, Respondent.

BRIEF OF RESPONDENT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

PETITIONER'S ISSUE PRESENTED

Whether the automatic waiver provision of S.C. Code Ann. § 63-19-20 is unconstitutional?

RESPONDENT'S ISSUES PRESENTED

Did the post-conviction relief court properly dismiss Petitioner's application where the automatic waiver provision of section 63-19-20 is constitutional, and thus the PCR court committed no error of law?

STATEMENT OF THE CASE

Anthony Allan Jones, II (Petitioner), is presently confined in the South Carolina Department of Corrections. During its October 2015 term, the Charleston County Grand Jury indicted Petitioner for armed robbery. Additionally, the Dorchester County Grand Jury indicted Petitioner for first-degree burglary during its October 2015 term of court as well. David Aylor, Esquire, represented Petitioner on both charges.

On December 12, 2016, Petitioner appeared in the Charleston County Court of General Sessions before the Honorable Deadra Jefferson, waived venue, and pleaded guilty as indicted to both offenses. Pursuant to negotiations with First Circuit Solicitor's Office, Judge Jefferson sentenced Petitioner to fifteen years' imprisonment for first-degree burglary and ten years' imprisonment for armed robbery. Judge Jefferson ordered both of these sentences to be served concurrently. Petitioner did not file a notice of appeal.

On June 19, 2017, Petitioner simultaneously filed identical, timely applications for post-conviction relief in Charleston County and Dorchester County. Both applications were filed the same day by the same counsel of record, Elizabeth Franklin-Best, Esquire, challenging the same convictions, and making identical allegations. In its return, Respondent moved to merge the actions, with the Dorchester application (2017-CP-18-0657) being merged into the Charleston application (2017-CP-10-1880). By order dated June 22, 2017, Chief Administrative Judge for the First Judicial Circuit Diane Goodstein ordered the cases be merged.

An evidentiary hearing convened in Charleston County on November 18, 2019, before the Honorable Robert E. Hood. Petitioner was represented by Ms. Franklin-Best. Petitioner alleged counsel was deficient for failing to investigate the circumstances of Petitioner's youth to mitigate Petitioner's sentence, and that he did not engage in any other meaningful plea negotiations on

Petitioner's behalf, in violation of Petitioner's right to the effective assistance of counsel. Petitioner also alleged the automatic waiver provision of the section 63-19-20 of the South Carolina Code of Laws is unconstitutional.

The lower court dismissed the first allegation on the record as counsel submitted a sentencing memorandum and Petitioner received the mandatory minimum sentence. On the second allegation, the lower court dismissed the allegation based on the allegation not being a cognizable PCR claim and section 63-19-20 being constitutional. Judge Hood issued a written order filed on January 31, 2020.

Petitioner timely filed a notice of appeal on February 5, 2020, raising the sole issue of whether section 63-19-20 is unconstitutional. This Court granted certiorari by order dated April 19, 2021.

STANDARD OF REVIEW

The standard of review for post-conviction relief matters depends on the specific issues before the appellate court. Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018). On appellate review, courts give great deference to a post-conviction relief court's findings of fact and will uphold them if there is **any** evidence in the record to support them. Smalls, 422 S.C. at 179, 810 S.E.2d at 839-40 (citing Sellner v. State, 416 S.C. 606, 610, 787 S.E.2d 525, 527 (2016); Jordan v. State, 406 S.C. 443, 448, 752 S.E.2d 538, 540 (2013); Caprood v. State, 338 S.C. 103, 109, 525 S.E.2d 514, 517 (2000)). However, pure questions of law will be reviewed *de novo* without deference to the lower court. Id. Appellate courts will reverse the decision of the post-conviction relief court when it is controlled by an error of law. Goins v. State, 397 S.C. 568, 573, 726 S.E.2d 1, 3 (2012).

ARGUMENT

The post-conviction relief court properly dismissed Petitioner's application where the automatic waiver provision of section 63-19-20 is constitutional, and thus the PCR court committed no error of law.

Petitioner contends the automatic waiver provision of section 63-19-20 of the South Carolina Code of Laws which automatically transfers certain juvenile offenders from Family Court to General Sessions based on age and the type of crime committed is unconstitutional because it does not allow discretion in sentencing for a defendant who was a juvenile at the time of the crime, allegedly in violation of Petitioner's right to due process. However, Petitioner does not have a constitutional right to be treated as juvenile in criminal proceedings, and South Carolina's juvenile waiver process is not unconstitutional merely because it does not provide for discretionary waiver or a hearing before adjudicating the cases of certain older youths who commit specified classes of felonies in General Sessions. Critically, neither the state nor federal constitutional guarantees the right to be adjudicated as a juvenile because such a distinction was not in existence at the time of the adoption of the either the United States or the South Carolina Constitution. Therefore, the PCR court did not commit any error of law, and this Court should affirm the PCR court's decision denying relief.

Petitioner argues section 63-19-20 is unconstitutional because it restricts a judge's ability to consider "the recognized traits of youth" before a juvenile offender is automatically waived from Family Court to General Sessions, where the offender is treated as an adult and the sentences are more severe. BOP p. 14. However, Petitioner has no constitutional right to have his case adjudicated in Family Court since there was no such court, and no such distinction between adult and juvenile offenders, at the time of the adoption of either the United States Constitution or South Carolina's state constitution. See, e.g., City Council of Anderson v. O'Donnell, 29 S.C. 355, 367, 7 S.E. 523, 528 (1888) ("[T]he well settled doctrine, in this State at least, as well as many other

States, is that these general constitutional provisions securing the right of trial by jury are to be read in light of the law existing at the adoption of the constitution. They were not designed to *extend* the right of trial by jury, but simply to *secure* that right as it then existed." (italics in original)). Under the common law in existence at the time of the ratification of the South Carolina Constitution, a juvenile offender accused of a crime was prosecuted in the same manner as an adult and tried by a jury after the juvenile was formally indicted for a criminal offense. See In re Gault, 387 U.S. 1, 16 (1967) ("At common law, children under seven were considered incapable of possessing criminal intent. Beyond that age, they were subjected to arrest, trial, and in theory to punishment like adult offenders."); see also State v. Coleman, 54 S.C. 162, 162, 31 S.E. 866, 866 (1899) (affirming a juvenile defendant's criminal conviction for the indicted offense of carnal knowledge of an unmarried woman under fourteen years of age after a jury trial in the court of general sessions); State v. Toney, 15 S.C. 409, 414 (1881) (affirming a juvenile defendant's criminal conviction for the indicted offense of malicious trespass that resulted from a jury trial).[1] Over time, the legislature gradually enacted legislation granting judges the power to assess and adjudicate juvenile cases in a different manner than cases involving adult offenders. See, e.g., S.C. Code Ann. § 255 (1932) (providing that probate courts in counties having a population between 85,000 and 100,000 residents have exclusive original jurisdiction over any cases involving a child under sixteen years old and authorizing probate court judges acting as judges of children's court to conduct summary hearings, adjudicate juvenile offenders delinquent, and exercise discretion to

[1] At that time, the manner in which adult offenders and juvenile offenders were distinguished under the common law was that a child was conclusively presumed to be incapable of committing a crime if under the age of seven; a child was presumed to be incapable of committing a crime if between the ages of seven and fourteen with that presumption subject to rebuttal; and a child was presumed capable of committing a crime if over the age of fourteen with that presumption subject to rebuttal. Dodd v. Spartanburg Ry., Gas & Elec. Co., 95 S.C. 9, 15, 78 S.E. 525, 528 (1913).

transfer cases of juvenile felony offenders that are fourteen years of age or older to circuit court). This process culminated in the creation of the Family Court in 1968, and the enactment of the South Carolina Children's Code in 1981. See Act No. 361, 2008 S.C. Acts & Joint Resolutions (reorganizing and restructuring the South Carolina's Children's Code); Act No. 71, 1981 S.C. Acts & Joint Resolutions (enacting the South Carolina Children's Code, outlining the juvenile transfer process, and identifying the procedure for adjudicating juvenile offenders as delinquents through non-jury delinquency proceedings); Act No. 1195, 1968 S.C. Acts & Joint Resolutions (establishing a uniform family court system throughout South Carolina, granting family courts exclusive original jurisdiction over cases involving children, and authorizing family court judges to adjudicate juvenile offenders as delinquents through non-jury delinquency proceedings).

Thus, any rights Petitioner may have regarding adjudication as a juvenile in Family Court are statutorily created. All statutes are presumed to be constitutional and, if possible, will be construed in such a way to render them valid. State v. Neuman, 384 S.C. 395, 402, 683 S.E.2d 268, 271 (2009); see Powell v. Hargrove, 136 S.C. 345, 350, 134 S.E. 380, 382 (1926) ("[An appellate court] must sustain the validity of the legislative enactment, if it is possible to do so by any reasonable construction of the Constitution, even though the Court might differ with the Legislature as to the propriety of the legislation."). A statute "will not be declared unconstitutional unless its repugnance to the constitution is clear and beyond a reasonable doubt[,]" and the party challenging the validity of the statute has the burden of proving that it is unconstitutional. In re Care and Treatment of Lasure, 379 S.C. 144, 147, 666 S.E.2d 228, 229 (2008); see State v. Jones, 344 S.C. 48, 58, 543 S.E.2d 541, 546 (2001) ("Appellants have the burden of proving the statute unconstitutional.")

Here, Petitioner relies on the holdings and reasoning in the cases of Miller v. Alabama, 567 U.S. 460 (2012), and Aiken v. Byars, 410 S.C. 534, 765 S.E.2d 572 (2014), and their progeny to support his argument. However, Petitioner's reliance on these cases is misplaced, as these cases apply only in the context of a mandatory sentence of life without parole for homicide crimes. Petitioner was convicted of two non-homicide crimes, and he was not sentenced to life without the possibility of parole, or even a "de facto" life sentence, and thus does not fit within the scope of the cited cases.

This Court in Byars vacated all life without parole sentences imposed on juvenile offenders and found the defendants were entitled to new sentencing hearings where the courts "fully explore[d] the impact of the defendant's juvenility on the sentence rendered." Id. at 545, 765 S.E.2d at 578. After Byars, however, this Court has considered various other challenges to juvenile sentencing schemes alleged to have been made unconstitutional by Miller, and the Court has consistently rejected that proposition.

For example, in State v. Slocumb, this Court held the following as to "de facto" life sentences for juvenile offenders:

> Neither Graham nor the Eighth Amendment, as interpreted by the Supreme Court, currently prohibits the imposition of aggregate sentences for multiple offenses amounting to a *de facto* life sentence on a juvenile non-homicide offender. We therefore decline to provide Slocumb relief from his 130-year sentence stemming from his multiple and violent crimes.

426 S.C. 297, 314-15, 827 S.E.2d 148, 157 (2019). More to the point, in State v. Smith, decided shortly after Slocumb, this Court held that mandatory minimum sentences for juveniles are constitutional under the Eighth Amendment and Miller.[2] 428 S.C. 417, 421, 836 S.E.2d 348, 350 (2019). In Smith, this Court explained:

[2] Tellingly, Petitioner failed to discuss or cite to Smith in his brief.

> Smith argues the statute is unconstitutional because it places juvenile and adult homicide offenders on equal footing for sentencing purposes, and the Eighth Amendment, as interpreted by the United States Supreme Court (the Supreme Court) in Miller v. Alabama, forbids such a result. In accordance with the overwhelming majority of states that have addressed similar arguments, we hold the mandatory minimum sentence imposed by section 16-3-20(A) is constitutional as applied to juveniles and affirm Smith's convictions and sentences.

Id. at 420, 836 S.E.2d at 349.

Additionally, the United States Supreme Court tacitly approved juvenile waiver provisions similar to South Carolina's when it declined to grant certiorari to review the D.C. Circuit Court of Appeals' decision in United States v. Bland, in which the Court of Appeals found "the legitimate scope of prosecutorial discretion clearly encompasses the exercise of such discretion where it has the effect of determining whether a person will be charged as a juvenile or as an adult." 472 F.2d 1329 (D.C. Cir. 1972), cert denied, 93 S. Ct. 2294 (1973). Bland, who was sixteen years old at the time of his arrest and indictment for armed robbery and related offenses, challenged the constitutionality of a District of Columbia statute which defined the term "child" in such a way as to exclude "an individual who is sixteen years of age or older and... charged by the United States Attorney with... murder, forcible rape, burglary in the first degree, robbery while armed..." or other specified offenses. Id. at 1330. Similarly, South Carolina's waiver statute in effect at the time Petitioner committed these crimes[3] provided: "'Child' or 'juvenile' does not mean a person sixteen years of age or older who is charged with a Class A, B, C, or D felony as defined in Section 16-1-20 or a felony which provides for a maximum term of imprisonment of fifteen years or more." S.C. Code. § Ann. 63-19-20 (2014). The Bland court, noting "legislative exclusion of individuals

[3] Petitioner was sixteen when he committed these crimes. App. 22. At that time, section 63-19-20 automatically waived juvenile offenders aged sixteen or older to General Sessions. S.C. Code. § Ann. 63-19-20 (2014). However, effective July 1, 2019, the automatic waiver now operates for offenders aged seventeen and older. S.C. Code Ann. § 63-19-20 (2020).

charged with certain specified crimes from the jurisdiction of the juvenile justice system is not unusual," held, "[i]n the absence of such 'suspect' factors as 'race, religion, or other arbitrary classification,' the exercise of discretion by the United States Attorney in the case at bar involves no violation of due process or equal protection of the law." Id. at 1334, 1338. Accepting Bland's argument, the court wrote, would also require it to "accept the hitherto unaccepted argument that due process requires an adversary hearing before the prosecutor can exercise his age-old function of deciding what charge to bring against whom." Id. at 1338.

Smith and Bland directly refute Petitioner's argument that section 63-19-20 is unconstitutional because it restricts a judge's decision-making ability by requiring a mandatory minimum sentence be imposed upon a juvenile offender. Mandatory minimum sentences for juveniles sentenced in adult court are not unconstitutional and do not run afoul of Miller. Smith, 428 S.C. at 420, 836 S.E.2d at 349. Further, Bland makes clear that automatic waiver provisions, like South Carolina's, which operate by giving the prosecuting attorney discretion to charge a person sixteen years of age or older with certain enumerated crimes and thereby prosecute that person as an adult, do not violate due process.

While state laws and policies can sometimes create a protected liberty interest triggering due process, "the United States Supreme Court has never held there is a protected liberty interest in being treated as a juvenile" offender for purposes of adjudication. State v. Orozco, 483 P.3d 331 (2021) (citing Wilkinson v. Austin, 454 U.S. 209 (2005)); see also State v. Rice, 401 S.C. 330, 335, 737 S.E.2d 485, 487 (2013) ("[T]he decision whether to waive a juvenile to general sessions court in no manner determines the juvenile's guilt, innocence, or punishment—it merely determines the forum in which the case is to be tried."). Additionally, numerous other states have considered this exact issue of automatic waiver provisions and the adjudication of juvenile

offenders is regular criminal courts and found them to be constitutional. See, e.g., State v. B.T.D., 296 So. 3d 343, 354 (Ala. Crim. App. 2019) (holding that "[a]bsent a statutory right to 'exclusive' juvenile court jurisdiction, a child does not have any recognized protectable liberty interest in a juvenile adjudication."); State v. Watkins, 191 Wash.2d 530, 423 P.3d 830, 834–36 (2018) (noting Washington's statutory scheme "precludes our juvenile courts from presiding over a particular class of juveniles[,]" i.e., those charged with an enumerated offense); State v. Angilau, 245 P.3d 745, 750–51 (Utah 2011) (holding Utah's automatic waiver was constitutional and did not create a liberty interest because the defendant "was never entitled to juvenile jurisdiction once he met the criteria in the automatic waiver statute."); State v. Behl, 564 N.W.2d 560, 567 (Minn. 1997) (reasoning that "[p]rocedural due process ... requires no such hearing for *automatic certification* because the juvenile court never had jurisdiction over the juvenile." (emphasis in original)).

Thus, Petitioner's automatic waiver to General Sessions on the basis of his age plus the fact that the crimes he committed were within the specified classes of qualifying felonies cannot be unconstitutional simply because it exposes him to a legal, mandatory minimum sentence. Accordingly, the PCR court therefore did not commit any error of law and correctly denied relief. This Court should affirm.

CONCLUSION

For the foregoing reasons, this Court should affirm the decision of the PCR court denying relief.

Respectfully submitted,

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