OPINIONS

OF

THE SUPREME COURT

AND

COURT OF APPEALS

OF

SOUTH CAROLINA

ADVANCE SHEET NO. 28

July 17, 2006
Daniel E. Shearouse, Clerk
Columbia, South Carolina
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THE STATE OF SOUTH CAROLINA
In The Supreme Court

The State, Respondent.

v.

Thomas Bryant, Petitioner.

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS

Appeal from Richland County
Marc H. Westbrook, Circuit Court Judge

Opinion No. 26183
Heard November 15, 2005 – Filed July 17, 2006

REVERSED

Assistant Appellate Defender Robert M. Dudek, of South Carolina Commission on Indigent Defense, Division of Appellate Defense, of Columbia, for Petitioner.

Attorney General Henry Dargan McMaster, Chief Deputy Attorney General John W. McIntosh, Assistant Deputy Attorney General Donald J. Zelenka, Assistant Attorney General Derrick K. McFarland, and Solicitor Warren B. Giese, all of Columbia, for Respondent.

CHIEF JUSTICE TOAL: We granted Petitioner a writ of certiorari to review *State v. Bryant*, 356 S.C. 485, 589 S.E.2d 775 (Ct. App. 2003), in which the court of appeals affirmed the trial court's admission of Petitioner's two prior firearms convictions. We reverse.

FACTUAL/PROCEDURAL BACKGROUND

Petitioner has been confined to a wheelchair for over twenty years due to a car accident. On July 22, 1999, he was visiting the Bottoms Up strip club, where he met the victim, Daniel Fletcher Austin. At approximately 3:30 a.m., the two left the club together to go back to Petitioner's hotel room.

Between 3:30 and 4:00 a.m., as he was leaving his room to go to work, Kevin Hawkins saw Petitioner alone in the corridor. Petitioner asked Hawkins to get him help because he said he had been injured in a physical altercation. Hawkins informed the front desk clerk of Petitioner's claims. As the clerk called the sheriff's department, she heard shots. Immediately before calling the sheriff, the clerk testified she had given Austin a key to Petitioner's room.

The police arrived and found Austin lying in the breezeway shot six times and bleeding. A stand-off ensued between the police and Petitioner which lasted 20-25 minutes. The stand-off ended when a SWAT team rushed Petitioner's room and found Petitioner on the floor with a self-inflicted gunshot wound to his stomach.

Petitioner was convicted of murder and the unlawful possession of a weapon by a convicted felon. He was sentenced to life without parole for the murder and five years concurrent for the weapons charge.

ISSUE

Did the circuit court err in admitting Petitioner's prior firearms convictions?

LAW/ANALYSIS

At trial, prior to Petitioner testifying, the State sought to introduce evidence that Petitioner had previously been convicted of voluntary manslaughter in 1984, shoplifting in 1992, a bad check charge in 1994, possession of a unlawful weapon by a convicted felon in 1997, and pointing and presenting a firearm in 1998. Petitioner did not object to the admission of the shoplifting or bad check convictions. He argued, however, that the manslaughter conviction should be excluded because it was more than ten years old. As to the two weapons convictions, Petitioner argued they did not have anything to do with truthfulness and thus their probative value was low. He further argued that their similarity to the current charges caused their admission to be highly prejudicial.

The State contends the convictions were offered to impeach Petitioner and to show "the defendant continues to get in trouble even after 1990. Every two years, he commits at least two crimes." The trial judge allowed the firearms convictions to be introduced, and although the manslaughter conviction itself was not introduced, Petitioner stipulated he had been convicted of a violent crime in 1984.

The court of appeals affirmed Petitioner's convictions in a 2:1 decision. *Bryant*, 356 S.C. 485, 589 S.E.2d 775. Relying on *State v. Green*, 338 S.C. 428, 527 S.E.2d 827 (2000), the majority reviewed the trial court's statements as a whole and concluded that the trial court had an appropriate reason to admit the evidence "based on [the trial court's] belief the testimony could lead to an inference [Petitioner] was unworthy of credibility because of his prior convictions." *Bryant*, 356 S.C. at 491, 589 S.E.2d at 776.

Noting the importance of "[Petitioner's] testimony to his defense, and the state's burden of discounting his testimony to prove the elements of murder," the Court of Appeals nonetheless held the trial judge did not abuse his discretion in admitting Petitioner's prior convictions to impeach his credibility. *Id*. at 492, 589 S.E.2d at 779. Judge Beatty dissented and stated he believed the prior convictions were improper character evidence and should not have been admitted. *Id*. at 496, 589 S.E.2d at 781. He also concluded that the admission was not harmless because there was not overwhelming evidence of Petitioner's guilt. *Id*.

This Court has held that a trial judge must conduct a balancing test to determine whether remote convictions are admissible under Rule 609(b), SCRE. *State v. Colf*, 337 S.C. 622, 626, 525 S.E.2d 246, 248 (2000). Rule 609(b) creates a presumption that remote convictions are inadmissible and places the burden on the State to overcome this presumption. *Id.* When considering whether to admit prior convictions, a trial judge should consider the following factors:

> (1) The impeachment value of the prior crime;
> (2) The point in time of the conviction and the witness's subsequent history;
> (3) The similarity of the past crime and the charged crime;
> (4) The importance of the defendant's testimony; and
> (5) The centrality of the credibility issue.

Id. at 627, 525 S.E.2d at 248. After the trial court conducts the balancing test, the judge must make a determination and articulate, on the record, the specific reasons for his ruling. *Id*. Specifically, the trial judge must articulate why the probative value of the prior conviction outweighs its prejudicial effect. *State v. Johnson*, 363 S.C. 53, 59-60, 609 S.E.2d 520 (2005). [1]

[1]Although *Colf* involved the admission of remote convictions under Rule 609(b), the "[Court of Appeals] has implicitly recognized the value of these factors in making such a determination under Rule 609(a)(1), and urged the trial bench to not only articulate its ruling, but to also provide the basis for it, thereby clearly and easily informing the appellate courts that a meaningful

Under Rule 609(a)(2), SCRE, if a crime is viewed as one involving dishonesty, the court must admit the prior conviction because, prior convictions involving dishonesty or false statement must be admitted regardless of their probative value or prejudicial effect. Thus, Petitioner's convictions for shoplifting and writing bad checks were properly admitted and Petitioner does not dispute this. The issue is whether the prior firearms convictions involve dishonesty or false statements so as to be admissible without weighing the probative value of their admission with its prejudicial effect.

Violations of narcotics laws are generally not probative of truthfulness. *See State v. Cheeseboro,* 346 S.C. 526, 552 S.E.2d 300 S.C. (2001) (citing *State v. Aleksey*, 343 S.C. 20, 538 S.E.2d 248 (2000)). Furthermore, a conviction for robbery, burglary, theft, and drug possession, beyond the basic crime itself, is not probative of truthfulness. *United States v. Smith*, 181 F.Supp.2d 904 (N.D. Ill. 2002). Likewise, firearms violations also are not generally probative of truthfulness. Accordingly, Petitioner's prior firearms convictions do not involve dishonesty and their probative value should have been weighed against their prejudicial effect prior to their admission pursuant to Rule 609(a)(1).

In admitting the prior firearms convictions, the trial judge noted that "the fact that he may tend to get in trouble from time to time, while it has a certain amount of prejudice in it, also, does include that issue of whether or not he's worthy of belief." The trial judge did not address the similarity of the prior convictions to the current charges as required by *Colf.* Additionally, we note that when the prior offense is similar to the offense for which the defendant is on trial, the danger of unfair prejudice to the defendant from impeachment by that prior offense weighs against its admission. *See e.g., Colf*, 337 S.C. at 628, 525 S.E.2d at 249. Petitioner's prior firearms

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balancing of the probative value and the prejudicial effect has taken place as required by Rule 609(a)(1)." *State v. Martin*, 347 S.C. 522, 530, 556 S.E.2d 706, 710 (Ct. App. 2001) (internal quotation marks omitted).

convictions had nothing to do with Petitioner's credibility and, their admission was more prejudicial than probative, especially in light of the offenses for which he was on trial. Accordingly, we hold the trial court erred in admitting Petitioner's prior firearms convictions.

The State, however, contends even if the trial court erred, the admission of Petitioner's prior convictions was harmless. We disagree.

Error is harmless where it could not reasonably have affected the result of the trial. *In re Harvey*, 355 S.C. 53, 584 S.E.2d 893 (2003). Generally, appellate courts will not set aside convictions due to insubstantial errors not affecting the result. *State v. Sherard*, 303 S.C. 172, 399 S.E.2d 595 (1991). Thus, an insubstantial error not affecting the result of the trial is harmless where a defendant's guilt has been conclusively proven by competent evidence such that no other rational conclusion can be reached. *State v. Bailey*, 298 S.C. 1, 377 S.E.2d 581 (1989). The circumstances of each individual case are to be considered.

Additionally, "this Court has placed great emphasis on the importance of a defendant's right to assert self-defense when there is *any evidence* to support it." *State v. Taylor*, 356 S.C. 227, 235, 589 S.E.2d 1, 5 (2003) (emphasis added). In acknowledgement of this important right, our Court has made every effort to assure that the burden remains on the State to disprove self-defense. *See State v. Burkhart*, 350 S.C. 252, 565 S.E.2d 298 (2002); *State v. Addison*, 343 S.C. 290, 540 S.E.2d 449 (2000); *State v. Wiggins*, 330 S.C. 538, 500 S.E.2d 489 (1998).

In this case, Petitioner's defense was that he acted in self-defense, and this hinged entirely on his own testimony. Moreover, the only witnesses to the shooting were Petitioner and the victim. Although, the record contains evidence which may undermine Petitioner's self-defense theory, the record also contains evidence which supports Petitioner's self-defense theory. Therefore, the State should not be allowed to attack the defendant's credibility with inadmissible prior convictions; especially where the Petitioner's credibility was essential to his defense. Accordingly, we hold the

improper admission of Petitioner's prior firearms convictions was not harmless.

CONCLUSION

Based on the foregoing, we hold the improper admission of Petitioner's prior firearms convictions was erroneous and does not qualify as harmless error. Accordingly, we hold his murder conviction should be

REVERSED.[2]

MOORE, PLEICONES, JJ., and Acting Justice James C. Williams, concur. BURNETT, J., dissenting in a separate opinion.

[2]At trial, Petitioner admitted he was guilty of unlawful possession of a weapon by a convicted felon and his self-defense argument went to only the murder charge. Accordingly, his conviction for unlawful possession of a weapon stands.

BURNETT, J.: I agree with the majority's conclusion the trial court erred in admitting Petitioner's prior firearms convictions. However, I disagree with the majority's harmless error analysis. Therefore, I respectfully dissent.

Error is harmless where it could not reasonably have affected the result of the trial. In re Harvey, 355 S.C. 53, 63, 584 S.E.2d 893, 897 (2003). The materiality and prejudicial character of the error must be determined from its relationship to the entire case. State v. Mitchell, 286 S.C. 572, 573, 336 S.E.2d 150, 151 (1985). Generally, appellate courts will not set aside convictions due to insubstantial errors not affecting the result. State v. Sherard, 303 S.C. 172, 176, 399 S.E.2d 595, 597 (1991). Thus, an insubstantial error not affecting the result of the trial is harmless where guilt has been conclusively proven by competent evidence such that no other rational conclusion can be reached. State v. Bailey, 298 S.C. 1, 5, 377 S.E.2d 581, 584 (1989). Error is harmless beyond a reasonable doubt where it did not contribute to the verdict obtained. Arnold v. State, 309 S.C. 157, 172, 420 S.E.2d 834, 842 (1992). Where a review of the entire record establishes the error is harmless beyond a reasonable doubt, the conviction should not be reversed. State v. Pickens, 320 S.C. 528, 531, 466 S.E.2d 364, 366 (1996).

To establish self defense: (1) the defendant must be without fault in bringing on the difficulty; (2) the defendant must have been in actual imminent danger of losing his life or sustaining serious bodily injury, or he must have actually believed he was in imminent danger of losing his life or sustaining serious bodily injury; (3) the defendant must show that a reasonably prudent person of ordinary firmness and courage would have entertained the belief that he was actually in imminent danger and that the circumstances were such as would warrant a person of ordinary prudence, firmness, and courage to strike the fatal blow in order to save himself from serious bodily harm or the loss of his life; and (4) the defendant had no other probable means of avoiding the danger. State v. Bryant, 336 S.C. 340, 344-45, 520 S.E.2d 319, 321-22 (1999); State v. Goodson, 312 S.C. 278, 280, 440 S.E.2d 370, 372 (1994).

At trial, Petitioner argued he acted in self defense and this defense hinged entirely on his own testimony. In my opinion, Petitioner's exculpatory story of self defense is not plausible.

Petitioner testified he was living at Days Inn, where he met the victim, Austin, earlier in the week. He testified on July 22, 1999, he went to Bottoms Up, a strip club, where he met Austin. He and Austin had several alcoholic drinks during the evening. Austin repeatedly asked Petitioner if he had any "weed" or knew where to find any "weed," but Petitioner repeatedly told Austin he did not. Around 3:30 a.m. Petitioner left the club to go back to the hotel and Austin followed him. The two men had a fist fight in the parking lot of Bottoms Up, and Petitioner testified Austin did not possess a weapon during the fight. He and Austin continued towards the hotel, but they got into another fist fight during which Petitioner fell out of his wheelchair. Austin kicked Petitioner in the face and eventually helped him back into his wheelchair. The two men then proceeded to Petitioner's room, where they again had an altercation in front of the room. Petitioner fell out of his wheelchair during this incident, and Austin helped him back into the wheelchair. At this point, Austin left and went to the hotel desk clerk to get a room key.

Kevin Hawkins testified he saw Petitioner alone in the corridor between 3:30 a.m. and 4:00 a.m. Petitioner asked Hawkins to tell the front desk clerk he had been robbed and needed help. Hawkins testified Petitioner had a scrape on his nose and he informed the front desk of Petitioner's request.

Petitioner testified as he opened the door to his room, Austin reappeared. Austin then followed Petitioner inside, closed the door, and demanded "weed." Petitioner testified he thought Austin would kill him and that another person was with Austin. He further testified Austin was not armed.

Petitioner then went to the nightstand and retrieved a loaded pistol. He shot Austin six times and Austin fell, got back up, and ran out of the room. Petitioner then went to the dresser and retrieved a loaded shotgun.

He went into the breezeway where he saw Austin leaning against the wall.[3] Petitioner fired the shotgun five times because he thought Austin had not been previously hit. He then went back into the room, reloaded both guns, and shot out into the hallway from the room. Petitioner eventually shot himself in the stomach before being apprehended by police after a stand-off.

In my opinion, Petitioner's guilt was conclusively proven by competent evidence such that no other rational conclusion could have been reached. Petitioner testified that after he shot the unarmed Austin six times, Austin ran out of the room. See State v. Light, 363 S.C. 325, 610 S.E.2d 504 (Ct. App. 2005) (unarmed victim did not pose a threat to armed defendant and the defendant could not have reasonably believed she did.) Further, Petitioner followed Austin out into the hallway and continued shooting, even though he was not sure it was Austin in the hallway.

Significantly, the ballistics evidence does not support Petitioner's claims. The State's ballistics experts testified the pistol shots were fired through the hotel room door. Further, an officer testified he did not see any blood in the hotel room which is inconsistent with Austin having fallen after being shot several times while in the hotel room.

Even though the trial court erred in admitting Petitioner's prior convictions, the error was harmless because the evidence fails in any respect to support Petitioner's self-defense theory. A reasonably prudent person would not have believed Petitioner had to shoot Austin repeatedly through a door, reload, follow him into the hallway, and again shoot him in the hallway in order to save himself from serious bodily harm or the loss of his life. Accordingly, the admission of the prior firearms convictions was harmless.

[3] Petitioner testified he was not sure if the person in the breezeway was Austin.

THE STATE OF SOUTH CAROLINA
In The Supreme Court

Ralph Delahoussaye, Respondent,

v.

State of South Carolina, Petitioner.

ON WRIT OF CERTIORARI

Appeal From Charleston County
A. Victor Rawl, Circuit Court Judge

Opinion No. 26184
Submitted May 24, 2006 – Filed July 17, 2006

AFFIRMED IN PART; REVERSED IN PART

Attorney General Henry Dargan McMaster, Chief Deputy Attorney General John W. McIntosh, Assistant Deputy Attorney General Donald J. Zelenka, of Columbia, for Petitioner.

Assistant Appellate Defender Eleanor Duffy Cleary, of South Carolina Commission on Indigent Defense, Division of Appellate Defense, of Columbia, for Respondent.

JUSTICE WALLER: This Court granted the State's petition for a writ of certiorari to review the grant of post-conviction relief (PCR) to respondent Ralph Delahoussaye. We affirm in part, and reverse in part.

FACTS

On March 9, 1976, a jury convicted respondent of armed robbery, and the trial court sentenced him to 25 years imprisonment. This Court affirmed respondent's conviction on November 12, 1976. State v. Delahoussaye, Op. No. 76-MO-106 (S.C. Sup. Ct. filed Nov. 12, 1976). Four days later, on November 16, 1976, respondent escaped from the custody of the South Carolina Department of Corrections (SCDOC).

While an escapee, respondent committed the federal crimes of conspiracy to kidnap, conspiracy to transport a stolen motor vehicle interstate, and possession of a firearm during the commission of a felony. He was sentenced to 45 years in federal district court in Georgia on February 4, 1977. At the sentencing, the trial court stated:

> Now you all[1] have difficulties with the State of South Carolina as to the charges you were serving and have not yet completed. There are other charges pending against you that have not yet been resolved. The sentence that this Court imposes upon each of you today is separate and distinct of all other sentences that have been imposed or that may be imposed by any other court, Federal or State. I say that so there won't be any misunderstanding about that.

The SCDOC issued a detainer against respondent on August 7, 1979.[2] After being paroled from federal prison, respondent returned to the SCDOC's

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[1] Respondent had a co-defendant in federal court.

[2] The August 7, 1979, letter indicated respondent was "wanted to complete the remainder of the 25-year sentence from which he escaped on November 16, 1976," in addition to being wanted for other outstanding charges related to his escape. Eventually, the detainer that was specifically related to the unresolved charges was

custody on February 2, 2002. The SCDOC calculated his projected max-out date for the 25-year armed robbery sentence as August 9, 2015.

In June 2002, respondent filed for PCR seeking credit for the time he served while in federal custody. After a hearing, the PCR court rejected the State's argument that, pursuant to Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000), this is an administrative matter not properly heard in PCR court. In addition, the PCR court granted respondent relief and ordered that respondent's sentence "be recalculated so that he is given credit for time spent in federal custody since August 7, 1979."

ISSUES

1. Did the PCR court err in finding that respondent's claim, involving credit for time served in another jurisdiction, was appropriate for PCR?

2. Did the PCR court err in finding that respondent's time served in federal custody, for crimes committed after his escape from South Carolina's custody, entitled him to credit on his original South Carolina armed robbery sentence?

DISCUSSION

1. Propriety of Claim under PCR Act

The State argues that the PCR court erred in allowing respondent's claim to be asserted under the PCR Act because it involves service credit which, pursuant to Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000), is the type of claim that should be reviewed under the Administrative Procedures Act (APA).

In Al-Shabazz, this Court held that under the PCR statute, PCR is proper only when the applicant mounts a collateral attack challenging the

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considered "void" for lack of prosecution, but a "hold" was continued due to respondent's 25-year sentence for the armed robbery conviction.

validity of his conviction or sentence. Al-Shabazz, 338 S.C. at 367, 527 S.E.2d at 749 (citing S.C. Code Ann. § 17-27-20(a)). Nonetheless, the Al-Shabazz Court noted "two non-collateral matters specifically listed in Section 17-27-20(a)(5)" that are cognizable under the PCR Act: "the claim that an applicant's sentence has expired and the claim that an applicant's probation, parole, or conditional release has been unlawfully revoked."[3] Id. at 368, 527 S.E.2d at 749.

As for the majority of non-collateral matters, however, Al-Shabazz stated that these claims generally would be decided first by the SCDOC's internal grievance system and then would be subject to review under the APA. Id. at 369, 527 S.E.2d at 750. Specifically, the Court noted that "[t]hese administrative matters typically arise in two ways: (1) when an inmate is disciplined and punishment is imposed and (2) when an inmate believes prison officials have erroneously calculated his sentence, sentence-related credits, or custody status." Id.

The PCR court found that the instant case was distinguishable from Al-Shabazz, which concerned **discretionary** good-time credits, because this case involved "day-for-day time actually served" by the inmate. In addition, the PCR court found that where a case involves the expiration of a sentence, Al-Shabazz specifically allowed this type of claim under the PCR Act.

We agree with the PCR court that respondent's case encompasses a claim that his sentence had expired.[4] Therefore, this matter was appropriately

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[3] Section 17-27-20 lists who may institute a PCR action and specifically states that "[a]ny person who has been convicted of, or sentenced for, a crime and who claims: … (5) **That his sentence has expired**, his probation, parole or conditional release unlawfully revoked, **or he is otherwise unlawfully held in custody** or other restraint" may bring a claim under the PCR Act. S.C. Code Ann. § 17-27-20(a)(5) (2003) (emphasis added).

[4] We note the SCDOC **released** respondent from its custody after the PCR court granted him relief (but prior to the State filing its appeal). Thus, **under these particular facts**, it is clear to us respondent's claim regarding credit for approximately 23 years of federal time actually served indeed was a claim that his 25-year South Carolina sentence had expired.

filed pursuant to the PCR statute. See S.C. Code Ann. § 17-27-20(a)(5); Al-Shabazz, 338 S.C. at 368, 527 S.E.2d at 749.

Accordingly, we affirm the PCR court's ruling on this issue.

2. Credit For Federal Time Served After An Escape

The State also argues that when an inmate escapes from the SCDOC's custody, subsequently commits a crime in another jurisdiction while an escapee, and serves time for the subsequent crime, the inmate should not be entitled to credit for the time served simply because the SCDOC has issued a detainer. The PCR court, however, found that this Court's decision in Robinson v. State, 329 S.C. 65, 495 S.E.2d 433 (1998), clearly stated that a South Carolina convict may receive credit for the time that he is incarcerated in another jurisdiction from the time that a detainer is issued by the SCDOC. We agree with the State that because Robinson did not involve an escapee, it is inapplicable to the instant case.

In Robinson v. State, Robinson had been found guilty of accessory after the fact of a felony in South Carolina state court in 1989; he was sentenced to ten years imprisonment. He appealed his conviction **and was released on appeal bond**. Later in 1989, he was arrested in Chicago on federal RICO charges. He was subsequently convicted and sentenced to six years in prison. Then, in August 1992, he was convicted and sentenced to life imprisonment on additional, gang-related federal charges. The federal sentences were ordered to run concurrently with Robinson's state sentence. 329 S.C. at 66-67, 495 S.E.2d at 434. Robinson's state conviction was affirmed by this Court in September 1991 (which was in between his federal court convictions). See State v. Robinson, 305 S.C. 469, 409 S.E.2d 404 (1991), cert. denied, 503 U.S. 937 (1992).

Robinson filed for PCR seeking to obtain credit in South Carolina for time served in federal custody from the date his conviction was affirmed. Robinson had been in federal custody from the date of his 1989 arrest until January 18, 1995, when he was admitted to, but deemed absent with leave from, the SCDOC. The PCR court granted Robinson credit for time served

from the date his South Carolina conviction was affirmed. Robinson v. State, 329 S.C. at 67, 495 S.E.2d at 434.

This Court reversed explaining that because the federal sentences had been ordered to run concurrent with the South Carolina sentence, "the Bureau of Prisons should have delivered Robinson into South Carolina custody so that the federal court's imposition of a concurrent sentence could be satisfied." Id. at 71, 495 S.E.2d at 436. However, the Court also stated that while a "convict is subject to a South Carolina detainer, he is constructively in South Carolina custody. As a result, a convict will receive credit for time spent in another jurisdiction while subject to a South Carolina detainer." Id. at 71, 495 S.E.2d at 436-37. Therefore, the Court held that he should have been given credit for time served since January 18, 1995 (the date he was constructively admitted to the SCDOC). Id. at 71, 495 S.E.2d at 437.

Respondent argues the rule of Robinson applies to his case despite the fact that he escaped from state custody. Specifically, respondent maintains that the lodging of a detainer significantly harms a federal inmate's status, and these consequences occur "regardless of whether the person escaped." Thus, respondent contends that the PCR court correctly applied Robinson. We disagree. Because Robinson was **lawfully** out on appeal bond, he was entitled to the credit. Here, however, respondent **escaped** from the SCDOC's custody. Under South Carolina law, it is clear respondent's status as an escapee distinguishes this case from the Robinson rule.

In Oglesby v. Leeke, 263 S.C. 283, 210 S.E.2d 232 (1974), we stated that "[a]s a general rule, a sentence can be satisfied only by death, service of the required time, or relief therefrom by competent authority." Id. at 287, 210 S.E.2d at 234. There, Oglesby had been sentenced to three years for housebreaking and larceny; he escaped approximately five months after his sentence began. Subsequently, he committed a crime in New York and served time there. While serving the New York sentence, a detainer was filed requesting a hold for South Carolina. Oglesby refused to waive extradition, but extradition was eventually granted, and he returned to prison in South Carolina to complete service of the three-year sentence. Id. at 285-86, 210 S.E.2d at 233.

This Court affirmed the trial court's denial of "credit for any of the time he was away during his escape." Id. at 286, 210 S.E.2d at 233. Significantly, we held that Oglesby's escape "tolled the running of the sentence he was then serving and the time of his imprisonment under that sentence did not again begin to run until his return to the South Carolina prison." Id. Moreover, we observed that Oglesby's:

> [E]ntire absence was because of his escape and his resistance to efforts of the State of South Carolina to effect his return for the service of his sentence. **It is undisputed that no part of his absence or imprisonment in New York was in execution of the South Carolina sentence**.

Id. at 286-87, 210 S.E.2d at 233-34 (emphasis added).

We hold that the rule of Oglesby was not modified by this Court's decision in Robinson and therefore directly applies to respondent's case. Here, as in Oglesby, respondent's entire absence from the SCDOC's custody was because of his escape. Furthermore, given the federal trial judge's comments regarding respondent's "difficulties with the State of South Carolina" and that the federal sentence was "separate and distinct of all other sentences that have been imposed or that may be imposed by any other court," respondent cannot assert that his federal sentence was intended to run concurrently with his South Carolina sentence.

Moreover, because we have previously distinguished a rule regarding service credit based on whether the inmate's status was non-escapee versus escapee, it is consistent with South Carolina case law that the Robinson rule should not be applied to an escapee. Compare State v. Dozier, 263 S.C. 267, 210 S.E.2d 225 (1974) (holding that where a non-escapee is imprisoned in another state while contesting extradition, he is entitled to credit on any subsequent South Carolina sentence) with Kephart v. State, 277 S.C. 395, 289 S.E.2d 402 (1982) (holding that escapee's time spent imprisoned in

Pennsylvania contesting extradition should not be credited toward his remaining armed robbery sentence in South Carolina).[5]

Finally, we note that several other states have also ruled an escapee cannot be credited with time served in another jurisdiction on a subsequent crime. See, e.g., Woodson v. State, 383 N.E.2d 1096 (Ind. Ct. App. 1978); Williams v. State, 280 N.W.2d 406 (Iowa 1979); State *ex rel.* Linehan v. Wood, 397 N.W.2d 341 (Minn. 1986); Commonwealth *ex rel.* Goins v. Rundle, 192 A.2d 720 (Pa.), cert. denied, 375 U.S. 959 (1963); Carter v. State, 523 S.W.2d 639 (Tenn. Crim. App. 1975).

Indeed, "[i]t would be a novel rule which would allow a sentenced criminal, by the simple expedient of escape, to select the state in which he wishes to serve his incarceration." Williams, 280 N.W.2d at 408; see also Carter, 523 S.W.2d at 640 ("Service of jail time in another jurisdiction during a fugitive status certainly does not double as service of the punishment escaped from.").

In sum, we find the PCR court erred by applying Robinson and ordering that respondent's sentence be recalculated by the SCDOC. Because respondent's escape "tolled the running of the sentence he was then serving," the SCDOC correctly calculated that his 25-year armed robbery sentence originally imposed in 1976 "did not again begin to run until his return to the South Carolina prison" in 2002. Oglesby, 263 S.C. at 287, 210 S.E.2d at 234.

Accordingly, we reverse the PCR court's grant of relief to respondent. See Pierce v. State, 338 S.C. 139, 145, 526 S.E.2d 222, 225 (2000) (the Court will reverse if the PCR court's decision is controlled by an error of law).

[5] The Legislature has also made distinctions regarding service credit based on an inmate's escapee status. See S.C. Code Ann. § 24-13-40 (1976) (statute for computation of time served by prisoners provides that full credit shall be given for time served prior to trial and sentencing, **except** that credit for time served shall **not** be given "when the prisoner at the time he was imprisoned prior to trial was an escapee from another penal institution").

CONCLUSION

Based on the above reasons, the PCR court's finding that respondent properly pursued this action under the PCR Act is affirmed. However, we reverse the PCR court's ruling that respondent was entitled to credit on his South Carolina armed robbery sentence for federal time served after he escaped from the SCDOC's custody.

AFFIRMED IN PART; REVERSED IN PART.

TOAL, C.J., MOORE, BURNETT and PLEICONES, JJ., concur.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

LandBank Fund VII, LLC., Respondent,

v.

Kent D. Dickerson, Dickerson & Sons, Inc., and Phoenix Land and Development Company, LLC, Appellants.

Appeal From Horry County
J. Stanton Cross, Jr., Master-in-Equity

Opinion No. 4111
Heard March 7, 2006 – Filed May 8, 2006
Withdrawn, Substituted and Refiled July 11, 2006

AFFIRMED

C. Mitchell Brown, William C. Wood, Jr., Elizabeth Herlong Campbell, all of Columbia, for Appellants.

J. Jackson Thomas, of Myrtle Beach, for Respondent.

WILLIAMS, J.: Kent D. Dickerson, Dickerson & Sons, Inc., and Phoenix Land and Development Company, LLC,[1] appeal a decision of the Horry County Master-in-Equity concluding Dickerson was not entitled to additional compensation for certain work performed on behalf of LandBank Fund VII, LLC. We affirm.

FACTS

In 1995, Joe C. Garrell, a Myrtle Beach resident and licensed realtor, recruited investors from among his family and friends for the purpose of acquiring and reselling a large tract of land in Horry County. The group of investors formed LandBank, LLC, a South Carolina limited liability company, to facilitate the transaction. Garrell received a real estate commission on the land sale and a membership interest in the company for his efforts in forming the entity and acquiring the land.

The initial LandBank transaction proceeded smoothly and was financially beneficial to the company and its members. Accordingly, the transaction was followed by several other purchases, most from the same seller as the initial transaction, International Paper. To facilitate these subsequent purchases, four additional limited liability companies were formed. The companies were ultimately dubbed Landbank II, LandBank Fund III, LandBank Fund IV, and Landbank Fund V. LandBank entities II through V were each concerned with separate purchases, and the subsequent sale of, different tracts of land, but were virtually identical in membership and operation to the original LandBank, LLC.

In 1999, LandBank Resource Management, LLC, ("LRM") was formed to provide management services to all the LandBank entities. According to

[1] This appeal and the underlying action involve the employment of Kent D. Dickerson, acting both individually and, in some instances, on behalf of the aforementioned companies. Because the differing roles of Dickerson as both individual and head of these companies are not at issue, this opinion will collectively refer to all appealing entities as "Dickerson" for the remainder of this opinion.

the respondent, LRM was a board managed entity owning no property. Its function was to manage the LandBank entities, review and consider additional LandBank investor opportunities, and meet the service needs of the various LandBank entities, including the procurement of surveying, engineering, land planning, legal, zoning, utilities, and environmental services. LRM's operational funds came from reimbursements by the other LandBank entities. Though under the direction of the LRM board, Garrell handled the day-to-day management of LRM.

In 2000, Garrell began feeling somewhat overwhelmed by the extent of his LandBank responsibilities and requested that the LRM board allow him to seek professional assistance. In March 2000, Garrell engaged the professional consulting services of Dickerson, a non-practicing attorney from Arizona who was knowledgeable and experienced in the acquisition and marketing of real estate. These services were initially intended to be temporary and Dickerson's agreement with LandBank anticipated completion by around September 2000.

LRM was pleased with the initial services provided by Dickerson. In April 2001, Garrell, after again receiving the full consent of the LRM board, entered into a modification of Dickerson's consulting agreement. In addition to the compensation called for in Dickerson's initial agreement, the modification called for a $30,000 "performance based fee" to be paid to Dickerson in appreciation of his prior efforts. The modification also secured Dickerson's future services for an indefinite period of time, terminable upon six months notice by either party. As compensation for his continued non-exclusive services, the modification called for Dickerson to receive $15,000 per month, $2,000 per month in home rental expenses, a sport utility vehicle, cell phone, computer, office, and company credit card. The modification agreement also called for future "transaction/performance-based compensation when justified and agreed to in advance."

In February 2002, Dickerson proposed a venture to the LRM board that was substantially different than LandBank's prior business activities. Dickerson envisioned a "beach club" concept for the benefit of the end purchasers of all the LandBank properties. Because the properties were

landlocked, he felt the purchase and development of a beachfront club and restaurant could be used to enhance the marketability of the LandBank properties. The proposed beach club was to be acquired and developed by a separate LandBank entity, LandBank Fund VI. This proposal was different from the previous LandBank entities in that it contemplated continued ownership and operation of a facility, rather than the simple acquisition, marketing, and sale of a tract of undeveloped land.

Dickerson pitched this new business concept to the LRM board on several occasions and submitted an official "summary proposal" in July 2002. Due to the higher risk involved in this sort of business venture, the proposal was not as well received by the LandBank members as prior business opportunities. In order to make LandBank Fund VI a more attractive investment for the members of the previous LandBank entities, the beach club plan (LandBank Fund VI) was coupled with a low-risk investment with a promising possibility of quick profit. Named LandBank Fund VII, LLC, this business proposal was to fit the traditional mold of the LandBank through LandBank V entities. It involved another purchase of a large tract of land from International Paper at $15,000 an acre and a potentially quick resell to homebuilder D.R. Horton for $20,000 an acre. It was understood among the members of the prior LandBank entities that LandBank Fund VI and VII were a "package deal" and membership in the lower risk LandBank Fund VII meant membership in the higher risk LandBank Fund VI. Ultimately, about sixty-five percent of the LandBank members joined LandBank Fund VI and VII.

By September 2002, LandBank Fund VII's purchase of the International Paper ("IP") tract was under contract with Garrell. The sales agreement with IP provided for the assignment of Garrell's contract rights to LandBank Fund VII prior to closing. On December 6, 2002, LandBank Fund VII purchased the IP property. Due largely to complications concerning environmental issues, the desired simultaneous sale to D.R. Horton was delayed.

During several meetings leading up to the purchase of the IP tract, Dickerson did not disclose to the LRM board that, beginning as early as

September 2002, he was attempting to obtain a very large "asset placement fee" of three and one-half percent of the total D.R. Horton sales price payable to him by LandBank Fund VII upon closing. According to Dickerson, this fee was openly discussed and fully approved by Garrell as early as the summer of 2002. Richard Lovelace, an attorney for the LandBank entities who performed a substantial amount of work on the LandBank Fund VII transaction, supports Dickerson's claims regarding the fee, at least to the extent that the fee was discussed among Dickerson, Garrell, and himself.

Garrell does not dispute the fact that Dickerson's fee was discussed between them. According to Garrell, however, he made it very clear to Dickerson that he did not have the authority to approve such a large payment and the matter would first have to be approved of by the LRM board. To this end, Garrell entered Dickerson's fee by hand on a draft closing statement just before a meeting between board chairman Lyle Ray King, Dickerson and himself on January 12, 2003. According to both Garrell and King, the fee was unequivocally discussed at this meeting and King told Dickerson in unmistakable terms that the proposed fee was not acceptable and would not be approved by the board.

Dickerson claims that the fee discussions with King were "non-committal" and that he left the meeting believing he still had a binding agreement regarding his additional fee due to his prior discussions with Garrell. Nevertheless, two days after the meeting with King, Dickerson instructed attorney Lovelace's staff to change the signature block on all future proposed contracts with D.R. Horton to reflect that it would be signed on behalf of LandBank Fund VII by "Kent D. Dickerson, its Representative." Dickerson's specific written instructions concerning the signature page included the phrase "No Joe Garrell or Lyle Ray King."

On January 20, 2003, Dickerson signed and delivered (as LandBank Fund VII's "Representative") to D.R. Horton a contract which included the payment of the "asset placement and assignment fee" by LandBank Fund VII to Dickerson. The negotiations with D.R. Horton concerning the contract's terms were handled exclusively by Dickerson and Lovelace and finalized on January 30, 2003. There is a factual dispute between the parties as to the

extent Garrell was kept abreast of these negotiations, including a heated disagreement as to when he first received a draft of the contract including Dickerson's disputed fee. Garrell claims he was kept in the dark as to the specific terms of the contract drafts passing between Dickerson and D.R. Horton.

On February 21, 2003, Dickerson attended a meeting of the LandBank VI and VII Board of Managers. At this meeting, Dickerson discussed the imminent closing of the D.R. Horton transaction and the board reviewed a sales and cash flow analysis for the upcoming sale. Conspicuously absent from this presentation was any mention of the fee sought by Dickerson.

The closing of LandBank Fund VII's sale to D.R. Horton took place on March 13, 2003. According to Garrell, he received a copy of the proposed final contract approximately ten days prior to the closing date.[2] Upon noticing Dickerson's fee was included in this draft, Garrell told Dickerson the fee had not been approved by the board and must be removed from the final closing statement. Nevertheless, Dickerson's desired fee appeared on the closing statement prepared by Lovelace on the day of closing. When Garrell noticed the fee remained in the documents, he struck Dickerson's fee from the closing statement and refused to sign until a new closing statement was prepared that did not call for the payment of Dickerson's "asset placement fee." The revised closing statements were prepared and the LandBank Fund VII sale to D.R. Horton was finalized.

Dickerson continued to claim entitlement to the $373,998 fee in conjunction with the 445-acre land sale to D.R. Horton. LandBank Fund VII filed a complaint on May 2, 2003, seeking a declaratory judgment that Dickerson was not owed the disputed fee. Dickerson counterclaimed, asserting he was entitled to the fee based on breach of contract or, alternatively, in quantum meruit for services provided. The mater was referred by consent to the Horry County Master-in-Equity. By order filed July 14, 2004, the Master-in-Equity granted LandBank Fund VII's requested

[2] There is a factual dispute between the parties as to when Garrell actually received this draft of the "final" contract.

relief and dismissed Dickerson's counterclaims with prejudice. Dickerson's motion to alter or amend the order was denied. This appeal followed.

DISCUSSION

I. Breach of Contract

An action alleging breach of contract is an action at law. Airfare, Inc. v. Greenville Airport Comm'n, 249 S.C. 265, 269, 153 S.E.2d 846, 848 (1967); Foxfire Village, Inc. v. Black & Veatch, Inc., 304 S.C. 366, 369, 404 S.E.2d 912, 914 (Ct. App. 1991). "In an action at law, an appellate court will correct errors of law but must defer to the trial court's factual findings and affirm unless there is no evidence reasonably supporting those findings." Crafton v. Brown, 346 S.C. 347, 351, 550 S.E.2d 904, 905-906 (Ct. App. 2001).

In the present case, the Master-in-Equity, after reviewing the evidence presented and considering the testimony and credibility of the witnesses, found that Dickerson "failed to establish by a preponderance of the evidence that there was a meeting of the minds as to the payment of a fee or commission . . . in connection with the sale of land to D.R. Horton." Upon review of the record on appeal, we conclude the Master's finding is supported by the evidence.

The burden of establishing the existence of an oral contract and its terms between Dickerson and LandBank Fund VII rests upon Dickerson. See Jackson v. Frier, 146 S.C. 322, 329, 144 S.E. 66, 68 (1928) ("The burden is on a party pleading a fact to prove it.") In order to establish the existence of an oral fee agreement, Dickerson must prove by a preponderance of the evidence that there was a meeting of the minds as to all of the essential and material terms of the alleged agreement. See Player v. Chandler, 299 S.C. 101, 104-105, 382 S.E.2d 891, 893-894 (1989).

Despite Dickerson's relative sophistication in business and legal matters, no written agreement to pay the fee signed by LandBank Fund VII was ever obtained (excluding the D.R. Horton contract signed only by

Dickerson as a "Representative" of LandBank Fund VII). Accordingly, the Master was confronted with highly conflicting testimony and evidence concerning the presence or absence of a verbal agreement. Although Garrell does not dispute the fact that he discussed payment of the disputed fee with Dickerson as early as the summer of 2002, he maintains, and the Master-in-Equity agreed, that he made clear to Dickerson any compensation in addition to that called for in his lucrative consulting agreement with LRM could only be obtained with board approval. This understanding between LandBank Fund VII and Dickerson is further bolstered by the testimony of King, the board chairman, concerning the meeting of January 12, 2003, during which King explained to Dickerson the board would not approve such a large payment. Dickerson was aware Garrell first sought and received board approval in every prior dealing concerning his compensation.

Conversely, Dickerson's own evidence and testimony tend to reflect the fluid nature of his alleged "asset placement fee" agreement. In several contract drafts present in the record on appeal, the percentage fee first appears in a document dated January 13, 2003, the day after Dickerson was told of the board's probable denial of the proposed fee. All previous drafts call for either no fee, a fee paid by D.R. Horton, a fee of $2000 per acre, or a fee of an indeterminate amount. The testimony of Lovelace, LandBank Fund VII's attorney, supporting Dickerson's claims goes only as far as to back up that Dickerson's fee was, in fact, discussed among Garrell, Dickerson, and Lovelace. It does not refute Garrell's claims that Dickerson was made well aware of the need for board approval before any agreement concerning additional compensation would be binding on LandBank Fund VII.

If Garrell made clear to Dickerson that any fee agreement was not valid until approved by the board, then clearly no meeting of the minds occurred between Garrell and Dickerson regarding the finality of Dickerson's fee agreement, regardless of Garell's actual or apparent authority to bind LandBank Fund VII. The Master-in-Equity, considering conflicting evidence, determined that Dickerson was, in fact, made aware of the necessity for board approval. Accordingly, he concluded Dickerson failed to carry his burden of proof establishing a binding fee agreement between the

parties. Because there is evidence reasonably supporting his conclusion, we affirm the Master on this basis.[3] [4]

II. Quantum Meruit

Dickerson argues on appeal that the Master-in-Equity erred in dismissing his counterclaim for quantum meruit recovery based on Dickerson's receipt of compensation under his consulting agreement with LRM. We disagree.

An action based on a theory of quantum meruit recovery sounds in equity. Columbia Wholesale v. Scudder May N.V., 312 S.C. 259, 261, 440 S.E.2d 129, 130 (1994). When reviewing an action in equity, an appellate court "reviews the evidence to determine facts in accordance with [its] own view of the preponderance of the evidence." Tiger, Inc. v. Fisher Agro, Inc., 301 S.C. 229, 237, 391 S.E.2d 538, 543 (1989).

In order to establish a valid claim for recovery in quantum meruit, the plaintiff must establish "(1) benefit conferred by [the] plaintiff upon the defendant; (2) realization of that benefit by the defendant; and (3) retention of the benefit by the defendant under circumstances that make it inequitable for

[3] Because we affirm the Master's finding that there was no meeting of the minds between Garrell and/or LandBank Fund VII and Dickerson concerning Dickerson's fee agreement, we need not address Dickerson's arguments regarding Garrell's presumptive authority to bind LandBank Fund VII.

[4] Dickerson also argues that the ultimate closing of the D.R. Horton deal by LandBank VII amounts to a ratification of the contract and, with it, Dickerson's fee. This issue is wholly without merit. The present appeal concerns an alleged fee agreement between Dickerson and LandBank VII, not a material term of the contract between LandBank VII and D.R. Horton. It would be a gross misapplication of the ratification doctrine to conclude that Dickerson, acting unilaterally as the "representative" of LandBank VII, is entitled to the fee because he inserted it into a contract between two other parties, notwithstanding the fact that the land sale contract was ultimately consummated.

him to retain it without paying it value." Myrtle Beach Hospital, Inc. v. City of Myrtle Beach, 341 S.C. 1, 8-9, 532 S.E.2d 868, 872 (2000) (emphasis added). Under his modified consulting agreement, Dickerson was compensated at over $250,000 per year by LRM, the managing entity of all the LandBank companies. The modified agreement secured Dickerson's service to LRM, an entity with the stated goal of considering additional LandBank investor opportunities, for an indefinite period of time. Furthermore, Dickerson's consulting agreement expressly states that future "[t]ransaction/performance based compensation" will be granted only "when justified and agreed to in advance."

Considering Dickerson's lucrative contract with LRM, we agree with the Master-in-Equity's conclusions on this matter. We find nothing in the record on appeal that would make recovery by Dickerson on his quantum meruit claims appropriate or equitable. The fact that LandBank Fund VI and VII were not in existence when Dickerson entered his consulting contract with LRM does not persuade this court such ventures were not contemplated when Dickerson's future services were secured.

For the foregoing reasons, the Master-in-Equity's decision is

AFFIRMED.

BEATTY and SHORT, J.J., concur.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Jane Doe, by and through her legal guardian, and Robert Roe, by and through his legal guardian,[1] Appellants,

v.

Barnwell School District 45 and Barnwell County Sheriff's Department, Defendants,

Of whom Barnwell School District 45 is, Respondent.

Appeal From Barnwell County
James C. Williams, Jr., Circuit Court Judge

Opinion No. 4137
Heard June 6, 2006 – Filed July 17, 2006

REVERSED AND REMANDED

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[1] The names of the minor plaintiffs have been changed and the names of their guardians have been redacted to protect the minors' identities.

R. Bentz Kirby and Glenn Walters, both of Orangeburg, for Appellants.

Allen D. Smith, of Columbia, for Respondent.

STILWELL, J.: Jane Doe and Robert Roe (the students) filed this action against Barnwell School District 45 and the Barnwell County Sheriff's Department alleging, inter alia, gross negligence in hiring and supervising personnel and resource officers. The trial court dismissed the action against the district for lack of subject matter jurisdiction. We reverse and remand.

FACTS[2]

The students attended Barnwell County High School. During a football game on September 19, 2003, a police officer and a deputy sheriff discovered the students sitting in the back seat of an automobile parked on school grounds. Another deputy sheriff, who was a resource officer at the school, joined them at the car. The police officer informed the deputies that he did not observe any inappropriate behavior or contact between the students.[3] The officer left the students in the care of the deputies. The deputies questioned the students after escorting them to a school office. The principal and two assistant principals were present and participated in the questioning.

The students claim one of the deputies "attempted to intimidate and humiliate [Roe] by screaming, insulting, threatening, and other inappropriate language." The students' parents were summoned to the school and informed their children had engaged in sexual activity while on school grounds. As a result, Doe's parents took her to a hospital to undergo medical testing to determine if she had engaged in sexual intercourse. The medical examination

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[2] The facts related here are as alleged in the complaint.

[3] The district contends the students were engaged in inappropriate sexual activity.

determined Doe had never engaged in sexual intercourse. Although the principal initially threatened the students with expulsion or ten days suspension, she ultimately suspended them for only five days. The students appealed the principal's decision to the school board, which upheld the suspension.

The students then filed this action. As to the district, the students alleged the principal failed to protect them and the district failed to properly train and supervise the principal and resource officers. The trial court dismissed the suit against the district for lack of subject matter jurisdiction because it found the students were attempting to "circumvent the prohibition against appealing short-term student suspensions . . . ."

STANDARD OF REVIEW

"[S]ubject matter jurisdiction is a question of law for the court." Murphy v. Owens-Corning Fiberglas Corp., 346 S.C. 37, 43, 550 S.E.2d 589, 592 (Ct. App. 2001), overruled on other grounds by Farmer v. Monsanto Corp., 353 S.C. 553, 579 S.E.2d 325 (2003). Questions of law may be decided with no particular deference to the trial court. Moriarty v. Garden Sanctuary Church of God, 341 S.C. 320, 327, 534 S.E.2d 672, 675 (2000).

LAW/ANALYSIS

The students, contending their suit is based on gross negligence arising from the interrogation, argue the trial court erred in finding the lawsuit pertained to a school suspension and dismissing the complaint for lack of subject matter jurisdiction. We agree.[4]

"Subject matter jurisdiction is the power to hear and determine cases of the general class to which the proceedings in question belong." Eagle

[4] Additionally, the students claim the trial court erred in failing to allow them to amend the complaint to remove a paragraph referencing S.C. Code Ann. § 59-19-560 (Rev. 2004). Because we determine the trial court had jurisdiction over the complaint as it was written, determining whether the students should have been allowed to amend is unnecessary.

Container Co. v. County of Newberry, 366 S.C. 611, 633-34, 622 S.E.2d 733, 744 (Ct. App. 2005) (citation omitted). In Byrd v. Irmo High School, the supreme court found that South Carolina law does not provide for judicial review of student suspensions of ten days or less. 321 S.C. 426, 432-36, 468 S.E.2d 861, 864-67 (1996). The court later qualified that holding to allow judicial review of a temporary suspension where the student challenges the suspension as violative of due process. Floyd v. Horry County Sch. Dist., 351 S.C. 233, 236-37, 569 S.E.2d 343, 345 (2002) (finding due process for students suspended ten days or less requires: (1) oral or written notice of the charges; (2) an explanation of the evidence; and (3) an opportunity to present their side of the story).

The trial court agreed with the district's contention that the single reference in the claim to section 59-19-560 of the South Carolina Code as the basis for the trial court's jurisdiction justifies characterizing the entire action as a challenge of the temporary suspensions.[5] Although this section appears to give the circuit court jurisdiction over appeals of suspensions, the court in Byrd found that the more recently enacted, specific statute, section 59-63-230, essentially superseded section 59-19-560 by providing for appeal to the board of trustees. See Byrd, 321 S.C. at 434-35, 468 S.E.2d at 866; S.C. Code Ann. § 59-63-230 (2004). Therefore, if this were solely an appeal of the suspension, the circuit court would lack jurisdiction.

In construing a complaint, however, the court must review the entire pleading. Smith v. Nelson, 83 S.C. 294, 300, 65 S.E. 261, 263 (1909) (construing the "complaint upon the whole"). A review of the complaint as a whole in this case does not support the district's argument that the students brought this action to appeal suspensions. See Rule 8(f), SCRCP (providing that all pleadings must be construed to do substantial justice to all parties); Gaskins v. S. Farm Bureau Cas. Ins. Co., 343 S.C. 666, 671, 541 S.E.2d 269, 271 (Ct. App. 2000), aff'd as modified on other grounds, 354 S.C. 416, 581 S.E.2d 169 (2003) ("To ensure substantial justice to the parties, the pleadings

[5] Section 59-19-560 provides: "Any party aggrieved by the order of the county board of education shall have the right to appeal to the court of common pleas . . . ." S.C. Code Ann. § 59-19-560 (Rev. 2004).

must be liberally construed."). As stated in the complaint, the causes of action against the district are "Gross Negligence and Gross Negligence in Hiring and Supervision." The complaint does not request relief from the suspensions. The suspensions merely arose out of the same situation as the alleged wrongful conduct by the district. Unlike Floyd and Byrd, this case is based on the conduct of school officials and resource officers in the manner of interrogation and investigation rather than the wrongful imposition of suspensions.[6]

CONCLUSION

We find the trial court erred in dismissing the action for lack of subject matter jurisdiction based solely on a finding that the action was an attempt to appeal short-term suspensions. Accordingly, the order of the trial court is

REVERSED AND REMANDED.

HUFF and BEATTY, JJ., concur.

[6] At oral argument, the issue of the ultimate viability of this action was briefly mentioned. We venture no opinion on the merits of this action.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Judith Ann Burckle Clay, Appellant,

v.

Daryl James Burckle, Respondent.

Appeal From Aiken County
Peter R. Nuessle, Family Court Judge

Opinion No. 4138
Submitted June 1, 2006 – Filed July 17, 2006

VACATED

John L. Creson, of Augusta, for Appellant.

Paul Andrew Anderson, of Aiken, for Respondent.

STILWELL, J.: Judith Burckle Clay (Mother) appeals the family court's order naming Daryl Burckle (Father) primary residential parent of their son. Mother argues South Carolina lacked jurisdiction over the matter because Florida still had exclusive jurisdiction under the Uniform Child

Custody Jurisdiction Act (UCCJA) and the Parental Kidnapping Prevention Act (PKPA). We agree and vacate the order of the family court.[1]

FACTS

Mother and Father married on November 24, 1993, and had one child. The family resided together in Florida until Mother and Father were granted a divorce by the Florida circuit court in 1997. The divorce decree provided Mother and Father share parental responsibility for the child. The decree designated Mother as the primary residential parent and ordered that Father receive visitation. Both parties remarried and continued to reside in Florida. However, after several domestic disputes involving Mother and her new husband, the Juvenile Division of the Florida circuit court granted temporary custody to Father. Eventually, the court made Father the permanent, primary residential parent of the child and granted Mother supervised and telephone visitation.

On July 23, 2002, Mother moved to establish unsupervised visitation, to address counseling for the child, and other related issues. Additionally, on August 15, 2002, Mother filed a motion seeking to prevent the removal of the child from the jurisdiction of the Florida court. On August 26, 2002, Father submitted a letter supplying the court with his new address and informing it that as of August 19, 2002, he lived in South Carolina.

Thereafter, Mother filed a supplemental motion in the Florida court to modify custody or visitation. The court found Father was to continue to serve as the primary residential parent, but Mother was to have unsupervised visitation with the child. Mother traveled to South Carolina in an attempt to exercise visitation with the child for the Thanksgiving 2003 holiday, but she, even with assistance from South Carolina law enforcement officers, was unable to locate Father or the child.

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[1] We decide this case without oral argument pursuant to Rule 215, SCACR.

On December 17, 2003, Mother filed a motion for contempt in the Florida court seeking to compel Father's compliance with the court's visitation order. At the contempt hearing, Father appeared only through counsel. The court issued an order finding Father to be in willful contempt of its previous order granting Mother visitation. In support of its finding of contempt, the court found Father refused to allow visitation or any contact by telephone or mail. Further, the court found Father was incapable of performing his duties as primary residential parent, and the situations that caused Mother to lose custody no longer existed. The circuit court ordered "as a sanction for [Father's] contemptuous conduct and pursuant to Florida Statute 61.13(4)(c)(5), [Mother] will hereafter be designated as the primary residential parent."

Mother traveled to South Carolina to pick up the child as provided by the Florida court's order, but Father would not allow her to take the child. As a result, Mother filed an action in South Carolina family court to enforce the Florida court's order making her the primary residential parent. The South Carolina family court held a hearing and issued a bench order for the sheriff to locate the child and place him in the custody of Mother. Father refused to turn the child over, obtained a new attorney, and filed a motion in the South Carolina family court to reconsider, alter, or amend the previous order requiring him to relinquish custody.

On August 31, 2004, the South Carolina family court held a hearing on Father's motion. In addition, it held an emergency hearing regarding the custody of the child. The court issued its order finding the Florida court did not have jurisdiction over the child because South Carolina was the home state of the child at the time Mother brought the last custody related action in Florida. The South Carolina family court vacated its previous order and declared it would not follow the Florida circuit court order that awarded Mother custody. In a separate order, the family court awarded Father custody of the child and ordered the child not be removed from South Carolina. Additionally, the South Carolina court found Mother was entitled to supervised visitation as she and Father could agree. It is that order we address on appeal.

In the meantime, Father appealed to the Florida District Court of Appeals the Florida trial court's order changing custody to Mother. The Florida appellate court agreed with Father's argument that the Florida trial court erred in changing custody to Mother because she did not ask for that relief and reversed that portion of the trial court's order but affirmed the finding of contempt. The Florida appellate court remanded the case to the trial court for it to "fashion a suitable sanction for the contempt."

Mother then sought to supplement the record on appeal in our court to include the Florida appellate court's opinion, prompting the response from Father that he would not contest its inclusion if the decision of the trial court on remand would also be included in the supplement to the record. This court granted the motion to supplement the record with both the appellate court's opinion and the circuit court's order on remand.

In the order on remand, the Florida trial court adamantly reasserted its exclusive jurisdiction and ordered Father to continue as primary residential parent with specified unsupervised visitation for Mother over various holidays and school breaks, together with other electronic and telephonic methods of visitation.

LAW/ANALYSIS

Mother appeals the South Carolina family court's order denying her custody and mandating supervised visitation "as agreeable between the parties." Mother argues the South Carolina family court lacked jurisdiction to issue such an order in this custody matter under the PKPA, 28 U.S.C. § 1738A (2000) and the UCCJA, S.C. Code Ann. § 20-7-782 to -830 (1976). We agree.[2]

The PKPA and UCCJA "govern the subject matter jurisdiction of state courts to rule in interstate custody disputes. Because the PKPA is federal

[2] Because we find the family court did not have jurisdiction over this matter, addressing Mother's additional argument questioning Father's notice of the Florida circuit court proceedings would be improper.

legislation, its provisions will govern any conflict between it and the UCCJA . . . ." Widdicombe v. Tucker-Cales, 366 S.C. 75, 86, 620 S.E.2d 333, 339 (Ct. App. 2005) (cert. pending) (internal citations omitted). The PKPA mandates three criteria for a court to retain continuing jurisdiction: "1) that the original custody determination was entered consistently with the provisions of the PKPA; 2) that the court maintain jurisdiction under its own state law . . . ; and 3) that the state remains the residence of the child or of any contestant." Id.; see also 28 U.S.C. § 1738A(d).

Because Florida issued the initial custody decree, we apply the PKPA test to determine if it retained continuing jurisdiction over the matter. At the time of the original custody decree, Mother, Father, and the child were all residents of Florida, where the original decree was issued. Accordingly, Florida met the first requirement for retaining jurisdiction because the original decree was consistent with the provisions of the PKPA. See Widdicombe at 86-87, 620 S.E.2d at 339.

The second requirement is that Florida maintained jurisdiction under its own state law. Florida has enacted the Uniform Child Custody Jurisdiction and Enforcement Act, which is the successor to the UCCJA. The relevant section provides:

> 1) Except as otherwise provided in s. 61.517, a court of this state which has made a child custody determination consistent with s. 61.514 or s. 61.516 has exclusive, continuing jurisdiction over the determination until:
>
> (a) A court of this state determines that the child, the child's parents, and any person acting as a parent do not have a significant connection with this state and that substantial evidence is no longer available in this state concerning the child's care, protection, training, and personal relationships; or

> (b) A court of this state or a court of another state determines that the child, the child's parent, and any person acting as a parent do not presently reside in this state.

Fla. Stat. § 61.515 (2002). Clearly, 1(a) does not apply to the current situation because no Florida court has found that the state lacks a significant connection with the parties. To the contrary, the Florida circuit court repeatedly stated that it has exclusive jurisdiction. As to 1(b), Mother continues to reside in Florida. Accordingly, under Florida law, Florida has met the second requirement to establish exclusive, continuing jurisdiction.

The third criterion, that the state remains the residence of the child or of any contestant, is easily met by Florida as well. Even though the child and Father have moved out of state, Mother has remained a resident of Florida throughout the proceedings. Therefore, Florida meets the third requirement of the PKPA for continuing jurisdiction.

Florida meets all three requirements mandated by the PKPA for it to have continuing jurisdiction. Accordingly, under 28 U.S.C. § 1738A(d), the South Carolina family court did not have jurisdiction over the matter.

Additionally, the PKPA addresses the specific instance when one state's court may modify a custody order issued by another state:

> A court of a State may modify a determination of the custody of the same child made by a court of another State, if—(1) it has jurisdiction to make such a child custody determination; and (2) the court of the other State no longer has jurisdiction, or it has declined to exercise such jurisdiction to modify such determination.

28 U.S.C. § 1738A(f)(2000). This section is nearly identical to the pertinent section in South Carolina's version of the UCCJA, which provides:

> If a court of another state has made a custody decree, a court of this State shall not modify that decree unless (1) it appears to the court of this State that the court which rendered the decree does not now have jurisdiction under jurisdictional prerequisites substantially in accordance with this subarticle or has declined to assume jurisdiction to modify the decree and (2) the court of this State has jurisdiction.

S.C. Code Ann. § 20-7-810(a) (1976). As discussed above, Florida retains jurisdiction and, therefore, South Carolina was not in a position to modify the Florida court's order relating to the child's custody.

One of the main purposes of legislation like the UCCJA is to avoid conflicting custody decrees between states. Widdicombe at 87, 620 S.E.2d at 339; see also S.C. Code Ann. § 20-7-784(a)(6)(7) 1976) (other purposes include "avoid[ing] relitigation of custody decisions of other states in this State insofar as feasible" and "facilitat[ing] the enforcement of custody decrees of other states"). In considering similar cases, our courts have given great deference to the jurisdiction of the state that originally ruled on a custody matter. Widdicombe at 87, 620 S.E.2d at 339-40. "Courts which render a custody decree normally retain continuing jurisdiction to modify the decree under local law." Knoth v. Knoth, 297 S.C. 460, 463, 377 S.E.2d 340, 342 (1989). "Although more than one state may meet these jurisdictional requirements, once a custody decree has been entered, the continuing jurisdiction of the decree state is exclusive." Sinclair v. Albrecht, 287 S.C. 20, 23, 336 S.E.2d 485, 487 (Ct. App. 1985). A child's residence in another state is not dispositive of this jurisdictional question. Knoth at 464, 377 S.E.2d at 342-43. If the prior state still has sufficient contact with the case to satisfy the jurisdictional requirements, all petitions for modification must be addressed in that state. Id. at 463, 377 S.E.2d at 342. The court's previous consideration of the case is one factor in favor of its continued jurisdiction. Id. When a state attempts to exercise continuing jurisdiction over a custody decree on which it has previously ruled, we interpret the jurisdictional requirements in the UCCJA broadly. Widdicombe at 87, 620 S.E.2d at 340. Because Florida issued the initial custody and properly continued to exercise

jurisdiction in the case, South Carolina's assumption of jurisdiction was inappropriate under the UCCJA as well.

The Florida courts have continued to exert continuing jurisdiction throughout the proceedings. Under both the PKPA and the UCCJA, the South Carolina family court improperly assumed jurisdiction. Accordingly, because the South Carolina family court lacked jurisdiction, its order is

VACATED.

HUFF and BEATTY, JJ., concur.