

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM FLORENCE COUNTY
In The Court of General Sessions

Honorable D. Craig Brown,
Circuit Court Judge

Appellate Case No. 2022-000767

The State,

Respondent,

v.

Ahmand Deshod McKnight,

Defendant.

In re: Frederick DeBerry,

Petitioner.

PETITION FOR WRIT OF CERTIORARI

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S.C. SUPREME COURT

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ISSUE PRESENTED

- I. When this Court has held “failure to timely appeal the interlocutory order of the trial court effects a waiver of appeal rights”, did the Court of Appeals err in dismissing Petitioner’s appeal from an oral order denying him the right to a jury trial in a constructive criminal contempt matter?

- II. When the South Carolina Constitution states that “no person may be held to answer for any crime” in General Sessions Court, did the Court of Appeals erred in dismissing Petitioner’s appeal of the denial of his request for grand jury presentment?

STATEMENT OF THE CASE

This is an appeal from an oral order denying Petitioner the right to a trial by jury and the right to grand jury presentment in a constructive criminal contempt action initiated by the State in the Court of General Sessions. App. 1-2.

Petitioner is a bail bondsman. Petitioner's bonding company also contracts with Securus Technologies to install and manage the electronic monitoring bracelet accounts for Securus Technologies. App. 5.¹

On April 27, 2020, the Honorable Thomas Russo set bond for Defendant McKnight. In the Order setting bond Defendant McKnight was required to be monitored through GPS monitoring. App. 5. The written order filed with the clerk stated, "Any violation of misconduct be Defendant will be reported to Law Enforcement by GPS Monitoring." App. 6.

Defendant McKnight posted bond through Reggie Tindall and Tindal Bail Bonds, LLC. App. 6. However, Tindall did not provide any electronic monitoring. Therefore, Tindall asked Deberry Bail Bonding to assist with the electronic monitoring. App.6.

Nakita Flores, an agent of Deberry Bail Bonding, put the ankle monitor on Defendant McKnight and notified Securus Technologies to begin electronic monitoring. App. 6.

The State alleges that the Defendant McKnight failed to comply with the conditions and restrictions of the electronic monitoring. App. 6. The State also alleges that Petitioner was in violation of Judge Russo's order. Therefore, the State filed a Petition for a Rule to Show Cause against Reggie Tindall, Nakita Flores and Frederick DeBerry.

¹ This Appeal was dismissed prior to briefing or the creation of a Record on Appeal. Therefore, Petitioner is citing to his own memorandum for the underlying facts of this matter. *See* Rule 243, SCACR. Should Certiorari be granted Petitioner would request that the Court allow an amended Appendix which would include the State's Petition for Rule to Show Cause and Transcript of the December 8, 2021 hearing before the Circuit Court.

On December 8, 2021, a hearing was convened before the Honorable D. Craig Brown. Prior to the hearing beginning, the Court recognized that this was a criminal contempt hearing and that he could incarcerate the parties for up to six months. App. 6.

Petitioner requested a trial by jury as provided for in criminal cases under the South Carolina Constitution. App. 6. Petitioner further argued that the South Carolina Constitution required that he be indicted prior to a trial in General Sessions for criminal contempt. App. 6-7. The Circuit Court denied Petitioner's requests and indicated that it intended to proceed forward with a bench trial for contempt without grand jury presentment. App. 6

Petitioner then informed the Circuit Court that based on the Supreme Court's decision in *Foggie v. CSX Transp.*, it was Petitioner's belief that he would waive his issues if he did not immediately appeal the Circuit Court's oral order. App. 7. The Circuit Court agreed to adjourn the hearing so that Petitioner could file an appeal with the Court of Appeals. App. 7.

On December 8, 2021, Petitioner filed an appeal with the South Carolina Court of Appeals. App. 1-2. However, on December 22, 2021, the Court of Appeals requested memorandum on appealability. App. 4.

On January 4, 2022, Petitioner filed his memorandum arguing that the following issues were immediately appealable:

- 1) The Circuit Court's Denial of [Petitioner's] right to trial by jury under the South Carolina Constitution.
- 2) The Circuit Court's Denial of [Petitioner's] right to grand jury indictment under the South Carolina Constitution.
- 3) The Circuit Court's Denial of [Petitioner's] right to trial by jury under the United States Constitution.

App. 5-8.

On January 4, 2022, Respondent filed its memorandum. App. 11-15. In that memorandum, Respondent argued that Respondent argued that Petitioner was not entitled to entitled to a jury trial

“as a matter of right”, and therefore, the Circuit Court’s ruling was not immediately appealable. App. 14.

On February 9, 2022, the Court of Appeals dismissed the Appeal. App. 17. Petitioner immediately filed a Petition for Rehearing. App. 18-21. On March 23, 2022, Respondent filed a Return to Petition for Rehearing. App. 24-26. The Court of Appeals denied rehearing on May 5, 2022. App. 29-30.

This Petition follows.

ARGUMENT

I. The Court of Appeals err in dismissing Petitioner's appeal from an oral order denying him the right to a jury trial in a constructive criminal contempt matter.

The Appellate Courts of this state have jurisdiction to hear appeals based on S.C. Code § 14-3-330. S.C. Code § 14-3-330 states the following:

The Supreme Court shall have appellate jurisdiction for correction of errors of law in law cases, and shall review upon appeal:

(1) Any intermediate judgment, order or decree in a law case involving the merits in actions commenced in the court of common pleas and general sessions, brought there by original process or removed there from any inferior court or jurisdiction, and final judgments in such actions; provided, that if no appeal be taken until final judgment is entered the court may upon appeal from such final judgment review any intermediate order or decree necessarily affecting the judgment not before appealed from;

(2) An order affecting a substantial right made in an action when such order (a) in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action, (b) grants or refuses a new trial or (c) strikes out an answer or any part thereof or any pleading in any action;

(3) A final order affecting a substantial right made in any special proceeding or upon a summary application in any action after judgment; and

(4) An interlocutory order or decree in a court of common pleas granting, continuing, modifying, or refusing an injunction or granting, continuing, modifying, or refusing the appointment of a receiver.

Petitioner respectfully submits that the issues raised to the Court of Appeals are immediately appealable under S.C. Code § 14-3-330.

The right to a trial by jury is a substantial right in this State. The South Carolina Constitution notes that “[t]he right of trial by jury shall be preserved inviolate.” S.C. Const., art. I, § 14. Additionally, if Petitioner had not appealed this issue at this time, he would have been foreclosed from appealing it later. The Courts of this State have found that the failure to immediately appeal the denial of a jury trial constitutes a waiver of the right to appeal the issue. *See e.g. Foggie v. CSX Transp., Inc.*, 315 S.C. 17, 23, 431 S.E.2d 587, 590 (1993) (“The failure to timely appeal the interlocutory order of the trial court effects a waiver of appeal rights.”); *Creed v.*

Stokes, 285 S.C. 542, 542-43, 331 S.E.2d 351, 352 (1985) (“Though he opposed the order, he failed to appeal from it. The order was not interlocutory, and should have been appealed immediately because it affected the mode of trial, a substantial right”); *See Frampton v. S.C. DOT*, 406 S.C. 377, 386, 752 S.E.2d 269, 274 (Ct. App. 2013) (“We find DOT did not preserve this issue for our review because it did not immediately appeal the trial court's order affecting the mode of trial, which is a substantial right.”).

At the Court of Appeals, Respondent argued that Petitioner was not entitled to a jury trial “as a matter of right”, and therefore, the circuit court’s ruling is not immediately appealable. App. 12. Respondent’s arguments establishes an artificial barrier to appellate review. However, even if such a barrier exist, Petitioner submits that he has the right to a trial by jury in this case.

Petitioner has the right to a jury trial in this action.² “The right of trial by jury shall be preserved *inviolat*e.” S.C. Const., art. I, § 14 (emphasis added). “The section has been interpreted by this Court as securing the right to a jury only in cases in which that right existed at the time of the adoption of the constitution in 1868; if the case is a statutory action, a jury will be allowed only if the action is in the nature of a suit triable at common law in 1868.” *C. W. Matthews Contracting Co. v. S.C. Tax Com.*, 267 S.C. 548, 553, 230 S.E.2d 223, 225 (1976). “Generally, the relevant question in determining the right to trial by jury is whether an action is legal or equitable; there is no right to trial by jury for equitable actions.” *Lester v. Dawson*, 327 S.C. 263, 267, 491 S.E.2d 240, 242 (1997).

² Petitioner submits that he has a right to trial by jury under the South Carolina Constitution and under the plain language of the Sixth Amendment. However, Petitioner recognizes that the Federal Courts interpret the Sixth Amendment right to trial by jury as only applies to crimes that carry over six months of incarceration. Therefore, this argument is primarily addressing the South Carolina Constitution.

Under the South Carolina Constitution, Petitioner would have the right to trial by jury for a criminal contempt because it is an action at law. Criminal contempt was codified in S.C. Code § 14-5-320. Criminal contempt is an action in law not an action in equity. *See Gompers v. Bucks Stove & Range Co.*, 221 U.S. 418, 444-45, 31 S. Ct. 492, 499 (1911) (“Proceedings for civil contempt are between the original parties and are instituted and tried as a part of the main cause. But on the other hand, proceedings at law for criminal contempt are between the public and the defendant, and are not a part of the original cause.”). Therefore, Petitioner has a right to trial by jury in this criminal contempt matter brought by the State.

Petitioner respectfully request that this Court grant certiorari and find that Petitioner has a right to trial by a jury in this constructive criminal contempt case.

II. When the South Carolina Constitution states that “no person may be held to answer for any crime” in General Sessions Court, the Court of Appeals erred in dismissing Petitioner’s appeal of the denial of his request for grand jury presentment.

The South Carolina Constitution states the following:

No person may be held to answer for any crime the jurisdiction over which is not within the magistrate’s court, unless on a presentment or indictment of a grand jury of the county where the crime has been committed...

S.C. Const., art. I, § 11. The Crime of Contempt of the Circuit Court is codified in S.C. Code § 14-5-320. The purpose of an indictment is to provide notice to a criminal defendant; however, proper notice “is a component of the due process that is accorded *every* criminal defendant.” *See Evans v. State*, 363 S.C. 495, 508, 611 S.E.2d 510, 517 (2005) (emphasis added).

Petitioner respectfully submits that prior to being held criminally responsible for Contempt of the Circuit Court, he has the right to have the alleged offense submitted to the grand jury.

Refusing to require grand jury presentment should be immediately appealable. Although it appears to be a novel question of law, Petitioner respectfully submits that this Court should find that the refusal to require grand jury presentment prior to trial is a substantial right that is immediately appealable under S.C. Code § 14-3-330.

A criminal defendant waives objections to an indictment unless they are raised prior to a jury being sworn. Moreover, “[n]o irregularity in any writ of venire facias or in the drawing, summoning, returning, or impaneling of jurors is sufficient to set aside the verdict, unless the party making the objection was injured by the irregularity or unless the objection is made before the returning of the verdict.” S.C. Code § 14-7-1140. In essence, South Carolina’s error preservation rules require that defendant’s object to problems with indictments at the first available opportunity. This is because whether there is probable cause to support a grand jury indictment should always be determined prior to a petit jury finding there is proof beyond a reasonable doubt.

An objection to the failure to present a case to the grand jury should be seen the same as the denial of a mode of trial. The purpose of an indictment is to provide notice to a criminal defendant. *See Evans*, 363 S.C. at 508, 611 S.E.2d at 517. For notice of a crime to be constitutionally sufficient, a grand jury must have been lawfully assembled. *See id.*, 363 S.C. at 511, 611 S.E.2d at 519 (“Similarly, an indictment issued by a grand jury in which the jurors were selected in an illegal or discriminatory manner likely would be deemed a nullity and, as a matter of law, would be insufficient to give the required notice to a defendant.”).

Refusal to even present a case to a grand jury is analogous to a mode of trial objection. Since this Court has repeatedly held that the denial of a party's right to a particular mode of trial is immediately appealable as a substantial right, this Court should also find that the failure of the State to present a grand jury is immediately appealable.

In the present case, the Court of Appeals dismissed Petitioner's appeal of this issue. Petitioner respectfully requests that the Court grant certiorari on this issue and find that Petitioner has a right to grand jury indictment prior to being tried for constructive criminal contempt.

CONCLUSION

For the foregoing reasons Petitioner respectfully requests that this Court grant certiorari and reverse the rulings of the Circuit Court and Court of Appeals.

Respectfully submitted,

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