

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SC Court of Appeals

On Petition of Writ of Certiorari to Charleston
County Court of Common Pleas
The Honorable Jennifer B. McCoy, Chief Administrative Judge

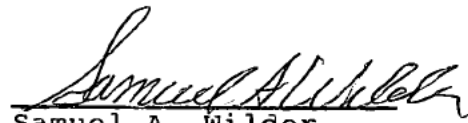
Appellate Case No. 2021-000055

SAMUEL A. WILDER, # 258295.....PETITIONER,

v.

STATE OF SOUTH CAROLINA.....RESPONDENT.

PETITION FOR REHEARING



Samuel A. Wilder
Tyger River C.I.
200 Prison Rd
Enoree, SC 29335

STATEMENT OF ISSUES ON PETITION FOR REHEARING

Petitioner is being denied due process and equal protection of the law by denying his access to the court and denying his writ of Certiorari on jurisdictional claims in violation of the 14th Amendment of the United States Constitution and parallel to the South Carolina Constitution Article 1, §3.

Petitioner's counterstatement of issues for Rehearing

The ... concept of subject matter jurisdiction ... involves a court's power to hear a case, can, never be forfeited or waived. Consequently defects in subject matter jurisdiction require corrections regardless of whether the error was raised. ... issues related to subject matter jurisdiction may be raised at anytime. *

* State v Gentry, 363 S.C. 93, 610 S.E.2d 454 (S.C. 2005)

ARGUMENT

The South Carolina Court of Appeals denied Petitioner's Writ of Certiorari in violation of the concept of subject matter jurisdiction and the error of subject matter jurisdiction must be corrected and the Order Restricting Future Filings must be voided.

Under the PCR Act, the right to seek appellate review of the denial of PCR is expressly authorized by state law (citing S.C. Code Ann §17-27-100 (2014) Based on our extension of *Anders v. California*, 366 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967) to PCR matters in *Johnson v. State* 294 S.C. 310, 364 S.E.2d 201 (1988), which acts as a safeguard of the right to appeal, we recognized the petitioner was entitled to the assistance of appellate counsel in seeking review of the denial of PCR. *Mack v. State*, 433 S.C. 267, 856 S.E.2d 160, 163 (S.C. 2021). The Petitioner had assistance of appellate counsel and counsel answered the Rule 243(c) when Petitioner was direct to answer and therefore put the wrong argument to the court,

However, the PCR hearing is not properly before the court because Petitioner had a new trial motion filed in General Sessions Court. See In part Petitioner during pendency of the motion for new trial, the petitioner filed three matters with the state courts. On August 17, 2004, the petitioner filed an application for post-conviction relief (PCR) ... The State filed its return on January 11, 2005. A hearing was held on June 21, 2005, before the Honorable D. Garrison Hill, circuit court Judge.

During the hearing the PCR judge was informed of the pending motion for new trial and consequently found that it did not have jurisdiction to address the PCR application in accordance with rule 29, SCRMP. Therefore, on July 5, 2005, the PCR court filed an order of dismissal denying and dismissing application the PCR application without prejudice. Miller v Cartledge 2013 WL 4042110.

Lack of subject matter jurisdiction can be raised at any time even for the first time on appeal, by a party or by the court. Ex parte Cannon 385 S.C. 643, 685 S.E.2d 814 (S.C. 2009). As well as, the Petitioner's counsel motion and notice of appeal as a petition for writ of certiorari in the Court's original jurisdiction even though the notice of appeal was untimely, marks another jurisdiction claim. See Return to Petition For Writ of Certiorari, page 4 bottom to page 5. There is a jurisdiction issue on the trial being held on May 5, 1999, when according to §14-5-740 the court of General Sessions was held on the fourth Monday in May. Ex parte Lilly 1876 WL 5977 (S.C. 1876)(Where the term of a circuit court, as fixed by law, has expired, the judge has no power, by order, to continue its existence, convene it at another time, and proceed to the trial of cases). Henceforth Petitioner must be release from prison to the custody of sheriff to be discharge. See Exparte Dehay, 3 S.C. 564. These are a glimes of the jurisdictional issues Petitioner want you to reconsider and to prevent a continuing miscarriage of justice.

CONCLUSION

The Petitioner pray this court would grant petition for rehearing.

A handwritten signature in cursive script, appearing to read "Samuel A. Wilder". The signature is written in black ink and is positioned above the printed name.

SAMUEL A. Wilder

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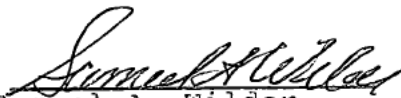
SAMUEL A. WILDER, # 258295.....Petitioner,

v.

State of South Carolina.....Respondent

CERTIFICATE OF SERVICE

The undersigned hereby certify that he mail Petition for Rehearing to S.C. Court of Appeals, Jenny A. Kitchings, Clerk, P.O. Box 11629, Columbia, S.C. 29211 and Samantha J. Weidauer, Esquire, Assistance Attorney General, P.O. Box 11549, Columbia, S.C. 29211 this 21 day of August 2022 by depositing same in the U.S. mail.


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