

State of South Carolina)	In the South Carolina
County of Union)	Supreme Court
Tony Moore Jr., #188313)	
Appellant.)	C/A No: 2021-CP-44-00268
v.)	
)	Notice of Appeal
State of South Carolina)	Rule 243, SCACR
Respondent.)	
_____)	

(Preamble)

Comes now, the appellant, Tony Moore Jr., seeking to appeal the Final Order of Dismissal from the court of the Honorable Daniel D. Hall, court of common pleas, dated October 14, 2022. The appellant received the final order on October 25, 2022, advising him that he has thirty (30) days to file an appeal in the case.

The above named appellant is a pro se litigant who is not trained in the jurisprudence of the law, respectfully asks this Honorable Court to construe the filing liberally. Wall v. Rasnick, 42 F. 4th 214(2022) (when confronted with the objections of a pro se litigant, the court must be mindful of it's responsibility to construe pro se filings liberally, in practice, this liberal construction allows courts to recognize claims despite various formal deficiencies, such as incorrect labels, or lack of cited legal authorities).

History

On March 22, 1995, the appellant was put to trial in Union County, South Carolina, outside the mandatory statutory requirements for holding trials in S.C. Code Ann. Title 14-5-820(1), before the Honorable Costa M. Pleicones.

The General Sessions Court of Union County did [n]ot have unbridled judicial discretion to conduct criminal trials as that court so pleases.

The Subject matter jurisdiction of the Union County Court of General Sessions depends upon the authority granted to it by the [l]aws of this state, and it's [f]undamental Howard "vs" S.C. Dept. of Corrections, 399 S.C. 618, 733 S.E.2d. 211 (2012); O.A. Smith Corp. "vs" S.C. Dept. of Health, 428 S.C. 189, 833 S.E.2d. 451 (2019).

To be absolutely sure, Article 5 of the S.C. Code of Laws is captioned "POWER AND JURISDICTION OF COURTS AND JUDGES".

Unshakable, the S.C. Code Ann. Sec. 14-5-820(1) is listed in the diction of Article 5, and it specifically and unequivocally states in relevant part:

THE COURT OF GENERAL SESSIONS SHALL BE HELD
AT UNION THE FOURTH MONDAY OF FEBRUARY,
THE THIRD MONDAY OF MAY, THE THIRD MONDAY
OF SEPTEMBER, AND THE SECOND MONDAY IN DECEMBER.

It is regrettable reality that the General Sessions Court of Union County adjudicated Petitioners criminal case on March 22nd and 23rd, 1995.

In doing so the lower court entertained and adjudicated Petitioner's criminal case "Malum Prohibitum".

Compelling respect, it is the General Assembly who establishes the jurisdiction of the courts in a Legislative pronouncement, Bayly "vs" State, 397 S.C. 290, 724 S.E.2d. 182 (2012). What is more, the state legislature has the authority to [l]imit the subject matter jurisdiction of a court that it has created, Howard Supra, O.A. Smith Supra.

So that nobody misses the point, the lower courts do [n]ot make statutory laws, nor can they change them. In point of fact, it is the legislative department who makes the laws, the executive department who carries the laws into effect, and the judicial department who interprets and declares the laws forth with by the state legislature,

S.C. Pub. Int. Foundation "vs" S.C. Trans. Infr. Bank, 403 S.C. 640, 744 S.E.2d 521 (2013); State "vs" Hodges, 349 S.C. 232, 562 S.E. 2d. 623 (2002) The lower courts and the judges in this state are bound by the commands of the State Legislator.

As a starting premise, issues related to lack of subject matter jurisdiction can be raised at anytime, in any proceeding, including this one,

Edwards "vs" State, 372 S.C. 493, 642 S.E. 2d. 738 (2007);

State "vs" McBride, 416 S.C. 379, 786 S.E. 2d. 435 (2016); being so, this litigation can be adjudicated on the merits in this judicial arena.

Subject matter jurisdiction is [f]undamental,

Brown “vs” State, 343 S.C. 342, 540 S.E. 2d. 846 (2001);

State “vs” Guthrie, 352 S.C. 103, 572 S.E. 2d. 309 (2002);

State “vs” Dudley, 364 S.C. 578, 614 S.E. 2d 623 (2005); it is a question of [l]aw, [n]ot of fact,

Gant “vs” Selph, 423 S.C. 333, 814 S.E. 2d. 523 (2018). Insofar, if the doctrine of precedents (stare decisis) is regarded as the champion of stability and uniformity in the law, subject matter jurisdiction is a courts [s]tatutory or Constitutional power to hear and adjudicate a case, U.S.

“vs” Cotton, 535 U.S. 625, 122 S.Ct. 1781 (2002);

Steel Co. “vs” Citizens for a better env., 523 U.S. 83, 118 S.Ct. 1003 (1998);

Lightfoot “vs” Cendants Mortg. Corp., 137 S.Ct. 553 (2017);

Kosciusko “vs” Parham, 428 S.C. 481, 836 S.E. 2d. 362 (2019);

1st Citizens Bank “vs” Taylor, 431 S.C. 149, 847 S.E. 2d. 249 (2020).

Undebatable, the aftermath of a court acting without subject matter jurisdiction is a void judgement, and utterly void judgement, Jackson “vs” Jackson, 342 S.C. 415, 853 S.E. 2d. 344 (2020). (Actus Judiciarius Coram Non Judice Irritus Habetur);

Consequently, the statute of limitations pursuant to the S.C. Code Ann. Sec. 17-27-45, and the precedent Pelquin “vs” State, 321 S.C. 468, 469 S.E. 2d. 606 (1996) nor the doctrine of res judicata apply to issues related to lack of subject matter jurisdiction, Brown Supra at [No. 1].

Subject matter jurisdiction can never be forfeited or waived, not even by consent of the parties, nonetheless, defects in subject matter jurisdiction require correction, U.S. “vs” Cotton, Supra.

- I. Whether the lower court erred by not granting petitioner an evidentiary hearing, when the fact's pertaining to jury misconduct was not conclusively refuted by the record?

During the voir dire, the court, through trial defense attorney, Thomas H. White IV, asked each potential juror, whether they were related by blood or marriage to each member's name being called. Whether they had any biases, or prejudices for or against party, or had any knowledge of the case that would preclude them from being impartial jurors, see (T.T. page(s) 23 line 1-9, page 70 line 18-25, page 71 line 1-25, page 72 line 1-5). The court also instructed the jury not to discuss the case before it's submission with anyone. U.S. Const. 6, 14; S.C. Const. Art. 1 sec. 3, 14.

Juror Woodrow Smith acknowledged that he was the third (3rd) cousin and friend of the victim's father, Lonnie Smith Sr. However, Juror Smith did not disclose at any time during the trial that he was disobeying the court's direct instruction and his oath, not to discuss the case, or to not form any opinions before the trial is over. Eventually, the jury found Moore, the appellant guilty of Murder, which included Juror Smith. The defense was not negligent in it's attempt to uncover the latent structural error of a biased juror.

Prejudice

The duty of the prosecutor is to seek the truth. Honorable Chief Justice Don Beatty, for the South Carolina Supreme Court before the Solicitor's Association.

It is fundamental that a defendant is entitled to a fair trial by an impartial jury. The trial judge has a duty to assure himself that every juror is unbiased, fair, and impartial. A juror may be prejudiced, biased, or interested in the action for some other reason, and depending upon the facts and circumstances, subject to a challenge for cause or the exercise of a peremptory challenge. State v. Gullidge, 277 S.C. 368, 287 S.E. 2d 488 quoting 50 C.J.S. Juries, sec. 279, peremptory challenge, p. 1066, and Photostat Corporation v. Ball, 338 F. 2d 783 (CA 10, 1964) S.C. Code Ann. Title 14-7-1020;

"The court shall, on motion of either party in the suit, examine on oath any person who is called as a juror to know whether he is related to either party, has any interest in the cause, has expressed or formed any opinions, or is sensible of any bias or prejudices therein, and the party objecting to the juror may introduce any other competent evidence in support of the objection. If

it appears to the court that the juror is not indifferent in the cause, he must be placed aside as to the trial of that cause and another must be called.” see State v. Foster, 80 S.C. 347, 61 S.E. 564(1908).

On or about July 21, 2021, or so, the appellant received an affidavit, to which the appellant took as a dying declaration from Mr. Michael Porter. In the affidavit, Mr. Porter expressed a discussion that he had with his blood first (1st) cousin, the juror Woodrow Smith. Mr. Porter specifically accounted that, “he didn’t know why them people was wasting his time trying that boy because everybody already know that boy is guilty, and he was going to vote guilty.” I asked whose jury trial he was on and he said, “Tony Moore’s boy that killed that girl... Perleen Neal is real close.”

Mr. Porter’s entire affidavit is an outlined, detailed statement of a formed and expressed opinion about the appellant and the outcome of the case. Foster, Id. S.C. Code Ann. Title 14-7-1020

Mr. Porter and juror Smith “talks about how Tony Jr, shot and killed Bull’s friend, David Gist back in the day.” Also, the affidavit swore that juror Smith did not believe before trial as to the defense of accident. See attached affidavit dated April 27th, 2021.

Question of Fact

A few days after this above stated information was made available the appellant, he filed a petition with the South Carolina Supreme Court, seeking authorization to file his sixth Post Conviction Relief application, citing juror misconduct. On August 4, 2021, by order, the court’s Chief Justice granted permission. See Order dated August 11, 2021.

The appellant then filed his Sixth P.C.R. application arguing he was denied his Sixth Amendment right to a fair trial by an impartial and objective jury. In support of his claim, appellant submitted the affidavit from affiant Porter, along with the trial transcript pages of the voir dire wherein the juror failed to honestly answer specific questions requested by trial judge. The appellant argues that, had he and defense known or was made aware of the extended prejudicial latent biases and formed opinion of the juror, he would have used a peremptory

challenges would have been different. The petitioner argued that he could not have raised this issue because the juror's concealment of the above stated facts, rendered the information unavailable to him until on or about July 21, 2021, through Mr. Porter's declaration. This was made available after the appellant's direct appeal, and other filed writs and petitions for relief. The appellant argues that this latent issue of juror bias, concealment, and expressed opinion fails under the discovery rule exception to the one (1) year limitations period and was therefore timely. See S.C. Code Ann. Title 17-27-45[c], which provides that if a PCR applicant discovers "material facts not previously presented and heard that require [] vacation of [his] conviction or sentence," he may file a PCR application "within one (1) year after the date of actual discovery... or after the date when the facts could have been ascertained by the exercise of due diligence."

The South Carolina Supreme Court's Justice Kittredge, in McCoy v. State, 401 S.C. 363, 737 S.E. 2d 623 (2013) clarified the issue of juror misconduct and the filing of subsequent applications for relief. The court quoted, "we find a genuine issue of facts exists as to whether petitioner's claim is successive under section 17-27-90, which permits an applicant to file a subsequent PCR application only if the applicant demonstrates a sufficient reason why the claims asserted previously." The applicant explains that the juror's misconduct of nondisclosure was not discovered until members of the juror's family and friend, Patricia Powers, made the issue available to the appellant some twenty-six (26) years later. Neither the applicant, nor trial counsel, are mind readers, so discovery juror bias, expressed or formed opinions, is a highly complexed subject that must not be ignored. The corroborating affidavits go far beyond juror misconduct, but an attack to the appellant's life or death, as well as the integrity of the jury box. See State v. Foster, 80 S.C. 347, 61 S.E. 564 (1908).

The conditional Order of Dismissal as well as the final, commits an error of law. See Final Order of Dismissal page 8 of 11. The appellant argued extensively that he is being held unlawfully due to the seating of a biased, prejudiced, and already preconceived opinion of a seated juror discovered post-trial, not newly-discovered evidence. See Addition to Applicant's Response to Conditional Order of Dismissal dated March 7, 2022. This is a structural defect that defies analysis by harmless-error standards and which affected the framework within which the

trial proceeded. Therefore, the denial of a fair trial by an impartial jury and the guilty verdict cannot be deemed as fundamentally fair.

S.C. Code Ann. Title 14-7-1020 is a mandatory statute and therefore, must be followed as such. See Eades v. Palmetto Cardiovascular and Thoracic PA, 422 S.C. 196, 810 S.E. 2d 848 (Questions of statutory interpretation are questions of law, which we are free to decide without any deference to the court below..., Under this rule, a statute restricting the common law will not be extended beyond the clear intent of the legislature. See also, Hodges v. Rainey, 341 S.C. 79, 533 S.E. 2d 578 (what a legislature says in the text of a statute is considered the best evidence of the legislative intent or will, therefore, the courts are bound to give effect to the expressed intent of the legislature).

Without the undisclosed prejudicial information, the appellant at trial could not make intelligent use of his peremptory challenges. The state could not guess how the appellant and his trial attorney would have used their challenges, nor could the trial judge do his job to weed out biases or prejudices of jurors. Ms. Powers, gave her personal opinion to the juror and the appellant sees this affidavit as an attempt, then, to influence the juror. See State v. McQuire, 272 S.C. 547, 253 S.E. 2d 103 (a jury should not begin discussing a case, nor deciding issues, until all evidence, argument of counsel, and change of law). The appellant at the time of filing his sixth (6th) PCR, had just been made aware of the latent facts at issue, and must not be procedurally barred from raising the issue for the first time. Washington v. State, 324 S.C. 232, 478 S.E. 2d 833 (Post-Conviction Relief petitioner was not procedurally barred from receiving new trial, even though application may have been successive, given many procedural irregularities that occurred during course of petitioner's judicial process that deprived him of due process...). This court does grant new trials under successive PCR applications.

The lower court's Final Order of Dismissal says that the Appellant has not put into evidence of testimony from the juror or any other jurors. For this to happen, the lower court would have to have an evidentiary hearing for the facts to be developed. Also, as a key note, the lower court and the Attorney General's Office refused to appoint counsel and give the appellant a hearing date, as well as looked for an explanation outside of S.C. Code Ann. Title 14-7-1020 which states, "and the party objecting to the juror may introduce any other competent evidence in

support of the objection.” It only takes one juror to deny a criminal defendant his or her constitutional and statutory rights to a fair trial by an impartial jury. The lower court did not view the evidence (sworn to) favorable to the appellate. See Robertson v. State, 418 S.C. 505, 795 S.E. 2d 29 (when considering the state’s motion for summary dismissal of a motion for post-conviction relief (PCR), where no evidentiary hearing has been held, the PCR judge must assume facts presented by the applicant are true and view those facts in the light most favorable to the defendant). The corroborating written testimony from both affiants show (1) juror intentionally concealed information on voir dire, and (2) this failure prejudiced defendant’s right to exercise peremptory challenge. State v. Woods, 345 S.C. 583, 550 S.E. 2d 282. The lower Court blatantly disregarded decades of well established Supreme Court and Court of Appeals precedents.

Finally, the appellant upon receiving the anonymous letter, did in fact write and send it to the Union County Clerk of Court as well as the Union County Sheriff’s Department for inspection and investigation. Both agencies failed to act. The appellant strongly believes that it is because the information was in favor of the appellant.

Conclusion

Juror Smith failed to respond to specifically asked questions on voir dire which clearly applied to his biases or prejudices, as well as formed opinion before and during trial. This concealment deprived the appellant of vital information material to his intelligent use of peremptory challenges. The appellant strongly believes that he is entitled to a new trial and/or to have his conviction and sentence vacated, in the name of justice.

Respectfully,

S/ 