

STATE OF SOUTH CAROLINA)
 COUNTY OF AIKEN)
)
 Eric L. Spann, #245840,)
 Applicant,)
))
 v.)
))
 State of South Carolina,)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 FOR THE SECOND JUDICIAL CIRCUIT

Case No.: 2019-CP-02-3131

FINAL ORDER OF DISMISSAL

This matter is before the Court based on a successive, sixth application for post-conviction relief filed by Applicant Eric L. Spann. In response, Respondent the State of South Carolina made its return and moved to summarily dismiss the action as procedurally barred on numerous grounds pursuant to the Uniform Post-Conviction Procedures Act, S.C. Code Ann. § 17-27-10 et seq. (2014).

After a review of the record and pleadings, this Court agreed this application should be summarily dismissed and provisionally dismissed the action by way of a Conditional Order of Dismissal filed on December 20, 2021, giving the Applicant twenty days from the date of service of said Order in which to show why the dismissal should not become final. Attached to this Final Order and incorporated herein by reference is a Certificate of Service dated January 5, 2022, serving the above-mentioned Conditional Order of Dismissal on Applicant, though his counsel.¹

In response to this conditional dismissal, Applicant filed a document captioned "Applicant's Response to Conditional Order of Dismissal," that was filed on January 25, 2022. In this document, Applicant argues that his sixth application should not be summarily dismissed because challenges to subject matter jurisdiction can be raised at any time and should not be

¹ Applicant filed this action pro se but counsel P. Andrew Anderson later assumed representation and filed the response to the conditional order of dismissal on Applicant's behalf.

May 9 2022
 Robert J. White, C.M.P.
 C.C.P. & G.S.
 Charla Griffin
 Deputy Clerk

procedurally barred as successive. In support of this argument, Applicant relied upon S.C. Code Ann. § 22-5-320 and asserts the plea court was without subject matter jurisdiction to accept his plea based on a lack of preliminary hearing.

However, Applicant fails to recognize that the South Carolina Supreme Court declared Section 22-5-320 unconstitutional forty years earlier in State v. Keenan, 278 S.C. 362, 366-67, 296 S.E.2d 676, 678-79 (1982) (holding Section 22-5-320 of the South Carolina Code, which provided a defendant the right to a preliminary hearing if demanded before an indictment, unconstitutional). Rule 2(b), SCRCrimP, unambiguously states, ““If the defendant requests a preliminary hearing, the hearing shall be held within ten days following the request. ***The hearing shall not be held, however, if the defendant is indicted by a grand jury*** or waives indictment before the preliminary hearing is held.”

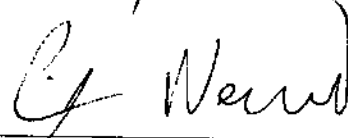
Moreover, Applicant’s claims that the Aiken County Court of General Sessions was without subject matter jurisdiction to accept his plea based on a lack of a preliminary hearing fails as a matter of law, as courts of general sessions obviously have jurisdiction to dispose of criminal matters by way of jury trial or plea. See State v. Smalls, 364 S.C. 343, 346, 613 S.E.2d 754, 756 (2005) (“The court of general sessions has subject matter jurisdiction to try criminal cases.”); State v. Gentry, 363 S.C. 93, 100, 610 S.E.2d 494, 498 (2005) (“[S]ubject matter jurisdiction is the power of a court to hear and determine cases of the general class to which the proceedings in question belong.”); id. at 101, 610 S.E.2d at 499 (“Circuit courts obviously have subject matter jurisdiction to try criminal matters.”).

In the present case, Applicant was properly indicted by the Aiken County Grand Jury and pled guilty in the Aiken County Court of General Sessions. The plea court had jurisdiction to accept his guilty pleas and impose a sentence. This claim fails as a matter of law.

IT IS THEREFORE ORDERED that for the reasons set forth in the Court's Conditional Order of Dismissal, this application for post-conviction relief is hereby **DENIED AND DISMISSED WITH PREJUDICE**.

This Court hereby advises Applicant he must file and serve a notice of appeal within thirty days of the service of this Order to secure appellate review. See Rule 203, SCACR. Applicant's attention is directed to Rule 243, SCACR, for the procedures following the filing and service of the notice of appeal.

AND IT IS SO ORDERED this 1st day of May, 2022.



CLIFTON NEWMAN
Presiding Judge
Second Judicial Circuit

Columbia, South Carolina