THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

APPEAL FROM KERSHAW COUNTY

COURT OF COMMON PLEAS

JOCELYN NEWMAN PRESIDING JUDGE

CASE NO: 2022-CP-28-413

RECEIVED

MAY 11 2023

S.C. SUPREME COURT

State of South Carolina.....Respondent

"VS"

Mr. Robert Cannon.....Appellant

EXPLANATION AS TO WHY APPELLANTS PCR APPLICATION WAS NOT TIME BARRED OR SUCCESSIVE TO COMPLY WITH RULE 243(c) SCACR

[Relevant Statement Of The Facts]

On February 9th 2012, Appellant submitted his first PCR application to the lower court.

On March 17th, 2014 an evidentiary hearing was held, and Appellant was denied relief on all grounds litigated.

On April 27th, 2022 Applicant submitted his second PCR application to the lower court alleging that the General Session Court of Kershaw County lacked subject matter jurisdiction to entertain and adjudicate his criminal trial predicated on Federal law as determined by the U.S. Supreme Court, and the domestic precedents from [t]his court.

The lower court summarily dismissed this action as being untimely filed, and successive, and this explanation as to why this litigation should be adjudicated on the merits follows:

[INDEX]

Standing alone, The Rules of civil procedure (SCRCP) applies to all post conviction matters,

Fishburne "vs" State, 427 S.C. 505, 832 S.E. 2d. 584 (S.C.2019);

Leamon "vs" State, 363 S.C. 432, 611 S.E.2d. 494 (S.C.2005);

As a result, Summary dismissal pursuant to the S.C. Code Ann. § 17-27-70(c) is tantamount per.se. to the summary judgment stage as outlined in Rule 56 SCRCP.

I must emphasize the point, that during the summary judgment/summary dismissal stage, the [m]oving party always bears the initial responsibility of informing the court of the basis for it's motion which the moving party believes demonstrates an absence of a genuine issue of material fact,

Celotex Corp. "vs" Catrett, 477 U.S. 317, 106 S.Ct. 2548 (1986);

Anderson "vs" Liberty Lobby Inc., 477 U.S. 242, 106 S.Ct. 2505 (1986);

Importantly, for the purpose of summary judgment/summary dismissal, a material fact is a fact that [m]ight affect the outcome of the case under the governing law, additionally [o]nly disputes over fact's that might affect the outcome of the case under the governing law will properly preclude the entry of summary judgment.

Most significally, factual disputes that are irrelevant of unnecessary should [n]ot be counted or even considered during the summary dismissal/summary judgment stage at all,

Bean "vs" S.C. Cent R.Co., 392 S.C. 532, 709 S.E.2d.99 (2011), Anderson supra at 2510.

During this stage of the litigation, the court must draw all reasonable inferences in favor of the Non-moving party,

Tolan "vs" Cotton, 572 U.S. 650, 134 S.Ct. 1861 (2014);

Bass "vs" Gopal, Inc., 395 S.C. 129, 716 S.E.2d. 910 (2011);

Fisher "vs" Shipyard V. Counsel, 415 S.C. 256, S.E.2d. 903 (2016).

Fundamentally, When considering the states motion for summary dismissal/ summary judgment, where no evidentiary hearing has been held, the PCR judge must assume all fact's presented by the Appellant are true, and view those fact's in the light most favorable to the Appellant,

Robertson "vs" State, 418 S.C. 505, 795 S.E. 2d. 29 (2019);

McCoy "vs" State, 401 S.C. 363, 737 S.E.2d.623 (S.C. 2013).

Critically serious, while the evidence of the Non-Moving is to be believed and all justifiable inferences must be drawn in the Non-movants favor, a party cannot create a genuine dispute of material fact through mere speculation, or compulation of inferences,

Gibson "vs" Epting, 426 S.C. 346, 827 S.E. 2d.178 (2019);
Grimsley"vs" S.C. Law Enf. Div., 415 S.C. 33, 780 S.E.2d. 897 (2015);
Doe "vs" Morgan St. Unv., 544 F.Supp. 3d. 563 (4th Cir.2021);

Taken together, credibility determinations, the weighing of the evidence and the drawing of legitimate inferences from the fact's are [j]ury functions, and not those of the court, Anderson supra at 2513.

Likewise, as settled by innumerable authorities, summary dismissal of a PCR application without a hearing is appropriate [o]nly when (1), it is apparent on it's face of the application that there is no need for a hearing to develope any fact's and (2) the applicant is not entitled to relief Leamon supra at 434.

[QUESTION PRESENTED]

DID THE COURT OF COMMON PLEAS ERROR BY SUMMURALY DISMISSING APPELLANTS PCR APPLICATION, WHEN APPELLANT RAISED THE FACTUAL PREDICATE, THAT THE TRIAL COURT LACKED SUBJECT MATTER JURISDICTION TO ENTERTAIN AND ADJUDICATE HIS CRIMINAL TRIAL ?

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[ARGUMENT]

BECAUSE APPELLANT RAISED THE FACTUAL PREDICATE THAT THE TRIAL COURT LACKED SUBJECT MATTER JURISDICTION TO ENTERTAIN AND ADJUDICATE HIS CRIMINAL TRIAL IT WAS ERROR BY THE COURT OF COMMON PLEAS TO SUMMARILY DISMISS APPELLANTS PCR APPLICATION.

As a threshold matter, there are several reasons why the lower court dropped the ball in this hypersensitive litigation, therefore I will litigate each matter separately.

[A].Because there was a genuine issue of material fact in dispute in Appellants lack of subject matter jurisdiction claim, it was gross error by the lower court to grant the state summary dismissal/summary judgment on this claim.

On page 13 of the order of dismissal, the state and the court stated;

"As an initial matter, this court finds Applicant's allegations regarding jurisdiction are without merit". Circuit courts obviously have subject matter jurisdiction to try criminal matters,
State "vs" Gentry,363 S.C. 93,610 S.E. 2d. 494 (2005).
The language by the court as stated is [n]ot accurate. How can this be ? It's elementary, "The court of General Sessions, Nor the County Grand Jury can entertain and adjudicate criminal proceedings on their own authority. To be absolutely sure, on page 6 of Appellant's memorandum to support PCR application, Appellant's diction was - "Compelling respect, it is the General Assembly who establishes the [j]urisdiction of the courts in a legislative pronouncement, Bayly "vs" State,397 S.C. 290,724 S.E. 2d. 182 (S.C. 2012). On page 11 on the same memo, Appellant also stated - "The jurisdiction of a court of the subject matter of an action depends upon the [a]uthority

granted to it by the Constitution and [l]aws of the state, and is fundamental, Howard "vs" S.C. Dept. Of Corr., 399 S.C. 618, 733 S.E.2d. 211 (2012).

Appellant informed the lower court in his "Response to conditional order of dismissal" that the Grand Jury of Richland County conveined and true-billed his indictments on February 7th, 2007, which was in fact a grand jury proceeding held malum prohibitum pursuant to the S.C. Code Ann. § 14-5-670(1).

So that nobody misses the point, On the very first point of law that Appellant made to the state and the lower court, is that the judicial power blessed to the Kershaw County Court of General Sessions is [C]oetensive with the judicial power of the kershaw grand Jury,

State "vs" McClure, 277 S.C. 432, 289 S.E. 2d. 158 (S.C. 1982);

State "vs" Funderburk, 259 S.C. 256, 191 S.E.2d. 520 (S.C. 1972);

State "vs" Wheeler, 259 S.C. 571, 193 S.E.2d.515 (S.C.1972);

Being so, when Appellant forthwith the undisputed fact that the grand jury conveined and true-billed Appellants indictments in a preter legal judicial proceeding, that fact is a genuine issue of material fact that is undisputed, moreover undeniable.

Importantly, The state never put-forth [a]nything to the court to bear it's initial responsibility of showing the court that no genuine issue of material fact exist.

[T]his Court cannot ignore reality that the U.S. Supreme Court and our domestic precedents emphasize the point that, subject matter jurisdiction in part is a courts [S]tatutory [p]ower to adjudicate a case,

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

Steele Co. "vs'" Citizens, 523 U.S. 83, 118 S.Ct. 1003 (1998);

Lightfoot "vs" Cendant, 137 S.Ct. 553 (2017);

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

1st Cit. Bank "vs" Taylor, 431 S.C. 149, 847 S.E.2d. 249 (2020);

Acknowledging this, it is accurate to say that the kershaw County Grand Jury was contumacious, moreover recalcitrant to the subject matter jurisdictional [c]ommands of the state legislature as setforth in the S.C.Code Ann. § 14-5-670 for Kershaw County.

It appears that Appellants diction that the grand jury true-billed his indictments is simply undisputed, moreover uncontested.

On page 13 of the order of dismissal, the order addressed the sufficiency of the indictments.
Strickly speaking, nothing pertaining to the sufficiency of the indictments should have been considered, or even counted during this litigation because it's irrelevant. Anderson supra 2510, Bean supra.
In point of fact, Appellant is only litigating that his indictments are null and utterly void, because they were born in a grand jury proceeding that was not authorized by the state legislature.

The lower court and the state also stated:
"The record reflects the Kershaw County Grand Jury [V]alidly indicted Appellant" (See order of dismissal pg. 14)
Appellant presented a genuine issue of material fact thats in dispute, when factually the grand jury proceeding was held in violation of state law.
The courts diction is a factual inaccuracy by definition.
Needless to say, the lower court ignored reality, because standing alone, this was enough to preclude summary dismissal ipso jure.

To sum this matter up, the lower court clearly erred in granting the states motion for summary dismissal, when the U.S. Supreme Court, and [T his [C]ourt has stated that subject matter jurisdiction statutory or constitutional to adjudicate a case, and the state failed to forthwith anything to show a **jurisdictional fact**, to prove that it had judicial power from anywhere to have have a grand jury proceeding on **February 7th, 2007.**
Blowing my mind, is that the lower court summarily dismissed this action, and THE GRAND JURY PROCEEDING, AND THE TRIAL ITSELF WERE ADJUDICATED IN VIOLATION OF **STATE LAW, AND FEDERAL LAW AS DETERMINED BY THE U.S. SUPREME COURT,** all I can say is SHAME, SHAME, SHAME.

IT WAS ERROR BY THE LOWER COURT TO SUMMARILY DISMISS APPELLANTS PCR ACTION AS BEING UNTIMELY FILED, AND SUCCESSIVE

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Simply put, issues related to lack of subject matter jurisdiction can never ever construed as successive, or time barred. Why not ? Because the doctrine of Res-Judicata do not apply to the hypersensitive jurisdictional dispute Brown "vs" State, 343 S.C. 342,540 S.E. 2d. 846 at [no.1] (2001).

What is more, again, issues related to lack of subject matter jurisdiction can be raised at any time in any proceeding according to the precedents of [t]his court.

Reality is this, Appellant can raise this issue [a]gain, and under the subject matter jurisdiction jurisprudence the court should hear the matter on the merits, because the U.S. Supreme Court has [h]eld that "defects in subject matter jurisdiction require correction, Cotton supra. Am I right ? okay moving on.

This matter was irrelevant and should not have been counted of considered in this litigation.(order of dismissal pg. 14-16.)

The state cites Graham "vs" State, 378 S.C. 1,661 S.E. 2d. 337 (S.C. 2008) for Appellant to establish why he did not raise this claim in hia initial PCR relief action.

Again, this is also irrelevant to this litigation. The precedent Gramham is based on ineffective assistance of counsel, this litigation is predicated on lack of subject matter jurisdiction, therefore there is no stare decisis effect pursuant to this precedent.

BECAUSE A GENUINE ISSUE OF MATERIAL FACT EXIST AS TO WHETHER THE STATUTE OF LIMITATIONS APPLY TO ISSUES RELATED TO LACK OF SUBJECT MATTER JURISDCITON, IT WAS ERROR BY THE LOWER COURT TO SUMMARILY DISMISS APPELLANTS PCR APPLICATION ON THIS GROUND

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On page 16-18 of the order of dismissal, summary dismissal was forthwith against Appellant predicated on the statute of limitations.

Undebatable, as a threshold matter, the state never presented anything to the court, to demonstrate an [a]bsence of a genuine issue of material fact, that issues related to lack of subject matter jurisdiction can be time barred under the statute of limitations, pursuant to the S.C. Code Ann.§ 17-27-

45,/Peloquin "vs" State,321 S.C. 468,469 S.E. 2d. 606 (1996).
Critically serious, on page 3 of Appellants "Response to the order", Appellant unequivocally informed the court that fraud on the court, and subject matter jurisdiction has [n]o statute of limitations. It is the wild card in the law that can be raised at anytime.
To every broad rule there is an exception, and subject matter jurisdiction is the exception to squelch a time bar.
Not susceptible to alternative interpretations, [a]gain the U.S. Supreme Court has emphasized the point that defects in subject matter jurisdciton require correction, Cotton supra]. The Court did not put a time limit on when the correction can be made.

The order of dismissal appears to be valid on all points of the law, however reality is that the order of dismissal is specious.
Inasmuch, because the Appellants PCR raised the factual predicate of lack of subject matter jurisdiction anchored in federal law as determined by the U.S. Supreme Court, and precedents from this court, the court should have appointed counsel under Rule 71.1 SCRCP, and had a hearing. the lower court just tossed the federal precedents and this courts precedents in the trash. You see it.

Enough said

5/5/23
DATE

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[CONCLUSION]

For the reasons stated, this court should remand this case back to the lower court for adjudication on the merits, or in the alternative adjudicate this matter in [t]his court on the merits.

Respectfully written

5/5/23
DATE

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