THE STATE OF SOUTH CAROLINA

In The Supreme Court

Appellate Case No.

The State of South Carolina .....Respondent

v.

Terron Dizzley ..... Appellants
Gwendolyn B. Frasier
LaQuesha Felder

MEMORANDUM OF LAW IN SUPPORT OF IMMEDIATE APPEAL PURSUANT TO S.C. CODE ANN. SEC. 14-3-330 (1976 & SUPP. 2003),

---

S, Terron Dizzley

Terron Dizzley, 359480
ACI
1057 Revolutionary Trail
Fairfax, SC 29827

S, Gwendolyn B. Frasier

Gwendolyn B. Frasier
7996 Pennyroyal Road
Georgetown, SC 29440

S,

LaQuesha Felder
1440 Baxter Street
Orangeburg, SC 29115

TABLE OF CONTENTS

JURISDICTIONAL STATEMENT

The jurisdiction of this immediate appeal is governed by S.C. Code Ann.s 14-3-330 (1976 & Supp. 2003).

TABLE OF AUTHORITIES

RULES AND STATUTES

STATEMENT OF ISSUES ON APPEAL

I.. Whether The S.C. Court of Appeals abused its discretion by denying Appellants Emergency Motion to Relieve retained Attorney, William G. Yarborough and proceed pro se ?

II. Whether The S. C. Court of Appeals abused its discretion by issuing an order through the clerk of court stating that the Court would not accept any filings with Appellants Gwendolyn B. Frasier and LaQuesha Felder's name on it because they were not parties to the appeal, which violated substance rights of Appellants?

III. Whether the S. C. Court Appeals abused its discretion pursuant to its order granting the Attorney General's request to hold their Emergency Exparte and Proposed Motions for Immediate Release, Double Jeopardy, False Imprisonment, Lack of Trial Court's Jurisdiction to Impose Sentence, First and Fourteenth Amendment Rights to Familial Association in abeyance and remanding their case back to the Circuit Court?

FACTUAL AND PROCEDURAL HISTORY OF CASE

Appellants, Terron Dizzley, Gwendolyn B. Frasier and LaQuesha Frasier did not hire Attorney Yarborough, nor give consent for Attorney Yarborough to file an Appellant Brief on their behalf. Attorney Yarborough was only hired to represent them at the November 17, 2022, Hearing, and at no time did Appellants agree to waive any of their rights to be heard on their issues.

On October 28, 2021, Appellants Terron Dizzley, Gwendolyn B. Frasier, Terron's mother, and LaQuesha Felder, Terron's wife, filed " Proposed and Exparte Emergency Motions for Immediate Release of Terron Dizzley Pursuant to Double Jeopardy, False Imprisonment, Lack of Trial Court's Jurisdiction to Impose Sentence, First and Fourteenth Amendment Rights to Familial Association. On April 12, 2022, the Honorable Judge Culbertson denied Appellants' emergency motions without a hearing, pursuant to an order that did not establish any findings of facts or conclusions of law on merits of their case as required by law.

On April 25, 2022, Appellants then filed an "Emergency Motion for Alteration, Modification, Amend, Reconsideration, and Recession of Order." When Judge Culbertson refused to respond to Appellants' "Motion for Alteration...," Appellants filed a timely appeal to the S.C. Court of Appeals and also filed the same "Emergency Exparte and Proposed Motions for Immediate Release, Double Jeopardy, False Imprisonment, Lack of Trial Court's Jurisdiction to Impose Sentence " in the S.C. Court of Appeals exercising their rights to challenge subject matter jurisdiction even for the first time on appeal. The S.C. Court of Appeals dismissed Appellants appeal as untimely.

Appellants then filed a "Motion to Reinstate" their appeal, and the S. C. Court of Appeals granted Appellants' motion on the grounds that their "Motion for Alteration..." tolled the time for filing an appeal and remanded Appellants' case back to the circuit court for a ruling on Appellants' "Motion for Alteration..," and ordered that their motions filed in the S. C. Court of Appeals be held in abeyance pursuant to a request from the Attorney General. Appellants then filed a "Motion For Update And Request For Conditional Order," where they objected to the granting of the state's request to hold the

"Emergency Exparte and Proposed Motions For Immediate Release..." in abeyance filed in the S.C. Court of Appeals until the case is resolved in the circuit court on the grounds that according to clearly established state and federal law, a request for "stay"pursuant to a motion where a defendant raises issues of deprivation of life, or liberty, and double jeopardy, must not be granted because defendant would suffer 'irreparable harm" by such delay.

Appellants also objected to the S. C. Court of Appeals order remanding their case back to the circuit court, where the law is clear that subject matter jurisdiction may be raised at any time, even for the first time on appeal, even sua sponte by the court, and that under such circumstances, the appellate court must take notice on their own motion so as to preserve the administration of justice and to prevent the punishment of the defendant under the present sentence. Appellants also addressed to the S.C. Court of Appeals that if they did not adjudicate their case, they would suffer further "irreparable harm" by having their case remanded back to the circuit court, because the Court refuses to respond to their case, and the Clerk of Court, Alma Y. White has been depriving Appellant, Terron from accessing the courts for almost nine years, which is a felony crime of "obstruction of justice." Despite this, the S.C. Court of Appeals did not respond to Appellants "Motion to Update And Request For Conditional Order." As a result, Appellants case was remanded back to the circuit court where they were forced to hire an attorney (Attorney William G. Yarborough) because the Clerk of Court of Georgetown County, Alma Y. White, again refused to schedule a hearing for Appellants case despite the S.C. Court of Appeals order.

ARGUMENT 1

I. The S.C. Court of Appeals abused its discretion by denying Appellants Emergency Motion to Relieve retained Attorney, William G. Yarborough and proceed pro se.

Appellants contends that the S.C. Court of Appeals order denying their Emergency Motion to Relieve Counsel And Proceed Pro, to relieve retained Attorney, William G. Yarborough from representation on appeal pursuant to their Emergency Exparte and Proposed Motions for Immediate Release, Double Jeopardy, False Imprisonment, Lack of Trial Court's Jurisdiction to Impose Sentence, and First and Fourteenth Amendment Rights to Familial Association, is immediately appealable under

S.C. Code Ann. s 14-3-330 (1), (2),(a)(b)(c), (3) because it affects substantial rights, namely, Appellants right to self-representation, See: State v. Barnes, 407 S.C. 27 (2014); Faretta v. California, 422 U.S. 806 (1975); lawyer of choice, and conflict free counsel. State v. Gregory, 364 S.C. 150 (2005); Cuyler v. Sullivan, 446 U.S. 335 (1980). Appellants contend that these rights and others would be lost if this order is not immediately appealed, whereas, Appellants would also lose the right to be heard on all of their issues on appeal, which would deny Appellants the right to due process. Further, Appellants contend that it would be difficult or impossible to show prejudice resulting from an appeal after the Appellate Court rules on their case pursuant to Attorney Yarborough's Brief as the law of their case. See: Hagwood v. Somerville, 362 S.C. 191 (2005), " In a matter of first impression, an order granting motion to disqualify party's attorney in civil case affects substantial right and may be immediately appealed; order granting motion to disqualify party's preferred attorney must be immediately appealed or any later objection in subsequent appeal will be waived."

Appellants contend that if this Court refuses to relieve Attorney Yarborough as counsel, it would also prejudice the Courts, because if Appellants issues are not adjudicated, they have the right to file them again, because subject matter jurisdiction can be raised at any time, and may not be waived even by consent of the parties.

Appellants contends that the S.C. Court of Appeals order is contrary to the SCACR.

SCACR Rule 407, Rules of Professional Conduct, Rule 1.16, Comment {4} "A client has a right to discharge a lawyer at any time, with or without cause, subject to liability of payment for lawyer's services. Where future dispute may be anticipated, it may be advisable to prepare a written statement reciting the circumstances.

STATEMENT OF CASE

On September 22, 2022, Appellant Terron Dizzley entered into a contract with Attorney Yarborough for representation pursuant Appellants Emergency Motion For Alteration..., pursuant to their Emergency Exparte and Proposed Motions for Immediate Release, Double Jeopardy, False

Imprisonment, Lack of Trial Court's Jurisdiction to Impose Sentence, First and Fourteenth Amendment Rights to Familial Association, which was remanded back to the circuit court by the S.C. Court of Appeals for a ruling pursuant to findings of facts and conclusions of law. Appellant's mother, Gwendolyn B. Frasier initially spoke with Attorney Yarborough about the details of the case, and he agreed to represent them. The agreement was that Attorney Yarborough would be paid $7,500 to represent Appellants at the hearing pursuant to their Emergency Motion for Alteration...

The agreement also established that an additional $7,500 retainer fee would be required, which would only be paid to Attorney Yarborough if Appellants agreed for him to file an Appellant Brief pursuant to any adverse decisions from the circuit court and would be refunded if Appellants did not allow him to file the Appellate Brief, choose to file it themselves, or hire someone else to file it. Appellant contends that Attorney Yarborough got the circuit court to schedule a hearing for November 17, 2022. However, Attorney Yarborough breached their contract and failed to raise all of Appellants issues at the November 17, 2022, hearing. Appellants contends that at no time did they agree to waive any of their issues.

Appellant contends that before hiring Attorney Yarborough, according to him, he read Appellants Emergency Exparte and Proposed Motions for Immediate Release, Double Jeopardy, False Imprisonment, and Lack of Trial Court's Jurisdiction to Impose Sentence, First and Fourteenth Amendment Rights to Familial Association, which was sent to him by Appellants mother, Gwendolyn B. Frasier pursuant to his request. When Appellant, Terron Dizzley spoke to Attorney Yarborough via prison telephone conference and in person, Attorney Yarborough was adamant that he agreed with the issues and laws which supported them. However, after Attorney Yarborough was paid, right before the hearing when Appellant inquired as to whether he was prepared to raise the Fourth Amendment, and indictment issues, Attorney Yarborough responded that he did not know how to raise these issues, that he was not familiar with Fourth Amendment issues. However, Attorney Yarborough promised Appellant that he would make sure that he had an opportunity to testify on his own behalf at the hearing and raise the issues himself.

At the hearing, after Attorney Yarborough finished arguing the Double Jeopardy issues, he addressed to the Honorable Judge Culbertson that Appellant desired to testify in his defense, and the Attorney General objected, inappropriately alleging "hybrid representation," and Judge Culbertson also denied Attorney Yarborough 's request to allow Appellant to testify in his defense, also inappropriately alleging "hybrid representation, based on the Attorney General's request," with no objections by Attorney Yarborough.

After this, Appellant, Terron Dizzley immediately addressed to the court himself that he wished to exercise his constitutional rights to testify in his defense, and, he was still denied. See : Transcript from November 17, 2022, Hearing in Georgetown S.C., Tr. P. 13, L 11- P. 14, L 1-8.

Appellant contends that the record shows that after Judge Culbertson denied their motion, Appellant immediately addressed to the court again that he wished to exercise his right to testify in his defense and explained that he had relevant facts which proves that he was being held falsely imprisoned/kidnapped. The Honorable Judge Culbertson without any reason that served a legitimate interest denied Appellant again of his constitutional right to testify in his defense. The record also shows that Appellant even requested to fire Attorney Yarborough and then requested to exercise his right to self-representation in order exercise his right to testify in his defense, to protect his rights to be heard on all of his issues. Judge Culbertson also denied Appellant's request to represent himself. See : Tr. P. 19, L 11- 23.

The record proves that Appellant still pleaded with the courts and explain that this was a "miscarriage of justice," and that the laws and circumstances of his case proves that he's being held kidnapped/falsely imprisoned and pleaded with the courts to at least look at these laws and reconsider the judgment. Appellant also addressed to the court that he also had other issues that were not addressed. However, Appellant's petitions and pleas to the trial court in regard to his life and liberty, right to testify in his defense, and right to self-representation were arbitrarily and capriciously characterized by Judge Culbertson as "rambling." See : Tr. P. 19, L 24- P.24.

Appellant contends that the courts, throughout nine years of appealing his unlawful conviction, has refused to file his motions or adjudicate his case and has intentionally kept him away from the court to cover up his false imprisonment, denied several of his motions to represent himself and every time he hires a lawyer the courts always used his counsel to violate his right to testify in his defense, by inappropriately alleging "hybrid representation," to keep Appellant silent, which is a violation of his right to due process.

RIGHT TO TESTIFY

Appellant contends that the Honorable Judge Culbertson abused his discretion and violated Appellant's constitutional right to testify in his defense, by inappropriately invoking the prohibition against hybrid representation for arbitrary, capricious, and disproportionate reasons in order to silence Appellant to cover up his false imprisonment. Appellant contends that Judge Culbertson's errors were not harmless, and this issue is preserved for appellate review. See : State v. Rivera, 402 S.C. 225 (2013), " trial court violated defendant's constitutional right to testify in his defense at trial, and ; deprivation of a defendant's constitutional right to testify in his or her defense at trial cannot be harmless and, as such, is structural error. Defendant preserved for direct appellate review, his claim that trial court erred in a death- penalty case in refusing to honor his request to testify in his own defense at the guilt phase of trial, even though defendant and his guardian adlitem, not defense counsel, objected to trial court's ruling, and the state argued that issue was not preserved based on the prohibition against hybrid representation ; defense counsel acknowledged to trial court defendant's wishes to testify yet expressly refused to comply with those wishes, defendant directly and through the guardian objected to trial court's ruling, and the state urged trial court to honor defendant's request to testify. We find it inappropriate to invoke the prohibition against hybrid representation here based on the absence of an objection by counsel, particularly since counsel acknowledged to the trial court Appellant's desire to testify yet expressly refused to comply with those wishes.

The right of a criminally accused to testify or not testify is fundamental. Rock v. Arkansas, 483 U.S. 222, 230 (1971); Faretta v. California, 422 U.S. 806 (1975); Washington v. Texas,

388 U.S. 14 (1967); Chambers v. Mississippi, 410 U.S. 284 (1973), "But restrictions of a defendant's right to testify may not be arbitrary or disproportionate to the purpose they are designed to serve," I'd. at 55-56, 107 S. Ct. 2704. " In applying it's evidentiary rules a state must evaluate whether the interest served by a rule justify the limitation imposed on the defendant's constitutional right to testify." I'd. at 56, 107 S. Ct. 2704.

Evidence rules which " infringe upon a weighty interest of the accused" but fail to serve any legitimate interest are arbitrary. Homes v. South Carolina, 547 U.S. 319, 324-26 (2006) (quoting United States v. Scheffer, 523 U.S. 303, 308 (1998)."

RIGHT TO SELF-REPRESENTATION

Appellant contends that the Honorable Judge Culbertson also violated his Constitutional Rights under the Sixth Amendment of the United States Constitution to self-representation, when Appellant requested to fire his lawyer and proceed pro se in order to protect his right to testify in his defense. See : Faretta v. California, 422 U.S. 806 (1975) ; McKaskle v. Wiggins, 465 U.S. 168 (1984).

Appellant contends that after the hearing he spoke to Attorney Yarborough and told him that he and his family were firing him. Attorney Yarborough, requested that if Appellants give him an opportunity to draw up the Appellate Brief, he would incorporate all of their issues, allow Appellants to review it, and if Appellants was not satisfied that he would return the $7,500, and Appellants could file the Brief themselves or find someone else to file it.

Appellants agreed. However, Attorney Yarborough breached this agreement also, after months of filings continuances, against Appellants wishes, and provided Appellants a copy of the Appellate Brief he intended to file which still did not raise all of Appellants issues, and Attorney Yarborough intentionally provided a false procedural history of Appellant Terron Dizzley's case that was prejudicial to him. See: Emergency Motion to Relieve Counsel and Proceed Pro Se ; Motion to Amend Emergency Motion to Relieve Counsel And Proceed Pro Se and ; Appellant Terron Dizzley's Response to Attorney Yarborough's Response to Terron's Motion to Amend Emergency Motion to Relieve Counsel And Proceed Pro.

As a result of Attorney Yarborough breaching their contact, Appellant had his mother, Gwendolyn B. Frasier emailed Attorney Yarborough on March 13, 2023, and explained to him that they were firing him, not to file the Appellate Brief, that they would file it themselves, and requested that he return the $7,500 paid him for the appeal. Attorney Yarborough responded with a letter acknowledging that he received the email, and that he filed an extension which was granted until April 19, 2023, and that Appellants must file their Brief by that time.

On March 28, 2023, Appellants filed an Emergency Motion to Relieve Counsel and Proceed Pro Se, and also filed the Appellate Brief, along with a Habeas Corpus in Aid of Appellate Jurisdiction. On March 30, 2023, Appellant Gwendolyn B. Frasier emailed Attorney Yarborough again and explained to him that they had filed a Motion to Relieve Counsel, the Appellate Brief, and to return the $7,500 retainer for the Appellate Brief and the $7,500 paid to him for representation at the November 17, 2023, hearing because he breached his contact and did not raise all of Appellants issues as agreed. The clerk of court of the S.C. Court of Appeals refused to docket Appellants' March 28, 2023, filings, alleging that they were filed procedurally incorrect, that Appellant, Terron Dizzley, had to serve Attorney Yarborough a copy, and that Gwendolyn B. Frasier and LaQuesha Felder were not parties to the appeal, and nothing would be filed with their names on it. However, the Courts nor Attorney Yarborough sent Appellants proper notice of the clerk of court's letter rejecting their filings. Attorney Yarborough did email Appellant Gwendolyn B. Frasier a copy of the clerk of court's letter dated April 5, 2023, however, Appellant Frasier did not notice the email until April 18, 2023, along with another email from Attorney Yarborough stating that because Appellants did not correct the alleged procedural flaws and refile their motions on time, he filed his Appellant Brief on behalf of Appellants.

According to clearly established S.C. Supreme Court law: (1) Appellants Motions were not filed procedurally incorrect, and were timely filed, whereas, Foster v. State, 298 S.C. 306 (1988), establishes that hybrid representation does not apply to pro se litigants filing a motion to relieve counsel. Therefore, a motion to relieve counsel is just like any other motion and only requires Appellants to serve the Attorney General; (2) Even if Appellants Motions were filed procedurally

incorrect, the clerk of court had no authority to reject filing them irrespective of any procedural flaws that may have existed, for this was a question of law for the judge to determine. See Barnes v. State, 433 S.C. 399 (2021).

Appellant filed a Motion to Amend Emergency Motion to Relieve Counsel and Proceed Pro Se addressing these concerns, and on May 16, 2023, Appellant received an order from the S.C. Court of Appeals indicating that his Motion to Relieve Counsel And Proceed Pro Se was denied. (However, Attorney Yarborough is an Attorney Paid by Appellants).

REQUEST FOR *FULLER*, AND *FARETTA* HEARING AND RIGHT TO SELF-REPRESENTATION

The S.C. Supreme Court established in State v. Fuller, 337 S.C. 236 (1999), "Failure to conduct hearing on murder defendant's request to represent himself, made on morning of trial, was reversible error; fact that defendant's request was made in an atmosphere of his escalating dissatisfaction with his attorney suggested that defendant's purpose in making request was not to delay or stall the proceedings, but rather to address his growing concerns about his attorney, and failure to conduct a hearing precluded both full assessment of purpose behind defendant's request and determination of what effect granting request would have on proceedings."

Appellants contends that their case and *Fuller* are so strikingly similar both factually and legally, that to deny them a hearing would violate Appellants' right to due process and equal protection of law under the Fourteenth Amendment of the U.S. Constitution. Appellants contends that the record from the November 17, 2022, hearing shows that Appellant, Terron Dizzley's request to fire Attorney Yarborough was made at the hearing in an atmosphere of watching Attorney Yarborough breach his contract by failing to raise all of Appellants' issues as he agreed and failing to defend and protect Appellant's right to testify in his own defense.

Appellant, Terron Dizzley, contends that the record shows that his request at the November 17, 2022, hearing and Appellants (which was agreed upon by all Appellants Gwendolyn B. Frasier and LaQuesha Felder after giving Attorney Yarborough a chance, upon his request, to raise all of their issues

in the Appellate Brief, and he also breached that agreement) March 28, 2023 Emergency Motion to Relieve Counsel And Proceed Pro, were not made for the purpose to delay or stall proceedings, but to protect their constitutional rights to due process so that they may receive a ruling on all of their issues. Appellants contend that the S.C. Court of Appeals order violates their Sixth Amendment right to self-representation and other substantial rights.

Therefore, the S.C. Court of Appeals should have conducted a hearing pursuant to Appellants' Emergency Motion to Relieve Counsel and Proceed Pro Se, pursuant to State v. Fuller, 337 S.C. 236 (1999); and Faretta v. California, 422 U.S. 806 (1975).

RIGHT TO COUNSEL OF CHOICE

Appellant contends that forcing Attorney Yarborough to represent them on appeal would be interfering with Appellants fee agreement with Attorney Yarborough, which would amount to an unlawful seizure and deprivation of a liberty interest without due process; that liberty interest is Appellants' funds to retain another lawyer of choice. Appellant contends that the Court's order would allow the courts to unlawfully seize Appellants' money and award it to Attorney Yarborough, and force Appellants to pay Attorney Yarborough for conflicting representation against their wishes. According to clearly established U.S. Supreme Court law, the court's decision constitutes an unconstitutional restraint on Appellants' assets which violates Appellants' Sixth Amendment right to retain "counsel of choice." See: Louis v. U.S., 146 S. Ct. 1083 (2016), "The Supreme Court, Justice Breyer, held that pretrial restraints on defendant's assets needed to obtain counsel of choice violates the Sixth Amendment. The Sixth Amendment right to counsel grants a defendant " a fair opportunity to secure counsel of his own choice, Powell v. Alabama, 287 U.S. 45, 53 (1932), that he " can afford to hire," Caplin & Drysdal Chartered v. United States, 491 U.S. 617 (1989). "The Court has consistently referred to the right to counsel of choice as " fundamental." The right to select counsel of choice" is just, "the root meaning" of the Sixth Amendment right to counsel." U.S. v. Gonzalez- Lopez, 548 U.S. 140, 147-148 (2006)."

ARGUMENT 2

II. The S.C. Court of Appeals abused its discretion by issuing an order through the clerk of court stating that the Court would not accept any filings with Appellants Gwendolyn B. Frasier and LaQuesha Felder's name on it because they were not parties to the appeal, which violated substance rights of Appellants.

Appellants Gwendolyn B. Frasier and LaQuesha Felder contends the S.C. Court of Appeals order stating that the court would reject anything filed with their names on it, alleging that they are not parties to the appeal, of which they have been appealing since October 28, 2021, is immediately appealable pursuant to S.C. Code Ann. s 14-3-330(2)(a)(b)(c), because, the order affects substantial rights, namely, their: (1) First and Fourteenth Amendment rights to familial association, Disabato v. South Carolina Ass'n of Schools Adm'rs, 404 S.C. 433 (2013), " The freedom of association implicit in the First Amendment is a fundamental right, and thus, like the freedom of speech, the First Amendment protection against the abridgment of the freedom of association applies against the state through the Fourteenth Amendment." Lee v. City of Los Angeles, 250 F. 3d 668 (2000); Santosky v. Kramer, 455 U.S. 745 (1982); (2) First and Fourteenth Amendment right to access the courts, and due process; (3) prevents a judgment from which an appeal might be taken and discontinues their action; (4) refuses an appeal; (5) strikes out an answer to a novel question of law; (6) dismantles Appellants' case, and allows baseless false allegations against them to become the law of their case pursuant to an "appealable" order from the Honorable Judge Culbertson, of which Appellants were aggrieved; and (7) violates their Sixth Amendment rights to counsel of choice. See: Hagwood, supra, 362 S.C. 191 (2005); Creed v. Stokes, 285 S.C. 542 (1985), " Landowner waived objections in boundary dispute to order referring matter to master, as landowner failed to immediately appeal from order, and order became law of case once landowner failed to timely appeal."

NOTICE OF COUNSEL, GWENDOLYN B. FRASIER, LAQUESHA FELDER

On October 28, 2021, Appellants, Gwendolyn B. Frasier and LaQuesha Felder, filed an Exparte Motion pursuant to their First and Fourteenth Amendment right to familial association with Appellants, Terron Dizzley without government interference, as parties to their "Emergency Exparte Motion and Proposed Motion for Immediate Release, Double Jeopardy, False Imprisonment, Lack of Trial Court Jurisdiction to Impose Sentence, pursuant to Terron Dizzley's false imprisonment.

Appellants contend that they had a right to file their Exparte Emergency Motion along with Appellant, Terron Dizzley, and the Court of General Sessions had jurisdiction to adjudicate their motion. See: Ex Parte The State-Record Co., Inc., v. State, 332 S.C. 346 (1998), " The general rule that a court in a criminal case will not issue an injunction is subject to the exception that a court, once having obtained jurisdiction of a cause of action, has inherent power to do all things reasonably necessary to the administration of justice in the case before it. 42 Am. Jur. 2d Injunctions sec. 11 (1969). The United States Supreme Court has recently recognized the inherent authority of a court to protect its proceedings. See Degen v. United States, 517 U.S. 820 (1996) (courts invested with judicial power have inherent authority to protect their proceedings in course of discharging their traditional responsibilities). We find patent that a court of general sessions has subject matter jurisdiction to issue an injunction, if necessary, to protect its proceedings."

Since this motion was filed, every order by the Honorable Judge Culbertson was "only" addressed to Appellants Gwendolyn B. Frasier and LaQuesha Felder. None of the Court's orders were served on Appellant, Terron Dizzley. Therefore, "only" Appellants Gwendolyn B. Frasier and LaQuesha Felder were initially recognized by the Court as the Appellants of this case. When the Honorable Judge Culbertson issued an order denying Appellants motions that did not comply with law, pursuant to findings of facts and conclusions of law, and refused to respond to Appellants' "Emergency

Motion for Alteration, Amend, Modification, Reconsideration and Rescission of Order, Appellants filed an appeal.

Appellants contend that the record shows that the S.C. Court of Appeals mistakenly dismissed their appeal, on the grounds that the appeal was untimely. Appellants then filed a Motion to Reinstate on the grounds that; (1) Appellant Terron Dizzley had never received any notices pursuant to any rulings in their case and all appeals filed on his behalf were pursuant to notification from Appellants, Gwendolyn B. Frasier and LaQuesha Felder, who had received orders from the courts. Therefore, according to S.C. law, an appeal under such circumstances is not untimely; (2) Appellants had filed an Emergency Motion for Alteration...in the circuit court, of which the court refused to respond, which tolled the time for filing an appeal; and (3) subject matter jurisdiction maybe raise at any time even for first time on appeal, and may not be waived even with consent of all parties and should be taken notice of by the Appellate Court. Appellants contend that it was based on these grounds that the S.C. Court of Appeals remanded their case back to the circuit court for a ruling on their Motion for Alteration... Therefore, Appellants, Gwendolyn B. Frasier and LaQuesha Felder have appealed two of the Honorable Judge Culbertson's orders specifically addressed to them and the circuit court nor the S.C. Court of Appeals issued any orders that they were not parties to this case.

Appellants contend that according to the record of this appeal, they were always recognized by the Courts as parties to this case; if this were not so, the Honorable Judge Culbertson would not have addressed them at the November 17, 2022, hearing and would not have issued such order pursuant to their case.

PROSECUTORIAL MISCONDUCT

Appellants contend that the transcript of the November 17, 2022, hearing proves that it was not until the Attorney General initiated false, baseless accusations against Appellants Gwendolyn B. Frasier and LaQuesha Felder by stating that they were "individuals practicing law without a license," and not to

consider them as parties to this case, that the Courts began violating their Fourteenth Amendment rights to due process, First Amendment rights to access the courts, and State statutory rights to appeal. The record shows that based on these false, baseless allegations from Attorney General, Judge Culbertson deprived Appellants Gwendolyn B. Frasier and LaQuesha Felder of the opportunity to fully and fairly present their case, therefore, violating their rights to due process and issued an order pursuant to these false allegations that Appellants were "individuals practicing law without a license," without any findings of facts or conclusions of law on the merits of Appellants' Exparte Motion that supported such ruling. The record also proves that when Gwendolyn B. Frasier tried to explain to the court that this was not the case, that she was not attempting to practice law without a license on behalf of Appellant Terron Dizzley but was a pro se litigant exercising her First and Fourteenth Amendment right to familial association with Terron Dizzley, Judge Culbertson refused to allow her to speak, as well as LaQuesha Felder. See: November 17, 2022, hearing transcript P. 14, L 12- P. 15, L 1-20.

The Attorney General's accusations were false and resulted in prosecutorial misconduct and intimidating Appellants to prevent them from testifying and to prevent them from exercising their First and Fourteenth Amendment rights to familial association with Terron Dizzley, of which they have a right to, without government interference pursuant to Terron's false imprisonment for on nine years and counting. Appellants contend that the same exact thing happened in State v. Inman, 395 S.C. 539 (2011), "manner in which State conducted *void dire* of defense expert concerning her licensure status and whether she was subject to civil and criminal penalties for practicing social work without a license unequivocally constituted witness intimidation. A prosecutor may not "lob baseless threats or charges at a potential defense witness in effort to prevent the witness from testifying." State v. Williams, 326 S.C. 130 (1997), "State's improper intimidation of potential defense witness resulting in witness refusal to be interviewed by defense counsel was not harmless error. Governmental intimidation of witness can be deemed harmless error where witness nonetheless testifies, but fact that witness does not testify does

not automatically result in reversal, and, in order to obtain relief, defendant instead must demonstrate both substantial interference and prejudice."

Appellants contend that the record of the November 17, 2022, hearing proves substantial interference with their right to "free and unhampered" choice to prosecute their case. Appellants contends that, clearly, they were prejudiced by such deprivation of their rights to due process. State v. Williams, 326 S.C. 130 (1997),"Improper intimidation of a witness may violate a defendant's due process right to present his defense witness freely if the intimidation amounts to 'substantial government interference with the defense witness free and unhampered choice to testify." See: Berger v. United States, 295 U.S. 78, 88 (1935), " A prosecutor may prosecute with earnestness and vigor-indeed, he should so. But, while he may strike hard blows, he is not at liberty to strike foul ones. It is as much his duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one."

Appellants also contend that the Honorable Judge Culbertson's actions of issuing such an order also amounted to intimidating and threatening Appellants, Gwendolyn B. Frasier and LaQuesha Felder, to prevent them from prosecuting their case and pursuing an appeal. Therefore, the Honorable Judge Culbertson's conduct amounted to an abuse of discretion and a "usurpation of judicial power." See also: **SC ST s 40-5-80 Citizens may prosecute or defend own cause;** which states in pertinent part: "This chapter may not be construed so as to prevent a citizen from prosecuting or defending his own cause, if he so desires."

FRAUD UPON THE COURT

Appellants contend that, now the Clerk of Court of S.C. Court of Appeals is also using the same tactics that The Attorney General and Judge Culbertson used to prevent them from fully and fairly presenting their case at the November 17, 2022, hearing, that has already been established in the S.C.

Supreme Court as " intimidating and threatening" an individual to prevent them from appealing their case, as of right.

Appellants also contend that, according to the S.C Supreme Court, the Attorney General, the Honorable Judge Culbertson, and the clerk of court of the S.C. Court of Appeals actions also amounts to "fraud upon the court." See: Sanders v. Smith, 431 S.C. 605 (2020), "Fraud Upon the court, as a ground for relief from judgment, is a narrow and invidious species of fraud that subverts to the integrity of the court itself, or is a fraud perpetrated by officers of the court so that the judicial machinery cannot perform in the usual manner it's impartial task of adjudging cases that are presented for adjudication." See also: Chewing v. Ford Motor Co., 354 S.C 72 (2003).

Appellant Gwendolyn B. Frasier contends that she paid Attorney Yarborough $15,000 dollars to represent them on remand pursuant to their Emergency Motion for Alteration..., and Attorney Yarborough assured Appellant Terron Dizzley and Appellant Frasier on several occasions that he would address "all" of their issues raised in their Emergency Motion for Alteration..., which was the sole purpose that the S.C. Court of Appeals remanded the case back to the Circuit Court. However, although the Attorney General's allegations at the November 17, 2022, hearing were baseless and has been determined by the S.C. Supreme Court as to be "prosecutorial misconduct," see Inman, supra, 395 S.C. 539 (2011), Attorney Yarborough failed to defend them, as his clients against these allegations, and sold them out and became their adversary, falsely alleging that he was not representing them.

Attorney Yarborough misrepresented the truth to Appellants Terron Dizzley and Gwendolyn B. Frasier, indicating that he would raise "all" their issues in the Appellate Brief. However, Attorney Yarborough began to threaten Appellants Terron and Gwendolyn B. Frasier that if she or Terron Dizzley filed anything is the case, he would ask to be relieved and would also abandon Appellant Terron Dizzley's case.. (Note: Attorney Yarborough also intentionally misrepresented the truth in his April 18, 2023, filing of the Initial Briefs on behalf of Appellants, of which Appellants disapproved, that Appellants Gwendolyn B. Frasier and LaQuesha Felder signed their names as parties to the motions

because they did not understand the meaning of "Power of Attorney" without speaking to Appellant Gwendolyn B. Frasier nor LaQuesha Felder although he knew this was not true, and that they were parties to the case pursuant to their First and Fourteenth Amendment rights to familial association).

The U.S. Supreme Court has also established that when an attorney employed corruptly sells out his client's interest, such fraudulent acts are sufficient to set aside a judgment or decree. See: United States v. Throckmorton, 98 U.S. 61 (1878) " Where unsuccessful party has been prevented from fully exhibiting his case, by fraud or deception, as by keeping him away from court, false promise of compromise, or keeping him ignorant of the suit; or where an attorney fraudulently or without authority assumes to represent a party and connives at his defeat; or where attorney regularly employed corruptly sells out his clients interest; and in similar cases where there has never been a real contest, new suit may be maintained to set aside and annual judgment or decree."

RIGHT TO APPEAL

Appellants contend that according to clearly established state statutory laws, and rules of court of South Carolina, Appellants have a right to appeal the Honorable Judge Culbertson's order pursuant to their case. See: State v. Rearick, citing " State v. Wilson, 387 S.C. 597, 599 (2010) ("The right to appeal arises from and is controlled by statutory law."). To appeal, a defendant must be "aggrieved" by a decision that is statutorily classified as one that is appealable, which generally involves a final judgment. S.C. Code Ann. sec. 18-1-30. ("Any party aggrieved may appeal in the cases prescribed in this title."); Rule 201(b), SCACR, ("Only a party aggrieved by an order, judgment, sentence or decision may appeal."): See Rule 201(a), SCACR ("Appeal may be taken, as provided by law, from any final judgment, appealable order or decision.").

Appellants contend that the Honorable Judge Culbertson's November 17, 2022, order denying their case on the grounds alleging that they were "individuals practicing law without a license," is a

final order within the meaning of the above statutes and rules of South Carolina which gives them the right to appeal Judge Culbertson's order.

DUTIES OF CLERK OF COURT FIRST AND FOURTEENTH AMENDMENT RIGHT TO ACCESS THE COURT AND PROCEDURAL DUE PROCESS

Appellants contend that the Clerk of Court of the S.C. Court of Appeals had no authority to reject docketing their appeal in this matter irrespective of any procedural flaws that she may have felt existed, or whether she believed Appellants were parties to the appeal or not. See: Barnes v. State, 433 S. C. 399 (2021). "We take this opportunity to remind the clerks of court of their ministerial duty to docket filings irrespective of potential procedural flaws that may exist. Miller v. State , 377 S.C. 99, 102, 659 S.E.2d 492, 493 (2008) ("[I]t is not within the Clerk of Court's authority to refuse to perform her duty based on her opinion that a filing lacks legal merit or is untimely."). This duty is not discretionary. See 21 C.J.S. Courts § 335 (2021). Unless specifically authorized by statute or a court rule, a clerk of court may not exercise any judicial power reserved for a judge. Id. ("The clerk cannot, without express constitutional or statutory authority, exercise any judicial functions."). This includes the prohibition of performing any action contingent on deciding a question of law. Id. ("It follows that a clerk of court cannot ordinarily determine questions of law."). Accordingly, a clerk of court does not have the authority to reject a filing based on ostensible or perceived failures, including whether the document is contained on the proper form. Because the clerk's role is ministerial in this respect, the clerk shall not be "concerned with the merit of the papers or with their effect and interpretation ...." Id. § 337. Stated differently, "[a] clerk of court may not reject a pleading for lack of conformity with requirements of form; only a judge may do that." Instead, the clerk shall accept the filing, thereby permitting the court to decide any issues the parties may have with it.".

ARGUMENT 3

III. The S.C. Court Appeals abused its discretion pursuant to its order granting the Attorney General's request to hold their Emergency Exparte and Proposed Motions for Immediate Release,

Double Jeopardy, False Imprisonment, Lack of Trial Court's Jurisdiction to Impose Sentence, First and Fourteenth Amendment Rights to Familial Association in abeyance and remanding their case back to the Circuit Court.

Appellants contend that the S.C. Court of Appeals August 12, 2022, order granting the Attorney General's request to hold their case filed in the S.C. Court Appeals in abeyance and remand their case back to the circuit court was an error of law, caused them to suffer "irreparable harm," and violated their rights to due process. Appellants contend that their Emergency Motions were filed pursuant to their right to raise subject matter jurisdiction at any time, even for the first time on appeal.

SUBJECT MATTER JURSIDITION

Appellants contend that according to clearly established S.C. Supreme Court law, See: ; State v. Guthrie, 358 S.C. 102 (2002), "The lack of subject matter jurisdiction can be raised at any time, can be raised for the first time on appeal, and can be raised sua sponte by the court. Furthermore, lack of subject matter jurisdiction may not be waived, even by consent of the parties, and should be taken notice of by this Court. State v. Funderburk, 259 S.C. 256 (1972), "It is elementary that lack of jurisdiction of the court or subject matter can be raised at any time, including for the first time on appeal in this Court. Accordingly, it is immaterial that the defendant failed to appeal from the earlier ruling of Judge Baker or the intermediate ruling of Judge Weatherford, even if it be assumed that he had the right to."

Therefore, as stated in *Funderburk*, a ruling from the circuit court was "immaterial" pursuant to Appellants right to challenge subject matter jurisdiction in the Appellate Court, and the S.C. Court of Appeals should have taken notice of Appellants "Emergency Motions for Immediate Release..." Tatnall v. Gardner, 350 S.C. 135 (2002), " An appellate court must, on its own motion, raise issue of subject matter jurisdiction to ensure orderly administration of justice." State v. Castleman, 219 S.C. 136 (1951), " Where defendant, convicted of first offense of unlawful possession of intoxicating liquor, failed to question the courts jurisdiction either in the trial court or on appeal, the Supreme Court on its own

motion, raised the question of jurisdiction to prevent the punishment of defendant under a sentence imposed by court without jurisdiction."

HOLDING CASE IN ABEYANCE, IRREPARABLE HARM

Appellants contend that they filed a Motion for Update and Request for Conditional order addressing the fact that they would suffer "irreparable harm" by holding their case in abeyance, and that under such circumstances, the court's order was contrary to the law. See: Gilliam v. Foster, 63 F. 3d 287 (4th Cir. 1995), "Balance of harm with respect to state's request for stay pending appeal of order granting writ of habeas corpus precluding State from proceeding with retrial tipped decidedly in favor of petitioner, even though State claimed irreparable harm from delay in completing the trial, which had already started, as petitioners' loss of right not to be placed twice in jeopardy would be irreparable and, in view of likelihood of petitioners' success, as indicated by district Court's grant of the writ, stay would be denied."

STATEMENT OF ISSUES CHALLENGING SUBJECT MATTER JURSIDITION RAISE IN APPELLANTS INITIAL EMERGENCY EXPARTE AND PROPOSED MOTIONS FOR IMMEDIATE RELEASE, AND ISSUES PRESERVED FOR APPEAL FROM THE NOVEMBER 17, 2022 HEARING THAT CANNOT BE WAIVED AND MUST BE TAKEN NOTICE OF BY THE APPELLANT COURT ON OWN MOTION TO ENSURE THE ADMINISTRATION OF JUSTICE AND PROTECT APPELLANT FROM BEING HELD FALSELY IMPRISONED PURSUANT TO A SENTENCE IMPOSED WITHOUT JURISDICTION

I. Whether the Circuit Court Judge erred in his ruling at the November 17, 2022, hearing that trial judge's ruling at Appellant's first trial of 2012, discharging Appellant's jury on the grounds that the state failed to meet their burden of proof to convict Appellant was not a judgment of acquittal for purposes of double jeopardy which barred Appellant's second trial of 2014 because of the label place on trial court's ruling as a mistrial ?

II. Whether the Circuit Court Judge stated an error of law in his ruling at the November 17, 2022, hearing and acquit Appellant again when he stated that the trial judge's ruling in Appellant's first trial of

2012, which was a jury trial, discharging Appellant's jury on the grounds that the prosecution failed to meet their burden of proof to convict Appellant was a judgment of acquittal, but judgments of acquittals only applies to bench trials and not jury trials?

III. Whether the trial judge's sua sponte declaration of a mistrial was dictated by a manifest necessity or ends of public justice and violated Appellants Fifth Amendment rights under the Double Jeopardy Clause?

IV. Whether the affidavit in Appellant's arrest warrant provided by arresting officer, Investigator, Melvin Garrett, which does not provide any information to enable a magistrate to determine probable cause, and made false declarations to the magistrate to obtain Appellant's arrest warrant result in a constitutionally deficient arrest warrant which violated Appellant's Fourth and Fourteenth Amendment rights to due process, result in an unlawful seizure, false imprisonment, and tainted the entire judicial process, and resulted in an unlawful prosecution and conviction without jurisdiction?

V. Whether The trial court exceeded its jurisdiction by holding Appellant to answer for an infamous crime and sentencing Appellant to imprisonment without indictment or presentment by grand jury?

VI. Whether the Circuit Court Judge and the Attorney General's false accusations made at the November 17, 2022, hearing that Appellants Gwendolyn B. Frasier and LaQuesha Felder were 'individuals practicing law without a license" for exercising their First and Fourteenth Amendment rights to familial association, to prevent Appellants from prosecuting their case and testifying amount to intimidation and threatening Appellants and result in prosecutorial misconduct and an abuse of discretion and violated their right to due process?

VII. Whether the Circuit Court Judge erred by refusing to allow Appellant to testify in his defense and denying him his right to self-representation at Appellant's November 17, 2022, pursuant to his Emergency Motion for Immediate Release, Double Jeopardy, False Imprisonment, Lack Of Trial Court's Jurisdiction to Impose Sentence?

because his sentence violated the Fifth Amendment Double Jeopardy Clause Appellants respectfully request that this Honorable Court issues an order to the S.C. Court of Appeals to, own it's own motion, as required by law, raise the issue of jurisdiction pursuant to the merits of all of Appellants issues to ensure the administration of justice, and to prevent Appellant, Terron Dizzley, from being further punished, falsely imprisoned, pursuant to a sentence without jurisdiction.

CONCLUSION

For the foregoing reasons, Appellants respectfully request that this Honorable Court issue an order to vacate the S.C. Court of Appeals order denying their Emergency Motion to Relieve Counsel and Proceed Pro, and also order the S .C. Court of Appeals to cease from violating Appellants Gwendolyn B. Frasier and LaQuesha Felder's First and Fourteenth Amendment rights to access the court, due process, and their state statutory right to appeal. Appellants also respectfully request that this Honorable Court issue an order that the S.C. Court of Appeals docket their March 28, 2023, filings and adjudicate their case on the merits. Appellants contend that they have a right to file their March 28, 2023, filings, and the time and money that it cost them to make copies, etc., to not docket their filings would place an additional financial burden on them aside from the $15,000 loss to Attorney Yarbrough, pursuant to a contract that he breached and to not file Appellants' case and allow a ruling to be made on the merits of all the of their issues would amount to "extrinsic fraud"/"fraud upon the court," and obstruction of justice.

For the foregoing reasons this immediate appeal should be granted.

Date: May 24, 2023

Respectfully submitted,

S. Terron Dizzley

Terron Dizzley, 359480
ACI
1057 Revolutionary Trail
Fairfax, SC 29827

S/ Gwendolyn B. Frasier

Gwendolyn B. Frasier
7996 Pennyroyal Road
Georgetown, SC 29440

S/

LaQuesha Felder
1440 Baxter Street
Orangeburg, SC 29115