

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT
APPEAL FROM KERSHAW COUNTY
COURT OF COMMON PLEAS
ALISON RENNE LEE, PRESIDING

RECEIVED
JUN 26 2023
S.C. SUPREME COURT

CASE NO: 2022-CP-28-413/

Appellate Case No: 2023-000762

STATE OF SOUTH CAROLINA.....Respondent

"VS"

ROBERT CANNON.....APPELLANT

PETITION FOR A REHEARING

Appellant would move this court for a rehearing on the factual predicate of the trial court lacking subject matter jurisdiction to entertain and adjudicate Appellant's criminal trial.

There are several valid point's of law that I submit that implores plenary review by this Honorable Court. Noticeable, the lower court held that the issue of subject matter jurisdiction can be time barred, and the court held that this factual predicate can be successive and no hearing is needed, therefore [s]ummary dismissal was proper.

[T]his court upheld that decision, which is a [s]harp departure within subject matter jurisprudence from this court, and from the United States Supreme Court.

The particular reasons that I Petition this court for a rehearing with plenary review is for the following particulars to wit;

- [A]. ISSUES RELATED TO LACK OF SUBJECT MATTER JURISDICTION CAN NEVER EVER TIME BARRED.**

When this court upheld the lower court's decision that issues related to lack of subject matter jurisdiction can be time barred by the statute of pursuant to the S.C. Code Ann. § 17-27-45, and the precedent to wit, Pelquin "vs" State, 321 S.C. 468, 469 SE.2d. 606 (1996).

Subject matter jurisdiction is the big joker in the card game of law.

It can be played at anytime in any proceeding, and there is nothing to retard it's judicial force and power.

If nothing else, the U.S. Supreme court made it clear that defect's in subject matter jurisdiction require [c]orrection, and it can never be forfeited, or waived, U.S. "vs" Cotton, 535 U.S. 625, 122 S.Ct. 1781 (2002).

The Nations High Court never held that the factual predicate of lack of subject matter jurisdiction can be time barred by anything.

Being so, there is absolutely no legal foundation, or stare decises affect that can support a time bar in this litigation. Simply put, the court's logic is unfounded.

This much is certain, the court did not cite any precedent at all for me to read to demonstrate that the factual predicate of lack of subject matter can be time barred by the statute of limitations.

The Respondent in this litigation never demonstrated an absence of a genuine issue of material fact that this issue was time barred. To be absolutely sure, I dont see any affidavits, and I don't see any federal or state precedents of any kind of authority to show that the Respondent was entitled to summary disposition in this case, However if Respondent did, I missed it, please send me a copy of it, because I did not get it.

[B]. THE DOCTRINE OF RES JUDICATE DO NOT APPLY TO ISSUES RELATED TO LACK OF SUBJECT MATTER JURISDICTION

The court held that this issue was successive, which is defined as -following one after the other in a series: following each other without interuption.

Being so even if this issue was successive, the court's are still duty bound to adjudicate this issue, because the act's of a court without subject matter jurisdiction are utterly void, Jackson "vs" Jackson, 432 S.C. 415 (2020).

Steele Co. "vs" Citizens For a Better Env. 523 U.S. 83, 118 S.Ct. 1003 (1998).

Some may quibble the point that Appellant can raise this issue [a]gain if he so pleases, because [t]his court has explained that the doctrine of RES JUDICATA do not apply to issues related to lack of subject matter jurisdiction, Brown "vs" State, 343 S.C. 342, 540 SE.2d. 846 [No.1] (2001).

[C]. THE RESPONDENT DIDN'T DEMONSTRATE AN ABSENCE OF A GENUINE ISSUE OF MATERIAL FACT THAT THE CIRCUIT COURT HAD SUBJECT MATTER JURISDICTION.

As a starting premise, the United States Supreme Court defines subject matter jurisdiction as a court's [s]tatutory, or [c]onstitutional power to adjudicate a case,

Nobody will debate this language, Likewise, Respondent never demonstrated that it had legislative judicial power, based on fact, Appellant's litigation is anchored in the Respondent's violation of the S.C. Code Ann. § 14-5-670. What is more, Respondent has not demonstrated that the trial court had [C]onstitutional power either under the authority of the Chief Justice of [t]his court.

To be sure, the S.C. Code Ann. § 14-5-910, § 920 and § 930 have prerequisites for the judges to adhere to, before any Constitutional power under Article V § 4 can be exercised.

Nobody can seriously argue that Respondent submitted anything during the summarily dismissal stage, to wit, a petition from the prosecutor, a court order from the presiding judge, all of which by law is to be filed with the clerk of court according to state legislative statutory law.

Undebatable, because respondent did not produce anything in this case according to law, a genuine dispute was lurking in this litigation.

Applicant as a matter of law demonstrated a **prima facie** showing that he was entitled to a hearing in this case.

[D]. THEY HAVE AGREED THAT THE CIRCUIT COURT LACKED SUBJECT MATTER JURISDICTION

Fundamentally, "when considering the states motion for summary dismissal where no evidentiary hearing has been held, the PCR Judge [M]ust assume fact's presented by the [A]ppellant are [t]rue, and view those fact's in light most favorable to the [A]ppellant,

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

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

It's a fact of record that Appellant's case was summarily dismissed, and we can assume that the court followed the law and **ac**cepted what Appellant stated was true in his favor, if so, Appellant is entitled to immediate release, because the diction in his pleading's state the court lacked subject matter jurisdiction to adjudicate his criminal trial. **NOW BY LAW FROM THIS COURT, THIS CASE IS OVER, THERE IS NO MORE TO LITIGATE IF THE COURT EXCEPTED WHAT APPELLANT STATED WAS [T]RUE !**

[E]. THE HOLDINGS OF THIS COURT HAS CREATED TENSION WITH THE COMMANDS OF THE STATE LEGISLATURE.

Compelling respect, the legislative department makes the laws of this state, the executive department carries the law's into effect, and the judicial department interpret's and declares the law's the state legislature forthwith, S.C. Public Interst Foundation "vs" S.C. Transp. Infracture Bank, 403 S.C. 640,744 S.E. 2d.521 (S.C. 2013);

State ex rel. Condon "vs" Hodges, 349 S.C. 232,562 S.E.2d. 623 (2002);

It is the General Assembly who establishes the [j]urisdiction of the court's in a legislative pronouncement,

Bayly "vs" S.C. Dept. of Corrections, 397 S.C. 290,724 SE.2d.182 (2012);

Importantly, the legislature has the [a]uthority to limit the subject matter jurisdiction of a court that it has created as stated in the S.C. Code Ann. 14-5-670,

O.A. Smith Corp. "vs" S.C. Dept. of Health, 428 S.C. 189,833 SE.2d.451 (2019).

in this setting, the court must take notice that Appellant has forthwith the jurisdictional statute for Kershaw county, and it is being totally ignored by the court's.

The legislature do not do futile act's, and reality in this matter is that legislative jurisdictional law has been impermissibly abrogated, and has no effect in the law. I submit the law and all I get is orders of dismissal with no exceptable explanation according to law.

The court's holding in this case has created tention between the state legislature and this court based on fact this court has ruled contrary to the commands of the legislative department.

[F]. THE COURT'S RULING IN THIS CASE IS CONTRARY TO FEDERAL LAW AS DETERMINED BY THE U.S. SUPREME COURT, AND THE 14TH AMENDMENT TO THE FEDERAL CONST.

There is no dispute that Appellant is entitled to due process, equal protection of the law's, and fundamental fairness, all of which is protected by the 14th Amendment to the Federal Constitution. I submit that all of these right's have been compromised in this litigation, what is more the holdings of the u.s. Supreme Court in Cotton, Supra have been turned into a farce. Appellant's procedural due process right's have been squelched in this case.

[G]. THE TERMS OF THE S.C. CODE ANN. SECTION 14-5-670(1) ARE CLEAR.

The law in this matter is clear, "When a statute's terms are clear and unambiguous, on its facial validity, such as the S.C. Code Ann. § 14-5-670(1), there is no room for statutory construction, and a court must apply the statute according to its literal meaning,

State "vs" Sweat, 279 S.C. 367, 665 S.E. 2d. 645 (2008).

Importantly, "one must abide by the words where there is no ambiguity, (VERBIS STANDUM, UBI NULLA AMBIGUITAS).

The court must give words their [o]rdinary or natural meaning,

Artis "vs" District of Columbia, 138 S.Ct. 594 (2018).

We must remember that every word in a statute carries a meaning,

Ransom "vs" FIA, 562 U.S. 61, 131 S.Ct. 716 (2011).

Critically serious, the sole function of the court is to enforce the statute according to its terms, Sebelius "vs" Cloer, 569 U.S. 369 (2013).

The diction in the S.C. Code Ann. § 14-5-670(1) serves as a specification and termination of statutory judicial power of the General Sessions Court of Kershaw County.

This much is certain, the statute indicates without question that the court's statutory power is [l]imited, and the only exceptions to this statute is proscribed in the law pursuant to the S.C. Code Ann. § 14-5-910 through § 930, and there is no authorization from these statutes for the court to have any judicial proceeding's as stated in this litigation.

The threshold matter in this litigation is where did the General Sessions court of Kershaw County get judicial power to adjudicate the judicial power in this case.

In State "vs" Price, No.2023-000629 (April 26, 2023) Justice Kittredge stated During hearing.

"WE ARE HERE TO RIGHT WRONG'S"
ARGUING 'PROCEDURE' MATTERS."

Because Subject matter jurisdiction is fundamental, and the procedures used in this case are not in compliance to the legislative statutory jurisdictional law, the proceeding's should be construed as NON JURIDICUS, thus having no force or effect.

I am asking this court to rehear this case, specifically and unequivocally on the point's of law that I have litigated here.

Respectfully speaking, if this court denies me relief, please upon your order provide me the basis for denying me relief so I will know what to litigate in my upcoming litigation if I decide to take this matter further.

I want this matter adjudicated by the full court, not a word processor, meaning give me a reason for your ruling.

Respectfully Written

6/20/23

DATE

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