

The State of South Carolina
Court of Appeals

SCDC

JUL 25 2023

MAIL ROOM

Robert Watkins

Appellant

v

Greenville County

Respondent

Appeal from Judge Letitia H. Verdin
circuit Court Judge Greenville County criminal Case
Indictment 2002-GS-23-1063

Appellate Case number #2020-001421

Petition for a Rehearing

RECEIVED

JUL 27 2023

SC Court of Appeals

Robert Watkins 243803

2-2-B

Livesay Corr. Inst

P.O. Box 580

Una SC 29378

Argument

Appellant alleges that this Court is overlooking that issues of lack of subject matter jurisdiction over a criminal case can be raised at any time, can be raised for first time on appeal, and can be raised sua sponte by the court. State v Brown, 351 S.C. 552, 570 S.E.2d 559 (2002) see also State v Ervin, 333 S.C. 351, 510 S.E.2d 220 (Ct App. 1998) (holding issues related to subject matter jurisdiction may be raised at any time); 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. Brown 343 S.C. at 346, 540 S.E.2d at 848; The acts of a court with respect to a matter as to which it has no jurisdiction are void. Id. at 346, 540 S.E.2d at 849; State v Funderbuck, 259 S.C. 252, 191 S.E.2d 520 (1972).

This issue of lack of subject matter jurisdiction is not subject to the requirements of SCR Crim. Rule 29(b) after discovered evidence; where Appellant challenged the trial court's jurisdiction to convict him on the charge that the trial judge charged the jury in his charge to the jury, in which the jury found him guilty of, in which no grand jury

indictment was issued for that charge before the jury was sworn, and in which a grand jury found probable cause to believe that charged offense in which the trial judge charged the jury, issued a true bill of indictment for. Appellant ask this court to revisit the lack of subject matter jurisdiction issue, that can be raised at any time.

Also Appellant appealed the 18th Judicial Circuit Court Judge Letitia H. Verdin order denying his Motion. In her order issued on October 5 2020 she stated in that order

" The Court is in receipt of Defendant's Motion filed on September 29th 2020 After careful review the Court hereby denies Defendant's Motion; Judge Letitia H. Verdin doesn't state any legal authority in which to support her order (ruling in which she denies Appellant's Motion; The S.C. Attorney General's office as the state's 'Respondent' can only argue what's been argued by Judge Letitia H. Verdin in her order; and can not argue something different on Appeal. On appeal Judge Verdin's order is reviewed for an abuse of discretion. This court is overlooking the Question of law, in which is: did the circuit Court Judge Letitia H. Verdin

abuse her discretion in denying Appellant's Motion to Vacated Conviction on grounds of lack of subject Matter Jurisdiction, based on the facts and evidence in his Motion?

Appellant wasn't convicted for the charge offense in Indictment 2002-GS-237063 that the Solicitor use to bring Appellant before the court of General Sessions. He was convicted on the charge that the trial Judge charged the jury, in which a grand jury never issued a true bill of Indictment for. Please revisit Appellant Lack of subject Matter Jurisdiction issue.

Also in SC Court of Appeals Unpublished Opinion NU 2023-CIP-142 Submitted March 1, 2023 - filed April 5, 2023 Appellate Case NU 2020-CU1421 in which it Affirmed Appellant's 2008 Conviction. (Judges Thomas, McDonald and Hewitt.)

held Appellant's motion for a new trial, which he filed on September 29 2020 was untimely because he could have discovered and defects in the indictment caused by the jury instructions during his trial in 2008.

Accordingly, we affirm pursuant to Rule 220(b) SCAAC and following authorities: State v. Mercer, 387 S.C. 149, 166, 672 S.E2d 556, 565 (2009) (The

decision whether to grant a new trial rests within the sound discretion of the trial court, an [an appellate court] will not disturb the trial court's decision absent an abuse of discretion."); id. at 167, 672 S.E.2d at 565. ("The deferential standard of review constrains [an appellate court] to affirm the trial court if reasonably supported by the evidence."); Rule 29(b), S.C.Rim P ("A motion for a new trial based on after discovered evidence must be made within one (1) year after the date of actual discovery of the evidence by the defendant or after the date when the evidence could have been ascertained by the exercise of reasonable diligence.")

This does not apply to a motion to vacate conviction on lack of subject matter jurisdiction. Appellant's Motion was not a Motion pursuant to S.C.Rim P Rule 29(b) after after discovered evidence for a New trial, and the appellate court should not affirm the trial court order because it is not reasonably supported by the evidence. The trial court order simply denies all Appellant's issues raised without any evidence or law.

An abuse of discretion occurs when a trial

Court's decision is unsupported by the evidence or controlled by an error of law. State v Rice, 368 S.C at 613, 629 S.E.2d at 395. Judge Letitia H. Verdin's decision is unsupported by the evidence, in which she states no law in support of her decision, specifically she did not deny Appellants Motion pursuant to S.C. Crim. P. Rule 29(b), nor was Appellants Motion based upon S.C. Crim. P. Rule 29(b). The S.C. attorney General's office is of the Executive branch of Government, it can not pursuant to S.C. Const. article 1 section 8 separation of powers act in the capacity of the judicial Branch of Government as it did in its argument in the States Respondents brief, presenting an legal argument in which was not argued in Judge Verdin's order in which she denied Appellates Motion to Vacate sentence and Conviction; where Judge Verdin did not argue that appellants Motion was untimely in violation of S.C. Crim. P. Rule 29(b). The S.C. attorney General's Argument raised in their Brief of Respondent was not raised in the lower court, and therefore not preserved for Appellate Court review; in which S.C. Court of Appeals issued an order denying Appellants appeal pursuant to S.C. Crim. P. Rule 29(b).

Plus an issue of lack of subject Matter jurisdiction can be raised at anytime, State v Brown 351 S.C. 552, 570 S.E.2d 559 (2002); art. 50Crim.P. Rule 29(b) doesn't apply in which to place a state of limitations on when an issue of lack of subject Matter jurisdiction is raised violating citizens who have been convicted of a crime due Process and equal Protection of rights under State v Brown 351 S.C. 552, 570 S.E.2d 559 (2002) State v Gentry 363 S.C. 93, 610 S.E.2d 494, an would also be unconstitutional inviolation S.C. Const article III section 34 special legislation, to use 50Crim.P. Rule 29(b) to place a statute of limitation on issue of lack of Subject Matters jurisdiction that can be raised at anytime.

This court's concern should be whether or not Judge Verdin abused her discretion in denying Appellants Motion to Vacate Conviction and Sentence under the issue of lack of subject Matter jurisdiction that can be raised at anytime, and whether her decision was unsupported by evidence or controlled by an error of law.

Appellant was prejudiced "inviolated" of Due process by the SC Attorney General's argument in their Brief of Respondent, because it was not based upon the Trial Court Judge Verdin's ruling in her order denying Appellants Motion in which Appellant alleged that the Court

lacked subject matter jurisdiction to convict him of a
uncharged offense. That the jury found him guilty of
the charge Judge Patterson charged the jury in which
he amended the facts in the indictment, that violated
Due process and resulted in the jury finding him guilty by
in which there was no true bill of indictment for
when the jury was sworn, the Appellate Court is over
looking this issue, its dismissing or denying this
issue without reviewing it under a wrong application
of law: S.C. Crim. P. Rule 29(b). In criminal cases, the
appellate court sits to review errors of law only.
State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216,
220 (2006). An abused of discretion occurs when
the trial court's ruling is based on an error of law, or
when grounded in factual conclusions, is without
evidentiary support. Clark v. Cantrell, 339 S.C. 369, 389
529 S.E.2d 528, 539 (2000). On appeal this court
is applying a deferential standard of review and
overlooked the issue of lack of subject matter jurisdiction
raised in his motion and in which the Judge Verdict
denied in which was unsupported by the evidence
and was not controlled by law. Yet this court
used an application of law, S.C. Crim. P. Rule 29(b)
applied by the state in its Brief of Respondent

That was presented before it in violation of Appellants due process of right, to entertain a standard of review in error, based on the issue of lack of subject Matter

Jurisdiction: The S.C. Court of Appeal differential standard of review pursuant to SCRCR P. Rule 29(b) violates Appellants Due process of rights, because (1) his Motion was not based upon SCRCR P. Rule 29(b) after discovered evidence, (2) and there is no

evidence in support of the law SCRCR P. Rule 29(b) applied by Judge Verdin in her Order denying Appellants Motion to Vacate Conviction and Sentences: Appellant never received the opportunity to correctly address Judge Verdin's order denying his Motion to Vacate Conviction and Sentence issue concerning lack of subject Matter Jurisdiction, because he order is unsupported by evidence and law: A proper remedy would be

for this court to grant Appellant leave to file a SCRCR Rule 59(e) with Judge Leitha H. Verdin, to Motion her to rule upon each issue raised in his Motion, with supporting evidence and law in which she base her decision: So it is properly this court should Remand Appellants case back down to the lower circuit Court for a proper adjudication on the issue and merits raised in Appellants Motion

according to law ... Also Appellant acknowledged that this court in its Unpublished Opinion 2023-UP-142 stated (1) That Watkins failed to make any substantial argument or cite any authority as to this issue in his brief, and therefore found his issue abandon. see Slater v Lindsey, 394 S.C. 357, 363, 714 S.E.2d 554, 558 (Ct App. 2011) (An issue is deemed abandon and will not be considered on appeal if the argument is raised in a brief but not supported by authority. Appellant states that this court is incorrect. Appellant did support each of his issues with supporting authority, in which this court is overlooking, because it has prejudge his case based upon SCCRimP. Rule 29(b) without reviewing the merits of each issue raised, in specifically the lack of subject matter jurisdiction issue that can be raised at any time; and again, this court Appellate jurisdiction is only to review, if the lower court Judge Letitia H. Verdin order is supported or unsupported by the evidence and or is based upon error of law under abuse of discretion. Judge Letitia H. Verdin's order is unsupported by evidence and is neither controlled by law; her decision is improper and an abused of her discretion to comply with the law

in ruling on each issue Appellant raised in his Motion?
She never quoted any evidence or authority to support
her order denying Appellant's motion. basically, because
she wanted to prejudice Appellant from his right to
a Judiciary review on the merits of his issues raised
in his Appellant's brief, in which he supported each
issue with legal authority. either case laws or Constitutional
laws.

In conclusion, Appellant seeks the
granting of his petition for a Rehearing for this Court
to review the Lack of subject Matters jurisdiction
issue, or Remand back down to lower circuit court
so that Judge Letitia H. Verdin can make a proper
ruling based upon laws and supporting facts and
evidence in reference to Appellant Motion to Vacate
Conviction and Sentence pursuant to Lack of subject Matter
Jurisdiction and due process violations.

Respectfully submitted by
Robert Watkins 293803-2-2-13
Livesay Corr Inst
P.O. Box 580
Una SC 29378

The State of South Carolina
Court of Appeals

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Robert Watkins

Appellant SC Court of Appeals

Greenville County

Respondent

SCDC

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MAIL ROOM

Appeal from Judge Letitia H. Verdin
Circuit Court Judge Greenville County
Criminal Case Indictment 2002-GS 23-7063

Appellate Case # 2020-001421

Proof of Service

I Appellant Robert Watkins on 7-25-2023 after receiving
S.C. Court of Appeal order extending my time to file
a Petition for a rehearing on July 20, 2023 to July 25, 2023
in which I received from Livesay Core Trust mail room on
July 24, 2023, placed in the Livesay Core Trust
mailroom my Petition for a Rehearing addressed to
SC Court of Appeal at P.O. Box 11629 Columbia SC
29211 and a copy to SC Attorney General's office
at P.O. Box 11549 Columbia SC 29211 on 7-25-2023

to be delivered by interdepartment mail to
both parties.

Robert Watkins 293863 (22-18)
Livesey, Conn. First
P. O. Box 550
Uno SC. 29378

7-25-23

The South Carolina Court of Appeals

Robert Watkins
Greenville County

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Appellant
Respondent

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7-25 2013

JUL 27 2023

SC Court of Appeals

Dear office of the clerk of Court of the Court of Appeals.

Enclosed you will find my Petition for a Rehearing and proof of service to S.C. Attorney General's Office. Please file and return a filed copy to me for my records. I didn't receive the Court's order extending my time to file my 3rd and last Petition for an extension of time to file my Petition for a Rehearing granted to me on July 20 2023 to July 25 2023 until July 24 2023. Leaving me with only one day to complete my Petition for a Rehearing in which I got it in the mail on July 25 2023 after 12:00 noon, to send interdepartment mail

Robert Watkins 248803-2-2-B

Livesay Carr Trust

Po Box 580

Uma SC 29378