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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Greenville County
Honorable Letitia H. Verdin, Circuit Court Judge
Appellate Case No. 2023-001359

The State,

Respondent,

vs.

Robert Max Watkins,

Petitioner.

RETURN TO PETITION FOR WRIT OF CERTIORARI

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RESPONDENT'S STATEMENT OF ISSUE ON CERTIORARI

Whether the circuit court correctly denied Petitioner's motion for a new trial when the motion was untimely, he did not produce any newly-discovered evidence, and the underlying claims are meritless because he was convicted under a valid true-billed indictment by a court of competent jurisdiction.

STATEMENT OF THE CASE

Petitioner was indicted at the February 2002 term of the Greenville County Grand Jury for armed robbery (R. 27-28) and possession of a weapon during commission of a violent crime (R. 27-28). The State brought the case to trial in October 2002. Petitioner was convicted, but had his conviction reversed and his case remanded for a new trial on appeal of his PCR action. Watkins v. State, 2008-MO-001 (S.C. Sup. Ct. filed January 14, 2008).

Petitioner was retried in September 2008. He was again convicted as charged and the Honorable Larry R. Patterson sentenced him to consecutive terms of twenty-five years for armed robbery and five years for possession of a weapon. On appeal, the Court of Appeals reversed his conviction and remanded for a new trial. State v. Watkins, Op. No. 2011-UP-091 (S.C. Ct. App. filed March 8, 2011). After a Petition by the State, this Court reversed the decision of the Court of Appeals and affirmed his convictions and sentences. State v. Watkins, 406 S.C. 360, 752 S.E.2d 261 (2013).

On June 10, 2013, Petitioner filed a Petition for Writ of Habeas Corpus in the United States District Court for the District of South Carolina. On June 26, 2013, the court dismissed the petition without prejudice because state court proceedings were ongoing.

In January 2014, Petitioner subsequently filed an application for Post-Conviction Relief raising numerous trial and appellate issues, as well as several constitutional issues. After a hearing on April 22, 2015, the circuit court issued an Order of Dismissal on October 2, 2015, denying post-conviction relief. On October 5, 2017, the Court of Appeals denied his Petition for Writ of Certiorari after consideration of the entire appendix pursuant to Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988). A petition for rehearing was also denied.

While the appeal from the denial of his PCR application was pending, Petitioner filed a motion for a new trial on October 7, 2015. The motion was captioned: “Motion for a New Trial Pursuant to § 17-23-110, *Brady v. Maryland*, 373 U.S. 83 (1963) and SCRCrimP Rule 29(b), After or Newly Discovered Evidence.” The motion was denied and dismissed on April 26, 2016. This Court affirmed the denial on March 7, 2018. *State v. Watkins*, Op. No. 2018-UP-103 (S.C. Ct. App. filed March 7, 2018).

While the appeal on his motion for a new trial was pending, Petitioner filed a Motion to Vacate Sentence on April 27, 2017. This was denied by Order on May 23, 2017. After confusion on appeal and a remand to the circuit court for clarification, on November 16, 2017, the Honorable Letitia H. Verdin issued an Order clarifying that her May 23, 2017 Order denied his motion to vacate sentence. The appeal from this Order was dismissed as untimely by the Court of Appelas on June 12, 2020.

On December 20, 2018, Petitioner filed his second Petition for Writ of Habeas Corpus in the District Court. On September 30, 2019, United States Magistrate Judge Paige J. Gossett filed a report and recommendation, identifying the claims raised and recommending Respondent’s motion for summary judgment be granted. On November 18, 2019, Senior United States District Judge Cameron McGowan Currie issued an order adopting the report, granting Respondent’s motion for summary judgment, and dismissing the petition.

On February 12, 2020, Petitioner filed a second application for post-conviction relief. He originally asserted a violation of *Brady v. Maryland*, 373 U.S. 83 (1963). On September 23, 2020, He amended his application to allege other claims related to the recall of the remittitur in his direct appeal from the 2008 conviction. This PCR action is still pending with the circuit court.

On September 29, 2020, Petitioner filed a new motion entitled "Pro-se litigant Robert M Watkins Independent Motion to Vacated September 24, 2008 Conviction and Sentence on grounds that the indictment is void and the court lacked personal and subject matter jurisdiction to convict and sentence pro-se litigant under an void indictment, and Due process and equal Protection Violation of SC Const. article 1 section 3, U.S.C.A. 5th 14th," making various allegations regarding the indictment against him, the timing of the grand jury consideration, subject matter jurisdiction, and other claims. The Motion was denied by the Honorable Letitia H. Verdin in an Order Denying Defendant's Motion on October 5, 2020. Petitioner appealed this ruling. The Court of Appeals affirmed in an unpublished opinion filed April 5, 2023. State v. Watkins, 2023-UP-142 (S.C.Ct.App. dated April 5, 2023). His petition for rehearing was denied on August 18, 2023. Petitioner filed a document styled as a petition for writ of certiorari with this Court on August 22, 2023. The document did not contain a statement of issue presented, statement of the case, or argument section. Despite Petitioner's failure to comply with Rule 242, SCACR, in this return the State addresses the issue raised by Petitioner at the Court of Appeals.

ARGUMENT

I. This petition should be deemed abandoned because Petitioner has not complied with the South Carolina Appellate Court Rules.

Rule 242(d), SCACR, provides that a petition for writ of certiorari should contain the questions presented for review, a statement of the case, and a "direct and concise argument in support of the petition." Petitioner's petition contains none. Accordingly, this Court should deem the petition abandoned. See Rule 240, SCACR ("Failure of the moving party to perform any act required by this Rule may be deemed an abandonment of the motion or petition.").

II. The circuit court correctly denied Petitioner's motion for a new trial because the motion was untimely and he did not produce any newly-discovered evidence. His underlying claims are meritless because he was convicted under a valid indictment by a court of competent jurisdiction.

Petitioner contends the circuit court erroneously refused to vacate his 2008 conviction and sentence for armed robbery. He claims he was convicted under an invalid indictment because the indictment did not give sufficient notice of the offense and was issued by an illegally constituted grand jury. He further contends the trial court's jury instructions created a "variance" in the indictment, effectively amending the indictment. He also alleges the trial court was without subject matter jurisdiction. The Court of Appeals correctly held Petitioner's arguments related to the indictment are barred because they are not timely. Regardless, the arguments are meritless. Petitioner was convicted under a valid indictment by a court of competent jurisdiction. This Court should deny certiorari.

Petitioner's motion alleged various defects in the indictment under which he was tried. The motion is not timely. It does not allege any newly-discovered facts, much less facts material to guilt or innocence. See Rule 29(b), SCRCrimP ("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."). It is not a proper 29(b) motion. Instead, it is a legal challenge to the sufficiency of the indictment under which he was tried.

The motion is untimely because the alleged defects in the indictment could have been discovered when this case went to trial in 2008. S.C. Code Ann. § 17-19-90 provides: "Every objection to any indictment for any defect apparent on the face thereof shall be taken by demurrer or on motion to quash such indictment before the jury shall be sworn and not afterwards." See also State v. Gentry, 363 S.C. 93, 101, 610 S.E.2d 494, 499 (2005) (citing S.C. Code §17-19-90) (holding "if an indictment is challenged as insufficient or defective, the defendant must raise that issue before the jury is sworn and not afterwards"). The purpose of the statute is "to prevent motions to arrest judgment on grounds based upon defects in indictment apparent on the face thereof." State v. Lark, 64 S.C. 350, 42 S.E. 175, 176 (1902). Petitioner was required to raise these issues at trial, and may not do so now.

Even if properly before the court, his claims are meritless. The true-billed indictment's description of the offense with which he was charged was framed in the language of the applicable statute, which was cited therein. (R. 27-28). It alleged the time and date of the offense and that it occurred within Greenville County. It was sufficient to give Petitioner notice of the crime with which he was charged. See State v. Gentry, 363 S.C. 93, 102, 610 S.E.2d 494, 500 (2005) ("The indictment is a notice document. . . . the circuit court should judge the sufficiency of the indictment by determining whether (1) the offense is stated with sufficient certainty and particularity to enable the court to know what judgment to pronounce, and the defendant to know what he is called upon to answer and whether he may plead an acquittal or conviction thereon; and (2) whether it apprises

the defendant of the elements of the offense that is intended to be charged."). The trial court's jury instructions had no bearing on the validity of the indictment.

Petitioner's jurisdictional claims are likewise meritless. Subject matter jurisdiction is the power to hear and determine cases of the general class to which the proceedings in question belong. Dove v. Gold Kist, Inc., 314 S.C. 235, 237-38, 442 S.E.2d 598, 600 (1994). In State v. Gentry, our supreme court abandoned the view that, in criminal matters, the circuit court acquires subject matter jurisdiction to hear a particular case by way of a valid indictment by either a county or state grand jury. State v. Gentry, 363 S.C.93, 101, 610 S.E.2d 494, 499 n.6 (2005) ("We note that a presentment of an indictment or a waiver of presentment is not needed to confer subject matter jurisdiction on the circuit court. However, an indictment is needed to give *notice* to the defendant of the charge(s) against him.") (emphasis in original). The subject matter jurisdiction of the circuit court and the sufficiency of an indictment are two distinct concepts. Id. A defendant has a constitutional right to demand that a grand jury which is properly established and constituted under the law consider the criminal allegations against him. Evans v. State, 363 S.C. 495, 509, 611 S.E.2d 510, 518 (2005). However, such a challenge does not implicate the subject matter jurisdiction of the circuit court. Id.

The circuit court clearly had jurisdiction over Petitioner's trial for armed robbery. S.C. Const. art. V, § 11 ("The Circuit Court shall be a general trial court with original jurisdiction in civil and criminal cases, except those cases in which exclusive jurisdiction shall be given to inferior courts, and shall have such appellate jurisdiction as provided by law."). His claim is meritless. This Court should deny certiorari.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that certiorari should be denied.

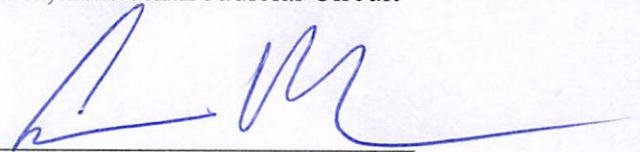
Respectfully submitted,

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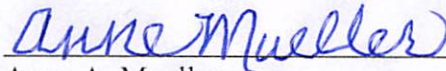
Robert Max Watkins,

Petitioner.

CERTIFICATE OF SERVICE

I, Anne Mueller, certify that I have served the within Return To Petition For Writ Of Certiorari on Petitioner by depositing a copy of the same in the United State mail, postage prepaid, addressed to Mr. Robert Max Watkins, 243803, Livesay Correctional Institute N2-0002-B, P.O. Box 580, Una, SC 29378.

I further certify that all parties required by Rule to be served have been served.
This 18th day of September 2023.



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