RECEIVED
Feb 07 2024
S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM LEXINGTON COUNTY CIRCUIT COURT

Debra R. McCaslin, Circuit Court Judge

Case No. 2023-CP-32-02817

The State (City Of Cayce), Respondent,

v.

Johnathan M. Daniels, Appellant.

NOTICE OF APPEAL

Now comes Appellant **PRO SE**, Johnathan Daniels, giving notice of appeal and notice of the below listed objections to the order and decision of the circuit court. Appellant preserves for appeal, the circuit court's findings, making the following objections:

1. Violation of Appellant's un-waived, Constitutionally protected rights is the issue here, and other factors cannot be determinant of a state court's obligation to correct Constitutional violations that have occurred or which it can prevent. In this case, Appellant appeals the orders of the municipal court. Those orders allow retaliatory prosecution of Appellant by City Of Cayce, hereinafter "the City", in retaliation for Appellant's protected exercise of religion; this despite the City, twice, failing to "demonstrate" as required by South Carolina § 1-32 and the state and federal constitutions under the federal strict scrutiny standard (although it is a

state statute, South Carolina § 1-32 invokes the compelling interest test, under the same federal strict scrutiny standard). Further, the orders of the municipal court deprive Appellant of his right to a jury trial, despite his demand for one, by denying Appellant the right to present his sole and only defense to the jury at trial (Appellant has preliminarily offered a religious exercise defense as his sole and only defense). The municipal court has ordered that, at trial, Appellant cannot bring up the subjects of his religion, exemptions to application of the laws, or religious accommodations in any way. Over Appellant's objections, these unconstitutional orders have effectively decided the case to Appellant's detriment and deprived him of substantial constitutionally protected rights. South Carolina § 14-3-330 (2)(a) pertains to appeals from, "An order affecting a substantial right made in an action when such order (a) in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action…"

2. The circuit court's finding that the circuit court has no jurisdiction to hear this appeal, although the appeal was originally made to the South Carolina Supreme Court, and referred to the South Carolina Court Of Appeals, which ordered and directed that this appeal must be made to the circuit court. If the circuit court also has no jurisdiction, then it would seem that no state court has jurisdiction to ensure Appellant's constitutionally protected rights are upheld. This constitutes a circular due process violation that sends Appellant from court to court, in an endless loop. The City and the municipal court have violated Appellant's constitutionally protected rights, and the judiciary of the state offered no recourse; that is unconstitutional.

3. The circuit court's insistence that this appeal was made under S.C. Code § 14-25-95, and that Appellant did not comply with that statutes requirements for appeal are erroneous. Contrarily, Appellant did give the notices required by S.C. Code § 14-25-95 to the municipal court within the 10 day period allowed for giving notice of intent to appeal after the orders of the municipal court. South Carolina Code § 14-25-95 does not address any other time requirement outside of the time allowed for giving notice of intent to appeal, and pertains only to appeals from a municipal court to a court of common pleas (i.e circuit court). This makes Appellant's compliance with S.C. Code § 14-25-95 non-determinant in disallowing his appeal for a lack of timeliness.

4. Judge McCaslin ignored the fact that Appellant's appeal was made pursuant to South Carolina §§ 14-3-330 (1) and/or (2)(a) and was only brought to the circuit court because the South Carolina Court of Appeals required it to be submitted to the circuit court (Appellant is Pro Se, and does not claim to understand why that decision was made by the South Carolina Court Of Appeals). South Carolina § 14-3-330 (1) pertains to appeals from circuit court cases "brought there by original process or removed" to the circuit court, while South Carolina § 14-3-330 (2)(a) pertains to appeals from, "An order affecting a substantial right made in an action when such order (a) in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action…" South Carolina § 14-3-330 (2)(a) does NOT state that an appeal made under that section MUST be brought before the circuit court before the South Carolina

Supreme Court has jurisdiction to hear the appeal challenging unconstitutional orders.

5. The only timeliness issue addressed by the circuit court, outside of S.C. Code § 14-25-95, is the period of time that passed between the remittance of the case from the South Carolina Court Of Appeals back to the municipal court. Appellant clearly established before the circuit court that his court appointed attorney provided ineffective assistance of counsel regarding the appeal, which was the sole cause of the delay in filing the appeal at the circuit court. At the circuit court hearing, it was explained to Judge McCaslin that Appellant's attorney, appointed by the municipal court, was ineffective as follows: **(A).** He refused to assist Appellant in making any religion-based appeal or presenting any such argument at trial. Appellant provided E-mails to the circuit court, which showed that his attorney incorrectly reasoned that no free exercise violation occurred because the statutes under which Appellant was charged were both neutral and generally applicable. Apart from his attorney being incorrect regarding general applicability of the laws, this reasoning was proper under *Employment Div., Dept. of Human Resources of Ore. v. Smith*, 494 U. S. 872, but it is a totally incorrect reasoning given South Carolina § 1-32. The compelling interest test imposed by South Carolina § 1-32 bypasses *Smith*'s neutrality and general applicability barriers to strict scrutiny, and the statute says so in the plain reading of its text. **(B).** Appellant's court appointed attorney refused to assist Appellant because he failed to recognize that under a compelling interest test and strict scrutiny, determination of a compelling interest cannot be done at a general or high level.

Instead, strict scrutiny requires that courts determine if the state has a compelling interest to deny an exemption to each particular religious claimant, individually and personally. In a strict scrutiny analysis, government cannot merely claim a compelling interest at a high level of generality, because the "compelling interest test under the First Amendment demands a more precise analysis." See Gonzales v. O Centro Espírita Beneficente União do Vegetal, 546 U. S. 418, 430–432 (2006) (discussing the compelling interest test applied in Sherbert and Wisconsin v. Yoder, 406 U. S. 205 (1972)); see *Fulton v. City Of Philadelphia*, 593 U.S. at 14 (2021). Rather than rely on "broadly formulated interests," courts must "scrutinize[] the asserted harm of granting specific exemptions to particular religious claimants." O Centro, 546 U. S., at 431. The question, then, is not whether the City has a compelling interest in enforcing these laws generally, but whether it has such an interest in denying an exemption to Appellant, individually. Appellant had explained to the municipal court, the City prosecutor, and his attorney, via multiple motions, affidavits, and statements that Appellant is very competent to drive, having previously been licensed for more than 25 years and having had only one driving accident during that time. Appellant is not frequently ticketed for moving violations, and does not use drugs or drink alcohol. Once properly narrowed, the City's asserted interests are insufficient to satisfy a compelling interest under strict scrutiny. Appellant's attorney, for political reasons, unreasonably refused to assist Appellant despite these facts. **(C.)** Appellant's court appointed attorney refused to assist Appellant because he intentionally misinterpreted the case law underlying South Carolina § 1-32's

compelling interest test, Wisconsin v. Yoder, 406 U.S. 205 (1972), and Sherbert v. Verner, 374 U.S. 398 (1963). His explanation of the implications of *Wisconsin v. Yoder: 406 U.S. 205* (1972) was completely incorrect. His first position was that *Yoder* was a driver's license case that was decided in favor of the state's right to require licensing. When Appellant informed him that it was a First Amendment religious exercise case, his attorney responded that despite his earlier inaccuracy, the case was decided in favor of the state's right to compel licensing or performance under the circumstances. This was also incorrect. In *Yoder*, the U.S. Supreme Court ruled 7-0 that the state of Wisconsin violated the First Amendment to the Constitution, and had no right to compel performance or punish noncompliance with its law. In deciding to abandon Appellant, Appellant's attorney denied this fact. **(D).** Appellant's court appointed attorney refused to assist Appellant because he refused to take notice that the frequency with which the City or the state actually grants the exemptions in question is irrelevant. As the Supreme Court stated in *Fulton v. City Of Philadelphia*, 593 U.S. (2021), quoting *Smith*, 494 U. S., at 884, "The creation of a formal mechanism for granting exceptions renders a policy not generally applicable, regardless whether any exceptions have been given, because it "invite[s]" the government to decide which reasons for not complying with the policy are worthy of solicitude."

6. The circuit court's finding that this appeal is untimely. Any untimeliness, between the remittance of the case from the South Carolina Court Of Appeals and Appellant's filing of the appeal to the circuit court, is a direct result of Appellant being abandoned by his court appointed attorney, who provided ineffective and

sub-standard assistance to Appellant. Further Appellant has never knowingly or intentionally waived his rights to religious freedom, right to counsel, and trial by jury. Since South Carolina § 14-3-330 (1) and (2)(a) allow intermediate appeals for the enforcement of Appellant's substantial Constitutionally protected rights, timeliness must give way to getting things right, otherwise Constitutional violations of substantial protected rights will continue to occur. In this case, the City is putting Appellant on trial for his constitutionally protected religious practice. Concurrent with the City's unlawful burdening of Appellant's free exercise of religion, the City has repeatedly failed to "demonstrate" as required by South Carolina Section 1-32, despite Appellant's multiple proper demands that the City do so. The City's prosecution of Appellant, and its refusal to allow Appellant lawful accommodation is a further unlawful substantial burden on Appellant's protected right of religious freedom. In this case, where Appellant has not waived his rights and the damage from the municipal court's ruling to Appellant's rights has already occurred, or is reasonably foreseeable and preventable/correctable, courts within this state must be able to review the record and ensure Appellant suffers no further Constitutional harm. All levels of this state's judiciary, from its municipal court to its highest court, so far, have failed to force the City to comply with the law.

7. The circuit court did not acknowledge that Appellant's Pro Se appeal, is an appeal from an" intermediate" or "interlocutory" order, such as the orders made by the municipal court in this case, and that such an appeal is properly addressed by South Carolina § 14-3-330 (1) and (2)(a). The circuit court's decision hinging on

whether the untrained, Pro Se Appellant misnamed an intermediate order an interlocutory one should not disallow his appeal. The circuit court should decide if the orders complained of can be appealed under South Carolina § 14-3-330 (1) and (2)(a) and hear the appeal. If the circuit court cannot hear the appeal under South Carolina § 14-3-330 (1) and (2)(a) that is understandable, as long as Appellant's appeal to the South Carolina Supreme Court is decided on the merits of the appeal. Additionally, the order of the municipal court, which disallows Appellant's religion based defense, may be appealed under South Carolina § 14-3-330 (2)(c) which pertains to an order that "strikes out an answer or any part thereof..."

8. Regarding timeliness, the circuit court's refusal to utilize it's authority under S.C. Code Ann. § 18-1-100 is stunning, and will allow gross injustice and violations of the state and federal Constitutions. The result is that Appellant is being put on trial while: (1) his religious exercise is unlawfully burdened by the City, and (2) he is deprived of the right to a jury trial, because he cannot present his sole and only legal defense to the jury at the municipal trial. Since preventing unconstitutional/retaliatory prosecution and unlawful denial of Appellant's right to a meaningful trial by jury is a sworn duty of the state's courts, justice requires that the circuit court hear and decide this appeal at this time. Why should the City be allowed to: (1) prosecute Appellant for his protected religious practice, (2) then, twice, fail to "demonstrate" as required by South Carolina Section 1-32, then (3) order that Appellant cannot present his sole and only defense to the jury (effectively denying Appellant's right to present a defense and his demand for jury

trial), and (4) then subject Appellant to an unwanted summary trial in a biased forum.

9. The circuit court's finding that Appellant must continue to endure blatant and unlawful denials of due process and the resulting damages is shocking. The denials and deprivations have already been brought to the attention of every level of this state's judiciary. This is to say that, the judiciary of South Carolina, with full knowledge that: (1) a deprivation of Appellant's protected rights has been carried out by a municipality of this state, (2) that the deprivation has been ratified and ordered to be allowed by the municipal judge, and (3) suffered by Appellant on multiple occasions, will not act to protect Appellant until he has been further deprived and sentenced to jail. Appellant has already suffered deprivations of his rights to religious freedom, liberty and property, and the circuit court's refusal to act will allow him to be deprived of his right to trial by jury as well. What is the point of South Carolina 14-3-330 (1) and (2)(a), if the appeal will be ignored and the unconstitutional conduct allowed to proceed until after final judgment?

10. The circuit court erred in not deciding the appeal on the merits. In any case, there must be at least one court in this state with jurisdiction to decide the case. This appeal has now been presented to every level of court in this state, and every court has refused to decide the appeal on the merits. Such round and round, circular denial of due process is unconstitutional.

The Cayce Municipal Court and City Of Cayce have engaged in depriving Appellant of his Constitutionally protected rights through retaliatory prosecution and denial of due process. The South Carolina Supreme Court has previously refused to decide this matter, having referred

the case to the South Carolina Court Of Appeals. The South Carolina Court Of Appeals refused to decide the case on the merits, requiring that the case go through the circuit court. Now, the circuit court too claims a lack of jurisdiction. Every level of the South Carolina judiciary has, so far, failed to protect Appellant's rights of religious freedom and right to a trial by jury. This is circular denial of due process, and is unconstitutional.

Finally and specifically, regarding Appellant's arguments made in this appeal, which the circuit court has refused to address on the merits, **Appellant maintains each and every objection to the actions and orders of the municipal court as described in the NOTICE OF CRIMINAL APPEAL / NOTICE OF OBJECTIONS filed with the circuit court on July 27th, 2023**. Appellant objects and maintains all of the abovementioned for review and appeal to the South Carolina Supreme Court or South Carolina Court Of Appeals.

Respectfully Submitted

Johnathan Daniels

Appellant, **PRO SE**

P.O. Box 30651
Columbia, South Carolina 29230
Email: chesssetbyj@yahoo.com

January 3rd, 2024