

Argument

RECEIVED

Jun 06 2024

S.C. SUPREME COURT

Question 1

Did the lower Court err in Failing to grant the Petitioner a Subject matter Jurisdiction hearing on his new challenged (Subject matter Jurisdiction) Issue?

Petitioner now submits his Explanation according to Rule 243(c), SCACR, as to why the lower Court judge determination that Petitioner/Applicant's post-conviction relief application was barred by the Statute of limitation and/or successive was improper:

The Petitioner/Applicant mailed the current post-conviction relief application on June 12, 2023 and filed by the Marion County Clerk of Court on July 14, 2023. The Petitioner basically agrees with the case history as presented by the Respondent.

The Petitioner/Applicant raised the following averments:

- 1) The Circuit Court lacked subject matter jurisdiction over a nonexistent offense (Homicide).
- 2) Ineffective Assistance of Counsel, (Plea Counsel failed to advise Petitioner, the Circuit Court lacked subject matter jurisdiction over a nonexistent offense),
- 3) Prosecutorial misconduct

'Explanation'

The Petitioner now presents his Explanation to this Court, why the lower Court determination that Petitioner's Post-Conviction relief application was barred by the Statute of limitation and/or successive was improper and contrary to established legal authorities:

1) The Circuit Court lacked subject matter jurisdiction to accept Petitioner's guilty plea to a nonexistent offense (homicide).

The Petitioner stood in front of a Circuit Court judge and pled guilty to a nonexistent offense (homicide), that was never ruled a homicide by the coroner or medical examiner, which is required by state law. See South Carolina Code Ann § 17-5-530(A)(1), see § 17-5-530(B). State law requires medical examiners to make an initial inquiry, forming the basis of a medical conclusion as to the cause and manner of death, if alleged death is caused by violence. See also State v. Westmoreland, 421 S.C. 807 S.E2d 701 (Ct. App. 2017). The Respondent/State argued in Westmoreland, supra... that a statute required the coroner to

'Explanation'

determine the manner of death was homicide, the defense objected, and the trial court responded, "I think Coroners are required to give rulings on death by law."

Petitioner further contends, just because a court has subject matter jurisdiction over a class of cases a defendant is convicted of does not end the court's inquiry into whether a jurisdictional defect sufficient to survive a guilty plea exists. See State v. Sims, 423 S.C. 397 814 S.E.2d 632 (Ct. App. 2018).

The jurisdictional power of a court of general sessions to adjudicate criminal cases is not unlimited. It does not include, for instance, the power to convict someone of a statute no longer in effect. In re Terrence, 317 S.C. 212, 214 452 S.E.2d 626, 627 (Ct. App. 1994), or of a nonexistent offense, Whitner v. State, 328 S.C. 1, 5 492 S.E.2d 777, 779 (1997), Williams v. State, 306 S.C. 89, 410 S.E.2d 563 (1991), see Sims supra,

Petitioner contends that his case falls under the category of being a nonexistent offense.

'Explanation'

Respondent contends that Petitioner already had a subject matter jurisdictional hearing concerning defects in his indictment.

Petitioner contends that this is a new subject matter jurisdictional issue that was never entertained by any court.

Petitioner further contends that the lower court's determination that his new subject matter jurisdiction issue was barred by the statute of limitation and/or successive was improper and contrary to legal authorities:

Petitioner contends that he should have been granted a subject matter jurisdictional hearing to determine whether or not the circuit court had subject matter jurisdiction to accept his plea to homicide since the coroner nor medical examiner never ruled the alleged incident/death a homicide, as required by state law. See South Carolina Code Ann. § 17-5-530(A)(1), see also Moses v. Sumter County, 55 S.C. 502, 33 S.E. 591 (1899). This court said in Moses, supra, it is made the duty of the coroner in all cases to hold the preliminary investigation, and he has no discretion to dispense

'Explanation'

with it. Petitioner contends that there was no investigation performed by the coroner or medical examiner in this case, no ruling or determination.

This Court was faced with a similar issue in Brown v. State, 343 S.C. 342 540 S.E.2d 846 (2001) overruled in part by State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005).

Brown, supra, filed a second subject matter jurisdiction issue and the Respondent/State asked this Court to dismiss Brown's issue on procedural grounds but this Court refused to do so.

This Court went on and explained the law by saying:

Initially, we note that the State argues Petitioner is precluded from raising a subject matter jurisdiction argument because the issue of subject matter jurisdiction has been litigated once before and ruled upon by this Court. We are unpersuaded by the State's procedural argument.

The jurisdiction of a Court over the subject

'Explanation'

matter of a proceeding is Fundamental. Anderson v. Anderson, 299 S.C. 110, 115 382 S.E.2d 897, 900 (1989). "Lack of Subject matter Jurisdiction may not be waived, even by Consent of the parties, and should be taken notice of by this Court."

id. It is well-settled that issues related to Subject matter Jurisdiction may be raised at any time, including For the First time on appeal in this Court. Carter v. State, 329 S.C. 355, 495 S.E.2d 773 (1998), State v. Funderburk, 259 S.C. 256, 191 S.E.2d 520 (1972). Furthermore, the acts of a Court with respect to a matter as to which it has no Jurisdiction is void, Funderburk, Supra,

while it is true that both this Court and the PCR Court have addressed Subject matter Jurisdiction arguments related to the Code Sections in the indictments, neither this Court nor the PCR Court has addressed the precise challenge now at issue. Since Subject matter Jurisdiction is an issue which is Fundamental and may be raised at any time, we decline to Find that our review of this issue is precluded on procedural grounds. Carter, Supra, Anderson, Supra.

'Explanation'

Petitioner contends that based upon this Court's list of legal authorities, that Brown's New Subject matter Jurisdiction Issue cannot be barred on procedural grounds.

Petitioner further contends that based upon this Court's ruling that subject matter jurisdiction is fundamental and may be raised at any time. The lower court ruling in his case, that petitioner's new subject matter jurisdiction issue is barred by the statute of limitation and/or successive was improper and contrary to legal authorities.

2) Ineffective Assistance of Counsel, (Plea Counsel failed to advise petitioner, the Circuit Court lacked subject matter jurisdiction over a nonexistent offense)

Petitioner further contends that plea counsel was ineffective and deprived petitioner of his sixth and fourteenth Amendment rights to the United States Constitution of effective assistance of counsel and due process of law when counsel failed to advise petitioner prior to pleading guilty to murder that the court lacked subject matter jurisdiction to accept a guilty plea to a nonexistent offense. State v. Sims, 423 S.C. 397, 814 S.E.2d 632 (Ct. App. 2018), State v. Funderburk, 259 S.C. 256, 191 S.E.2d 520 (1972).

Jerry L. Franklin, Jr # 132862
F 2 A-186
McCormick Correctional Inst.
386 Redemption Way
McCormick, S.C. 29399



RECEIVED

JUN 06 2024

S.C. SUPREME COURT

Hon. Patricia A. Howard
Clerk of S.C. Supreme Court
Post Office Box 11330
Columbia, S.C. 29211

RECEIVED
JUN 03 2024
MCO
ROOM

