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SC Court of Appeals

The State of South Carolina

In The Court of Appeals

State of South Carolina, Respondent,

V.

Antonio Gordon, Appellant.

Appellate Case No.2021-001280

Appellant's Petition for Rehearing and Rehearing En Banc Rule 221 S.C.A.C.R.

Order Filed July 3, 2024 unpublished Opinion No. 2024-UP-239

Mr. Alan McCrory Wilson Esquire.

Mr.Mark Reynolds Farthing, Esquire.

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Antonio Gordon,#259798

RCI GA 16

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I.

Appellant Petition this Honorable Court for a Rehearing and Rehearing En Banc of it's Order filed herein on July 3,2024, submitted June 1,2024-Filed July 3,2024, by unpublished Opinion No.2024-up-239 pursuant to Rule 221,SCACR. Appellant respectfully submits this Court should rehear this matter for the following reasons.

> This Court made a finding that Appellant appealed the denial of his Motion to Vacate Conviction and Sentence and that Gordon argues the circuit court erred by finding the General sessions court had jurisdiction to hear his guilty plea when he was a juvenile at the time of the offense and should have been adjudicated in the Family Court. Gordon contends that material facts and principles of law has been overlooked or disregarded and hence, there is a basis for granting a Rehearing and Rehearing En Banc.

Appellant asserts the issue to be considered on appeal is whether the lower court committed error of law when it failed to follow statutory construction and consider all of the statutes that relate to the same general law when making a finding general sessions court properly had jurisdiction. In construing statutory language, the statute must be read as a whole, and sections which are part of the same general statutory law must be construed together and each one given effect. Higgins v. State, 307 S.C. 446, 415 S.E.2d 799 (1992). The Court must presume the legislature did not intend a futile act S.C. Code Ann 20-7-7205(a);20-7-6605(1),(2);20-7-400(a)(1)(d);20-7-7605(1)(6) (Supp.1998) of the Children Code of Laws Act but rather intended those statutes to accomplish something. State ex rel. McLeod v. Montgomery, 244 S.C. 308, 136 S.E.2d 778 (1964).

This Court found that State v. Rice,401 SC 330 ,333, 737 SE2D 485,486 (2013) (agreeing with the Iowa Supreme Court reasoning that an erroneous order transferring a juvenile to general sessions court would be judicial error and not subject matter jurisdiction) bars Gordon numerous subject matter jurisdictional claims.

Appellant asserts this Court has overlooked important facts and principles of law on these issues. Jarmel Rice was charged as a juvenile when he was fifteen years old for a series of violent crimes. Following a contested waiver from family court to general sessions court, Appellant pled guilty to three counts of armed robbery and one count of assault with intent to kill and received a sentence of eleven years in prison, with many other charges dismissed. In pleading guilty, Appellant raised no objection to the family court waiver. On appeal, Appellant seeks to resurrect his family court constitutional challenge to the waiver as violative of Apprendi v. New Jersey, 530 U.S. 466, 120 S.Ct. 2348, 147 L.Ed.2d 435 (2000). In Rice case the family court judge issued an order waiving jurisdiction under the applicable statutes of the children code of laws act and Rice did not appeal the order then attempted to resurrect his family court constitutional challenge to the waiver as violative of Apprendi v. New Jersey,supra.

Appellants asserts his case is totally inopposit to Rice case and in fact does not have any relation. Appellant asserts that Rice case does not involve an issue where family court ***never issued an order relinquishing its first attached jurisdiction with a statement of***

reason, there was no waiver, no juvenile Petition filed and no waiver hearing conducted in Gordon case, there was no order signed by a judge Waiving or transferring jurisdiction once family court jurisdiction attached in this case based on him being found violating a criminal law and taken into family court custody jurisdiction based on probable cause. Gordon asserts Family court retained jurisdiction until an order is issued transferring or waiving jurisdiction pursuant to section 20-7-7605(1),(6);20-7-6605(1),(2) of the children code of laws act. Gordon asserts for 90 days the family court exercise it's exclusive original jurisdiction under sections 20-7-400(a),(1),(d) until the York County Grand jury issued true bill indictments in this case charging Gordon with a Class A,B,C, or D felony (***Note without any order with a statement of reason having to be signed and filed in the Clerk of Court).*** Gordon asserts as a result thereof his indictments and guilty plea judgment is a nullity void ab initio pursuant to State v. Funderburk (finding the grand jury did not have jurisdiction to issued true bill indictment) and State v. Wilson,

The Court in Rice did not view his argument as jurisdiction, he cast his issue on appeal as a constitutional claim, not a jurisdiction one. Specifically, Rice argued South Carolina Juvenile law violates his sixth amendment right to a jury trial and due process of law under Apprendi. Gordon agree with the Rice court that Rice did not even attempt to mount a jurisdictional claim before the court and therefore judicial error would apply to Rice but on the other hand Gordon case illustrate subject matter jurisdiction and have been so found in the lower court order in this case as well in numerous cases cited to this Court in Appellant's reply brief in which he herein adopt in his Petition for Rehearing and Rehearing En Banc.

Finally, Appellant asserts the doctrine of Stare decisis apply in this case where our Supreme Court has found this very same identical argument as jurisdictional in State v. Graham, 532 S.E.2d 262 (2000). Graham was a sixteen year old juvenile who challenged the general sessions court jurisdiction because he was not waived up from family court to general sessions court. Our Supreme Court found because Graham was charged with a class A,B,C or D felony established in section 20-7-6605(1) he did not first have to begin in family court jurisdiction. The only difference between Graham case and Appellant case is the fact Appellant was taken into family court custody jurisdiction based on probable cause pursuant to Sections 20-7-7205(a);20-7-6605(1),(2);20-7-400(a),(1),(d) which wasn't before the Graham court, the term probable cause wasn't mentioned, Graham did not argue his indictments was a nullity because general sessions did not have jurisdiction to indict him because family court retained jurisdiction until an order was issued transferring jurisdiction when his indictments was true billed. Most recent our Supreme Court in Jones v. State, 889 S.E.2d 590 (2023) addressed arguments where the Jones Court held "

Because the subsection exempts Jones from falling within the family court's jurisdiction, in operation with subsection 63-3-510(A)(1)(d), it cannot "transfer" or "waive" him to the circuit court". Therefore, we decline to characterize subsection 63-29-20(1) as an "automatic waiver provision" and view the subsection as definitional in effect. Gordon arguments are different than Jones and Graham in regards to the jurisdictional argument set forth and the laws relied on. Therefore pursuant to Graham and Jones Appellant's claims raised and argued are jurisdictional issues and not that of a judicial error and that his indictments and guilty plea guilty judgement is void ab initio because there was no proceedings commenced in family court jurisdiction. Therefore ,Gordon conviction and sentence should be vacated. See S.C. Code Ann 20-7-7205(a);20-7-6605(1)(2);20-7-400(a)(1)(d);20-7-7605(1)(6); ***Breedlove*, 285 Kan. at 1013-14**; ***Mayfield*, 241 Kan. at 561** where the Kansas Supreme Court held "In other words, the State must start in juvenile court when it charges an individual with criminal conduct he or she allegedly engaged in as a juvenile and cannot simply jump into district court. Without a proper juvenile court referral, the district court lacks jurisdiction over the criminal case, and the proceedings would be void. See ***State v. Belcher*, 269 Kan. 2, 8, 4 P.3d 1137 (2000)**; ***In re Estate of Heiman*, 44 Kan. App. 2d 764, 766, 241 P.3d 161 (2010)**.

"[A]bsent a proper bindover procedure * * *, the juvenile court has the exclusive subject matter jurisdiction over any case concerning a child who is alleged to be a delinquent." ***State v. Wilson*, 73 Ohio St.3d 40, 44-46, 652 N.E.2d 196 (1995)**. In *Wilson,* the juvenile was 17 years old at the time of his criminal activity and never appeared before the juvenile court, apparently because the state and the court mistakenly believed that he was 18 years of age when he committed the crime. He appeared before and was convicted and sentenced by the general division of the court of common pleas without any bindover proceeding or transfer order from the juvenile court. Thus, the true question in this case that the Graham and Jones court did not answer (1) How family court jurisdiction attaches in the first instance when children are found violating criminal laws and taken into family court custody jurisdiction ,(2) what happens after the child 16 years of age found violating a criminal law and taken into family court custody jurisdiction based on probable cause because the child is not charged with any felony. (3) Should a Petition be filed charging persons like Gordon with a crime in family court after being found violating a criminal law and taken into family court jurisdiction based on probable cause. The Jones Court recognize these jurisdictional questions need to be answered findings section 20-7-6605 is a definition statute and not a jurisdiction statute. Appellant's case answer these jurisdictional questions the Graham and Jones Court left open.

Moreover, In criminal cases, this Court reviews only errors of law. State v. Anderson, 415 S.C. 441,446,783 S.E.2d 51,54 (2016) (The trial court's factual findings are binding on the Court unless unsupported by the evidence, clearly Erroneous, or controlled by an error

of law); State v. Winkler,388 SC 574,582,698 SE2d 596,600 (2010). This Court Unpublished Opinion does not make a finding whether the lower court judge committed an error of law when it did not follow statutory construction as outlined by our Supreme Court in Higgins v. State, supra. The Appellant contends the Ohio Supreme Court opinioned in a case identical to Gordon when the court held "The statutory-construction canon of in pari materia instructs that statutes relating to the same subject "be construed together, so that inconsistencies in one statute may be resolved by looking at [the] other statute on the same subject." Black's Law Dictionary 911 (10th Ed.2014); see also State ex rel. Clay v. Cuyahoga Cty. Med. Examiner's Office, 152 Ohio St.3d 163, 2017-Ohio-8714, 94 N.E.3d 498, ¶ 17 (lead opinion) (the in pari materia rule of statutory construction applies when the wording of a statute is in doubt or ambiguous, i.e., capable of bearing more than one meaning). Because the juvenile-transfer process involves the application of different sections within R.C. Title 21, this canon should be followed. See State v. Smith,194 NE3d 297 (2022). It's clear the lower court order does not make findings of fact and conclusions of law on sections 20-7-7205(a);20-7-6605(1),(2);20-7-400(a),(1),(d);20-7-7605(1),(6) when making a finding General Sessions Court properly had jurisdiction. Therefore, Gordon asserts the lower court committed error of law and it's finding of fact should be reversed and his conviction and sentence be vacated accordingly. This Court should grant Rehearing and Rehearing En Banc to cure a gross miscarriage of justice.

Gordon asserts State v. Dunbar,587 SE2d 691 bar the Respondent's claim that Gordon ***subject matter jurisdictional issues is a judicial error.*** This issue was not presented to the lower court or ruled on by the lower court. In order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial judge. Issues not raised and ruled upon in the trial court will not be considered on appeal. Humbert v. State, 345 S.C. 332, 548 S.E.2d 862 (2001). A party need not use the exact name of a legal doctrine in order to preserve it, but it must be clear that the argument has been presented on that ground. See State v. Prioleau,supra where our Supreme Court vacated this Court Opinion to the extent it addressed an issue that was not preserved. Fn[1] Gordon asserts this Court did not make findings of fact and conclusions of law on this claim raised by Gordon in his reply brief and this Court should grant Rehearing and Rehearing En Banc.

Fn[1] The Respondent was given notice advance and the opportunity to respond to Gordon jurisdictional claims raised in his PCR 2001-cp-1414 in which the Respondent failed to make a return to Gordon jurisdictional claims. The lower court reopen its judgment in pcr (1414) for Gordon to properly litigate his claims where he was denied notice and the opportunity to respond to the State claim that ***"General Sessions Court properly had jurisdiction under section 20-7-6605 of the children code of laws drafted***

in the Respondent proposed order adopted by the PCR court". The Respondent again failed to make a return to Gordon jurisdictional claims in his Motion vacate conviction and sentence.
Furthermore, the State cannot argue one thing in the proposed order adopted by the PCR court in PCR (1414) and an alternate ground on appeal. State v. Duckman,341 SC 293,534 SE2D 268 (2000).

Also Gordon asserts "Judicial estoppel prevent the State from adopting its new position on appeal that Gordon subject matter jurisdictional claims are judicial errors. Judicial estoppel is an equitable concept that prevents a litigant from asserting a position inconsistent with, or in conflict with, one the litigant has previously asserted in the same or related proceeding." Cothran v. Brown, 357 S.C. 210, 215, 592 S.E.2d 629, 631 (2004). In Cothran, our supreme court held that the following elements are necessary for the doctrine of judicial estoppel to apply:

> (1) two inconsistent positions taken by the same party or parties in privity with one another; (2) the positions must be taken in the same or related proceedings involving the same party or parties in privity with each other; (3) the party taking the position must have been successful in maintaining that position and have received some benefit; (4) the inconsistency must be part of an intentional effort to mislead the court; and (5) the two positions must be totally inconsistent.357 S.C. at 215-16, 592 S.E.2d at 632.

Gordon contends he proved the (5) elements of judicial estoppel as outlined in Cothran v. Brown, supra. This Court did not make a finding of fact and conclusions of law as to whether or not the Respondent is judicial estoppel from asserting their judicial error argument. Gordon asserts this Court Unpublished Opinion does not address this legal claim set forth in his reply brief. This Court should grant Rehearing and Rehearing En Banc.

Appellant contends this Court Unpublished Opinion does not address whether the Gordon's guilty plea judgement is void because the general sessions court did not have subject matter jurisdiction where In the instant case Gordon was not given notice of charged. There was no filing of a juvenile petition charging Gordon with a crime after being found violating a criminal law and taken into family court custody jurisdiction based on probable cause under sections 20-7-7205(a);20-7-6605(1),(2);20-7-400(a),(1),(d);20-7-7605(1)(6) of the children code of laws act, Gordon argue that his exclusion from family court jurisdiction does not triggers until charged with a Class A,B,C or D felony under section 20-7-6605(1),(2). See People v. Pico,287 I'll. App.3d 607,222 Ill .Dec 908,678 .NE2d 780. The Pico Court focused on the term ***charged*** when the court held "***the plain language of section 5-4(6)(a) indicates that it's exemption is triggered only when the minor has been charged. Until that point, the minor retains the protection of the Juvenile Court Act. This is the only logical interpretation of section 5-4(6)(a), for until***

such time as the minor is charged, the State cannot know whether he will be tried pursuant to the criminal code as an adult or as a delinquent minor under the juvenile court act". Therefore, a filing of a juvenile petition charging Gordon with a crime was required in this case. 20-7-7605(1)(6) (supp1998). This Court held " In a court of general sessions, with the exception of certain minor offenses, the circuit court lacks subject matter jurisdiction to accept a guilty plea unless there is an indictment sufficiently stating the offense, there is a waiver of indictment, or the charge pled to is a lesser included offense of the crime charged in the indictment. ***Carter v. State*, 329 S.C. 355, 362, 495 S.E.2d 773, 777 (1998)**. Any waiver of presentment must be in writing. *See* ***Summerall v. State*, 278 S.C. 255, 294 S.E.2d 344 (1982)**; *see also* S.C.Code Ann. §§ 17-23-130 to -140 (1985).

For an indictment to be valid, it must state the offense with sufficient certainty and particularity to enable the defendant to know what he is called upon to answer. ***Carter*, 329 S.C. at 362-3, 495 S.E.2d at 777**. This requirement that a Gordon receive notice of the charges against him is rooted in due process. *See* ***State v. Butler*, 277 S.C. 452, 456, 290 S.E.2d 1, 3 (1982)**, *overruled in part on other grounds by* ***State v. Torrence*, 305 S.C. 45, 69 n. 5, 406 S.E.2d 315, 329 n. 5 (1991)**.

These same due process concerns extend to juvenile proceedings. Our supreme court has held that the fairness and due process requirements that ensure an adult criminal defendant will receive sufficient notice of the charges against him also apply to juvenile matters. ***In re Corey B.*, 291 S.C. 108, 109-10, 352 S.E.2d 470 (1987)** (holding a juvenile cannot be found guilty of a greater offense than alleged in the petition); *see also* ***In re Gault*, 387 U.S. 1, 30-33, 87 S.Ct. 1428, 18 L.Ed.2d 527 (1967)** (holding the due process protections requiring notice of the alleged charges extends to juveniles); ***In re Arisha K.S.*, 331 S.C. 288, 293, 501 S.E.2d 128, 131 (Ct.App.1998)** ("[A] child in a juvenile proceeding has a right to fundamental due process and thus, our courts must ensure that due process and fair treatment surround a juvenile's plea of guilty.").

Based on the due process protections governing juvenile proceedings and the exemplary procedure employed in courts of general sessions to preserve adults' due process rights, we now hold that a family court lacks subject matter jurisdiction to adjudicate a juvenile delinquent for a charge not alleged in the juvenile petition unless the adjudication is for a lesser included offense or there has been a written waiver of notice. Consequently, the notice requirement is not satisfied by merely serving notice of a delinquency proceeding without notifying the juvenile and his parents of the charges to be considered at the family court hearing. *See* ***In re Gault*, 387 U.S. at 33, 87 S.Ct. 1428**. To hold otherwise would violate a juvenile's due process right to notice. *See* ***In re Gault*, 387 U.S. at 33, 87 S.Ct. 1428** (holding due process protections extend to juveniles and require a child and his parents or guardian to be notified in writing, and sufficiently in advance of the hearing, of the specific charge or factual allegations to be considered at the hearing); ***In re Corey B.*, 291 S.C. at 109-10, 352 S.E.2d at 470**.

Gordon asserts because he was not given notice of a charge after being found violating a criminal law and taken into family court custody jurisdiction based on probable cause under sections 20-7-7205(a);20-7-6605(1)(2);20-7-400(a)(1)(d);20-7-7605(1), the general

sessions court was without subject matter jurisdiction pursuant to section 20-7-7605(1)(6) and In re Corey, B.,291 S.C. 108, 352 SE2d 470 (1987);In re Jason T.,531 SE2D 544 (2000) and his guilty plea judgment should be vacated as being void ab intio. Thus, Rice judicial error doctrine does not bar Gordon subject matter jurisdictional claim that could have been raised for the first time in Gordon motion to vacate conviction and sentence and on appeal. Brown v. State, 343 S.C. 342, 540 SE2d 846 (2001) Finding "***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, "[t]he acts of a court with respect to a matter as to which it has no jurisdiction are void." Funderburk, 259 S.C. at 261, 191 S.E.2d at 522."*** . This Court should grant Rehearing and Rehearing En Banc.

This Court in its Unpublished Opinion found that Rule 29(a) SCRCP and State v. Warren, 392 SC 235,239 SE2d 234,236 (ct.app.2011)("The Court does not retain authority to entertain motion which is not made within (10) days of sentence) prevents Appellant from filing his Motion to Vacate Conviction and Sentence based on "***Lack of Subject Matter Jurisdiction*** " whereas Appellant asserted in the lower court "***The Children Code of Laws Act was unconstitutionally vague under the due process clauses of South Carolina Constitution Article one section 3 and the 14th amendment to the United States Constitution as applied to Gordon because the term who is charged or the term charged as outlined in section 20-7-6605(1) of the children code of laws act does not set forth the proper standards for adjudication as applied to him being sixteen years of age found violating a criminal law and taken into family court custody jurisdiction based on probable cause under sections 20-7-7205(a);20-7-6605(1),(2);20-7-400(a),(1),(d) (Supp.1998). Appellant asserted his conviction under it was not merely erroneous,but illegal and void under Ex Parte Siebold 100 U.S. 371-77 (1879) holding ".***

Gordon contends he could have raised his statute constitutionality claim for the first time in the general sessions court and this Court on appeal. The issue of a statute's constitutionality may be raised anytime, where the statute determines subject matter jurisdiction. State v. Keenan, 278 S.C. 361, 296 S.E.2d 676 (1982);Brown v. State, supra. Gordon asserts the children code of laws ,section 20-7-6605(1) decide which jurisdiction he will be charged in, family or general sessions court through his age and class felony he's charged with. See State v. Graham, 532 SE2d 242 (1996); Anthony Jones v. State of South Carolina (2023) The Jones Court held:

"We begin by examining the jurisdiction of the family court and the operational effect of subsection 63-19-20(1). The family court has exclusive jurisdiction over a child "who is alleged to have violated or attempted to violate any state or local law." S.C. Code Ann. § 63-3-510(A)(1)(d) (2010). In general, a "child" or "juvenile" is defined as "a person less than seventeen years of age," according to the provision at the time of Jones's sentencing. S.C. Code Ann. § 63-19-20(1) (2010). However, the General Assembly expressly excluded from this definition "a person sixteen years of age or older who is charged with a Class A, B, C, or D felony as defined in Section 16-1-20 or a felony which provides for a maximum term of imprisonment of fifteen years or more." Id. (emphasis added). Because Jones did not meet the definition of a "child" or "juvenile," he was subject to the jurisdiction of the circuit court rather than the family court.

Further, the Jones Court went on to opinion ,in our view, subsection 63-19-20(1) operates as a definitional statute, in both its 2010 form and its 2021 form. The General Assembly created the family court as a statutory court and determines its jurisdiction through legislation. Because the subsection exempts Jones from falling within the family court's jurisdiction, in operation with subsection 63-3-510(A)(1)(d), it cannot "transfer" or "waive" him to the circuit court. Therefore, we decline to characterize subsection 63-29-20(1) as an "automatic waiver provision" and view the subsection as definitional in effect. Also see D.P. v. State, 151 NE3d 1210 (Ind.2000) finding ***"the age of the offender is determinative of subject matter jurisdiction ";Twyman v. State,459 NE2d 705,708 (Ind1984).***

Thus, the lower court had the power to decide Appellant's motion and subject matter jurisdictional claims raised therein. See State v. Smalls,613 SE2d 754,756 (2005);State v. Williams Unpublished Opinion 2020-UP-053 Submitted January 1st,2020-Filed February 26,2020 from this Court where Jerome Williams appeals an order denying his pro se motion to set aside his first-degree burglary conviction. Williams argues (1) his motion should have been addressed as a civil matter and transferred to the court of common pleas and (2) the court of general sessions lacked subject matter jurisdiction to rule on his motion pursuant to Rule 60(b)(3) and (5), SCRCP. This Court affirmed the appealed order pursuant to Rule 220(b), SCACR, and the authorities cited below.

1. Appellant asserts this Court rejected Williams's argument that the matter should have been transferred to the court of common pleas. Under Article V, section 11 of the South Carolina Constitution, the circuit court is "a general trial court with original jurisdiction *in civil and criminal*

cases . . . ." (emphasis added). ***Furthermore, although Williams referenced Rule 60(b), SCRCP, in his motion, the relief he sought concerned a criminal matter, namely the setting aside of his conviction and sentence. See State v. Smalls, 364 S.C. 343, 346, 613 S.E.2d 754, 756 (2005) ("The court of general sessions has subject matter jurisdiction to try criminal cases."***); State v. Gentry, 363 S.C. 93, 100, 610 S.E.2d 494, 498 (2005) ("[S]ubject matter jurisdiction is the power of a court to hear and determine cases of the general class to which the proceedings in question belong."); *id.* at 101, 610 S.E.2d at 499 ("Circuit courts obviously have subject matter jurisdiction to try criminal matters."). Therefore, we hold the circuit court, sitting as a court of general sessions, properly assumed jurisdiction over the motion.

2. Second, Appellant asserts because the general sessions court reopen PCR judgement in 2000-CP-46-1414 and because the motion was properly heard and adjudicated by the court of general sessions, the circuit court acted within its discretion in denying Gordon motion. *See* Rule 60(b)(4) SCRCP. Here, the circuit court concluded it had no basis to vacate Gordon conviction and sentence, and that finding was supported by a court order showing the General Sessions Court properly had jurisdiction to accept his guilty plea under section 20-7-6605(1). . State v. Keenan, 278 S.C. 361, 296 S.E.2d 676 (1982) (stating that "every court has the power *and duty* to decide all issues necessary to the determination of its own jurisdiction);State v. Smalls,613 SE2D 754 (2005) (The Court of General Sessions has subject matter jurisdiction to try criminal cases);Jones v. State, supra, finding challenge to the constitutionality of the definition statute in the Juvenile Justice Code proper before the PCR court. The Appellant asserts the distinction between an action of the court that is void *ab initio* rather than merely voidable is that the former involves the underlying authority of a court to act on a matter whereas the latter involves actions taken by a court which are in error. An order is void *ab initio* if entered by a court in the absence of jurisdiction of the subject matter or over the parties, if the character of the order is such that the court had no power to render it, or if the mode of procedure used by the court was one that the court could "not lawfully adopt." ***Evans v. Smyth-Wythe Airport Comm'n,* 255 Va. 69, 73, 495 S.E.2d 825, 828 (1998)**(quoting ***Anthony v. Kasey,* 83 Va. 338, 340, 5 S.E. 176, 177 (1887)**). The lack of jurisdiction to enter an order under any of these circumstances renders the order a complete nullity and it may be "impeached directly or collaterally by all persons, anywhere, at any time, or in any manner." ***Barnes v. Am. Fertilizer Co.,* 144 Va. 692, 705, 130 S.E. 902, 906 (1925)**. Consequently, Rule 1:1 limiting the jurisdiction of a court to twenty-one days after the entry of the final order does not apply to an order which is void *ab initio. See Singh v. Mooney,541 SE2D 549 (2001).* Consequently Rule 29(a) does not bar the lower court jurisdiction to decide Gordon constitutionality challenge to the children code of laws act that goes

directly to the power and authority of the court. Therefore, the lower court committed an abuse of discretion and error of law when it did not make findings of fact and conclusions of law on Gordon's constitutionality of the children code of laws act claim. Brown v. State, supra, Jones v. State, supra,

Gordon asserts the general sessions court lacked subject matter jurisdiction because ***The Children Code of Laws Act is unconstitutionally vague under the due process clauses of South Carolina Constitution Article one section 3 and the 14th amendment to the United States Constitution as applied to Gordon because the term who is charged or the term charged as outlined in section 20-7-6605(1) of the children code of laws act does not set forth the proper standards for adjudication as applied to him being sixteen years of age found violating a criminal law and taken into family court custody jurisdiction based on probable cause under sections 20-7-7205(a);20-7-6605(1),(2);20-7-400(a),(1),(d) (Supp.1998). Appellant asserts his conviction under it is not merely erroneous,but illegal and void under Ex Parte Siebold 100 U.S. 371-77 (1879) holding ".***

Conclusions

It is respectfully asked that this Court grant Rehearing and Rehearing En Banc to reconsider this Court Unpublished Opinion to cure a gross miscarriage of justice.

The State of South Carolina

In The Court of Appeals

State of South Carolina, Respondent,

V.

Antonio Gordon, Appellant.

Appellate Case No.2021-001280

Proof of service

Appellant certify he did serve his Petition for Rehearing and Rehearing En Banc on the Respondent Mr.Mark Reynolds Farthing, Esquire. At PO Box 11549 on this 23rd day of July, 2024, by Placing in Ridgeland Correctional Inst mailRoom.

Antonio Gordon

Mr. Alan McCrory Wilson Esquire.

Antonio Gordon,#259798

Mr.Mark Reynolds Farthing, Esquire.

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Ridgeland SC 29936

RE: State of South Carolina v. Antonio Gordon Appellate Case No. 2021-001280

Dear Clerk:

Please find enclosed Appellant's Petition for Rehearing and Rehearing En Banc I am filing with the court. The opposing counsel have been served with the same with proof service. Sincerely Thanks.

Antonio Gordon

Antonio Gordon
July 23, 2024

onio Gordon #25
[redacted]
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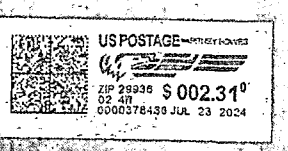
land, South Carolina, 29936



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