

The State of South Carolina

In the Court of Appeals

The State, Respondent

v.

Terron Gerhard Dizzley, Appellants

Appellate Case No. 2024-001176

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SC Court of Appeals

MOTION TO REINSTATE

Appellant, Terron Gerhard Dizzley, moves before this Honorable Court with an “Emergency Motion to Reinstate Appeal and Objections to Order Dismissing Appeal For Alleged Jurisdictional Reasons For Failure To Timely Serve Notice of Appeal Upon Respondents,” pursuant to SCACR Rules 260 and 203, on the grounds that: (1) the S.C. Court of Appeals order is an erroneous assessment of the facts of Appellant’s case; (2) is contrary to clearly established South Carolina and United States Supreme Court laws; (3) and sets a dangerous precedent under such circumstances of Appellant’s appeal from an indisputable illegal incarceration.

STATEMENT OF FACTS

Appellant contends that the record proves that he filed a timely notice of appeal in the South Carolina Supreme Court pursuant to Judge Bentley Price’s March 15, 2024 order denying his “Permanent Restraining Order And Injunction Pursuant to Double Jeopardy, False Imprisonment, Lack of Trial Court’s Jurisdiction to Impose Sentence,” and civil actions for Unlawful Arrest, Unlawful Pre-trial Detainment, False Imprisonment, and Malicious Prosecution, in the aboved matter against the Georgetown County Solicitor’s Office and the Georgetown County Sheriff’s Department. Along with the notice of appeal, Appellant filed a “Motion for Stay,”

explaining that on April 16, 2024, his false imprisonment story, and the civil actions he filed against the South Carolina Dep't of Corrections and against the Georgetown County Solicitor's Office and Sheriff's Department was aired on Live 5 News, and, on May 21, 2024, Appellant was assaulted by correctional officers and Associate Warden Washington, pepper sprayed, while in hand cuffs, and placed in solitary confinement at Allendale Corrections in retaliation for filing these civil actions.

Appellant also explained in the motion for stay that he was seriously injured, both physically and mentally pursuant to the assault, and did not have any of his legal material or access to resources to effectively appeal the case, and did not know when he would be released from solitary confinement, and asked the Court to hold his civil action in abeyance until he was released from solitary confinement and was competent to respond to the appeal effectively. Appellant also explained that he had already sent his mother an "Emergency Motion to Alter, Amend, Correct and Reconsider," the denial of Judge Price's order before the assault occurred, and had her type it up, and on the same day of the assault, May, 21, 2024, Appellant's mother went to the Georgetown County Courthouse and attempted to file the motion, and the clerk of court told Appellant's mother that Judge Price told her not to file anything else pursuant the case.

Appellant contends that he also received an order from the Georgetown County Clerk of Court indicating the same, that Appellant could not file anything else pursuant the aboved case, thus, violating Appellant's First and Fourteenth Amendment rights to access the courts and due process; also resulting in "obstruction of justice," and "fraud upon the court." Appellant also filed a "Motion For Leave To Proceed Informa Pauperis," and an "Exparte Motion For Funds To Pay For Transcript Of the April 18, 2024 Hearing," pursuant to his emergency injunction and civil

actions. This is also another reason why Appellant requested that the civil actions be held in abeyance, because he needed the transcript from the April 18, 2024 hearing to effectively appeal Judge Price's decision on the civil actions. Appellant also attached the "Motion to Alter, Amend, Correct, and Reconsider," that he attempted to file in the Georgetown County Court of Common Pleas to the notice of appeal filed to the South Carolina Supreme Court. The South Carolina Supreme without even evaluating the notice of appeal and documents filed with it assumed that the appeal was pursuant to Appellant's appeal from his unlawful imprisonment that has been pending in the S.C. Court of Appeals since 2022, where Attorney William G. Yarborough was unlawfully forced to represent Appellant, and sent the case to the S.C. Court of Appeals, and the S.C. Court of Appeals issued an order dismissing the case pursuant to "hybrid representation." Appellant then wrote the S.C. Court of Appeals and explained to the Court that it had made a mistake and the appeal was not the same as the appeal pending under Attorney William G. Yarborough's illegal representation. The S.C. Court of Appeals acknowledged the error and issued an order reinstating the case, of which Appellant received this order while he was still in solitary confinement at Allendale Corrections.

The S.C. Court of Appeals October 15, 2024, order dismissing Appellant's appeal for "allegedly" untimely serving Respondents counsel notice of appeal acknowledges that Appellant filed the notice of appeal on June 17, 2024, which was while Appellant was still in solitary confinement. The order also indicates that the Court sent Appellant a letter advising him that the proof of service was not filed on Respondents counsel, which was also sent while Appellant was in solitary confinement suffering from serious physical and emotional injuries, not including his illegal incarceration. However, this Court fails to address Appellant's motion for stay

where he requested that the S.C. Court of Appeals hold his case in abeyance until he was released from solitary confinement and gained access to his legal materials, resources to make copies, etc., and until he was mentally competent to litigate his appeal. The record proves that he was shipped from Allendale Corrections, from solitary confinement, on August 2, 2024, to Kershaw Correctional Institution, which was on a Friday. The record proves that the next week, on August 6, 2024, Appellant filed his amended proof of service which attest that he served the notice of appeal on Respondents counsel.

Appellant contends that, there was no way that he could have written multiple notices of appeals, proofs of services, and other documents mentioned filed with them by hand, while in solitary confinement, without any of his legal material, no access to copies, and with the injuries he was suffering from, which was addressed in the motion for stay. However, this Court refuses to address Appellant's illegal incarceration, the assaults he received, the motion for stay, and the due diligence applied by Appellant keeping his word that he would notify the Court when he was released from solitary confinement and was able to effectively litigate his appeal. The S.C. Court of Appeals order dismissing his appeal for "allegedly" untimely serving Respondents counsel, proves that the Court totality disregarded Appellant's safety, life, liberty, and rights to due process, failed to administer justice, and is only concerned with creating "procedural" reasons which are contrary to the law, to "arbitrarily and capriciously" dismiss Appellant's appeal, resulting in subjecting him to continuing illegal incarceration, as if there are laws which establish that "alleged" procedural errors justifies turning a "blind eye" to, "ignoring" Appellant's illegal incarceration, and that somehow these "alleged" procedural errors makes Appellant's illegal incarceration legal.

The S.C. Court of Appeals also fails to address the fact that, on September 11, 2024, Appellant filed a “Writ of Mandamus In Aid of Appellate Court’s Jurisdiction,” pursuant to the aboved case, pursuant to his “Emergency Permanent Restraining Order And Injunction For Immediate Release, Double Jeopardy, False Imprisonment, Lack of Trial Court’s Jurisdiction to Impose Sentence.” Appellant attempted to serve Chief Judge Edward Lockemy, and was informed by the process server that they could not reach Judge Lockemy at any listed addresses. Appellant was then informed that the new Chief Judge of the S.C. Court of Appeals is Bruce Williams. Appellant has now filed an amended writ of mandamus addressed to Judge Bruce Williams .

GROUND 1

SUBJECT MATTER JURISDICTION MAY BE RAISED AT ANY TIME, EVEN FOR FIRST TIME ON APPEAL, ADMINISTRATION OF JUSTICE

On October 25, 2024, Appellant received an order from the S.C. Court of Appeals, dated October 15, 2024, dismissing Appellant’s appeal “alleging” that Appellant’s notice of appeal served on Respondents counsel was untimely, and as a result, “this court lacks jurisdiction to hear this appeal.”

Appellant contends that the record proves that he filed the appeal in the aboved matter under emergency circumstances demanding relief from being held illegally incarcerated for ten years and counting without any legal nor jurisdictional authority, pursuant an illegal sentence imposed on him without jurisdiction in violation of the Fifth Amendment Double Jeopardy Clause, of which the state had no jurisdiction to prosecute him for pursuant to an indictment that was null and void, which also violated his Fifth Amendment rights not to be held to answer for an infamous crime without presentment or indictment by a grand jury. According to clearly established South Carolina and United States Supreme Court laws, issues of subject matter

jurisdiction may be raised at anytime including when raised for first time on appeal to an appellate court, may not be waived even with consent of parties, and an appellate court “**must,**” on its own motion, raise issues of subject matter jurisdiction to ensure orderly administration of justice.

State v. Guthrie, 358 S.C. 102 (2002), “The lack of subject matter jurisdiction can be raised at any time; can be raised for the first time on appeal, and can be raised sua sponte by the court. 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.”

State v. Funderburk, 259 S.C. 256 (1972), “It is elementary that lack of jurisdiction of the court or subject matter can be raised at any time, including for the first time on appeal in this Court. Accordingly, it is immaterial that the defendant failed to appeal from the earlier ruling of Judge Baker or the intermediate ruling of Judge Weatherford, even if it be assumed that he had the right to.”

Tatnal v. Gardner, 350 S.C. 135 (2002), “Issue of subject matter jurisdiction may be raised at anytime including when raised for first time on appeal to an appellate court. Subject matter jurisdiction may not be waived even with consent of parties. **An appellate court “must,” on its own motion, raise issue of subject matter jurisdiction to ensure orderly administration of justice.**”

State v. Castleman, 219 S.C. 136 (1951), “we should raise the question of jurisdiction on our own motion, so as to preserve the orderly administration of justice and to prevent the punishment of the defendant under the present sentence.”

Exparte Lange, 85 U.S. 163 (1873) “The Court initiated what has been described as a long process of expansion of the concept of the lack of jurisdiction. *Lange* contended that he had been twice sentence for the same offence, in violating the Fifth Amendment's Double Jeopardy Clause, when he had been re-sentenced to a term of imprisonment after having paid the fine originally imposed. Carefully disclaiming the use of habeas, as a writ of error, the Supreme Court ordered *Lange* released from imprisonment because the lower court's jurisdiction terminated upon the satisfaction of the original sentence. Where probable ground is shown that the party is in custody under or by color of authority of the United States, and is imprisoned without just cause, and, therefore, has a right to be delivered, **“the writ of habeas corpus then becomes a writ of right which may not be denied,”** as it ought to be granted to every man who is unlawfully committed or detained in prison or otherwise restrained of his liberty. A second judgment of the same verdict is, under such circumstances, **“void for want of power”** and it affords no authority to hold the party a prisoner, and he must be discharged.”

Exparte Wilson, 114 U.S. 417, (1885), “Holding Petitioner to answer for such infamous crime, and sentencing him to such imprisonment without indictment

or presentment by a grand jury... exceeds the jurisdiction of that court,” and, “there is no authority to hold the prisoner under the sentence.”

Therefore, according to clearly established South Carolina and United States Supreme Court law, as long as Appellant remains kidnapped, falsely imprisoned pursuant to an unlawful conviction and sentence without legal nor jurisdictional authority, the jurisdiction of the South Carolina Court of Appeals is never lost, and the South Carolina Court of Appeals “**must**” correct the wrong that has been done. Therefore, according to clearly established South Carolina and United States Supreme Court laws, this Court “**must**” on its own motion address Appellant’s issues challenging the trial court’s subject matter jurisdiction to impose a sentence on him in violation of the Fifth Amendment Double Jeopardy Clause, and pursuant to an indictment that was null and void, to ensure the orderly administration of justice and to ensure that Appellant is not being held under the present sentence unlawfully, without jurisdiction.

GROUND 2

EMERGENCY INJUNCTIONS UNDER SCRPC, RULE 65 DOES NOT REQUIRE SERVICE OF NOTICE TO ADVERSE PARTY WHERE IT IS SHOWN THAT IMMEDIATE AND IRREPARABLE INJURY WILL RESULT TO APPELLANT BEFORE NOTICE BE SERVED AND HEARING HAD THEREON

The S.C. Court of Appeals fails to address the fact that, under SCRPC, Rule 65, which is the jurisdictional court rule for filing “Injunctions; Mandamus, Habeas Corpus, And Other Remedial Writs,” which are extraordinary, emergency writs. Rule 65, establishes that:

“No temporary restraining order shall be granted without notice of motion for the order to the adverse party unless it clearly appears from specific facts shown by affidavit or a verified complaint that immediate and irreparable injury, loss

or damage will result to the applicant before notice be served and a hearing had thereon.

Appellant contends that the record proves that he filed the notice of appeal, and the writ of mandamus under emergency circumstances, and in his “verified complaint,” he provided facts that he is: (1) being held illegally incarcerated for ten years and counting, and is already suffering “irreparable injury”; and (2) Appellant addressed on countless occasions that he would suffer “further irreparable injury” if the Court waited until notice was served and a hearing had before adjudicating his emergency petitions; (3) Appellant has also requested emergency hearings within 24 hours of filing these emergency injunctions, petitions, mandamus, restraining orders, appeals, etc., to no avail. Therefore, according to clearly established South Carolina laws, and Equal Protection of Laws Clause under the Fourteenth Amendment of the United States Constitution, Appellant’s appeal, and mandamus, should have been filed, and adjudicated before notice was served to any adverse parties to prevent Appellant from suffering “further irreparable harm” from being held illegally incarcerated.

THE MOST IMPORTANT QUESTIONS (THE ELEPHANTS IN THE ROOM) ARE, WHY DOES THIS COURT CONTINUE TO DISREGARD APPELLANT’S EQUAL PROTECTION OF LAWS RIGHTS TO BE AFFORDED THE SAME TREATMENT PURSUANT TO THE RULES AND STATUTES OF EMERGENCY/EXTRAORDINARY WRITS, AND ALLOW APPELLANT TO SUFFER “FURTHER IRREPARABLE INJURY” FROM BEING HELD ILLEGALLY INCARCERATED FOR TEN YEARS AND COUNTING, CONTINUING TO ALLOW APPELLANT TO SUFFER FROM BEING HELD IN SOLITARY CONFINEMENT, AFTER BEING ASSUALTED; ALL WHILE BEING HELD ILLEGALLY INCARCERATED,

AND THEN, DESPITE EXTREME DUE DILIGENCE IN PROSECUTING HIS APPEAL, THE COURT ISSUES APPELLANT AN ORDER INDICATING THAT IT IS DISMISSING APPELLANT'S "INDISPUTABLE ILLEGAL INCARCERATION" EMERGENCY PETITION FOR IMMEDIATE RELEASE, BECAUSE APPELLANT "ALLEGEDLY" UNTIMELY SERVED RESPONDENTS COUNSEL NOTICE OF APPEAL, WHEN THE LAW DOES NOT REQUIRE SUCH SERVICE OF NOTICE UNDER SUCH EMERGENCY CIRCUMSTANCES. WHY IS APPELLANT'S OWN GOVERNMENT TURNING A "BLIND EYE" TO, CONDONING, AND PARTICIPATING IN APPELLANT'S ILLEGAL INCARCERATION?

GROUND 3

TIMELINESS OF SERVICE OF NOTICE OF APPEAL UPON

RESPONDENTS COUNSEL AND TOLLING

Appellant contends that the March 21, 2024, "Motion to Alter, Amend, Correct, and Reconsider" he attempted to file in the circuit court pursuant to Judge Bentley Price's May 15, 2024 order dismissing his case in the aboved matter, of which the clerks of court of Georgetown County refused to file, and the "Motion For Stay," "Motion For Leave To Proceed Informa Pauperis," and Appellant's "Exparte Motion Requesting Funds To Pay For Transcript Of April 18, 2024 Hearing," according to South Carolina's own laws, these motions tolled the time for service of notice of appeal.

Appellant contends that the same exact thing happened in this Court pursuant to Appellant's 2022 case which is still pending in this very Court, of which this Court has forced Attorney William G. Yarborough to illegally represent ~~on~~ Appellant and refuses to adjudicate his case. The record proves that Appellant filed a Notice of

Appeal from the Honorable Judge Benjamin Culbertson's ruling denying Appellant's October 21, 2021, "Emergency Exparte and Proposed Motion For Immediate Release, Double Jeopardy, False Imprisonment, Lack of Trial Court's Jurisdiction to Impose Sentence." Judge Culbertson's ruling simply denied Appellant's motion without an evidentiary hearing nor a ruling on the merits pursuant to "findings of facts and conclusions of law." Appellant then filed a "Motion For Alteration, Modification, Amend, Correct, and Recession of Order," and Judge Culbertson refused to respond. Appellant then filed a Notice of Appeal to the S.C. Court of Appeals, which was dismissed as untimely. Appellant then filed a "Motion to Reinstate," explaining the circumstances, and on August 11, 2022, the S.C. Court of Appeals granted Appellant's motion to reinstate on the grounds that: "Because Appellant's motion to alter and Amend tolled the time for serving and filing the notice of appeal, we grant the petition, reinstate this appeal, and remand to the circuit court to rule on Appellant's April 25, 2022 motion. See Rule 203(b)(2) ("When a timely post-trial motion is made under Rule 29(a) SCRCrimP, the time to appeal shall be stayed and shall begin to run from receipt of written notice of entry of an order granting or denying such motion.").

Therefore, according to the S.C. Court of Appeals own ruling in Appellant's previous pending case pursuant to the same exact circumstances, Appellant's "Motion To Alter, Amend, Correct, and Reconsider," "Motion For Stay," "Motion For Leave To Proceed Informa Pauperis," and "Exparte Motion Requesting Funds To Pay For April 18, 2024 Hearing," tolled the time for serving and filing the notice of appeal. (NOTE: The Georgetown County Clerks of Court refusal to file Appellant's "Motion To Alter, Amend, Correct, and Reconsider," and other motions based on instructions from Judge Price not to file anything else from Appellant pursuant to his case, was not

only a violation of Appellant's First and Fourteenth Amendment rights to access the courts and due process, but, were also criminal acts of "**fraud upon the court,**" "**obstruction of justice,**" and conspiracy to false imprisonment. Pursuant to this Court's duty to administer justice, Appellant respectfully ask this Honorable Court, "**WHAT IS THIS COURT GOING TO DO ABOUT THESE GRAVE INJUSTICES?**"

GROUND 3

CONVENTIONAL NOTIONS OF FINALITY MUST YIELD WHERE LIFE

OR LIBERTY IS AT STAKE

Appellant contends that the South Carolina Court of Appeals must not abuse the law which was created for the Equal Protection of Laws for citizens from deprivations of life, liberty or property as a tool to continue to deprive Appellant of his liberty by erroneously, and "arbitrarily and capriciously" using procedural and jurisdictional rules as a reason not to rule on Appellant's case in order to keep him kidnapped and falsely imprisoned, which is exactly what the Constitution forbids.

See: *Exparte Lange, supra*, 85 U.S. 163 (1873); *Bell v. Hood*, 327 U.S. 678 (1946), "Action against FBI officers for damages for illegal arrest, false imprisonment, and unlawful searches and seizures of property belonging to plaintiffs. A judgment dismissing the complaint for lack of jurisdiction was affirmed by the Circuit Court of Appeals, and plaintiff brings certiorari. Reversed. It is estimated practice for the Supreme Court to sustain the jurisdiction of federal courts to issue injunctions to protect rights safeguarded by the Constitution and to restrain individual state officers from doing what the Fourteenth Amendment forbids the state to do. Where federally protected rights have been invaded, courts will be alert to adjust their remedies so as to grant the necessary relief, and federal courts may use "any" available remedy to make good the wrong done."

Sanders v U.S., 371 U.S. 1(1963), "A prisoner who claims that his sentence was imposed in violation the Constitution or laws of the United States, may seek relief from the sentencing by filing a motion in the sentencing court stating the facts of his claim. **Conventional notions of finality of litigation have not place where life or liberty is at stake, and infringement of Constitutional**

Rights are alleged.” *Fay v. Noia*, 372 U.S. 39 (1963) “Conventional notions of finality in criminal litigation cannot be permitted to defect manifest federal policy that federal constitutional rights of personal liberty are not be denied without fullest opportunity for plenary federal judicial review. State courts, equally with federal court are charged with duty of protecting an accused in enjoyment of his constitutional rights.”

U.S. v. Ohio Power Co., 353 U.S. 98, (1957), “The interest in finality of litigation “must yield” where interest of justice would make unfair, strict application of Supreme Court’s rules.”

Therefore, it clearly established by The Supreme Court of the United States that the Court’s rules, including jurisdictional rules, were not made to be strictly applied nor abused to deprive a person of their life, liberty and property and the finality in criminal litigations under such circumstances must yield, and the courts must make good the wrong done.

See: *Exparte Virginia*, 100 U.S. 339 (1879), **“Whoever by virtue of public position under a state government deprives another of property, life, or liberty without due process of law or denies or takes away the equal protection of law violates the Fourteenth Amendment of the Constitution, U.S.C.A., his act being that of the State. One purpose of The Thirteenth and Fourteenth Amendments to the federal constitution, was to raise the colored race from the conditions of inferiority and servitude into perfect equality of civil rights with all other persons within the jurisdiction of states.”**

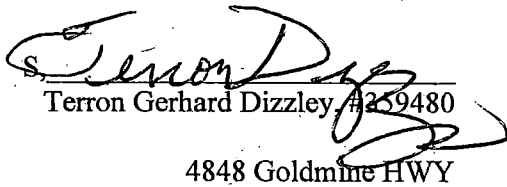
For the foregoing reasons stated subject matter jurisdiction may be raised at any time, even for first time on appeal and finality of litigation in criminal cases must yield where life and liberty are at stake. Therefore, Petitioners respectfully request that their appeal is reinstated. See also: Notice of Appeal filed pursuant to judgment of The Honorable Judge Benjamin H. Culbertson’s ruling on Petitioners Motion to Alter and Amend.

State v. Rearick, 417 S.C. 391 (2016), "A defendant may still challenge the denial of a motion to dismiss on double jeopardy grounds via (1) a petition for federal habeas corpus relief, or (2) a petition for this Court to issue an extraordinary writ; citing *Livingston v. Murdaugh*, 183 F. 3d 300, 301 (4th Cir. 1999); *Gilliam v. Foster*, 63 F.3d 287, 291 (4th Cir. 1995).

For the foregoing reasons, in the interest of liberty and justice, Appellant respectfully request that this "Motion to Reinstate" is granted.

Date. 11-8-2024

Respectfully submitted,


Terron Gerhard Dizzley #259480
4848 Goldmine HWY

Kershaw Correctional Institution

Kershaw, S.C., 29607

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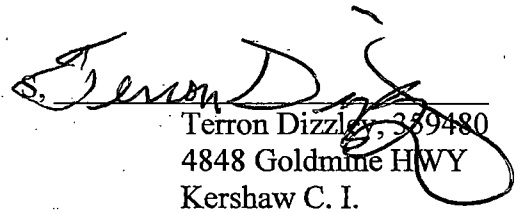
SC Court of Appeals

CERTIFICATE OF SERVICE

I, Terron Gerhard Dizzley, certify that on this ^{8th} day of November 2024, filed a "Motion To Reinstate," in the S.C. Court of Appeals pursuant CA No. 2024-001176 by placing in U.S. Mail postage pre-paid sent to the addresses below:

South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

Attorney General
Alan Wilson
P. O. Box 11549
Columbia, SC 29211


Terron Dizzley, 339480
4848 Goldmine HWY
Kershaw C. I.
Kershaw S.C., 29607

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SC Court of Appeals

NOTICE

South Carolina Court of Appeals
P.O. Box 11629
Columbia S.C., 29211

Dear Honorable Clerk:

Enclosed please find one original and one "Motion To Reinstate," pursuant to CA No. 2024-001176, stamp file please send copy to me.

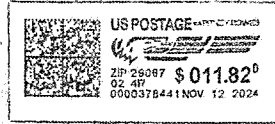
Date. November 8, 2024

With kind regards,



Terron Dizzley, 359480
4848 Goldmine HWY
Kershaw C. I.
Kershaw S.C., 29607

Terron Dizzley, #359480
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4848 Goldmine HWY
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Columbia, S.C. 29211

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KERSHAW CI
MAIL ROOM

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Dizzley
LEGAL MAIL
359480