THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to the Court of Appeals

On Appeal from York County

Honorable William A. McKinnon, Chief Judge

Appellate Case No.2021-001280

General Sessions Court 1998-GS-46-2847-2851

State of South Carolina, Respondent,

v.

Antonio Gordon, Appellant.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS

ANTONIO GORDON #259798

RIDGELAND C.I. SB#33

5 CORRECTIONAL RD

RIDGELAND, SC 29936

Index

The Court of Appeals erred when it gave an unpublished opinion finding Gordon could not file his Motion to Vacate Conviction and Sentence based on lack of subject matter jurisdiction under Rule 29(a) SCRCP and State v. Warren regarding Petitioner constitutional challenge to the Children Code of Laws contrary to this Court holding in State v. Keenan,278 SC 361,296 SE2d 676 (1982) and State v. Smalls,613 SE2d 754,756 (2005);Brown v. State,540 SE2D 846 (2001) (Lack of Subject matter jurisdiction may not be waived, even by consent of the parties, and should be taken notice of by this Court. It is well settled that issues related to subject matter jurisdiction maybe raised at anytime.)

Certification of Counsel

Petitioner certifies that the Petition for Rehearing and Rehearing En Banc was made and finally ruled upon by the Court of Appeals on October 8th,2024 and received by Appellant on October 16th,2024.

Questions

1. Whether the Court of Appeals erred when it gave an unpublished opinion without making a finding whether the trial court committed error of law and abused it discretion when the trial court made findings of fact and conclusion of law that General Sessions court properly had jurisdiction under section 20-7-6605 of the Children code of Laws Act without making findings of fact and conclusion of law and applying statutory construction and giving legislative intent to all sections related to the same general law ,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 as applied to Appellant being "sixteen years of age and found violating a criminal law and taken into family court custody/jurisdiction based on probable cause" in its Order of dismissal without a hearing but instead found State v Rice judicial error precedent

procedurally bar him from raising his subject matter jurisdiction issues in his Motion to Vacate Conviction and Sentence?

2.Did The Court of Appeals err when it gave an Unpublished Opinion regarding the State's ***"JUDICIAL ERROR "*** argument after Petitioner objected to the unpreserved issue under State v. Dunbar, for review?

3.Did The Court of Appeals err when it gave an unpublished opinion without considering Gordon "[j]udicial estoppel" issue properly raised by him in his reply brief and again in Rehearing and Rehearing En Banc?

4.Did the Court of Appeals erred when it gave an unpublished opinion finding Gordon could not file his Motion to Vacate Conviction and Sentence based on lack of subject matter jurisdiction under Rule 29(a) SCRCP and State v. Warren regarding Petitioner constitutional challenge to the Children Code of Laws contrary to this Court holding in State v. Keenan,278 SC 361,296 SE2d 676 (1982) and State v. Smalls,613 SE2d 754,756 (2005);Brown v. State

5.Whether General Sessions Court lack subject matter jurisdiction where the Children Code of laws Act Section §20-7-6605(1) Definition statute, is unconstitutionally vague under the due process clauses of the South Carolina Constitution Article 1 § 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) does not set forth the proper standards for adjudication as applied to Petitioner 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).

Statement of the Case

The records in this case indicates that On October 19,1998, the York County Grand Jury issued true billed indictments during a time Family Court retained jurisdiction for murder, two counts of attempted armed robbery, three counts of possession of weapon during the commission of a violent crime, possession of a weapon by a person less than twenty-one, criminal conspiracy and carjacking. After a Jackson v. Denno hearing held on July 16,1999,

The Petitioner plead guilty to murder, both counts of attempted armed robbery, possession of a weapon by a person under twenty-one, criminal conspiracy and three counts of possession of weapon during the commission of a violent crime. On July 19,1998, the Honorable John C. Hayes,III, sentences the Petitioner to a total of forty years imprisonment ROA P _____.

This is a rare but extensive history of a case of it's time. Petitioner filed his first post conviction relief application under S.C. Code Ann §17-27-20(1) (Suppose.2001) Antonio Gordon v. State of South Carolina, 2000-cp-46-1414. In the application Petitioner asserted as a ground for relief (a) Ineffective Assistance of Counsel pursuant to family court matters. ROA Volume 1 pages 248-254.

The Petitioner filed a second post-conviction relief application under section 17-27-20(2). Antonio Gordon v State of South Carolina.***(2001-cp-46-1866)***. In the application,, Gordon asserted as a ground for relief "***{S}ubject matter jurisdiction"*** (b) "***Family Court never relinquished its first acquired jurisdiction".*** See ROA volume one pages 254-261. Under Rule 15(b) of the SCRCP and section, 17-27-90 Gordon amended his jurisdiction claim and asserted other constitutional challenges to the children's code of laws See ROA Volume one page 262-274.

Appellant was court-appointed Tara D. Shurling, Esq to represent him in the matter as required by Rule 71.1(d) SCRCP.

The State made a Return to the applications as required by section 17-27-70(a) but did not address Gordon's jurisdictional claims See ROA Volume one pages 275(A)-275(d).

An order changing venue was issued transferring Gordon's case to Richland County in which both of Gordon's applications were consolidated and will be referred to as ***PCR (1414). ROA Volume one pages 276(A)-276-277.***

An evidentiary hearing was convened on July 29, 2003, before the Honorable Earnest Kinard Jr. PCR counsel Shurling, Esq informed the PCR court: ***"Your Honor, my client also alleges that his indictments is faulty in that he was indicted by the Court of General Sessions and tried as an adult without trial counsel having---and this is actually more of a sixth amendment argument, although my client couched it in terms of subject matter jurisdiction".*** See ROA Volume one pages 285 line 15-287 line 16 ***(PCR Transcript).*** Counsel proceeded to inform the Court that Gordon asked her to argue his jurisdiction claim and other constitutional claims and ineffective assistance of counsel claims relating to him being tried as an adult without the family court first relinquishing its jurisdiction in an order with a statement of reason. See ROA Volume one pages 286 line 15-page 287 line 10.

Without no legal argument presented during the PCR hearing on Gordon jurisdictional claims by neither party and at the conclusion of the hearing the court instructed the Respondent to prepare a proposed order. ***(TAKE NOTICE OF PCR TRANSCRIPT IN ITS ENTIRETY) ROA Volume one Pg 278-342.*** As instructed by the court the State prepared the order making specific findings of fact and conclusion of law as required by section 17-27-80. However, At claim 5 of the order the State amended their Return and answered Gordon jurisdiction claim out of time according to Rule 8(c) and 12(b) and 15(b) SCRCP and section 17-27-70(a) when the Respondent injected the language in the order that ***"Pursuant to S.C. Code Ann 20-7-6605, 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 a maximum term of imprisonment of fifteen years or more maybe remanded to the family court for disposition of the charge at the discretion of the solicitor. The Applicant was sixteen years old when he committed the crimes for which he was indicted and the crimes committed were Class A, B, C, or D felonies. Therefore, the General Sessions Court had jurisdiction". See Appendix Volume one pages 355 line 2-8 (PCR Order issued August 18th, 2003).

The PCR court signed the order as making specific finding of fact and conclusion of law as required by section 17-27-80 without Gordon first being giving **adequate notice in advance and the opportunity to respond** under section 17-27-70(b) and Rule 12 of the SCRP prior to judgment being issued on the State claim that ***"Pursuant to S.C. Code Ann 20-7-6605, a person sixteen years of age or older is charged with a Class A.B, C, or D felony as defined in section 16-1-20 or a felony which provides a maximum term of imprisonment of*** fifteen ***years or more maybe remanded to the family court for disposition of the charge at the discretion of the solicitor. The Applicant was sixteen years old when he committed the crimes for which he was indicted and the crimes committed were Class A, B, C, or D felonies. Therefore, the General Sessions Court had jurisdiction".***

The record reflects Gordon asked PCR counsel to file a Rule 59(e) motion and a Rule 60(b), SCRCP motion. See Appendix volume one pages 366 line 16-page 367 line 2 (***Letter from PCR counsel Tara Shurling, Esq to Ms.Richardson***). Counsel stated in her opinion there was no need for such motions and filed a Notice of Appeal in the case.

The Appellant filed a pro se Motion for reconsideration of facts in attempt to protect his procedural right to one full fair bite at the apple. The Court found that all claims raised in the application were rule on by the court and because Gordon received the order way after the initial appeal in this case, he filed a belated appeal in this Court Jurisdiction. This Court vacated the PCR court order denying the pro se motion as well denied Gordon request to file a belated appeal and post-conviction relief application. See Appendix Volume one page 365.(Order issued from this Court not dated).

The Petitioner filed three (3) more applications and reasserted the same jurisdictional claims and the State asked each court to deny the application as being time-barred and successive under the uniform post-conviction relief act and each court ruled as such.

In Petitioner last PCR application 2008-cp-46-4951, the State filed a motion with the court to restrict Gordon from filing any future post-conviction relief applications that raised or could have raised claims in previous applications. However, in the State motion, it is alleged Gordon has had more than his fair bite at the apple and showed the court that in every PCR application Gordon asserted his jurisdiction claims. See Appendix Volume two pages 17,21-page 25 (***Motion to Restrict Gordon from future filing filed by the state.)*** The Court issued an order restricting Gordon from filing any future PCR applications that raised claims that was raised in previous applications or could have been raised in previous applications and that ineffective assistance of PCR counsel is not a reason to have a second PCR application. See Appendix Volume two page 59 **(Order Restricting future filings).**

The Appellant eventually filed a Declaratory Judgment in this Court original jurisdiction asking the court to find the Uniform Post- Conviction Relief Act was unconstitutional because it did not provide a judicial remedy to remedy the ineffective assistance of pcr counsel. The court denied the petition and held that the Court and the lower courts have said no as to his ineffective assistance of pcr counsel claim that PCR counsel inadequately raised his jurisdictional claims as ineffective assistance of

counsel. See Appendix Volume two pages 74-75 (***Order from this Court issued on June 20,2019) Rehearing Order issued on November 19,2019.*** Appellant have filed other motions in attempt to receive his ***"procedural right to one full fair bite at the apple"***.

On September 9, 2021, Appellant filed a ***Motion To Vacate Conviction and sentence based on Lack of a Subject Matter Jurisdiction.*** See Appendix Volume two pgs 77-88. In the Motion Appellant asserted General Sessions court was without jurisdiction to accept his guilty plea and sentence him as an adult offender to a term of year's of imprisonment because:

(A) when the Grand Jury True Billed his indictments, the court of General Sessions did not have jurisdiction. Appendix Volume Two Pg 82 first paragraph because he was found violating a criminal law and taken into family court custody jurisdiction custody ***based on probable cause thereby providing family court with the first jurisdiction*** under S.C. Code Ann 20-7-7205(a) (Supp.1998) Title "Taking a Child into custody"; 20-7-6605(1),(2) (Supp. 1998) Title "Definition"; 20-7-400(a),(1),(d) (Supp.1998) Title "Exclusive Original Jurisdiction of Family Court". Appendix Volume Two Pg 82 second paragraph.

Petitioner asserted that before the York County Grand Jury could true bill his indictments Gordon was :

(1) Entitled to a hearing, counsel and a statement of reason with an order transferring jurisdiction to general sessions under sections 20-7-400(a),(1),(d), supra and S.C. Code Ann 20-7-7605(6) (Supp.1998) Title "Transfer of Jurisdiction"; ***Kent v. The United States, the 86 Sct 1045 (1966).*** Appendix Volume Two Pg 82 Third paragraph.

Appellant also asserted that:

(2) 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 him 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 standard 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). 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.*** Appendix Volume Two Pg 82 Fn2- pg 83

(3) Appellant asserted that even though he faced ***mandatory*** bind over under section 20-7-6605(1) of the Children code of laws Act, there should have first been a Petition filed under section 20-7-7605(6) alleging Gordon was found violating a criminal law and taken into family court custody/jurisdiction based on probable cause and that he is charged with a Class A, B, C, or D felony which would exclude him from family court jurisdiction under section 20-7-6605(1).Appendix Volume Two Pg 83 Fn3 second paragraph in Motion to Vacate Conviction and Sentence based on lack of subject matter jurisdiction.

For the first time Gordon asserted that he had been denied his fundamental constitutional rights to due process of law under South Carolina Constitution Article one section 3 and the 14th Amendment to the United States Constitution when the PCR court and the State "did not" provide him with

adequate notice in advance and the opportunity to be heard before the signing of the order on the State claim that "***Pursuant to S.C. Code Ann 20-7-6605,a person sixteen years of age or older 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 maybe remanded to the Family Court for disposition of the charge at the discretion of the solicitor. The Applicant was sixteen years old when he committed the crimes for which he was indicted and the crimes committed were Class A, B, C, or D felonies. Therefore, the General Sessions Court had jurisdiction".*** . Appendix Volume Two Pg 85 6th paragraph- pg 86 Petitioner asked the lower Court to exercise it's authority and vacate and or reopen the PCR Judgment in PCR (1414) to properly litigate his subject matter jurisdiction claims as those similarly situated. Appendix Volume Two Pg 86 Fn4 of Gordon's Motion to Vacate Conviction and Sentence based on ***"Lack of Subject Matter Jurisdiction ".***

The trial court issued an order on October 13,2021 and filed on October 18,2021. In the order the Honorable McKinnon reconsidered and addressed [5] jurisdictional issues when the court held:

> ***" The Court received this Handwritten motion request the court reconsider jurisdictional issues which have already been litigated in which the Court has issued orders denying relief. .....As previously ordered by the Court, the General Sessions court had jurisdiction over the Petitioner's guilty plea on July 16,1999. The Petitioner pled guilty to murder, three counts of possession of a weapon during the commission of a violent crime, two counts of attempted armed robbery, possession of a firearm by a person under twenty one and criminal conspiracy. Pursuant to the law at the time of his plea," 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 "is not a juvenile and may be remanded" to the family court for disposition of the charge at the discretion of the solicitor". See S.C. Code Ann 20-7-6605 (Now section 63-19-20). The Petitioner was sixteen years old and charged with a Class A, B, C, or D felony as defined in section 16-1-20. Consequently, the General Sessions court had jurisdiction, and the sentence and conviction shall not be vacated". The Court summarily dismissed the Appellant's Motion to Vacate Conviction and Sentence without a hearing.*** Appendix Volume Two Pg 89-90

Appeal

On Appeal Petitioner raised the following before the Court of Appeals :

Whether the trial court committed an error of law and abused it discretion when the trial court made findings of fact and conclusion of law that General Sessions court properly had jurisdiction under section 20-7-6605 of the Children code of Laws Act without providing findings of fact and conclusion of law and applying statutory construction and giving legislative intent to all sections related to the same general law ,sections 20-7-7205(a);20-7-6605(1),(2);20-7-400(a),(d);20-7-7605(1),(6) as applied to Gordon being ***"sixteen years of age and found violating a criminal law and taken into family court custody/jurisdiction based on probable cause"*** in its Order of dismissal without a hearing? See Appendix Volume Two pg _____(Initial Brief of Appellant)

Whether The trial court committed error *of law and abused it discretion when the trial court did not make findings of fact and conclusion of law in it's order summarily dismissing Gordon claims raised in his motion to vacate conviction and sentence without a hearing that of*:

(1) The Children Code of Laws Act 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 Appellant 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 standard 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). 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.? See Appendix Volume Two pg _____(Initial Brief of Appellant)***

The Respondent argued:

The circuit court did not err in denying Appellant's Motion to Vacate Conviction and Sentence because the allegation does not implicate subject matter jurisdiction, so it was not timely raised, and even improperly raised subject matter jurisdiction to accept Appellant's various pleas was proper in the Court of General Sessions. See Appendix Volume two pg_____(Brief of Respondent)

The Respondent further argued before the Court:

The question of a waiver from Family Court to the Court of General Sessions does not implicate subject matter jurisdiction. As our Supreme Court stated: "an erroneous order transferring a juvenile to general sessions court would be a judicial error—not a jurisdictional error." State v. Rice, 401 S.C. 330, 333, 737 S.E.2d 485, 486 (2013). The Court in Rice relied on a case from the Iowa Supreme Court in which that court found: "A juvenile court might enter an erroneous order waiving jurisdiction. Such an order, however, does not undermine the district courts jurisdiction "

The Court of Appeals in an Unpublished Opinion State of South Carolina v. Antonio Gordon Unpublished Opinion No.2024-UP-239 submitted June 1,2024-filed July 3,2024 **found** We affirm pursuant to Rule 220(b), SCACR, and the following authorities: Rule 29(a), SCRCrimP ("Except for motions for new trials based on after-discovered evidence, post-trial motions shall be made within ten (10) days after the imposition of the sentence."); State v. Warren, 392 S.C. 235, 239, 708 S.E.2d 234, 236 (Ct. App. 2011) ("The court does not retain authority to entertain a motion which is not made within ten days of sentencing."); Gantt v. Selph, 423 S.C. 333, 338, 814 S.E.2d 523, 525-26 (2018) ("Lack of subject matter jurisdiction may be raised at any time, and may be raised for the first time on appeal."); State v. Rice, 401 S.C. 330, 333, 737 S.E.2d 485, 486 (2013) (agreeing with the Iowa Supreme Court's reasoning that "an erroneous order transferring a juvenile to general sessions court would be a judicial error—not a jurisdictional error".)

Reason why certiorari should be granted

Gordon contends this Court should grant certiorari because the public interest is involved. This Court need to decide in the interest of the public how do Family Court acquires Jurisdiction over children in this State found violating a criminal law and taken into family court custody jurisdiction based on probable cause. For an example do a petition have to be filed charging children like Gordon with a crime after being found violating a

criminal law and taken into family court custody Jurisdiction based on probable cause? This Court should grant certiorari to clarify whether family court should first have a probable cause hearing before general sessions court can retain Jurisdiction over juveniles sixteen years of age found violating a criminal law and taken into family court custody jurisdiction based on probable cause. The State v. Graham,532 SE2D 262 ((2000) court and most recently the Anthony Jones v. South Carolina Court's recognize the need to answer these questions and Gordon contends his case share excellent details on how the Children of our State are treated once taken into custody based on probable cause.

This Court should grant certiorari to revisit State v. Graham and consider all the statutes relating to the same general law and define how a juvenile sixteen should be charged with crimes when taking into family court custody jurisdiction based on probable cause.

This Court should grant certiorari to clarify the difference between judicial error and subject matter jurisdiction.

Statement of the Facts

The records, in this case, reflect that on July 23, 1998, the Appellant was sixteen years of age when he was found violating a criminal law and taken into "Family Court" custody/jurisdiction based on probable cause. See Appendix Volume one Pages 80 Line 16-pg 83 Lone 16- pg 88 Line 24-pg 89 Line 10 (Pre Trial Transcript Detective John Thickens Testimony); Appendix Volume One Pg 208 Line 19-24 (Pre Trial Transcript Captain Charles Cabiness Testimony); Appendix Volume One Pg 138 Line 11 Pg 139 Line 1 (Pre Trial Transcript, Trial Court denying motion to suppress finding there was probable cause to make a warrantless arrest). The record in this case demonstrate law enforcement did notify the Appellant's parents of him being taking into custody according to the Children Code of Laws Act. See Appendix Volume One Pg 144 Line 16- Pg 146 (Pre Trial Transcript, Trial Court finding Appellant parents were notified under S.C. Code Ann 20-7-7205(A) (Supp.1998) Titled "Taking a Child into Custody" statute and denied counsel motion to suppress the Appellant confession).

Approximately 6 to 8 hours after the Defendant was taken into custody he appeared before a city recorder and signed an arrest warrant for murder. Appendix Volume One Pg 89 Line 13- Pg 90 Line 12. On July 27 , 1998, the Appellant were served arrest warrants for 2 counts of attempted armed robbery, possession of a weapon during the commission of a violent

crime, possession of a pistol by a person under twenty one, criminal conspiracy,. The Appellant was appointed Dan Agostino Esq to represent him in General Sessions court.

ARGUMENT

The Court of Appeals erred when it gave an unpublished opinion without making a finding whether the trial court committed error of law and abused it discretion when the trial court made findings of fact and conclusion of law that General Sessions court properly had jurisdiction under section 20-7-6605 of the Children code of Laws Act without making findings of fact and conclusion of law and applying statutory construction and giving legislative intent to all sections related to the same general law ,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 as applied to Appellant being "sixteen years of age and found violating a criminal law and taken into family court custody/jurisdiction based on probable cause" in its Order of dismissal without a hearing but instead found State v Rice judicial error precedent procedurally bar him from raising his subject matter jurisdiction issues in his Motion to Vacate Conviction and Sentence.

This Court has held "***It is well-settled that statues dealing with the same subject matter are in pari materia and must be construed together, if possible, to produce a single, harmonious result".*** Joiner v. Rivas,342 S.C. 102, 536 SE2d 372 (S.C. 2000). The primary rule of statutory construction is to ascertain and give the effect to the intent of legislature. Id In this case Gordon asked the lower court to find Family Court acquired the ***"[f]irst"*** jurisdiction in this case because he was a person **less than seventeen years of age** when he was found violating a criminal law and taken into "Family Court" custody jurisdiction based on probable cause under S.C. Code Ann §20-7-7205(a) ;20- 7-6605(1),(2);20-7-400(a),(1),(d) of the Children Code of Laws Act.

Gordon asserted because family court acquired the first jurisdiction in this case, before the York County Grand Jury could issue true bill indictments in this case, there should have been a hearing, counsel, and an order with a statement of reason issued waiving or transferring jurisdiction under sections 20-7-7205(a);20-7-6605(1),(2);20-7-400(a),(1),(d);20-7-7605(1),(6); Kent v. United States, 86 S.ct 1045 (1966); In the Interest of Shaw, 274 S..C. 534, 274 SE2D 522 (1980) "It is the responsibility of the family court to include in its waiver of jurisdiction order with a statement of reason for",-State v. Corey D, 529 SE2D at 23 "Permitted the family court to waive jurisdiction over murder charge

against twelve year old to the Court of general sessions. Applying the rules of statutory construction in conjunction with prior case law, the Court found section 20-7-7205(6) authorizes transfer on the basis of the offense (murder) without regard to age, while other subsection of the Children Code of Laws Act authorizes transfer on the basis of age and the classification of the offense", but because there was no order issued with a statement of reason in this case, his indictments and guilty plea judgement is a complete nullity void ab into pursuant to State v. Funderburk, 191 SE2d 520 (1972) "no indictment may be true billed by the grand jury when the circuit court lacks jurisdiction since the grand jury's jurisdiction is co-extensive with the criminal jurisdiction of the court in which it is impaneled and for which it is to make inquiry." See Appendix Volume Two pg _____ (Motion to Vacate Conviction and Sentence). Likewise this issue is a subject matter jurisdiction claim pursuant to State v. Funderburk, supra, thus Gordon indictments and guilty plea judgement is a complete nullity and void ab initio pursuant to Sections-20-7-7205(a);20-7-6605(1),(2);20-7-400(a),(1),(d);20-7-7605(1),(6);State v. Funderburk, supra and should be vacated as a matter of law. The Court of Appeals erred finding State v. Rice, supra, judicial error precedent apply to the instant case.

Gordon also asserted even though he faced mandatory bind- over under the Children Code of Laws Act section 20-7-6605(1),(2) after being found violating a criminal law and taking into family court custody jurisdiction based on probable cause, the Respondent was required to file a Juvenile Petition charging him with the crime of murder pursuant to Sections 20-7-7605(1),(6);State v. Corey D, supra, But because there was no juvenile petition filed charging him with a crime, the trial court was without subject matter jurisdiction. See In re Corey B, 291 S.C. 108,109-10,352 SE2d 470 (1987) finding Fairness and due process require that a criminal defendant receive sufficient notice of the charges against him to enable him to prepare a defense. *Butler v. State*, 277 S.C. 452, 290 S.E. (2d) 1 (1982); S.C. Const. Art. I, § 14. This requirement applies in a juvenile matter as well. *In re Gault*, 387 U.S. 1, 87 S.Ct. 1428, 18 *110 L.Ed. (2d) 527 (1967); *see also* S.C. Code Ann. § 20-7-740 (1985). Once convicted, a criminal defendant can be sentenced only upon the charges set forth or necessarily included in the terms of the indictment and not for a greater offense. *Fewell v. State*, 267 S.C. 17, 225 S.E. (2d) 853 (1976); *see also State v. Tabory*, 262 S.C. 136, 202 S.E. (2d) 852 (1974). Similarly, in a juvenile proceeding a minor cannot be found guilty of a greater offense than that alleged in the petition".

Gordon contends he is aware of this Court ruling in State v. Graham, which involved a sixteen year old juvenile charged and plead guilty to murder and armed robbery in the circuit court. This Court held because Graham was sixteen years of age charged with a Class A,B,C or D felony he did not have to first start in family court and found the circuit court had jurisdiction pursuant to §20-7-6605(1). Most recently this Court in Anthony Jones v. State held Jones did not meet the definition of child/juvenile, he was subject to the jurisdiction of the circuit court rather than family court. Anthony Jones v. State . This Court Opinion that §63-19-20(1) operates as a

definition statute, which is the equivalent of §20-7-6605(1). The Court declined to characterize it as a **"automatic waiver"** provision, the Court further declined to characterize Jones claim as jurisdiction. Gordon contends the Children Code of Laws Act Definition statute must be construed together with the above statutes because section 20-7-6605(1) operates as a mandatory definition provision that requires the filing of a charge for sixteen year old individuals before section 20-7-6605(1) can go into effect. Case law has made it clear that where a minor is either arrested without a warrant, or brought into custody for questioning, and then later charged with murder, the Act will apply. In *People v. McGhee*, 154 Ill.App.3d 232, 107 Ill.Dec. 369, 507 N.E.2d 33 (1987), the 16-year old defendant was arrested without a warrant and ultimately convicted of first degree murder. The court applied the Juvenile Court Act. See *McGhee*, 154 Ill.App.3d at 236, 107 Ill.Dec. 369, 507 N.E.2d 33. In *People v. Montanez*, 273 Ill. App.3d 844, 210 Ill.Dec. 295, 652 N.E.2d 1271 (1995), the 15-year old defendant was also arrested without a warrant. 273 Ill.App.3d at 848, 210 Ill.Dec. 295, 652 N.E.2d 1271. The court applied the Act and held that there was no reasonable notice given to the defendant's mother. *Montanez*, 273 Ill. App.3d at 850-52, 210 Ill.Dec. 295, 652 N.E.2d 1271. The purpose of the notice requirement under the Act is to allow, where possible, a parent to confer with and counsel a Juvenile before an interrogation and confession. *Montanez*, 273 Ill.App.3d at 850, 210 Ill.Dec. 295, 652 N.E.2d 1271.

In *People v. Pico*, 287 Ill.App.3d 607, 222 Ill.Dec. 908, 678 N.E.2d 780 (1997), the court analyzed the language of section 5-4(6)(a) and held that the exemptions from protections afforded by the Juvenile Court Act were not triggered until a juvenile is charged with one of the enumerated offenses. *Pico*, 287 Ill.App.3d at 611-12, 222 Ill.Dec. 908, 678 N.E.2d 780. In *Pico,* the defendant, a 16 year old, was initially brought to the police station as a witness who may have had information regarding the murder of the victim. *Pico*, 287 Ill.App.3d at 609, 222 Ill.Dec. 908, 678 N.E.2d 780. Upon questioning by a detective, however, it became apparent that the defendant was culpable, at which time the detective terminated the interview and attempted to notify the defendant's mother and summoned a youth officer. *Pico*, 287 Ill.App.3d at 609-10, 222 Ill.Dec. 908, 678 N.E.2d 780. The court held that the Act applied because the defendant was not yet charged with murder at the time he was questioned. *Pico*, 287 Ill.App.3d at 612, 222 Ill.Dec. 908, 678 N.E.2d 780. The court reasoned that "the plain language of section 5-4(6)(a) indicates that its exemption is triggered only when the minor has been charged. Until that point, the minor retains the protection of the 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 Act." [6].

Therefore, because there was no juvenile petition filed charging Gordon with a crime, the Court of General Sessions lacked subject matter jurisdiction, thus State v. Rice, supra judicial error does not apply to the instant case. The Court of Appeals Unpublished Opinion should be vacated as well as Gordon guilty plea judgement.

Gordon contends the Court of Appeals erred when it found State v. Rice judicial error apply to the instant case. In this State " **When a child found violating a criminal law or ordinance is taken into custody, the taking into custody is not an arrest. The jurisdiction of the court attaches from the time of the taking into custody. When a child is taken into custody, the officer taking the child into custody shall notify the parent, guardian, or custodian of the child as soon as possible. Unless otherwise ordered by the court. Section 20-7-7205(a).**

The general assembly defined the court as ***"[F]amily Court"*** under section 20-7-6605(2). Gordon contends §20-7-7205(a);§20-7-6605(1),(2);§20-7-400(a),(1),(3);§20-7-7605(1),(6) must be construed together. Joiner v. Rivas, supra. In State v. Smith, 94 NE2d 498 (2022) the Ohio Supreme Court held in a juvenile case ***"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 *308 of different sections within R.C. Title 21, this canon should be followed".***

The lower court in this case did not follow statutory construction when making a finding General Sessions Court properly had jurisdiction under §20-7-6605(1),supra. See Appendix Volume Two PG _____ (Liwer Court order)

However, our Court of Appeals found State v. Rice, judicial error apply to the instant case. Gordon contends this was an error of law due to the laws relied on and cited by him in his Initial, Reply, and Final briefs and Petition for Rehearing and Rehearing En Banc and Petition for Writ of Certiorari. Gordon contends his issues raised is subject matter Jurisdiction. See Breedlove 285 Kan. at 10B14; 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. 241P.3d 161 (2010).

"[Albsent 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." See State v Wilson 73 Ohio St.3d 40* 4446. 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. The Ohio Supreme Court found Wilson's conviction must be vacated for a lack of subject matter

jurisdiction. Thus, the true question in this case that the Graham and Jones court did not answer is (1) How family court jurisdiction attaches in the first instance over children when they are found violating criminal laws and taken into family court custody jurisdiction,(2) what happens after a child sixteen 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 20-76605 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). The Court of Appeals Unpublished Opinion does not make a finding whether the lower court committed an error of Law when it did not follow statutory construction as instructed by our Supreme Court in Joiner v. Rivas.

Wherefore this Court should grant certiorari to review the Court of Appeals unpublished opinion and find the issues Gordon raised is subject matter jurisdiction and vacate his Conviction and sentence as being void ab initio.

The Court of Appeals Erred when it gave an unpublished opinion regarding the State's unpreserved State v Rice judicial error issue raised for the first time in the Court of Appeals in violation of State v. Dunbar, 587 SE2d 691 (S.C. 2003)

Gordon contends the Court of Appeals Erred when it gave an unpublished opinion regarding the State unpreserved **State v. Rice,**supra, judicial error claim raised for the first time on appeal in this case. In this case Gordon served Respondent with a copy of his Motion to vacate conviction and sentence and put the Respondent on notice that he was asking the court to reopen his first PCR judgement PCR (1414). The Respondent did not respond. The Respondent did not

respond to the jurisdiction claims in the first PCR application PCR (1414). Gordon contends he did object to the State raising their claim for the first time on appeal. See Gordon's Reply Brief Vol 2 App.p _____. This Court has continuously held **"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. State v. Russell, 345 S.C. 128, 546 S.E.2d 202 (Ct.App.2001). A party may not argue one ground at trial and an alternate ground on appeal. State v. Prioleau, 345 S.C. 404, 548 S.E.2d 213 (2001); State v. Benton, 338 S.C. 151, 526 S.E.2d 228 (2000)(argued one ground in support of circumstantial evidence charge at trial and another ground in support of the charge on appeal). No point will be considered which is not set forth in the statement of issues on appeal. Rule 208(b)(1)(B), SCACR; State v. Bray, 342 S.C. 23, 535 S.E.2d 636 (2000)(it is error for an appellate court to consider issues not raised to it); State v. Prioleau, 345 S.C. 404, 548 S.E.2d 213 (2001). An issue that was not preserved for review should not be addressed by the Court of Appeals, and the court's opinion should be vacated to the extent it addressed an issue that was not preserved. Hendrix v. Eastern Distribution, Inc., 320 S.C. 218, 464 S.E.2d 112 (1995)".**

Therefore, this Court should grant certiorari to review the Court of Appeals Unpublished Opinion and vacate the Opinion to the extent it addressed an issue that was not preserved. State v. Prioleau,supra.

The Court of Appeals erred when it gave an unpublished opinion without addressing Gordon's Cotheran v. Brown,357 S.C. 210,215,592 SE2d 629 (S.C..2004) Judicial Estoppel issue properly raised regarding the State being procedurally barred from raising their claim

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Gordon contends the Court of Appeals Erred when it gave an unpublished opinion without addressing Gordon's Judicial Estoppel claim properly raised

regarding the State raising their judicial error issue for the first time on appeal. See Appendix Volume Two pg _____(Gordon Reply Brief) In this case the PCR court in PCR (1414) asked the Respondent to prepare a propose order, in the propose order the Respondent injected language replying to Gordon jurisdictional issues out of time while making specific findings of fact and conclusion of law on Gordon jurisdictional claims when the propose order states:

"Pursuant to S.C. Code Ann 20-7-6605, 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 a maximum term of imprisonment of fifteen years or more maybe remanded to the family court for disposition of the charge at the discretion of the solicitor. The Applicant was sixteen years old when he committed the crimes for which he was indicted and the crimes committed were Class A, B, C, or D felonies. Therefore, the General Sessions Court had jurisdiction". See Appendix Volume one pages 355 line 2-8 (PCR Order issued August 18th, 2003)".

When Gordon filed his second PCR and re-asserted his jurisdictional claims the Respondent alleged the claims was time barred and successive. Even in Gordon third PCR application he filed, the Respondent again argued the PCR was time barred and successive and asked the court to restrict Gordon from any future PCR filing and listed Gordon jurisdictional claims as a ground. The Court issued such order. See Appendix Volume two pg _____. It wasn't until Gordon filed his appeal from the order dismissing his Motion to Vacate Conviction and sentence the Respondent came up with their new outlook of the Facts and legal arguments relating to Gordon's subject matter jurisdiction claims. Gordon contends this Act was done intentionally by the Respondent to bar Gordon from reaching the merits of his true subject matter jurisdictional issues. Pursuant to Cotheran v. Brown, the State is barred from raising their new judicial error claim. This is the same proceedings from PCR (1414). Therefore, this Court should grant Certiorari to review the Court of Appeals Unpublished Opinion where it failed to address Gordon Judicial Estoppel claim raised in his reply brief. See Reply Brief Volume two App.p_____.

The Court of Appeals erred when it gave an unpublished opinion finding Gordon could not file his Motion to Vacate Conviction and Sentence based on lack of subject matter jurisdiction under Rule 29(a) SCRCP and State v. Warren regarding Petitioner constitutional challenge to the Children Code of Laws contrary to this Court holding in State v. Keenan,278 SC 361,296 SE2d 676 (1982) and State v. Smalls,613 SE2d 754,756 (2005);Brown v. State,

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The 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). Gordon asserts the children code of laws ,section 207-6605(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. S 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. S 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 63-3510(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 1 st 2020-Filed February 26,2020 from the Court of Appeals where Jerome Williams appealed an order denying his pro se motion to set aside his first-degree burglary conviction. Williams argued (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. The Court affirmed the appealed order pursuant to Rule 220(b), SCACR, and the authorities cited below.

Appellant asserts the Court rejected Williams's argument that the matter should have been transferred to the court of common pleas. Under Article V, section 1 1 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.

Second, Appellant asserts because the general sessions court reopen PCR judgement in 2000CP-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 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." Bames 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. Jones v. State, supra, Therefore, this Court should grant certiorari to review the Court of Appeals Unpublished Opinion and vacate opinion and find Gordon could have raised his constitutional challenge that goes directly to the power of the court accept his plea and issue true bill indictments in this case.

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 14 th 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 (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.

Conclusion

Gordon contends this Court should grant certiorari to review the Court of Appeals Unpublished Opinion and vacate it and issue a new opinion.

Respectfully Submitted

20.

Antonio Gordon 11/18/2024

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State, Respondent,

v.

Antonio Gordon, Appellant.

Appellate Case No. 2021-001280

Appeal From York County
William A. McKinnon, Circuit Court Judge

Unpublished Opinion No. 2024-UP-239
Submitted June 1, 2024 – Filed July 3, 2024

AFFIRMED

Antonio Gordon, pro se.

Attorney General Alan McCrory Wilson and Senior Assistant Attorney General Mark Reynolds Farthing, both of Columbia; and Solicitor Kevin Scott Brackett, of York, all for Respondent.

PER CURIAM: Antonio Gordon appeals the denial of his motion to vacate his convictions and sentences. On appeal, Gordon argues the circuit court erred by (1) finding the general sessions court had jurisdiction to hear his guilty plea when he was a juvenile at the time of the offenses and should have been adjudicated in

family court; and (2) not making a finding regarding the constitutionality of section 20-7-6605 of the South Carolina Code (Supp. 1998). We affirm pursuant to Rule 220(b), SCACR, and the following authorities: Rule 29(a), SCRCrimP ("Except for motions for new trials based on after-discovered evidence, post-trial motions shall be made within ten (10) days after the imposition of the sentence."); *State v. Warren*, 392 S.C. 235, 239, 708 S.E.2d 234, 236 (Ct. App. 2011) ("The court does not retain authority to entertain a motion which is not made within ten days of sentencing."); *Gantt v. Selph*, 423 S.C. 333, 338, 814 S.E.2d 523, 525-26 (2018) ("Lack of subject matter jurisdiction may be raised at any time, and may be raised for the first time on appeal."); *State v. Rice*, 401 S.C. 330, 333, 737 S.E.2d 485, 486 (2013) (agreeing with the Iowa Supreme Court's reasoning that "an erroneous order transferring a juvenile to general sessions court would be a judicial error—not a jurisdictional error").

AFFIRMED.[1]

THOMAS, MCDONALD, and VERDIN, JJ., concur.

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[1] We decide this case without oral argument pursuant to Rule 215, SCACR.

The South Carolina Court of Appeals

The State, Respondent,

v.

Antonio Gordon, Appellant.

Appellate Case No. 2021-001280

ORDER

After careful consideration of the petition for rehearing, the court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

Paul B. Thomas J.

Stephanie P. McDonald J.

R. Lister H. Verdin A.J.

Columbia, South Carolina

cc:
Antonio Gordon, 00259798
Alan McCrory Wilson, Esquire
Kevin Scott Brackett, Esquire
Mark Reynolds Farthing, Esquire

FILED
Oct 08 2024

THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to the Court of Appeals

On Appeal from York County

Honorable William A. McKinnon, Chief Judge

Appellate Case No.2021-001280

General Sessions Court 1998-GS-46-2847-2851

State of South Carolina, Respondent,

v.

Antonio Gordon, Appellant.

Certificate/proof of service

I, Antonio Gordon, hereby certify I did mail a copy of his Petition for Writ of Certiorari and Petition for the Appointment of Counsel on Mark R. Farthing, esq at P.O. Box 11549, Columbia, South Carolina 29211

On this 18th day of November ,2024, by placing it in Ridgeland Correctional Mailroom.

Antonio Gordon

Antonio Gordon#259798

RIDGELAND C.I

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RIDGELAND, SC 29936

Antonio Gordon #259798
R.C.I. SB #33
5 Correctional Rd
Ridgeland, SC 29936

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