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S.C. SUPREME COURT

The Supreme Court of South Carolina

Terron Gerhard Dizzley, Petitioner

v.

Erin Bailey, et al, Respondent

Appellate Case No. 2024-001999

Emergency Exparte Motion To Reinstate Appeal

Dear Honorable Judge John Kittredge:

This letter is in regards to your December 2, 2024 order dismissing my notice of appeal from the South Carolina Court of Appeals, indicating in part that: "Because Petitioner failed to file a petition for rehearing from the Court of Appeals' final decision and because the remittitur has now been sent pursuant to Rule 221 of the (SCACR), Petitioner's petition for writ of certiorari is stricken and dismissed...."

1. The aboved appeal was filed pursuant to my illegal incarceration for ten years and counting pursuant to an illegal sentence imposed on me without jurisdiction in violation of the Fifth Amendment's Double Jeopardy Clause, and pursuant to an indictment that was null and void. The Court construed my appeal as a petition for writ of certiorari, and imposed the normal appellate court rules to my case. However, the fact that this appeal is pursuant to an illegal incarceration, according to the law, this appeal should have been construed as an extraordinary writ, habeas corpus, under emergency circumstances, which may not be delayed or denied, and under such circumstances, the normal appellate court rules should not have applied to deprive me of my personal liberty.
2. However, although the circumstances of my illegal incarceration does not apply to the normal appellate court rules you cited, SCACR, Rule 221. Rule 221(a) states in part: "Petitions for rehearing must be actually received by the appellate court no later than fifteen (15) days after the filing of the opinion, order, judgment, or decree of the court." The record proves that I did file a "Motion To Reinstate" my case in the S.C. Court of Appeals on November 8, 2024, and the remittitur was filed on November 4, 2024, and although it was filed well within the (15) days as stated in Rule 221, the record proves that the S.C. Court of Appeals returned my motion to reinstate indicating that because the remittitur was filed, they no longer had jurisdiction of the case, which is contrary to the law.
3. The record also proves I filed a "Writ of Mandamus In Aid of Appellate Court's Jurisdiction," on September 11, 2024, well before any remittitur, which the

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court never responded to or adjudicated. I also filed an “Amended Writ of Mandamus In Aid of Appellate Court’s Jurisdiction,” on November 6, 2024, which was also within the 15 days of the remittitur, of which the court also returned to me indicating the because the remittitur was filed, they no longer had jurisdiction of my case.

4. The issues raised clearly challenges the trial court’s subject matter jurisdiction to sentence me, and the South Carolina Department of Corrections legal and jurisdictional authority to hold me in prison, which is literally kidnapping/false imprisonment. According to clearly established South Carolina and United States Supreme Court law, as long as I remain kidnapped/falsely imprisoned pursuant to an unlawful conviction and sentence without legal nor jurisdictional authority, and as long as the motion I am filing challenges subject matter jurisdiction, The Supreme Court of South Carolina not only has jurisdiction, but **“must”** on its own motion address my issues challenging the trial court’s subject matter jurisdiction to impose a sentence on me 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 I am not being held under the present sentence unlawfully, without jurisdiction.

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.”

5. Why would anyone, especially government officials who swore an oath to protect the rights of citizens do what you and the judicial system is doing to me.
6. I am requesting that my case is reinstated and construed as a “Writ of Habeas Corpus In Aid of Appellate Court’s Jurisdiction” and adjudicated promptly under emergency circumstances and pursuant to the merit,, pursuant to findings of facts and conclusions of law.

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 no 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 to 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.**”

7. Therefore, it is 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.

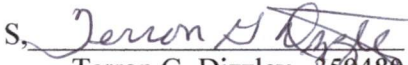
See: Exparte Virginia, 100 U.S. 339 (1879), “**Whoever by virtue of public position under a state government deprives another of property, life, or liberty**

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, I respectfully request that my appeal is liberally construed as a “Writ of Habeas Corpus In Aid of Appellate Court’s Jurisdiction,” and reinstated and an evidentiary hearing is promptly scheduled to afford me a “swift and imperative remedy” pursuant to my illegal incarceration.

December 12, 2024

With kind regards,

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