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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

On Petition for Writ of Certiorari to the Court of Appeals
Appeal from York County
Honorable William A. McKinnon, Circuit Court Judge
Appellate Case No. 2024-001905

THE STATE,

Respondent,

vs.

ANTONIO GORDON,

Petitioner.

RETURN TO PETITION FOR WRIT OF CERTIORARI

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ATTORNEYS FOR RESPONDENT

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PETITIONER'S STATEMENT OF ISSUES ON CERTIORARI

I.

“Whether the Court of Appeals erred when it gave an unpublished opinion without making a finding whether the trial court committed error of law and abused its discretion when the trial court made findings of fact and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?”

II.

“Did the Court of Appeals err when it gave an Unpublished Opinion regarding the State’s **JUDICIAL ERROR**’ argument after Petitioner objected to the unpreserved issue under *State v. Dunbar*, for review?”

III.

“Did the Court of Appeals err when it gave an unpublished opinion without considering Gordon ‘[j]udicial estoppel’ issue properly raised by him in his reply brief and again in Rehearing and Rehearing En Banc?”

IV.

“Did the Court of Appeals err when it gave an unpublished opinion finding Gordon could not file his Motion to Vacate Conviction and Sentence based on lack of subject matter jurisdiction under Rule 29(a) SCRPC and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*”

V.

“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).”

RESPONDENT'S COUNTER-STATEMENT OF ISSUE ON CERTIORARI

Did the Court of Appeals correctly affirm the circuit court judge's ruling that properly rejected Gordon's post-plea motion seeking for his convictions and aggregate sentence to be vacated two decades after he pled guilty to murder and other offenses when: (1) Gordon's motion—which did not raise any legitimate issues concerning subject matter jurisdiction—was filed more than eight-thousand days after he was sentenced, which meant the circuit court had long since lost jurisdiction over his case; and (2) even assuming Gordon's motion was somehow proper despite being filed decades too late, the York County Court of General Sessions did, in fact, unquestionably have subject matter jurisdiction over Gordon's case at the time he entered his guilty pleas in 1999?

STATEMENT OF THE CASE

Relevant Procedural History

In October of 1998, the York County Grand Jury indicted Petitioner Antonio Gordon for one count of murder, two counts of attempted armed robbery, three counts of possession of a firearm during the commission of a violent crime, one count of possession of a firearm by a person under twenty-one, and one count of criminal conspiracy. In July of 1999, Gordon appeared in the York County Court of General Sessions and entered guilty pleas to all those indicted offenses before the Honorable John C. Hayes, III, circuit court judge. At the conclusion of the plea hearing, the plea judge accepted Gordon's guilty pleas and deferred sentencing for a few days. Thereafter, on July 19, 1999, the plea judge sentenced Gordon to an aggregate forty-year term of imprisonment for his many convictions. Gordon then timely initiated an appeal.

On appeal, Gordon's appellate counsel submitted a brief pursuant to Anders v. California, 386 U.S. 738 (1967), along with a petition to be relieved. After reviewing the matter, the Court of Appeals issued an unpublished decision dismissing the appeal and granting appellate counsel's petition to be relieved. State v. Gordon, Op. No. 2000-UP-747 (S.C. Ct. App. filed Dec. 6, 2000). Thereafter, on January 9, 2001, remittitur was issued.

Following that and over the course of the next few decades, Gordon made *numerous* attempts to obtain relief from his convictions by filing multiple post-conviction relief actions, post-plea motions, other collateral actions, and various appeals.^{1 2} So far, none of Gordon's attempts in that regard have ultimately been successful.

¹ In an effort to curtail Gordon's repetitive filings, an order was issued in January of 2010 prohibiting Gordon "from filing any future application for post-conviction relief that raises the same grounds raised in th[e] action, any grounds raised in a prior action, or any allegations [Gordon] could have raised[.]" (R. pp. 558-559). And, based on his own representations, Gordon appears to be well aware of that order's existence. (R. p. 583).

On September 9, 2021, Gordon filed a pro se post-plea motion entitled “Notice and Motion to Vacate Conviction and Sentenced Based on ‘Lack of Subject Matter Jurisdiction” in the York County Court of General Sessions. Through an order filed on October 18, 2021, the Honorable William A. McKinnon, circuit court judge, summarily denied Gordon’s motion without conducting a hearing on the matter. Gordon then timely initiated an appeal.

On appeal, the Court of Appeals—following briefing—issued an unpublished decision unanimously affirming the circuit court judge’s order.³ State v. Gordon, Op. No. 2024-UP-239 (S.C. Ct. App. filed July 3, 2024). Thereafter, Gordon filed a pro se petition for rehearing along with a suggestion for rehearing en banc, and that petition was denied. Gordon then filed a pro se petition for a writ of certiorari in the Supreme Court.

² The records from many of the appellate proceedings that have been conducted to date in connection to Gordon’s various attempts to have his convictions overturned are presently available through the South Carolina Appellate Public Index. Appellate Records for Antonio Gordon v. State, South Carolina Appellate Court Public Index, <https://ctrack.sccourts.org/public/caseView.do?csIID=66546>; Appellate Records for Antonio Gordon v. State, South Carolina Appellate Court Public Index, <https://ctrack.sccourts.org/public/caseView.do?csIID=59466>; Appellate Records for Antonio Gordon v. State, South Carolina Appellate Court Public Index, <https://ctrack.sccourts.org/public/caseView.do?csIID=59456>; Appellate Records for State v. Antonio Gordon, South Carolina Appellate Court Public Index, <https://ctrack.sccourts.org/public/caseView.do?csIID=56219>; Appellate Records for State v. Antonio Gordon, South Carolina Appellate Court Public Index, <https://ctrack.sccourts.org/public/caseView.do?csIID=55250>; Appellate Records for Antonio Gordon v. State, South Carolina Appellate Court Public Index, <https://ctrack.sccourts.org/public/caseView.do?csIID=54992>; Appellate Records for State v. Antonio Gordon, South Carolina Appellate Court Public Index, <https://ctrack.sccourts.org/public/caseView.do?csIID=53807>.

³ Notably, while his case was pending at the Court of Appeals, Gordon submitted a pro se motion seeking authorization to submit yet another successive post-conviction relief application. Appellate Records for State v. Antonio Gordon, South Carolina Appellate Court Public Index, <https://ctrack.sccourts.org/public/caseView.do?csIID=74487>. However, that motion was denied. Id.

Factual History

A little over twenty-two *years* after he pled guilty to and was convicted of murder along with several related crimes, Gordon—who was sixteen years old at the time of his offenses—filed a motion with the York County Court of General Sessions seeking for his convictions and aggregate sentence to be totally vacated and wiped away.⁴ (R. pp. 578-586). As support for that extraordinary request, Gordon appeared to maintain his convictions were defective because jurisdiction over his case was supposedly vested in the family court at the time he entered his guilty pleas and was never properly transferred to the general sessions court in which he pled. (R. pp. 580-581; pp. 583-584). Gordon further noted he had been raising the exact same jurisdiction-based claim since the first post-conviction relief application he filed in 2000, and he appeared to contend his “fundamental constitutional rights” had somehow been violated due to the fact that particular claim had not been accepted by any courts. (R. pp. 583-584).

Upon becoming aware of Gordon’s motion, the Chief Judge for Administrative Purposes in the Sixteenth Judicial Circuit issued an order summarily denying it. (R. pp. 598-599). As support for his ruling, the circuit court judge explained: (1) Gordon’s jurisdictional argument had already previously been litigated and rejected; and (2) the York County Court of General Sessions properly had jurisdiction in Gordon’s case at the time Gordon entered his guilty pleas. (R. pp. 598-599). More specifically, the circuit court judge—quite correctly—instructed:

[Gordon] pled guilty to murder, three counts of possession of a firearm 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 this plea, “a person sixteen years of age or older who is charged with a Class A, B, C or D felony defined in Section 16-1-

⁴ Based on the factual summary presented during his guilty plea hearing, Gordon’s charges stemmed from an incident in which he fatally shot someone while attempting to carry out a pre-planned armed robbery along with several co-conspirators. (R. pp. 187-189).

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. § 20-7-6606 (Now § 63-19-20). [Gordon] was sixteen years old and charged with a Class A, B, C or D felony defined in Section 16-1-20. Consequently, the General Sessions court had jurisdiction, and the sentence and conviction shall not be vacated.⁵

(R. p. 598).

Following that, Gordon promptly appealed, arguing the circuit court judge reversibly erred by: (1) dismissing Gordon’s post-plea motion without a hearing after purportedly incorrectly finding the plea court did, in fact, have jurisdiction in his case; and (2) failing to address Gordon’s attempt to challenge the constitutionality of a particular statutory provision through his post-plea motion. (App. Br. p. 2; pp. 8-16). On appeal, the Court of Appeals rejected Gordon’s arguments and affirmed. State v. Gordon, Op. No. 2024-UP-239 (S.C. Ct. App. filed July 3, 2024). In doing so, the Court of Appeals relied on 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)

⁵ Significantly, the circuit court judge’s conclusion in that regard was completely consistent with the conclusion reached by the circuit court judge who rejected Gordon’s first post-conviction relief application in 2003. (R. p. 348; pp. 354-355; p. 359). Specifically, that circuit court judge ruled:

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 may be remanded to the family court for disposition of the charge at the *discretion of the solicitor*.” [Gordon] was sixteen years old when he committed the crime for which he was indicated and the crimes committed were Class A, B, C or D felonies. Therefore, the General Sessions Court had jurisdiction.

(R. p. 355).

(“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”).

Id.

STANDARD OF REVIEW

In criminal cases, appellate courts sit to review errors of law only. State v. Wilson, 345 S.C. 1, 5, 545 S.E.2d 827, 829 (2001); see State v. Branham, 392 S.C. 225, 228, 708 S.E.2d 806, 808 (Ct. App. 2011) (“The appellate court’s review in criminal cases is limited to correcting the order of the circuit court for errors of law.”). Based on that, appellate courts in such cases are typically “limited to determining whether the trial court abused its discretion.” State v. Green, 432 S.C. 572, 582, 854 S.E.2d 626, 631 (Ct. App. 2021). “An abuse of discretion occurs when the trial court’s ruling is based upon an error of law, such as application of the wrong legal principle; or, when based upon factual conclusions, the ruling is without evidentiary support; or, when the trial court is vested with discretion, but the ruling reveals no discretion was exercised; or when the ruling does not fall within the range of permissible decisions applicable in a particular case, such that it may be deemed arbitrary and capricious.” State v. Allen, 370 S.C. 88, 94, 634 S.E.2d 653, 656 (2006).

ARGUMENT

The Court of Appeals correctly affirmed the circuit court judge’s ruling that properly rejected Gordon’s post-plea motion seeking for his convictions and aggregate sentence to be vacated two decades after he pled guilty to murder and other offenses because: (1) Gordon’s motion—which did not raise any legitimate issues concerning subject matter jurisdiction—was filed more than eight-thousand days after he was sentenced, which meant the circuit court had long since lost jurisdiction over his case; and (2) even assuming Gordon’s motion was somehow proper despite being filed decades too late, the York County Court of General Sessions did, in fact, unquestionably have subject matter jurisdiction over Gordon’s case at the time he entered his guilty pleas in 1999.

Through his pro se petition for a writ of certiorari, Gordon appears to be attempting to challenge the circuit court judge’s order denying his post-plea motion seeking for his convictions and aggregate sentence to be vacated. Significantly though, Gordon’s post-plea motion was—just as the Court of Appeals astutely recognized—not filed in the circuit court until more than *two decades* after Gordon pled guilty to murder and other offenses in the York County Court of General Sessions. And, significantly, despite his apparent beliefs to the contrary, Gordon’s post-plea motion did not raise any *legitimate* issues that called into question the York County Court of General Sessions’s jurisdiction over his case at the time he entered his guilty pleas. Under such circumstances, the circuit court judge did not have jurisdiction to entertain Gordon’s post-plea motion since it was wildly untimely. Therefore, the ruling rejecting Gordon’s motion to vacate his conviction and aggregate sentence was a correct one since the circuit court judge did not have any valid authority to grant it. Accordingly, the Court of Appeals correctly affirmed the circuit court judge’s ruling rejecting Gordon’s improper, untimely, and fundamentally-incorrect post-plea motion. Gordon’s pro se petition for a writ of certiorari should be denied.

Pursuant to South Carolina law, a circuit court judge generally “is without authority to consider a criminal matter once the term of court during which judgment was entered expires.” State v. Warren, 392 S.C. 235, 238, 708 S.E.2d 234, 235 (Ct. App. 2011); see State v. Hinson,

303 S.C. 92, 94, 399 S.E.2d 422, 422 (1990) (“It is a long-standing rule of law that a trial judge is without jurisdiction to consider a criminal matter once the term of court during which judgment was entered expires.”). Significantly, that general rule is inapplicable *only* when either: (1) a timely post-trial motion is filed; or (2) a motion for a new trial based on after-discovered evidence is filed. State v. Campbell, 376 S.C. 212, 215, 656 S.E.2d 371, 373 (2008). Thus, absent the filing of a timely post-trial motion or a specific type of new trial motion, a circuit court judge lacks the authority to act in a particular matter once the term of court has ended. Id.; see 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.”).

In the case sub judice, the plea judge imposed Gordon’s aggregate sentence for murder and other offenses in the circuit court on July 19, 1999. Over eight-*thousand* days later, Gordon filed a motion in the same court seeking for his convictions and aggregate sentence to be overturned. Obviously, Gordon’s motion was not filed within ten days—or even ten *years*—of the imposition of his sentence. Cf. Warren, 392 S.C. at 240, 708 S.E.2d at 236 (“Warren’s motion to reconsider her sentence . . . is subject to the ten day time period prescribed in Rule 29; thus, because the motion was filed more than three years after imposition of the sentence, Warren’s motion is not timely.”). Therefore, Gordon’s motion was—just as the Court of Appeals correctly determined—not a timely one, and, resultantly, the circuit court judge who rejected Gordon’s untimely motion did not have any valid jurisdiction to grant Gordon the relief he was seeking.⁶ See Rule 29(a), SCRCrimP (affording ten days from the imposition of a

⁶ Notably, while a court’s lack of subject matter jurisdiction can be raised at any time *during a proceeding properly pending in a court*, Gordon’s wildly-untimely post-plea motion was not a proper proceeding based on its untimeliness and, thus, was not an appropriate vehicle through

sentence for the filing of post-trial motions in the circuit court); State v. Best, 257 S.C. 361, 368, 186 S.E.2d 272, 275 (1972) (“Under our judicial system the presiding judge in the Circuit Court loses jurisdiction with the adjournment of the term. It follows that after the adjournment of the term of court at which sentence is imposed the judge is without authority to change, amend or modify it.” (citations omitted)).

Furthermore, even if the wild untimeliness of Gordon’s post-plea motion could somehow be ignored, Gordon’s claim the York County Court of General Sessions had lacked jurisdiction over his case was nonetheless wholly meritless. That is true because the circuit court obviously had subject matter jurisdiction over Gordon’s case since it involved a charge of murder amongst other offenses. See, e.g., State v. Gentry, 363 S.C. 93, 100-101, 610 S.E.2d 494, 498-499 (2005) (explaining subject matter jurisdiction is “the power of a court to hear and determine cases of the general class to which the proceedings in question belong” and instructing “[c]ircuit courts obviously have subject matter jurisdiction to try criminal matters”); cf. State v. McBride, 416 S.C. 379, 385, 786 S.E.2d 435, 438 (Ct. App. 2016) (rejecting McBride’s age-based suggestion the circuit court lacked *subject matter* jurisdiction over his criminal case). Moreover, based on the law in effect at the time his guilty pleas were entered, Gordon’s case was properly brought in the York County Court of General Sessions due to the highly-serious nature of the heinous

which a lack of subject matter jurisdiction claim could validly be raised or addressed in Gordon’s case. See Gantt v. Selph, 423 S.C. 333, 338, 814 S.E.2d 523, 525-526 (2018) (“Lack of subject matter jurisdiction may be raised at any time, and may be raised for the first time on appeal.”); see also State v. Pfeiffer, 427 S.C. 10, 13, 828 S.E.2d 764, 766 (2019) (“In a criminal case, once the term of court ends, the trial court lacks jurisdiction to consider additional matters unless a party files a timely post-trial motion.”); cf. People v. Flowers, 802 N.E.2d 1174, 1184 (Ill. 2003) (“Although a void order may be attacked at any time, the issue of voidness must be raised *in the context of a proceeding that is properly pending in the courts*. If a court lacks jurisdiction, it cannot confer any relief, even from prior judgments that are void. The reason is obvious. Absent jurisdiction, an order directed at the void judgment would itself be void and of no effect.” (emphasis added)).

offenses—including murder, which was a felony punishable by death, life, or mandatory term of imprisonment of thirty years—he committed at the age of sixteen. See S.C. Code Ann. § 20-7-6605(1) (Supp. 1998) (“ ‘Child’ means a person less than seventeen years of age. ‘Child’ *does not mean* 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. However, a person sixteen years of age 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 may be remanded to the family court for disposition of the charge at the discretion of the solicitor.” (emphasis added)); see also S.C. Code Ann. § 16-3-20 (Supp. 1998) (“A person who is convicted of or pleads guilty to murder must be punished by death, by imprisonment for life, or by a mandatory minimum term of imprisonment for thirty years.”). Resultantly, notwithstanding the fact the circuit court judge who rejected Gordon’s untimely post-plea motion had no valid authority to do anything other than reject it as untimely, Gordon’s frivolous jurisdiction-based contentions were and are wrong on the merits and, thus, could not have validly entitled Gordon to a grant of relief even if raised in a proper manner. See Blanton v. Stathos, 351 S.C. 534, 542, 570 S.E.2d 565, 569 (Ct. App. 2002) (“A judgment by a court without jurisdiction of both the parties and the subject matter is a nullity and must be so treated by the courts whenever and for whatever purpose it is presented and relied on.”); cf. Tant v. South Carolina Dep’t of Corr., 408 S.C. 334, 342-343, 759 S.E.2d 398, 402 (2014) (“The judge sent the letter two-and-a-half years after sentencing and at that point no longer had jurisdiction over the case. Therefore, Judge Saunders was without jurisdiction to make any subsequent pronouncement concerning Tant’s sentence.” (citation omitted)).

For all those reasons, the circuit court judge properly rejected Gordon’s untimely and meritless post-plea motion in a summary fashion, and the Court of Appeals correctly affirmed the circuit court judge’s ruling on appeal. See Campbell, 376 S.C. at 215, 656 S.E.2d at 373 (“It is a long-standing rule of law that a trial judge is without jurisdiction to consider a criminal matter once the term of court during which judgment was entered expires.”); see also 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.”). Gordon’s petition for a writ of certiorari should be denied.

CONCLUSION


For all the foregoing reasons, it is respectfully submitted Petitioner’s petition for a writ of certiorari should be denied.

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