

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

Certiorari to the Court of Appeals
On Appeal from York County
Honorable William A. McKinnon, Chief Judge
Appellate Case No. 2024 -001905
General Sessions Court 1998-GS-46-2847-2851

State of South Carolina,
Respondent,

v.

Antonio Gordon
Appellant.

PETITION FOR REHEARING AND REHEARING EN BANC PURSUANT TO RULE 219(A),(B)

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

To the Honorable Justices of the Supreme Court of South Carolina:

The Petitioner, Antonio Gordon, respectfully submits this Petition for Rehearing and Rehearing En Banc pursuant to Rule 219(a),(b) SCACR. Mr. Gordon asserts that the Court's prior decision inadvertently overlooked critical legal principles and factual elements that necessitate thorough reevaluation to avert a grievous miscarriage of justice. He urges the esteemed Justices to consider the following points with the utmost seriousness: This Court denied Gordon's Petition for writ of certiorari on January 16, 2025 and received by him on January 28, 2025.

I. The Court's Oversight of Due Process Violations

The ruling previously rendered by this Court failed to fully appreciate the profound implications of denying Mr. Gordon's Petition for Writ of Certiorari. This denial was issued without granting Mr. Gordon the essential opportunity to present his arguments and evidence, particularly his Motion for extension of time, which was filed on January 9, 2025. Gordon did not receive the State brief until January 2nd, 2025. See attachment (a) likewise, Gordon Memorandum of law in support was filed timely. The significance of this oversight cannot be overstated, as it directly infringes upon Mr. Gordon's constitutional rights guaranteed by the South Carolina Constitution (Article 1, Section 3) and the 14th Amendment of the United States Constitution. The legal principles established in **Mathews v. Eldridge**, 424 U.S. 319 (1976), emphasize the paramount importance of due process and equal protection, which were regrettably absent in Mr. Gordon's case.

Mr. Gordon's Memorandum was duly submitted within the allowable timeframe, as he received the Respondent's Return on January 3, 2025, and subsequently filed for an extension on January 9, 2025. However, the Court neglected to consider the critical contents of his Memorandum, which would have illuminated the merits of his claims. The lack of opportunity for Mr. Gordon to contest the State's Return resulted in a manifest injustice that undermined the integrity of the judicial process and the foundational principles of fairness that it upholds.

II. Importance of *Kent v. United States

The Supreme Court's decision in *Kent v. United States*, 86 S.Ct. 1045 (1966), is particularly relevant to Mr. Gordon's case. In *Kent*, the Court established that juveniles are entitled to certain protections under the law, specifically regarding the waiver of jurisdiction from juvenile to adult court. The decision highlighted that due process must be afforded to juveniles when determining whether they should be tried as adults. The Court emphasized the necessity for a thorough examination of the evidence and a formal hearing before a juvenile's rights can be forfeited. In Mr. Gordon's situation, the lack of a proper notice and hearing regarding his status as an adult charged under Section 20-7-6605(1) is a critical factor. The failure to adhere to the standards set forth in *Kent* not only undermines the validity of the charges against him but also reinforces the argument that Mr. Gordon has not received the protections guaranteed to him as a juvenile.

III. Jurisdictional Questions and the Ambiguity of S.C. Code Ann. § 20-7-6605(1)

Petitioner maintains that his conviction must be vacated due to the inherent ambiguity present in S.C. Code Ann. § 20-7-6605(1). The statute's failure to define the term "charged" creates confusion regarding the appropriate standards for legal adjudication. As a minor taken into custody based on probable cause for a Class A, B, C, or D felony, Mr. Gordon was subjected to a law that is unconstitutionally vague, failing to provide adequate notice of the legal criteria applied against him.

Additionally, the designation of Mr. Gordon as an adult under Section 20-7-6605(1) deprived him of essential educational opportunities for a year while he awaited trial for the crimes for which he was taken into custody. This denial of education severely limited his ability to prepare for his defense and navigate the complexities of the legal system, further compounding the injustices he has faced. The consequences of this designation not only affected his immediate educational resources but also hindered his long-term prospects for rehabilitation and reintegration into society.

IV. The Untimeliness of the State's Claims and Subject Matter Jurisdiction Issues

Moreover, the Court of Appeals erred by addressing claims presented by the State that are fundamentally untimely. The procedural history of this case reveals that the Respondent's arguments were not raised within the appropriate timeframes established by law. Specifically, the claims concerning Mr. Gordon's subject matter jurisdiction were adequately addressed when the lower court reopened his PCR judgment (1414), and the State was duly notified of these claims. However, the State failed to respond to these allegations, which raises serious questions about the validity of their subsequent arguments.

Mr. Gordon contends that his conviction must be vacated due to several jurisdictional deficiencies:

1. ****Lack of Subject Matter Jurisdiction:**** The General Sessions Court lacked the authority to accept his guilty plea without a proper waiver from the family court. The family court's jurisdiction is established under Section 20-7-7205(a), which states that when a child is found violating a criminal law and taken into custody, jurisdiction attaches from the time of taking into custody. The solicitor failed to provide adequate notice of a juvenile petition under Section 20-7-7605(6), which is essential for establishing jurisdiction.
2. ****Improper Transfer of Jurisdiction:**** Under Section 20-7-7605(1) and (6), the failure to follow proper procedures for transferring jurisdiction from family court to General Sessions Court raises significant concerns about the validity of the charges against Mr. Gordon. The failure to issue a statement of reason in an order waiving jurisdiction resulted in the trial court lacking subject matter jurisdiction.
3. ****Constitutional Challenges to the Statute:**** Mr. Gordon asserts that the vagueness of S.C. Code Ann. § 20-7-6605(1) violates his constitutional rights under the South Carolina Constitution and the 14th Amendment to the United States Constitution. The lack of clarity regarding the term "charged" has resulted in a denial of fair notice and due process, which is a fundamental right.

By neglecting to address these critical jurisdictional issues, the untimeliness of the State's claims, and the State's failure to respond to the reopened PCR claims, the Court of Appeals compounded the injustices faced by Mr. Gordon. This oversight warrants the Court's reconsideration and the issuance of a rehearing and rehearing en banc to ensure that justice is served and the integrity of the judicial process is upheld.

V. The Imperative for Judicial Review

The responsibility of the Supreme Court to ensure that justice prevails is of utmost importance. By granting this Petition for Rehearing and Rehearing En Banc, the Court has the opportunity to rectify the errors that have perpetuated Mr. Gordon's unjust incarceration. The failure to adequately address the jurisdictional issues, the vagueness of the statute, and the untimeliness of the State's claims not only impacts Mr. Gordon but poses a broader threat to the integrity of the judicial system, affecting others in similar circumstances.

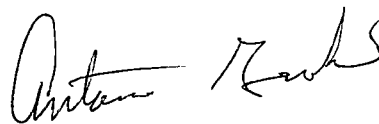
Conclusion

In light of the aforementioned reasons, Petitioner Antonio Gordon respectfully implores this Honorable Court to grant his Petition for Rehearing and Rehearing En Banc. The errors and oversights identified in the previous ruling, if left unaddressed, will perpetuate a profound miscarriage of justice. The principles of due process and equal protection demand that Mr. Gordon be afforded comprehensive and fair consideration of his claims, particularly in light of the unjust conviction he faces under an unconstitutionally vague statute that has deprived him of critical educational opportunities during a formative period of his life.

With the highest respect and urgency,

Antonio Gordon

Date: Feb 6, 2025

A handwritten signature in cursive script, appearing to read "Antonio Gordon".

THE STATE OF SOUTH CAROLINA

IN THE COURT of Appeals

APPEAL FROM YORK COUNTY

COURT OF GENERAL SESSIONS

William A. McKinnon, Chief Judge

1998-GS-46-2847;2849;2851

Appellate Case No:2024-001905

STATE OF SOUTH CAROLINA,

Respondent,

v.

ANTONIO GORDON,

Appellant.

Proof of service

I, Antonio Gordon, hereby certify that he did serve his common law petition for writ of certiorari and Petition for Rehearing and Rehearing En Banc:

South Carolina Attorney General Office.

Mark Farthing, esq, Attorney General

P.O. Box 11549

Columbia, South Carolina 29221

By depositing in the mail with sufficient funds on this 6th day of Feb 2025

Attachment (A) SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
REQUEST TO STAFF MEMBER

TO: STAFF NAME: MailRoom		STAFF TITLE:	DATE: Jan 27, 2025
INMATE NAME: Antonio Gordon		SCDC #: 259798	
INSTITUTION: Bridgeland	DORM/SIDE/BED: SB 33	HOUSING TYPE: <input type="checkbox"/> RHU <input type="checkbox"/> R&E <input type="checkbox"/> INFIRMARY <input type="checkbox"/> SSR <input type="checkbox"/> DEATH ROW <input type="checkbox"/> ASSISTED LIVING UNIT (ALU) <input type="checkbox"/> N/A	
REASON FOR PAPER REQUEST: <input type="checkbox"/> PREA <input type="checkbox"/> MEDICAL <input type="checkbox"/> MENTAL HEALTH <input type="checkbox"/> DENTAL <input type="checkbox"/> MEDICAL COPAY <input type="checkbox"/> MEDICAL RECORDS <input type="checkbox"/> KIOSK INACCESSIBLE (EXPLAIN):			

YOU MUST USE THE KIOSK IF YOUR PAPER REQUEST DOES NOT MEET ANY OF THE CRITERIA ABOVE.

I am requesting ~~transmit~~ a copy of the Date I signed
For Mark R. Farthing, SADAG, South Carolina Attorney General's office
Post office Box 11549, Columbia, SC 29211-1549. The Brown
~~envelope~~ envelope received December 31, 2024 in the
mailroom.
Thanks

Antonio Gordon

DISPOSITION BY STAFF MEMBER:

On 1/2/25 you signed and received the above
mail.

DATE: 1/28/25

STAFF SIGNATURE: 