STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

APPEAL FROM YORK COUNTY
COURT OF COMMON PLEAS

ROGER L.COUCH

Clifton D.Lyles,#294075.....Petitioner,

V.

State of South Carolina.....Respondent.

PETITION FOR COMMON LAW WRIT OF CERTIORARI

CLIFTON DONELL LYLES
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UNA,SOUTH CAROLINA 29378

Petitioner comes before this Honorable South Carolina Supreme Court pursuant to this motion for common law writ of certiorari, seeking to have corrected errors of laws and lack of subject matter jurisdiction of the trial court.

STATEMENT OF ISSUES

1. DID THE TRIAL JUDGE LACK SUBJECT MATTER JURISDICTION TO SEND THE CASE OUT TO THE JURY FOR A VERDICT DUE TO HIS FAILURE TO MAKE A FINAL RULING ON THE PRETRIAL SUPPRESSION MOTIONS IN VIOLATION OF RULE 4(a),S.C.R.Crim.P.?;and

2. DID THE TRIAL JUDGE LACK SUBJECT MATTER JURISDICTION TO SENTENCE PETITIONER AS A THIRD OFFENSE OFFENDER BASED ON PRIOR OFFENSES THAT EXCEEDED THE TEN YEAR LIMITATION PERIOD ALLOWED UNDER S.C.CODE ANN.§44-53-470(a)(3)?

PROCEDURAL HISTORY

Petitioner was indicted by the York County grand jury during the November 14,2002 term of the York County Court of General Sessions for one count of Trafficking Crack Cocaine(2002-GS-46-2650) and one count of possession of Crack Cocaine with intent to distribute within proximity of a school (2002-GS-46-2951). At trial, Petitioner was represented by James Shadd,III,Esquire. The state was represented by Teasa Weaver and Lisa Collins,both assistant solicitors with the sixteenth judicial circuit solicitor's office. Petitioner initially pled guilty to the Trafficking Crack Cocaine charge. As part of the agreement for that plea, the second indictment was dismissed. Petitioner was allowed to withdraw from the plea. The state did

not re-indict Petitioner on the possession of crack cocaine with the intent to distribute within proximity of a school charge. On April 7-8,2004, Petitioner was convicted for trafficking crack cocaine. Judge Couch sentenced Petitioner to thirty (30) years and a fine of $50,000.

ISSUE 1

DID THE TRIAL JUDGE LACK SUBJECT MATTER JURISDICTION TO SEND THE CASE OUT TO THE JURY FOR A VERDICT DUE TO HIS FAILURE TO MAKE A FINAL RULING ON THE PRETRIAL SUPPRESSION MOTIONS IN VIOLATION OF RULE 4(a),S.C.R.Crim.P.?

RELEVANT FACTS

Before trial, Defense counsel,James Shadd,III, filed the following three (3) pretrial motions pursuant to Rule 4(a),S.C.R.Crim.P: 1.Motion to suppress the Search warrant evidence; 2.Motion to reveal the Confidential informant's identity;and 3.Motion to suppress petitioner's statement.see Trial Transcript(Tr.),page(pg.)40Line(L.)21-23.

During the hearing of the motion to reveal the confidential informant's identity, the trial judge decided not to rule on the motion before trial but stated that he would rule on the motion after receiving more testimony during trial.see Tr.pg.64L.13-pg.77L.25. Trial judge also stated that if he finds information in that testimony that suggests that the confidential informant may have shown up during the search, that he would change the earlier ruling that he made denying the motion to suppress the search warrant evidence.see Tr.pg.76L.6-10. The trial judge ultimately failed to rule on either motion.

DISCUSSION

Petitioner contends that this motion for common law writ of certiorari should be granted based on the trial judge's failure to make a ruling on his pretrial motions to suppress the search warrant and reveal the identity of the confidential informant, in violation of Rule 4(a),SCRCrimP and Article 1§3 and 14 of the South Carolina Constitution.

The record shows that Petitioner did in fact file three (3) pre-trial motion.see Tr.pg.40L.21-23. One motion to suppress the search warrant evidence,Tr.pg.41L.1, one motion to reveal the identity of the confidential informant,Tr.pg.65L.15,and one motion to suppress my statement,Tr.pg.78L.3-6. The record shows that the trial judge did initially rule on the motion to suppress the search warrant evidence,Tr.pg.64L.13-pg.65L.7, but made its finality contingent upon his ultimate ruling on the motion to reveal the identity of the confidential informant,Tr.pg.75L.19-pg.76L.10. The record shows that the trial judge declined to rule on the motion hearing,Tr.pg.77L.23-25. The record also shows that trial counsel never re-raised the motions hearings,Tr.pg.369L.22-pg.371L.14, and nor did the trial judge rule on them,Tr.pg.408L.1-10.

Under the rule, parties are required to file a written notice to the trial judge informing him of the particular grounds that he is raising, and of the relief or order sought.see Rule 4(a),S.C.R.Crim.P., "An application to the court for an Order shall be by motion which, unless made during a hearing or trial in open court with a court reporter present, shall be made in

writing, shall state with particularity the grounds therfore, and shall set forth the relief or order sought. The requirement of writing is fulfilled if the motion is stated in a written notice of the hearing of the motion."

In Petitioner's particular case, he did file three motions to the trial judge stating with particularity that he wanted the identity of the confidential informant to be revealed,Tr.pg.65L.15-21, and the search warrant evidence suppressed,Tr.pg.41L.1-2. The trial judge did not settle the matter by giving an Order on the two motions as required by the rule.

PREJUDICE

Petitioner contends that the judge's failure to rule on the two (2) motions was highly prejudicial because it violated his rights to confrontation and compulsory process in violation of article 1§3 and 14 of the South Carolina Constitution and the 6th and 14th amendments of the United States Constitution.

During the pretrial hearing, the state presented the 'Affiant,Officer Ligon, as its sole witness.see Tr.pg.42L.1-pg.19 . Officer Ligon testified that through the usage of a confidential informant, he was able to conduct a control buy of crack cocaine from Petitioner.Tr.pg.42L.2-pg.45L.21. Officer Ligon testified that the confidential informant was fitted with an electronic listening device,given governmental funds which he used to purchase crack cocaine from petitioner, which he then retrieved from the informant.Tr.pg.44L.11-pg.45L.2. That information was then used to acquire a search warrant for

petitioner's residence.Tr.pg.43L.11-pg.45L.21. Officer Ligon testified that he was able to confirm the truth of the controlled buy through the confidential informant.Tr.pg.54L.2-13.

Petitioner was not allowed to know the identity of the confidential informant, whom was the sole witness to the alleged controlled buy. He was not allowed to see the evidence retrieved from the alleged confidential informant. He was not allowed to question the Affiant about the confidential informant.Tr.pg.48L.4-10. What's more is that the Affiant testified that he was not required to show the evidence from the alleged controlled buy to the magistrate judge whom issued the search warrant.Tr.pg.49L.21-pg.50L.2.

Petitioner contends that this was a direct violation of his rights to confrontation and compulsory process as required in Article 1§14 of the South Carolina Constitution,State v. Jenkins,322 S.C. 360,474 S.E.2d 812(S.C.App.1996);State v. Diamond,280 S.C. 296,312 S.E.2d 550(1984); and the sixth amendment of the United States Constitution.see Roviaro v. United States,353 U.S. 53,77 S.Ct. 623,1 L.Ed.(2d)(1957);McLawhorn v. North Carolina,484 F.2d 1(4th Cir.1973). Because the Affiant was not a party to the controlled buy in which he testified to the truth of, violated the sixth ammendments prohibition against hearsay testimony.see Crawford v. Washington,541 U.S. 36(2004).

Butfore those constitutional violations, Petitioner's trial would have come out differently because the drug evidence would have been suppressed as fruits of the poisoneous tree due to a lack of probable cause to issue the search warrant and the magistrate judge acting as a rubber stamp.

Even though the Affiant alleged in his affidavit that a controlled buy took place, he has yet to produce any evidence to cooberate that statement. No drugs,tape recordings,governmental funds,confidential informant, or no charges arising from the alleged crime. Not even the magistrate judge whom issued the search warrant has ever seen the alleged evidence.see Tr.pg.49L.21-pg.50L.2.

The affidavit was void of any residual evidence of a controlled buy such as: 1. How Affiant knows the informant; 2.How the informant knows Petitioner; 3.Where the Affiant met up with the informant to plan the controlled buy; 4.where the parties met up to wire the informant up with the listening devise; 5.whether the informant was searched before or after the buy; 6.how much money was given to the informant; 7.what time of day that the buy took place; 8.how much drugs were retrieved from the informant; 8.how the informant got to the residence; 9.did he see the informant enter and leave the residence; 10.where he met up with the informant to retrieve the drug evidence;etc.

The affidavit was also void of any information as to the confidential informant's veracity,reliability or basis of knowledge. Nor did the Affiant offer that information to the magistrate orally.Tr.pg.47L.24-pg.50L.2. This shows that the search warrant affidavit was defective on it's face being that it did not contain sufficient information or facts to allow a neutral and detached magistrate to make a common sense determination that probable cause existed. The Affiant testified that he never provided the magistrate with any oral testimony to

compensate. Therefore, looking at the totality of the circumstances, the magistrate acted as a rubber stamp.see State v. Weston,329 S.C. 287,494 S.E.2d 801(1997).

ISSUE 2

DID THE TRIAL JUDGE LACK SUBJECT MATTER JURISDICTION TO SENTENCE PETITIONER AS A THIRD OFFENSE OFFENDER BASED ON PRIOR OFFENSES THAT EXCEEDED THE TEN YEAR LIMITATION PERIOD ALLOWED UNDER S.C.CODE ANN.§44-53-470(a)(3)?

RELEVANT FACTS

After Petitioner was convicted for the trafficking offense, Solicitor Weaver presented petitioner's prior record to judge Couch for consideration in sentencing.see Tr.pg.412-pg.413. Defense counsel James Shadd,III, stated the following to judge Couch, "...your honor, I understand that you are rather limited in the discretion that you have because this is considered a third offense and you have to sentence him to a mandatory minimum of twenty five years, but not more than thirty years. Your honor, we would ask and respectfully request that you give him a twenty-five year sentence."see Tr.pg.415.

DISCUSSION

Petitioner contends that the trial court erred by using his prior 1992 cocaine convictions along with the 2002 marijuana convictions to enhance him from a first offense to a third offense. Under South Carolina law, to use a person's prior conviction as a means to enhance his sentence to a second or subsequent offense, the prior convictions may not exceed a Ten (10) year time period.see S.C.Code Ann.§44-53-470(a)(3),"For an

offense involving a controlled substance other than marijuana pursuant to this article, the offender has been convicted within the previous Ten years of a first violation of a controlled substance offense provision, other than marijuana offense provision, of this article or of another state or federal statute relating to narcotic drugs,depressants,stimulants, or hallucinogenic drugs."

In Petitioners particular case, his prior offenses exceeded the Ten (10) year time limitation. Petitioner's prior convictions took place in 1992, some Twelve (12) years prior to the 2004 Trafficking conviction.see Tr.pg.413. This fact means that the court was without proper jurisdiction to sentence Petitioner to thirty (30) years as a third offense offender.

And even if the ten year time period was to run from the "Time of his Conviction"(1992), or "release from confinement"(1993) as is spoken of in section 44-53-470(c), it would still exceed the ten year time limitation.see §44-53-470(c),(If a person is sentenced to confinement as the result of a conviction pursuant to this article, the time period specified in this section begins on the date of the conviction or on the date the person is released from confinement imposed for the conviction,whichever is later.). At the time of petitioner's conviction in 2004,there was no definition as to what "confinement" incurred. That language was not added to the statute until April 21,2016,via the Amendment of the 2010 Omnibus Crime Bill,Act 154(H-3545),Effective April 21,2016.

The court was also in err for using the prior 2001 marijuana

conviction due to §44-53-375 and §44-53-470 being in conflict concerning marijuana being used as a means to enhance a cocaine conviction.see Rainey v. State,307 S.C. 150,414 S.E.2d 131(S.C.1992). Because that conflict was not settled until 2003 with the ruling in State v. Dupree,583 S.E.2d 437(Ct.App.2003), after petitioner caught the trafficking charge, it was barred under Article 1§4 of the South Carolina Constitution from being applied to petitioner's sentencing.

NEGLIGENCE

Petitioner contends that he was in no manner contributory to the error, nor could he have taken advantage of the error during trial as he was not present during trial or sentencing. Petitioner contends that while his trial counsel was contributory to the negligence, for failure to investigate the priors before conceding to the court that it was proper to use the prior convictions, the sixth amendment right to effective assistance of counsel bars petitioner from being held responsible for counsel's negligence.

CONCLUSION

The common law writ of certiorari should be granted,Petitioner's conviction vacated and he be released, and or his sentence be reduced down to a first offense and he be immediately released from custody.

This 14 day of February,2025,

BY: [signature] 294073.

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TO:HON.JENNY A.KITCHINGS
CLERK
FROM:CLIFTON D.LYLES
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February 14,2025

Please find enclosed one "PETITION FOR COMMON LAW WRIT OF CERTIORARI" to be filed in your office.

Truly

Clifton Donell Lyles

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