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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Chester County

Honorable Donald B. Hocker, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JAMES B. CURRY,

APPELLANT

APPELLATE CASE NO. 2024-002075

INITIAL BRIEF OF APPELLANT

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Whether the circuit court abused its discretion in holding Appellant in contempt of court for violating prior court orders prohibiting him from making frivolous filings where the prior orders were based upon S.C. Code Ann. § 24-27-100 to -500 which only applies to civil actions filed by inmates and not to collateral criminal proceedings in which an inmate challenges his conviction?

STATEMENT OF THE CASE

Appellant was indicted during the July 2007 term of the Chester County grand jury for one count each of first-degree burglary, armed robbery, kidnapping, and assault and battery of a high and aggravated nature. R. (Indictments). In February of 2008, the State called Appellant's case to trial before the Honorable Brooks P. Goldsmith and a jury. Appellant represented himself *pro se*. Appellant was convicted as indicted and sentenced to concurrent terms of twenty-five years imprisonment on the burglary, armed robbery, and kidnapping charges, and ten years imprisonment on the assault and battery charge. R. (Sentencing sheets). Following his conviction, Appellant timely filed a notice of appeal before voluntarily withdrawing his appeal to pursue post-trial motions.

Appellant filed the first motion for a new trial based on after discovered evidence on July 29, 2008. The motion was denied by Judge Goldsmith orally during a hearing in February 2009, and later in an order filed on March 18, 2010. R. (Goldsmith 3.18.10 order). Appellant filed a second motion for a new trial based on after discovered evidence on April 7, 2009. The Honorable Howard P. King heard arguments on the motion on October 5, 2009. By written order Judge King denied the motion finding that none of the three grounds raised met the test for after-discovered evidence. R. (King 10.5.09 Order).

Between 2008 and 2009, Appellant pursued five civil lawsuits related to his convictions. Four of the cases were dismissed for failure to comply with the Rule 4 and Rule 5, SCRCP. The final case was dismissed for failure to state a cause of action pursuant to Rule 8, SCRCP. In the order dismissing Appellant's final civil lawsuit, Judge King placed Appellant on notice of S.C. Code Ann. § 24-27-200 and § 24-27-300, the Inmate Litigation Act (ILA). The order specifically warned that should Appellant continue to file frivolous, repetitions, or unfounded lawsuits, or

continue to place unreasonable demands on the Clerk of Court he could be subject to potential loss of earned work, education, or good conduct credits. It further stated that intentionally violating the order would be grounds to be held in contempt of court with the punishment being up to one year of incarceration consecutive to Appellant's current sentence. R. (King 12.17.09 order).

Appellant filed his first PCR action on May 14, 2010. A hearing was held on February 23, 2011, before the Honorable J. Earnest Kinard, Jr., and an order of dismissal was filed on April 20, 2011, finding that Appellant had not established any grounds for relief. R. (OOD 2010-CP-12-0228). Appellant filed his second PCR action on March 28, 2012, alleging newly discovered evidence. Judge Goldsmith issued a conditional order of dismissal finding the application barred as untimely and successive on October 1, 2012. R. (Conditional OOD 2012-CP-12-0184). Based on Appellant's response to the conditional order of dismissal, a hearing was scheduled before the Honorable Clifton Newman on August 6, 2013. An order of dismissal was filed on December 23, 2013. R. (OOD 2012-CP-12-0184). Appellant subsequently filed a motion for relief from judgement pursuant to Rule 60(b), SCRCP. The Honorable Brian M. Gibbons denied the motion by written order dated July 21, 2014, finding the motion was an attempted successive PCR application and finding the motion untimely. R. (Gibbons 7.21.14 order).

Appellant filed a third[1] motion for a new trial based on after discovered. Judge Gibbons denied the motion by order dated December 4, 2014, finding that the claim was not after-discovered evidence. Additionally, Judge Gibbons proceeded to restrict Appellant's filing ability

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1 The order denying the motion states that this is Appellant's fourth motion for a new trial based on after discovered evidence, not including his successive PCR applications or other dismissed lawsuits. However, the procedural history of the order only identifies two prior Rule 29(b), SCRCrimP, which aligns with the orders that have been issued in Appellant's various challenges to his convictions and sentences.

"[b]ased upon the repetitive and frivolous nature of Defendant's motions, and in reliance on In re Theron Maxton, 325 S.C. 3, 478 S.E.2d 679 (1996)." Judge Gibbons also referenced the order from Judge King which cited to S.C. Code Ann. §24-27-200 and admonished Appellant against the continued filing of frivolous lawsuits. R. (Gibbons 12.4.14 Order).

In 2021, Appellant filed a fourth motion for a new trial based on after discovered evidence. The Honorable Eugene C. Griffith, Jr., heard the motion. Judge Griffith denied the motion in a written order dated November 5, 2021. Judge Griffith found that Appellant had not complied with the procedural steps put in place by the December 4, 2014, order by Judge Gibbons because he had failed to provide an accompanying affidavit certifying that the matter raised was not frivolous. R. (Griffith 11.5.21 Order).[2] In a later order Judge Griffith found that Appellant's claim was without merit and again referenced Judge Gibbons' December 4, 2014 order. R. (Griffith 12.10.21 Order)

On April 5, 2022, Appellant filed a motion to be heard regarding a juror *voir dire* violation. An order denying that motion without a hearing was signed by Judge Gibbons and filed on April 15, 2022. R. (Order denying *pro se* motion 4.15.22). Appellant, on May 3, 2022, filed a motion for rehearing before the Chief Administrative Judge and a motion for Judge Gibbons to recuse himself from hearing further matters involving Appellant's convictions. By written order filed May 16, 2022, the motion for rehearing was denied and a hearing was scheduled to address Appellant's motion to recuse Judge Gibbons. R. (Order denying rehearing 5.16.22)

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2 Appellant also filed various motions to reconsider or rehear his various claims as well as various appellate actions. The motions to reconsider were all denied on the grounds stated in the original orders and the appeals were dismissed for failure to comply with the appellate court rules.

On July 20, 2022, a hearing was held before Judge Gibbons on Appellant's motion to recuse. Megan Jameson appeared on behalf of the Attorney General's office and Candice Lively appeared on behalf of the Sixth Circuit Solicitor's office. Appellant appeared *pro se*. Tr. 1. Judge Gibbons denied the motion for recusal. Tr. 14, ll. 4-7. Thereafter, Judge Gibbons, on the court's own motion, found Appellant in violation of S.C. Code Ann § 24-27-200 and ordered that any work, education, or good conduct credits that Appellant had earned be forfeited for filing frivolous actions and willfully violating court orders. Tr. 19, l. 15-Tr. 20, l. 8. A written order containing Judge Gibbons rulings was filed on August 10, 2022. (Gibbons 8.10.22 Order).

Appellant timely appealed Judge Gibbons order forfeiting any work, education, or good conduct credits as improper, asserting the ILA only applied to civil lawsuits by inmates challenging prison conditions and could not be used to penalize the filing of challenges to a criminal conviction. This Court found the issue unpreserved in an unpublished opinion. State v. Curry, Op. No. 2024-UP-391 (S.C. Ct. App. filed November 27, 2024).

On June 7, 2024, Appellant filed a motion to dismiss his convictions which prompted the circuit court to issue an order and rule to show cause as to why Appellant should not be held in criminal contempt of court pursuant to Judge King's December 17, 2009, order. R. (Rule to Show Cause). A hearing on the rule to show cause was held on November 21, 2024, before the Honorable Donald B. Hocker. The State was represented by Candice Lively. Appellant was represented by William Frick. Tr. 1. At the conclusion of the hearing, Judge Hocker took the matter under advisement. A written order filed on November 26, 2024, found Appellant in contempt. R. (Contempt Order).

STANDARD OF REVIEW

"A finding of contempt rests within the sound discretion of the trial judge." DiMarco v. DiMarco, 393 S.C. 604, 607, 713 S.E.2d 631, 633 (2011) citing Durlach v. Durlach, 359 S.C. 64, 70, 596 S.E.2d 908, 912 (2004) (citation omitted). Such a finding should not be disturbed on appeal unless it is unsupported by the evidence or the judge has abused his discretion. Id.

ARGUMENTS

I.

The circuit court abused its discretion in holding Appellant in contempt of court where the contempt sanction ordered violates Appellant's Sixth Amendment rights and holds Appellant in contempt for perpetuity.

Relevant Facts

The circuit court began the hearing by stating that Judge King issued an order in the last of Appellant's civil cases on December 17, 2009, "dismissing the case and indicating that they found the case to be frivolous, indicating that any future frivolous filings would subject the defendant to contempt sanctions up to one year consecutive to his previously imposed imprisonment on the criminal charges." Tr. 3, ll. 17-24. The court stated that further filings by Appellant challenging his conviction "resulted in an order from Judge Brian Gibbons in 2014 and also two orders from Judge Eugene Griffith in 2021, both indicating that any future frivolous filings would subject the defendant to be held in contempt of court." Tr. 4, ll. 1-9.

Appellant then filed a motion to dismiss his convictions. The court responded in a letter that the court lacked jurisdiction to hear the motion. The court also informed Appellant that he was not to respond to the letter of the court. Appellant responded to the court's letter requesting a hearing and a ruling on his motion. Appellant's response prompted the court to institute the contempt proceedings against Appellant. Tr. 4, l. 10-Tr. 5, l. 1.

The Chester County Clerk of Court stated it had received fifteen filings from Appellant after Judge King's 2009 order but prior to Judge Gibbons' order of December 15, 2014. Tr. 5, l. 23-Tr. 6, l. 1. Between Judge Gibbons' December 2014 order and Judge Griffith's November 2021 order Appellant sent two fillings and approximately twenty letters. Tr. 6, ll. 3-19. Between

Judge Griffith's November 2021 order and December 2021 order Appellant sent six filings. Tr. 6, l. 19-Tr. 7, l. 8. After Judge Griffith's December 2021 order Appellant filed the motion to dismiss and sent nine letters to the Clerk's office. Tr. 7, ll. 9-24.

Counsel Frick argued that Judge King's order only dealt with civil filings. Appellant had understood Judge King's order, as well as the subsequent orders that referenced it, to mean that he would face contempt of court if he continued to file civil lawsuits. Since the order Appellant had only submitted filings challenging his criminal convictions and therefore he was not in contempt. Counsel Frick continued that under S.C. Code Ann. § 24-27-300 the inmate must have made the same challenge on three prior occasions to be subjected to contempt. Since this was the second time Appellant had filed a challenge to the validity of his arrest warrant, under strict construction of the statute, Appellant had not violated the section. Tr. 8, l. 6-Tr. 12, l. 21.

Appellant then addressed the court, stating that he should not be held in contempt because S.C. Code Ann. § 24-27-300 only applies to civil actions by inmates challenging their prison conditions and he had not filed a civil lawsuit. He argued the ILA did not apply to his case and that he could not be held in contempt "because both the United States and South Carolina constitutions require that individuals have access to criminal courts to assert their constitutional rights without fear from retribution from the courts." Tr. 14, l. 18-Tr. 17, l. 19.

The circuit court noted that while Judge King's order dealt with civil matters, Judge Gibbons' 2014 order was in response to a motion for a new trial based on after discovered evidence which he found frivolous. That order continued that further frivolous filings would result in Appellant being held in contempt and did not mention civil filings. The court confirmed with the Clerk that after Judge King's 2009 order Appellant had only filed criminal actions challenging his conviction. Tr. 18, l. 20-Tr. 19, l. 23

An order holding Appellant in contempt was filed on November 26, 2024. R. (order). The court found that while Judge King's order dealt with civil matters, Judge Gibbons and Judge Griffith's orders dealt with criminal filings and Appellant had engaged in continued frivolous filing despite the orders. The court held Appellant in contempt but converted the citation to three counts of civil contempt. R. (order). The court sentenced Appellant to three consecutive five-month sentences to be served consecutively to his current sentence for an aggregate contempt sentence of fifteen months. The court allowed Appellant to purge himself of the contempt sentences writing,

> From the date of this Order forward he shall have no contact with the Chester Clerk of Court's office either verbally or in writing which includes letters, motions, lawsuits or any other material in writing except as made by a S.C. licensed attorney on the Defendant's behalf. This same contempt finding and citation shall also apply upon the Defendant's release from incarceration from SCDC on his current sentence if the Defendant were to make contact with the Chester County Clerk's office as stated above. R. (order)

The court surmised "[s]imply stated, the [Appellant] will not have to serve a contempt sentence at any point in time if he refrains from making any contact with the Clerk's office. If he makes contact then the contempt sentence goes into effect." R. (order).

Discussion

"Civil contempt must be shown by clear and convincing evidence." DiMarco v. DiMarco, 393 S.C. 604, 713 S.E.2d 631 (2011) *citing* Poston v. Poston, 331 S.C. 106, 113, 502 S.E.2d 86, 89 (1998). "Criminal contempt must be shown beyond a reasonable doubt." Id. "In determining whether a contempt sanction is criminal or civil, one must identify the purpose for which the sanction is imposed. Whereas civil contempt is either coercive or remedial in nature, criminal contempt is purely punitive." Id. at 111, 502 S.E.2d at 88. "Incarceration may be either civil or criminal." Id. at 112, 502 S.E.2d at 89. "The distinguishing factor is whether the incarceration is for a definite period of time, which is the hallmark of criminal contempt, or whether the contemnor

may avoid or cut short the incarceration by complying with the court's directive, which indicates civil contempt." Id. "The difference between the two is substantial because the constitutional safeguards provided in the Sixth Amendment may be triggered in criminal contempt proceedings. A contemnor has a constitutional right to a jury trial before a criminal sentence of more than six months incarceration may be imposed." Id. citing Curlee v. Howle, 277 S.C. 377, 385, 287 S.E.2d 915, 919 (1982).

In DiMarco, *supra* our Supreme Court considered the propriety of a contempt sanction ordering a definite sentence suspended upon the payment of a fine. Petitioner was under court order to make monthly child support payments to Mother and had made payments for over a decade when Mother filed for an increase in support in 2006. The family court decreased Petitioner's financial obligation and ordered that the payments be made through the court beginning on April 1, 2008. Petitioner attempted to make the initial payment under the new order, but the court lacked a record of the order and could not accept the payment. Id. at 606, 713 S.E.2d at 632.

The family court issued a rule to show cause because Petitioner was behind on his child support payments with a hearing scheduled for June 25, 2008. On June 23, 2008, Petitioner paid the arrearage bringing his child support account balance to zero. On the morning of the hearing, Petitioner did not appear on time and a warrant was issued for his failure to appear. Petitioner arrived at the courthouse shortly thereafter. Id. at 606, 713 S.E.2d at 632.

During the hearing, all parties acknowledged that Petitioner had met his financial obligations prior to the rule to show cause hearing. Counsel for Mother argued the court needed to hold Petitioner in contempt for "taking the law into his own hands and not showing up on time." From the bench the family court ordered a sentence of twelve months civil contempt, suspended to $250.00 court cost due by July 11, 2008. The written order also memorialized that Petitioner

was sentenced to twelve months incarceration, suspended upon payment of the fine. The family court had intended to hold Petitioner in civil, not criminal contempt. Id. at 606-07, 713 S.E.2d at 632-33.

This Court initially held that the contempt sanction had elements of both criminal and civil contempt. To remedy the unclear order this Court modified the family court's order and held that Petitioner must pay $250 in court cost, and if he failed to do so by the deadline, he would be incarcerated for twelve months. Id. at 608, 713 S.E.2d at 633-34.

Our Supreme Court found that this sanction was violative of Petitioner's Sixth Amendment rights. Our Supreme Court held that a contempt sanction can be only criminal or civil, not both, because the sanctions serve different purposes. Id. at 608, 713 S.E.2d at 634. "A judge certainly may order both a civil and a criminal contempt sanction, and, in that case, the sanctions should be separate and distinct. That is not what the family court judge did in this case. The ordered sanction was purely punitive in nature as Petitioner was in full compliance with the support order and there was no necessary act to be compelled through the contempt sanction. Id.

While the court cost fine was an allowable criminal contempt sanction that punished Petitioner for his tardiness and lack of respect for the court, the definite twelve-month incarceration of Petitioner if he failed to pay the court costs on time violated Petitioner's Sixth Amendment rights. Id. at 608-09, 713 S.E.2d at 634. In explaining its ruling our Supreme Court wrote,

> When incarceration is for a definite period of time and the contemnor may not purge the contempt by compliance with a court order, it is criminal incarceration and may trigger the protections of the Sixth Amendment. The court of appeals recognized the incarceration was for a definite period of time, but attempted to introduce a civil contempt element by saying Petitioner could avoid the sentence altogether by paying the court costs as ordered. There is no doubt Petitioner could avoid the incarceration by paying the costs, but clearly any litigant can avoid further sanctions by simple compliance. The problem with this order is that his noncompliance

> would trigger a twelve-month, definite, non-purgeable incarceration, and our law requires Petitioner be afforded a jury trial before receiving such a sentence.

Id. at 609, 713 S.E.2d at 634.

The contempt sanction in Appellant's case, much like DiMarco, violates Appellant's Sixth Amendment rights. Appellant was originally brough into court on a criminal contempt citation for purportedly failing to abide by the orders of Judge King, Judge Gibbons, and Judge Griffith. The purpose of the rule to show cause, and subsequent finding of contempt, was to punish Appellant's alleged failure to comply with the orders. The circuit court punished Appellant by sentencing him to an aggregate fifteen month's incarceration. This definite sentence implicated Appellant's Sixth Amendment rights and he was entitled to a jury trial on the criminal contempt rule to show cause.

The circuit court attempted to convert the contempt sanction from criminal to civil in the order by setting a condition upon which Appellant could purge his contempt sentence. The condition: to never again contact the Chester County Clerk of Court. Were Appellant to contact the Clerk at any point in time after the date of the order, the contempt sentence would go into effect. While there is no doubt that Appellant could avoid additional incarceration by not contacting the Clerk, if he were to contact the Clerk, it would trigger a fifteen-month definite sentence. Before such a sentence can be imposed, our law requires Appellant be afforded a jury trial. See DiMarco, *supra.*

Further, the contempt sanction as fashioned works to hold Appellant in civil contempt for perpetuity, with the specter of a prison sentence waiting in the wings should he ever contact the Clerk. Such a restriction on an incarcerated individual's ability to access the courts is not in line with the law. "It is fundamental that '[p]risoners have a constitutional right of access to the courts.'" See Kocaya v. Kocaya, 347 S.C. 26, 29, 552 S.E.2d 765, 767 (Ct.App.2001). The

sanction also purports to be in effect after Appellant's current incarceration period is finished which would prohibit Appellant the ability to file any lawsuit, claim, or matter with the Chester Clerk of Court during his lifetime. Such a result cannot be proper.

Admittedly, "no one, rich or poor, is entitled to abuse the judicial process." City of Columbia v. Assa'ad-Faltas, 420 S.C. 28, 49, 800 S.E.2d 782, 793 (2017) *citing* Childs v. Miller, 713 F.3d 1262, 1265 (10th Cir. 2013) (quoting Tripati v. Beaman, 878 F.2d 351, 353 (10th Cir.1989) (per curiam)). And '[t]here is no constitutional right of access to the courts to prosecute an action that is frivolous or malicious.' Id. However, Appellant has not abused the judicial process but has vigorously challenged his convictions during his prison sentence. Since Judge King's 2009 order Appellant has not filed a single civil lawsuit, nor has he inundated the Clerk's office with a high volume of filings. In the roughly fifteen years since the 2009 Judge King order Appellant has sent fifty-three motions, letters, or other correspondence to the Chester Clerk of Court which is roughly 3.5 filings every twelve months. While his issues have not had sufficient legal merit to be successful, they have not been wholly frivolous or malicious, nor have they been "repetitive" filings. This Court should find the contempt sanction in this matter improper.

II.

The circuit court abused its discretion in holding Appellant in contempt of court for violating prior court orders prohibiting him from making frivolous filings where the prior orders were based upon S.C. Code Ann. § 24-27-100 to -500 which only applies to civil actions filed by inmates and not to collateral criminal proceedings in which an inmate challenges his conviction.

Relevant Facts

Appellant filed five civil lawsuits that were all dismissed between 2008-2009. In 2009 Judge King issued an order in James B. Curry v. Former Chief Mike Revels & Town of Great Falls, placing Appellant on notice of S.C. Code Ann. §24-27-200 and §24-27-300 which allow for the revocation of earned credits or imposition of consecutive contempt sentences for up to a year where inmates abuse the filing process. Judge King admonished Appellant that further filings would result in sanctions. R. (King 12.17.09 Order).

In 2014, Judge Gibbons issued an order denying Appellant's motion pursuant to Rule 29(b), SCRCrimP. In that order Judge Gibbons referenced the 2009 Judge King order and S.C. Code Ann. §24-27-300. Judge Gibbons proceeded to restrict Appellant's ability to file under In re Theron Maxton, 325 S.C. 3, 478 S.E.2d 679 (1996). The order further stated that it "shall be served on the Attorney General's office, who is authorized pursuant to S.C. Code Ann. § 24-27-200 to investigate and prosecute" Appellant for possible contempt of court for any future filings. R. (Gibbons 12.4.14 Order). Judge Griffith subsequently issued two orders in 2021 denying motions filed by Appellant and referencing the Judge Gibbons December 4, 2014, order as the order that Appellant was supposed to follow in any filings. R. (Griffith 11.5.21 and 2.10.21 orders)

In finding Appellant in contempt, the circuit court ruled Appellant had violated the orders of Judge King, Judge Gibbons, and Judge Griffith. The court clarified that the Judge King order

dealt with civil matters, but the other orders dealt with criminal matters. The court ruled the fact that the orders referenced each other was immaterial. It found the basis for the orders was Appellant's "frivolous, meritless, overly burdensome and redundant filings and correspondence" that had occurred since Judge King's order in 2009 and held Appellant in contempt of court. Appellant was sentenced to an aggregate fifteen month's incarceration that would only be activated if Appellant were to contact the Chester County Clerk of Court at any point in time after the date of the order.

Discussion

The primary rule of statutory construction is to ascertain and give effect to the intent of the Legislature. Bryant v. State, 384 S.C. 525, 529, 683 S.E.2d 280, 282 (2009). "All rules of statutory construction are subservient to the one that the legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in light of the intended purpose of the statute." Broadhurst v. City of Myrtle Beach Election Comm'n, 342 S.C. 373, 380, 537 S.E.2d 543, 546 (2000). Words must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation. Bryant v. City of Charleston, 295 S.C. 408, 368 S.E.2d 899 (1988); State v. Blackmon, 304 S.C. 270, 273, 403 S.E.2d 660, 662 (1991).

Additionally, statutes are not intended to be read in a piecemeal fashion, taking only those parts which best serve a particular position. Citizens for Quality Rural Living, Inc. v. Greenville County Planning Commission, 426 S.C. 97, 825 S.E.2d 721 (2019) (The intention of the legislature when enacting a statute must be gleaned from the entire section and not simply clauses taken out of context). Courts, when interpreting a statute, should not concentrate on isolated phrases within the statute; a statute must be read as a whole and sections that are part of the same general statutory

law must be construed together and each one given effect. Id. "A statute as a whole must receive a practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of the lawmakers." Browning v. Hartvigsen, 307 S.C. 122, 125, 414 S.E.2d 115, 117 (1992).

"Courts will reject a statutory interpretation which would lead to a result so plainly absurd that it could not have been intended by the Legislature or would defeat the plain legislative intention." State v. Sweat, 386 S.C. 339, 351, 688 S.E.2d 569, 575 (2010) (internal citation omitted). "Any ambiguity in a statute should be resolved in favor of a just, equitable, and beneficial operation of the law." Bennett v. Sullivan's Island Bd. of Adjustment, 313 S.C. 455, 458, 438 S.E.2d 273, 274 (Ct.App.1993).

In 1996, the South Carolina General Assembly passed the Inmate Litigation Act (ILA). See S.C. Code Ann. §§ 24-27-100 to -500. The language of the ILA makes apparent that the intent of the Legislature was to limit the application of the ILA to civil cases filed by inmates challenging prison conditions. See S.C. Code Ann. §§24-27-100-110, -130,-150, -300; See also Wade v. State 348 S.C. 255, 263, 559 S.E.2d 843, 846 (2002). The first two sections of the ILA address the payment of filing fees and court costs by inmates filing civil actions. S.C. Code Ann. §§ 24-27-100-110. Section 24-27-130 allows a court to dismiss, without prejudice, a civil action filed by an inmate when the inmate has failed to pay the requisite filing fees and court costs in previously filed suits. However, the ILA also carves out exceptions when the inmate's trust account lacks sufficient funds to cover the filing (§ 24-27-150) or where the case is of the nature that the United States Constitution or South Carolina Constitution requires that an indigent person be allowed access to the courts (§ 24-27-400).

The plain meaning and purpose of the five sections of the ILA cited above is to limit inmate filing of civil actions that challenge conditions surrounding their incarceration and/or

apprehension. These provisions do not apply to matters initiated in the Court of General Sessions as criminal matters do not require filing fees and both the United States and South Carolina Constitutions require that indigent individuals have access to the criminal courts. Since these provisions clearly do not apply to actions filed in criminal court, it logically follows that the penalty provisions in S.C. Code Ann. §§ 24-27-200 and -300 also do not apply to inmate litigation filed in the criminal courts of this State.

The first penalty section of the ILA, section 24-27-200, allows a court to recommend the removal of earned work, education, and good conduct credits if the court finds that the inmate has, in a case pertaining to his incarceration or apprehension, 1) submitted a malicious or frivolous claim, or one that is intended solely to harass the party filed against; 2) testified falsely or otherwise presented false evidence or information to the court; 3) unreasonably expanded or delayed a proceeding; or 4) abused the discovery process. The second penalty provision, section 24-27-300, allows a court to hold an inmate in contempt of court and sentence them to a "term of imprisonment not exceeding one year that must be served consecutively to any terms of imprisonment previously imposed." The court must find "that the inmate has, on three or more prior occasions, while incarcerated, brough in a court of this State a civil action or appeal pertaining to his incarceration or apprehension that was dismissed prior to a hearing on the merits on the grounds that the action or appeal was frivolous, malicious, or meritless." Notably, this section carves out an exception where an inmate shall not be held in contempt if the court finds the inmate was under imminent danger of great bodily injury at the time of the filing.

The language of the penalty sections further evinces the Legislature's intent that passing the ILA was to curb abusive, frivolous, and malicious civil litigation filed by inmates. For the revocation of credits to be proper the inmate must be challenging his incarceration or apprehension,

not his underlying conviction. As our Supreme Court stated in Wade v. State, *supra*, the exception in section 24-27-300 "is logical only if one reads the statute as creating an exception for prisoners filing suit challenging dangerous prison living conditions causing an imminent danger to them." Wade at 261-262, 559 S.E.2d at 846. When the ILA is read as a whole, it is apparent that it does not apply to criminal matters filed by inmates challenging their convictions but only to civil cases challenging prison conditions.

In Wade, our Supreme Court addressed whether the ILA applied to post-conviction relief actions. Wade had pled guilty pursuant to a plea bargain and did not appeal but filed a timely PCR application. At the PCR hearing, Wade asserted that he was coerced into pleading guilty by counsel. Both of his attorneys offered testimony contradictory to Wade's assertion of a coerced guilty plea. The State moved to have Wade's inmate credits revoke pursuant to S.C. Code Ann. § 24-27-200 alleging he had testified falsely at the PCR hearing. The lower court granted the State's motion to revoke Wade's credits and denied his application for PCR. Wade at 257, 559 S.E.2d at 844.

Our Supreme Court held that applying the ILA to PCR actions resulted in absurd and disparate results not intended by the Legislature. Id. at 259, 559 S.E.2d at 845. The Court held that the main problem with applying the ILA to PCR actions was that it created a disparity in the treatment between incarcerated and non-incarcerated individuals. The ILA only applies to incarcerated individuals by virtue of S.C. Code Ann. § 24-27-140, but an individual does not have to be incarcerated to file a PCR action if they can demonstrate prejudice from the persistent results of their conviction. "Applying the ILA to PCR proceedings gives the State the power to punish prisoners for asserting constitutional rights while non-incarcerated applicants can assert those rights without fear of retribution." Id. at 261, 559 S.E.2d at 845.

The Court wrote that the "disparity increases when applying other provisions of the ILA to PCR actions." If a court held an inmate in contempt pursuant to section 24-27-300, they could suffer not only the loss of inmate credits but serve additional prison time while a non-incarcerated individual would not face such consequences. Additionally, the court wrote that the complex fee structure in the ILA evidenced the Legislature's intent to curtail the abuses of inmate litigation dealing with prison conditions and would not apply to PCR as there are not filing fees associated with PCR actions. Id. at 261-262, 559 S.E.2d at 845-846.

The rationale of the Wade Court applies with equal force to Appellant's case. Appellant filed a motion seeking to dismiss his charges arguing the court lacked subject matter jurisdiction. He based this assertion on the fact that his arrest warrant dated ten days *before* the alleged victim picked him out of a photo-line up which provided the purported probable cause for his arrest. Believing the arrest warrant conveyed subject matter jurisdiction to the court, he filed a motion in the Court of General Sessions of Chester County. Filing that motion was found to violate the prior orders, despite their improper reliance on the ILA, which resulted in his being held in contempt.

Applying the ILA to actions in the Court of General Sessions, such as the motions filed by Appellant, creates a disparity between incarcerated and non-incarcerated individuals who are challenging their conviction. An individual on probation or parole, or even one who has finished serving their sentence, could challenge the validity of their conviction on subject matter jurisdiction grounds without fear of being subjected to additional penalties in the ILA. The incarcerated individual challenging the conviction on subject matter jurisdiction must contemplate the loss of inmate credits and potential contempt findings that would increase the amount of time that they spend in prison for filing the same motion. Much like in a PCR action, the various provisions of the ILA cannot be applied to Appellant's case, or to any matter in the Court of

General Sessions, without reaching an absurd and disparate result that Legislature could not have intended. This Court should find that the ILA does not apply to matters filed in the Court of General Sessions and that Appellant could not be held in contempt based on the orders reliance on the ILA.

CONCLUSION

Based on the above arguments, Appellant respectfully requests this Court find the contempt order and sanction improper and remand for a new hearing.

Jessica M. Saxon
Appellate Defender

ATTORNEY FOR APPELLANT

This 7th day of July, 2025.