

State of South Carolina
In The Supreme Court

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Appeal from York County
General Sessions Court

MAR 17 2014

John C. Hayes, III, Presiding Judge S.C. SUPREME COURT

1998-65-2847; 2849; 2851

State of South Carolina

Respondent

vs.

Antonio Gordon

Appellant

Notice of Appeals

Antonio Gordon, appeals the Order Instructing the clerk of court to Place Appellant's motion to withdraw and vacate void guilty plea, based on after discovered evidence, lack of subject matter jurisdiction and lack of jurisdiction over Appellant's Person, in Appellant's General Sessions file, filed on February 24, 2014, and received by Appellant on March 11, 2014, issued by Honorable John C. Hayes, III, Presiding Judge.

Antonio Gordon

Antonio Gordon
610 Hwy 9 West
Bennettsville, SC 29512

This 13th day of March 2014

Other Counsel of Record:

Walter William Thompson, Sr., Deputy Solicitor
Sixteenth Circuit Solicitor's Office

1675-1A York Highway

York, SC 29745

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Appellant

EXPLANATION PURSUANT TO RULE 243(C)

This matter comes before the Court by way of Appellant's motion to withdraw and vacate void guilty plea, based on after discovered evidence, lack of jurisdiction over the subject matter, and lack of jurisdiction over Appellant's person to accept his guilty plea filed in the General Sessions Court on February 5, 2014.

On March 11, 2014, Appellant received a letter from the York County clerk of Court indicating the chief Administrative Judge denied Appellant's motion and ordered the clerk of Court to place in Appellant's General Sessions file. The clerk of Court added on that Appellant are seeking a civil matter which should be addressed through Post-conviction relief or a Habeas Corpus. There was no order issued denying Appellant's motion to withdraw and vacate void guilty plea. In other words, the chief Administrative Judge is alleging General Sessions Court does not have jurisdiction to entertain Appellant's motion to withdraw and vacate void guilty plea.

Appellant assert that the proper vehicle to withdraw a guilty plea is to file a motion before the sentencing Court. State v. Hazel, 275 S.C. 392, 271 S.E.2d 602 (1980) (Motion filed before the sentencing Court to withdraw guilty plea); U.S. v. Embrey, 250 F.3d 1181 (8th Cir. 2001) (Embrey Plead guilty then later moved to withdraw his guilty plea "after" being sentenced. He asserted that the plea had not been knowing or voluntary because he had medical problems at the time and because his attorney had a conflict of interest and had rendered ineffective assistance. After a hearing, the district Court found that Embrey had presented no fair and just reason to withdraw the plea, but failed to reach the merits of his ineffective assistance of counsel claim because the proper procedural mechanism for such a motion under 28 U.S.C. § 2255).

Therefore, Appellant's lack of subject matter jurisdiction and lack of jurisdiction over Appellant's Person to accept his guilty Plea, can be brought on "motion to withdraw and vacate void guilty Plea because subject matter jurisdiction can be raised at any time. see State v. Funderburk, 259 S.C. 256, 191 S.E.2d 520 (1972) (Holding "lack of subject matter jurisdiction can be raised at any time" including for the first time on Appeal or PCR); Anderson v. State, 527 S.E.2d 398, where issue of subject matter jurisdiction could be raised for the first time in his ensuing Petition for writ of mandamus). Therefore, it was error for the Chief Administrative Judge to instruct the clerk of court to place Appellant's motion to withdraw and vacate void guilty Plea in Appellant's General sessions file without a hearing. FN1

This Court should remand to the lower court because subject matter jurisdiction can be raised at any time State v. Funderburk, supra, This Court should also remand to the lower court where no Judge ruled on the Appellant's motion. see Martin v. State, (S.C. 1995) 321 S.C. 533, 471 S.E.2d 134 (Appellant's appeal to the Supreme Court of South Carolina of the clerk's decision to refuse to file a motion to Proceed in forma Pauperis in the Circuit Court was premature and would therefore, be remanded to the Circuit Court where no Judge had ruled on the Appellant's motion). The difference in Martin case and the Appellant's case, the Judge refused to entertain Appellant's motion to withdraw and vacate void guilty Plea. In Martin's case the clerk refused to file the motion. The Appellant assert the Principle enunciated in Martin apply to his case.

Antonio Gordon

FN1 Appellant assert that any claims that fall under the Post-conviction relief act, the trial Judge should "not" reach the merits of those claims but still decide and Rule on Motion to withdraw and vacate void guilty Plea. U.S. v. Embrey.

State of South Carolina
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General Sessions Court

John C. Hayes, III, Presiding Judge

1998-GS-2847; 2849; 2851

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Respondent,

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Appellant

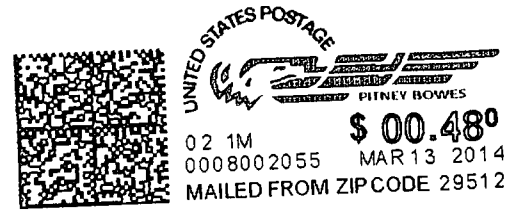
certificate of service

Appellant hereby certifies that one copy of the notice of Appeal and Explanation Pursuant to Rule 243(c), in the above case has been served upon opposing counsel, Salley W. Elliott, Assistant Deputy Attorney General, office of the Attorney General, P.O. Box 11549, Columbia, S.C. 29211, by depositing in the U.S. mail proper postage, this 13th day of March, 2014. 28 U.S.C. § 1746

Antonio Gordon

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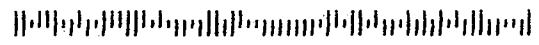


MAR 13 2014

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