

ORIGINAL

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Colleton County
Thomas A. Russo, Circuit Court Judge

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SC Court of Appeals

Opinion No. 2014-UP-337 (S.C. Court of Appeals filed September 24, 2014)

THE STATE,

RESPONDENT,

V.

ELIZABETH M. DINKINS,

APPELLANT.

APPELLATE CASE NO. 2012-208407

PETITION FOR REHEARING

The Appellant, Elizabeth M. Dinkins, respectfully petitions the Court for a rehearing of its Opinion No. 2014-UP-337 pursuant to Rule 221(a), SCACR based upon the following points overlooked or misapprehended by the Court:

On September 24, 2014, this Court filed its unpublished opinion affirming Appellant's conviction for forgery. In her appeal, Appellant argued that her conviction for forgery not involving any dollar amount in the Court of General Sessions should be vacated for lack of subject matter jurisdiction where the Legislature placed this offense within the exclusive jurisdiction of the magistrates and municipal court.

The description of the indictment alleged that the amount involved in the forgery was *none*, triggering the provisions of S.C. CODE ANN. § 16-13-10(C). R. 100. South Carolina Code section 16-13-10(C) provides:

If the forgery does not involve a dollar amount, the person is guilty of a misdemeanor under the jurisdiction of the magistrates or municipal court, *notwithstanding* the provisions of Sections 22-3-540, 22-3-545, 22-3-550, and 14-25-65, and upon conviction, must be fined in the discretion of the court or imprisoned not more than three years, or both.

§ 16-13-10(C) (emphasis added).

The plain language of this statute confers exclusive jurisdiction to the magistrates and municipal court for cases of forgery not involving any dollar amount. Therefore, the Court of General Sessions lacked subject matter jurisdiction to hear the case against Appellant. The State in its Respondent's Brief did not contest Appellant's assertion that § 16-13-10(C) conferred exclusive jurisdiction to the magistrates and municipal court for cases of forgery not involving any dollar amount and that the Court of General Sessions lacked subject matter jurisdiction over this offense.

"When interpreting a statute, this Court's primary function is to ascertain the intention of the Legislature. . . . When a statute is clear and unambiguous, the terms of the statute must be given their literal meaning." Mosteller v. County of Lexington, 336 S.C. 360, 363-64, 520 S.E.2d 620, 622 (1999). In addition, when the Legislature uses the phrase "*notwithstanding* any other provision of the law" in a particular statute, the Legislature clearly intends that the statute to be "exclusive of other provisions of the law." Id. at 364, 520 S.E.2d at 622 (emphasis added).

In State v. Castleman, 219 S.C. 136, 64 S.E.2d 250 (1951), this State's Supreme Court held it was reversible error for the Court of General Sessions to try a defendant for

the first offense of unlawful possession of intoxicating liquor where the Court of General Sessions did not have jurisdiction. The Supreme Court found that the General Assembly had statutorily conferred exclusive jurisdiction to the magistrates' court for the offense for which defendant was charged and therefore, the Court of General Sessions lacked jurisdiction over the case. Id. at 138, 64 S.E. at 251. Likewise, in Appellant's case, the Legislature has expressly placed crimes of forgery not involving any dollar amount within the exclusive jurisdiction of the magistrates and municipal court.

This Court held that the State presented evidence that Appellant owed Title Max a loan valued at a little over \$4000.00. However, the State never moved at trial to amend the indictment to allege that the amount of the forgery involved a dollar amount of \$4000.00. Instead, the State left the indictment language charging Appellant with receiving the sum of *none*. R. 100.

This Court's reliance on State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005) and Edwards v. State, 372 S.C. 493, 642 S.E.2d 738 (2007) is also misplaced where Appellant is not challenging the sufficiency of the indictment but whether which court had subject matter jurisdiction to try a case of forgery involving no dollar amount which the Legislature placed in the exclusive jurisdiction of the magistrates and municipal court. "[S]ubject matter jurisdiction is the power of a court to hear and determine cases of the general class to which the proceedings in question belong." Gentry, at 100, 610 S.E.2d at 498. Issues related to subject matter jurisdiction may be raised at any time. Id. at 100, 610 S.E.2d at 498

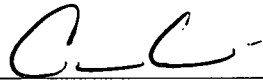
Accordingly, it was error for the Court of General Sessions to hear the case against Appellant where the Legislature expressly placed crimes of forgery not involving any dollar

amount within the exclusive jurisdiction of the magistrates and municipal court. Appellant's conviction for forgery not involving any dollar amount should be vacated for lack of subject matter jurisdiction.

CONCLUSION

For the reasons set forth herein, Appellant Elizabeth M. Dinkins respectfully requests that the Opinion of the Court of Appeals be withdrawn and her conviction for forgery vacated for lack of subject matter jurisdiction.

Respectfully submitted,



Carmen V. Ganjehsani
Appellate Defender

This 9th day of October, 2014.

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CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Petition for Rehearing in the above-entitled case has been served upon Mary Shannon Williams, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 9th day of October, 2014.



Carmen V. Ganjehsani
Appellate Defender
ATTORNEY FOR APPELLANT

SWORN TO BEFORE ME this 9th day
of October, 2014.

 (L.S.)

Notary Public for South Carolina

My Commission Expires: October 24, 2021.