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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Supreme Court
APPEAL FROM CHEROKEE COUNTY
Court of Common Pleas

J. Durham Cole, Circuit Court Judge

Case No. 2014-000-595

Frazier T. Williams, Appellant,

v.

State of South Carolina, Respondent.

INITIAL BRIEF OF APPELLANT

Frazier T. Williams
SCDC No. 227393
Perry Correctional Institution
430 Carlawn Road-24A/124
Pelzer, S.C. 29669
Pro se

Other Counsel of Record

Sally W. Elliott
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STATEMENT OF ISSUES ON APPEAL

1. DID THE TRIAL JUDGE ERR IN DENYING APPELLANT'S MOTION FOR RECUSAL?
2. DID THE TRIAL JUDGE ERR IN HOLDING THAT A WRIT OF MANDAMUS IS NOT A PROPER METHOD FOR CHALLENGING THE TRIAL COURT'S LACK OF SUBJECT MATTER JURISDICTION?

STATEMENT OF THE CASE

The appellant was indicted for murder (95-GS-11-477), burglary (95-GS-11-475), and armed robbery (95-GS-11-476) during the April 1995 term of General Sessions Court for Cherokee County. He went to trial October 30 thru November 3, 1995, before the Honorable J. Derham Cole, Judge and Jury. He was represented by Donald Leteer, Esq., of the Cherokee County Bar. The state was represented by Trent Pruett of the Cherokee County solicitor's office. The jury found him guilty on all charges, and Judge Cole sentenced him to life for murder and burglary and a concurrent sentence of twenty-five (25) years for armed robbery.

A timely appeal was filed on appellant's behalf. He was represented on appeal by Lisa T. Gregory who filed a brief pursuant to Anders v. California, 286 U.S. 738 (1967). The S.C. Court of Appeals affirmed his convictions and sentences. State v. Frazier Williams, Op. No. 27-MO-101 LS. C. App. filed October 29, 1997. The remittur was issued November 19, 1997.

The appellant next filed a petition for writ of habeas corpus in the Court of Common Pleas for Cherokee County on October 11, 2006. The respondent made its return and motion to dismiss on March 16, 2007. An evidentiary hearing was held on September 18, 2007, at the Spartanburg County Courthouse. The petition was dismissed on December 14, 2009, and a timely appeal was filed on his behalf.

The S.C. Supreme Court, by order dated April 15, 2010, transferred the appeal to the S.C. Court of Appeals. On May 27, 2010, the Court of Appeals dismissed the appeal.

A timely petition for Rehearing was filed. The petition was denied on July 14, 2010.

On April 24, 2013, appellant filed a PRO SE Petition for Writ of Mandamus in the Common Pleas Court for Cherokee County. By order dated October 29, 2013, Judge Derham Cole denied the writ of mandamus. The appellant then filed a motion for Judge Cole's recusal/and motion for vacation of Judge's order. On February 21, 2014, Judge Cole denied the motions for vacation of his order and recusal. A timely notice of appeal and motion to proceed in forma was filed by the appellant on March 14, 2014. The Supreme Court assigned appellant a docket number (2014-000-595), granted him leave to proceed in forma pauperis, and transferred his case to the Court of Appeals for disposition.

ARGUMENTS

1. THE TRIAL JUDGE ERRED IN DENYING APPELLANT'S MOTION FOR RECUSAL.

In this case, Judge J. Derham Cole was the Judge who presided over appellant's Criminal trial at which he was convicted and sentenced by Judge Cole to two life sentences for murder, burglary, and a concurrent twenty-five (25) years for armed robbery. Also, Judge Cole is the same Judge who presided over appellant's petition for writ of mandamus that he is challenging on this appeal.

As a threshold matter, in Floyd v. State, 400 S.E.2d 145 (1991), the S.C. Supreme Court held that it adopted a per se rule that a Judge who is scheduled to hear a post-conviction matter must, upon request of the applicant, recuse himself if he presided over applicant's criminal trial, or probation revocation for which post-conviction relief is sought. See also, State v. Watkins, 752 S.E.2d 261 (S.C. 2003).

Finally, as the record shows that Judge Cole was, in fact,

the same Judge who presided over appellant's criminal trial, this Court should find that Judge Cole erred in denying appellant's motion for his recusal and vacation of his order.

1. THE TRIAL JUDGE ERRED BY HOLDING THAT A WRIT OF MANDAMUS IS NOT A PROPER METHOD FOR CHALLENGING THE TRIAL COURT'S LACK OF SUBJECT MATTER JURISDICTION.

In this case, the appellant filed a petition for issuance of a writ of mandamus to challenging the trial Court's subject-matter Jurisdiction to convict and sentence him. In denying the writ, Judge J. Derham Cole held that petitioners writ of mandamus did not satisfy the elements, nor the purpose, of a writ of mandamus as established by case law. However, contrary to Judge Cole's ruling, the S.C. Supreme Court has held that issues of subject-matter Jurisdiction may be raised in writ of mandamus. see Anderson v. State, 527 S.E.2d 398 (S.C. App, 2001).

Here, the appellant requested a hearing on his writ of mandamus whereby he contended that his trial Court lacked subject-matter Jurisdiction to convict him upon indictments that were presented outside of a term of general Sessions Court. The appellant's claim is based on an "Affidavit" that was submitted by the seventh Judicial Circuit solicitor, Trent N. Pruett, in which he asserts that appellant's indictments were not presented by a grand Jury during a term of general Sessions Court. Exhibit 1.

Solicitor Pruett further asserts in his Affidavit that the trial Court was vested with subject-matter Jurisdiction even without a presentment of applicant's indictments during a term of general Sessions Court. In support of his assertions, he cites the Supreme Court's holding in Brown v. State, 449 S.E.2d 494 (1994), which held as follows:

The County grand Jury is "empaneled" during the first term of general sessions of the calendar year. see Code Ann. §§ 14-7-1550-1570 (Supp. 1993). By administrative order

of the Chief Justice, the Chief Judge for administrative purposes in judicial circuit is responsible for scheduling when the grand jury in each county within the circuit will convene to receive evidence and deliberate. Administrative Section, SC Register, pp. CC ADMIN 3-4. This order specifically encourages the Chief Judge to convene the grand jury when the Court of general sessions is not in session. After the grand jury has deliberated, it then reports its finding of "true bill" or "No Bill" to the Court of general sessions. This report may be made on the same day as the grand jury makes its finding, or it may be made at some later time.

The ~~Brown~~ Court only cited a portion of the S.C. Code § 14-7-1550 which was entitled "Manner of Drawing Grand Jurors" and stated the following, in relevant part:

No less than fifteen days before the convening of the first term of Court of general sessions for the calendar year, the Jury Commissioner shall draw from the jury box the number of grand jurors which the . . . Chief administrative Judge for the circuit has determined to be sufficient in order to "impanel a grand jury" . . . Immediately after these grand jurors are drawn, the Clerk of Court shall issue a writ of venire facias for these grand jurors requiring their attendance on the first day of the first week of Criminal (general sessions) Court in the County". Emphasis added.

In reviewing the above statute, it is clear, by comparison, that the ~~Brown~~ Court did not recite the whole statute in its ruling. The statutory terms being construed must be examined in context and their meaning determined by looking at other terms used in the statute. State v. Hudson, 519 S.E.2d 577 (S.C. App. 1999).

Furthermore, a review of the whole statute shows that the S.C. Legislators did empower the Chief Justice and the Administrative Judge with authority to "empanel" potential grand jurors outside a term of general sessions Court; however, the Legislators did not extend authority to either the Chief Justice or administrative Judge to "convene a grand

Jury outside of a term of general Sessions Court. Therefore any reliance on Brown's decision to deny the appellant's Jurisdictional Claim would be misplaced. See, S.C. Const. art 1, sec 8.

Notwithstanding, having shown that the Chief Justice could not have authorized a chief administrative Judge to convene a grand Jury outside of a term of general Sessions Court to return bills of indictments, the appellant now directs the Court's review of whether the return of his indictment outside of a term of general Sessions Court could have deprived the Court of subject-matter Jurisdiction to convict him. To resolve this question, one must interpret the holding by the U.S. Supreme Court in U.S. v. Cotton, 122 S.Ct. 1781 (2002), which guided the S.C. Supreme Court's holding in State v. Gentry, 610 S.E. 2d 494 (2005). In both Cotton and Gentry, the Courts held that the term subject-matter Jurisdiction means the Court's Statutory and Constitutional power to adjudicate a case.

In reliance on Cotton and Gentry, the appellant submits that the S.C. Constitution and Statutory Laws mandate that "no person may be held to answer for any crime unless upon a presentment of an indictment by a lawfully convened grand Jury". S.C. Const., Art I, § 11; S.C. Code of Law, § 14-9-10. Moreover, the grand Jury as lawfully drawn for service upon the general Sessions Court shall meet with the Court at each of its terms. S.C. Code § 14-9-170. Exhibit 2. In addition, the County Solicitor shall prepare, and, through the presiding Judge of general Sessions Court, submit to grand Jury bills of indictments, S.C. Code § 14-9-210. Exhibit 3.

Furthermore, the S.C. Supreme Court has held that no indictment may be true billed by a grand Jury when general sessions is not in a term since the grand Jury's Jurisdiction is Coextensive with criminal Jurisdiction of the general Sessions Court in which it is convened and for which it is to make inquiry on presentment of indictments. See State v. McClure, 289 S.E. 2d 158 (S.C. 1982).

Thus, in keeping with the mandatory provisions of Constitutional provisions of Constitutional and Statutory laws, the Cherokee County Solicitor's office could not have lawfully obtained appellant's indictments to confer subject-matter Jurisdiction upon general Sessions Court to try and convict appellant when the Cherokee County general Sessions Court was not in a term on "October 19, 1994", to convene and oversee the grand jury process in accordance with Constitutional and statutory requirements. See, e.g., State v. Sanders, 163 S.E.2d 220 (S.C. 1968).

Finally, the appellant submits that this Court should find that all acts taken by the Cherokee Solicitor's office outside of Constitutional and statutory restrictions to obtain appellant's indictments is, by necessity, deemed to be null and void since the grand jury must be convened under a term of general Sessions Court to present bills of indictments to confer subject-matter Jurisdiction upon a general Sessions Court to try Criminal Cases.

CONCLUSION

WHEREFORE, for the foregoing reasons, this Honorable Court should grant appellant's petition for writ of mandamus to reverse and vacate appellant's convictions and sentences as appellant has been illegally incarcerated for over eighteen (18) years.

Respectfully Submitted,
Frazier T. Williams
Frazier T. Williams #227393
Perry Correctional Inst.
430 Oaklawn Road - 04W124
Pelzer, S.C. 29669

Date: 10-6-October, 2014

THE STATE OF SOUTH CAROLINA
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SC Court of Appeals

Frazier T. Williams, Appellant,

vs

State of South Carolina, Respondent.

PROOF OF SERVICE

I certify that I have served the Initial Brief of Appellant,
Designation of Matter to be Included in the Record on Appeal and
Record on Appeal by depositing Copies in the U.S. Mail, postage
prepaid, on October _____, 2014, addressed to Sally W. Elliott, P.O.
Box 11549, Columbia, S.C. 29211-1549.

Date: 10-6-2014

151 Frazier T. Williams
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October 6, 2014

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SC Court of Appeals

South Carolina Court of Appeal
Jenny Abbott Kitchings, Clerk
Post Office Box 11629
Columbia, South Carolina 29211

Re: Frazier T. Williams #227393
Appellate Case No. 2014-000-595

Dear Clerk:

Enclosed please find my original Initial Brief of Appellant, Designation of Matter to be Included in the Record on Appeal, Record on Appeal, and Proof of Service of same for filing with your office.

Sincerely,

Frazier T. Williams
Frazier T. Williams #227393
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cc: Respondent's Attorney

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P.C.I. MAILROOM

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