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S.C. Supreme Court

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Colleton County
Thomas A. Russo, Circuit Court Judge

Opinion No. 2014-UP-337 (S.C. Ct. App. filed September 24, 2014)
2011-GS-15-0769

THE STATE,

RESPONDENT,

v.

ELIZABETH M. DINKINS,

PETITIONER.

PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF APPEALS

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ATTORNEY FOR PETITIONER.

INDEX

INDEX 1

CERTIFICATION OF COUNSEL 2

QUESTION PRESENTED FOR REVIEW 3

STATEMENT OF THE CASE 4

ARGUMENT

Petitioner’s 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 5

CONCLUSION 9

CERTIFICATION OF COUNSEL

The Court of Appeals issued its decision on September 24, 2014. App. 1-3.
Counsel for Petitioner certifies that the petition for rehearing was made on October 9, 2014
and finally ruled upon by the Court of Appeals on October 23, 2014. App. 4-9.

QUESTION PRESENTED FOR REVIEW

Whether Petitioner's 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?

STATEMENT OF THE CASE

On November 17, 2011, Petitioner Elizabeth M. Dinkins was indicted by the Colleton County Grand Jury for one count of forgery in violation of S.C. CODE ANN. § 16-13-10. The indictment alleged that Petitioner “did forge the name of the manager of Title Max of Hampton on a Satisfaction of Title Lien to [the] Department of Motor Vehicles and did receive the sum of *none*.” R.99-100. (emphasis added).

Petitioner was tried before the Honorable Thomas A. Russo and a jury on January 31 – February 1, 2012. R. 1. Petitioner was represented by David S. Mathews, and the State was represented by Assistant Solicitor Steven Knight. Id.

The jury found Petitioner guilty of forgery. R. 93, ll. 18-21. Judge Russo sentenced Petitioner to two years imprisonment. R. 97, ll. 17-20.

On September 24, 2014, the South Carolina Court of Appeals affirmed Petitioner’s conviction in an unpublished opinion. *State v. Dinkins*, Opinion No. 2014-UP-337 (S.C. Ct. App. filed September 24, 2014); App. 1-3. Petitioner subsequently filed a petition for rehearing on October 9, 2014. App. 4-8. The Court of Appeals issued an order denying the petition for rehearing on October 23, 2014. App. 9.

This petition for writ of certiorari to the Court of Appeals follows.

ARGUMENT

Petitioner's 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.

Petitioner was charged with forgery not involving any dollar amount in violation of S.C. CODE ANN. § 16-13-10(C), and, she was tried and convicted in the Court of General Sessions for Colleton County. R. 99-101. The description of the indictment alleged that the amount involved in the forgery was *none*, triggering the provisions of § 16-13-10(C). R. 100. This code section 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 Petitioner. The State in its Respondent's Brief did not contest Petitioner'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 over this offense.

The South Carolina Constitution provides that "[t]he judicial power shall be vested in a unified judicial system, which shall include a Supreme Court, a Court of Appeals, a Circuit Court, and such other courts of uniform jurisdiction as may be provided for by

general law.” S.C. CONST. ART. V, § 1. Article V, Section 11 of the South Carolina Constitution establishes the Circuit Court as the court of original jurisdiction in most cases except those in which exclusive jurisdiction is given to inferior courts such as the magistrates or municipal court:

The Circuit Court shall be a general trial court with original jurisdiction in civil and criminal cases, *except those cases in which exclusive jurisdiction shall be given to inferior courts*, and shall have such appellate jurisdiction as provided by law.

S.C. CONST. ART. V, § 11 (emphasis added).

The South Carolina Constitution further provides that the Legislature has the power to establish the jurisdiction of the magistrates:

The Governor, by and with the advice and consent of the Senate, shall appoint a number of magistrates for each county as provided by law. The General Assembly shall provide for their terms of office and their civil and criminal jurisdiction. . . .

S.C. CONST. ART. V, § 26.

In 2010, the Legislature amended the forgery statute to add Section C of the statute, specifically providing that in cases of forgery not involving 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” § 16-13-10(C) (emphasis added). The Legislature’s use of the word “notwithstanding” signals the Legislature’s intent to confer exclusive jurisdiction in the magistrates or municipal court despite the provisions of other statutes defining the jurisdiction of these inferior courts.

“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 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. This 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 Petitioner’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.

The Court of Appeals held that the State presented evidence that Petitioner owed Title Max a loan valued at a little over \$4,000.00. However, the State never moved at trial to amend the indictment to allege that the amount of the forgery involved a dollar amount of \$4,000.00. Instead, the State left the indictment language charging Petitioner with receiving the sum of *none*. R. 100.

Furthermore, a lien, “is not the debt but merely a charge upon the property for payment of the debt” and “dissolution of the lien does not eradicate the debt.” Shelley v.

South Carolina Dep't of Mental Health, 283 S.C. 344, 346, 322 S.E.2d 687, 689 (Ct. App. 1984). Even if Petitioner had cleared the lien on her vehicle, the underlying debt of approximately \$4,000.00 owed to Title Max would have remained. Petitioner would have still owed this amount. Petitioner would have not received any dollar amount had she completed the alleged forgery.

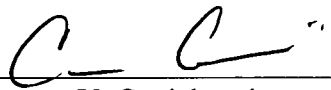
The Court of Appeals' reliance on State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005) and Edwards v. State, 372 S.C. 493, 642 S.E.2d 738 (2007) is also misplaced where Petitioner is not challenging the sufficiency of the indictment but whether which court had subject matter jurisdiction to try a case 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 Petitioner where the Legislature expressly placed crimes of forgery not involving any dollar amount within the exclusive jurisdiction of the magistrates and municipal court. Petitioner'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, Petitioner Elizabeth M. Dinkins respectfully requests this Court to grant her Petition and issue a writ of certiorari to the Court of Appeals to review the decision and reverse the Opinion of the Court of Appeals as well as her conviction.

Respectfully submitted,



Carmen V. Ganjehsani
Appellate Defender

ATTORNEY FOR PETITIONER.

This 24th day of November, 2014.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Colleton County
Thomas A. Russo, Circuit Court Judge

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THE STATE,

RESPONDENT,

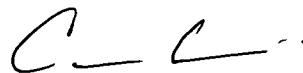
V.

ELIZABETH M. DINKINS,

PETITIONER.

CERTIFICATE OF SERVICE

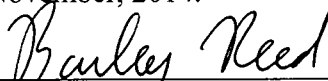
I certify that a true copy of the petition for writ of certiorari and a copy of the appendix, in this case has been served on Mary S. Williams, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201 and the S.C. Court of Appeals this 24th day of November, 2014.



Carmen V. Ganjehsani
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 24th day
of November, 2014.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: October 24, 2021