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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

RECEIVED
MAR 13 2015
SC Court of Appeals

Appeal from Fairfield County

R. Knox McMahon, Circuit Court Judge

Appellate Case No. 2014-000205

IN THE MATTER OF THE CARE AND TREATMENT OF LARRY HENDRICKS,

APPELLANT.

RETURN TO *PRO SE* MOTION TO EXPAND RECORD ON APPEAL

In response to the Pro Se Motion to Expand Record on Appeal, counsel for Larry Edward Hendricks respectfully states:

1. Former appellate defender Carmen Ganjehsani was originally appointed to represent appellant on or about August 4, 2014.
2. On December 12, 2014, Ms. Ganjehsani filed an *Anders*[1] brief along with the Record on Appeal, which contains the January 27, 2014 commitment hearing transcript, State's Exhibits 1-9, Defendant's Exhibits 1-6, Court's Exhibit 1, and the Order of Commitment.
3. On December 16, 2014, the Deputy Clerk of this Court sent appellant a letter pursuant to the *Anders* procedure telling him that he may file a *pro se* brief addressing any issues he believes the Court should consider within forty-five days.

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[1] *Anders v. California*, 386 U.S. 738, 87 S.Ct. 1396 (1967).

4. Also on December 16, 2014, appellant's case was re-assigned to undersigned counsel. A letter indicating this was sent to this Court on December 31, 2014.

5. On December 17, 2014, Appellant filed a letter addressed to Ms. Ganjehsani with this Court. That letter was not received by the Commission on Indigent Defense. The letter asserts that the Record on Appeal is incomplete because it does not contain copies of the *pro se* motions appellant filed on October 30, 2013, November 1, 2013, and January 9, 2014, or "the filed paperwork regarding other pre-trial issues filed by either party." He asked that the record be supplemented to include all documents filed with the trial court.

6. Also on December 17, 2014, I received a telephone call from appellant inquiring why his *pro se* motions were not included in the Record on Appeal and why the other issues raised in his *pro se* motions were not included in the *Anders* brief. I asked appellant to call back on Friday of that week so that I could familiarize myself with his case.

7. When appellant telephones again, I informed him that there were no *pro se* motions listed in the public index for his case and suggested that perhaps they were not actually filed with the Clerk's Office. Further, the actual argument made on the issues and the trial court's rulings were contained in the transcript. I advised that he could address any issues he desired in his *pro se* brief. I have not received any phone calls or written correspondence from appellant since that discussion.

8. On February 3, 2015, appellant sent a second letter to this Court. This letter was not copied to the Commission on Indigent Defense. The letter indicates that appellant

filed a Motion to Order Expansion of the Record on Appeal on December 30, 2014 and inquiries into the status of the motion.

9. On February 13, 2015, the Deputy Clerk of this Court sent a letter to appellant, copying counsel, indicating its receipt of his letters dated December 17, 2014 and February 3, 2015. The letter instructed appellant to file any extension request within ten days and that any other requests must come from counsel.

10. On February 18, 2015, I wrote to my client and explained that I did not receive his December letter, but based on our prior telephone conversation and reading the letters filed with the Court, I understood his request not to be for an additional transcript, but rather for inclusion in the Record on Appeal of the *pro se* motions that he filed with the trial court. I indicated to him again that I did not see them listed in the public index for his case, and that he may want to inquire as to whether they were filed with the Fairfield County Clerk's Office or his trial attorney. Alternatively, if he had copies of the motions, he could attach them to any *pro se* brief that he files with the Court. I further advised appellant to make sure that he files a request for an extension to file his *pro se* brief and made him aware that I did not see a copy of any Motion to Order Expansion of Record listed in this Court's electronic records system, despite his indication that same was filed on December 30, 2014.

11. Though dated December 30, 2014, the *pro se* Motion to Expand Record on Appeal was not filed with this Court until February 23, 2015. A copy of the Motion was not sent to the Commission on Indigent Defense.

12. On March 6, 2015, the Deputy Clerk of this Court sent a letter to appellant, copying counsel, confirming receipt of the Motion to Expand Record on Appeal. Counsel was instructed to file a return within ten (10) days.

13. On March 9, 2015, after receiving the March 6, 2015 letter, I called the Clerk's Office of this Court and was e-mailed a copy of the *pro se* Motion to Expand Record on Appeal.

14. Also on March 9, 2015, I called the Clerk's Office in Fairfield County to inquire as to whether their file contained copies of appellant's *pro se* motions filed October 30, 2013, November 1, 2013, and January 9, 2014, despite their absence from the public index. They pulled the file and were able to locate six *pro se* motions.

15. On March 10, 2015, our administrative specialist Angela Jackson faxed a written request for all of the *pro se* motions filed October 30, 2013, November 1, 2013, and January 9, 2014 to the Fairfield County Clerk of Court's office.

16. On March 12, 2015, copies of the *pro se* motions were received by the Commission on Indigent Defense.

17. Attached to this Return are copies of the three written *pro se* motions referenced in appellant's Motion to Expand Record on Appeal – October 30, 2014 Motion to Dismiss, January 9, 2014 Motion to Dismiss Pursuant to Rules 12(b) and 41(b) SCRCP, and January 9, 2014 Motion to Dismiss Pursuant to Rule 41, SCRCP.[2]

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[2] Copies of the following additional written *pro se* motions are ***not*** attached: October 30, 2013 Motion to Authorize Proper Attire for Trial, November 1, 2013 Opposition to Petitioner's Request for a Jury Trial, and November 1, 2013 Motion for a Ruling to Show Cause, because they were not cited in appellant's motion.

18. The written *pro se* motions do not appear to be necessary to this appeal because the record does not indicate that the trial court considered the written motions, but rather decided the motions based on the argument made on the record. *See* R. 18, l. 4 – 33, l. 7. Further, the written motions were not made court's exhibits.

19. If this Court finds that the written *pro se* motions are necessary to complete the *Anders* review, I will submit an Appendix to the Record on Appeal containing the three *pro se* motions referenced in appellant's Motion to Expand.

Based on the foregoing, counsel respectfully requests that this Court determine whether the written *pro se* motions are necessary for the Court's *Anders* review of this case. If so, please allow counsel to submit an Appendix to the Record on Appeal containing the three *pro se* motions referenced in appellant's Motion to Expand. Counsel also respectfully requests that appellant be given additional time to file his *pro se* brief from the latter of either the date of an Order disallowing the filing of an Appendix or from the date of submission of the Appendix to the Record on Appeal.

Respectfully submitted,

Laura R. Baer
Appellate Defender
South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT

This 13th day of March, 2015.

2013 OCT 30 AM 10:51
FAIRFIELD COUNTY
CLERK OF COURT
BETTY JO BECKHAM

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
County of Fairfield) SIXTH JUDICIAL CIRCUIT

State of South CAROLINA) Case No.: 2012-CP-20-0358
Plaintiff)
v.)
Larry Edward Hendricks) MOTION TO DISMISS
Movant/Respondent)

The Movant, Larry Edward Hendricks, who filed a MOTION TO APPOINT Assigned Counsel to Stand-by status, with the Clerk of Court on October 21, 2013, now comes before this Honorable Court, pro-se, TO move it TO Dismiss the above referenced action pursuant TO Rule 12(b) South Carolina Rules of Civil Procedure.

The basis for this Motion is that the matter pending before the court violates ARticle 1, § 8, of The South Carolina Constitution. That ARticle states in pertinent part That, "The legislative, executive, and judicial powers of the government shall be forever seperate and distinct from each other, and no person or persons exercising the functions of one said department shall assume or discharge the duties of any other." McConnell v. Haley, 711 SE2d 886 (SC 2011).

S.C. Code of Law § 44-48-30(2)(1) + (6)(a), are offensive to the state's constitutional provision of Seperation of Powers, by allowing the Executive Branch TO re-open final judgments of

the Judicial Branch to consider what the Judicial Branch had declared as non-violent offenses to now be violent, for purposes of the sexual violent predator Act (SVPA).

The determination of an offense is declared at the time of its occurrence. The judge at sentencing makes all final determinations. Hill v. U.S. ex. rel. Wampler, 298 U.S. 460, 56 S.Ct. 760 (1936); Jones v. Cunningham, 370 U.S. 236, 240-243, 83 S.Ct. 373 (1963); Early v. Murray, 451 F.3d 75 (CA2, 2006)(only the judgment of a court, as expressed through the sentence imposed by a judge has the power to constrain a person's liberty, and that judgment includes only those terms expressly imposed.). Once a determination has been made by a member of the judicial branch of government any deviation would violate The Seperation of Powers Doctrine.

Therefore, when the General Assembly directed the attorney general to reclassify the Movant, it impermissibly invaded the province of the judiciary by mandating the reopening of a final judgment, and by directing that a judicial function be performed by a member of the Executive Branch of government.

It is well settled principle that the legislature cannot annul, reverse, or modify a judgment of a court, already rendered. A judgment which is final by the laws existing when it is rendered, cannot Constitutionally be made subject to review by a statute subsequently enacted, as is the case of the SVPA.

The offenses occurred in 1997. The statute was enact after-wards. This Court has the inherent power to do all things reasonably necessary to insure that just results are reached to the fullest extent possible. STATE v. Langford, 735 SE2d 471 (SC 2012); Robinson v. Estate of Harris, 698 SE2d 801 (SC 2010). As such §44-48-30, as applied in this matter, is unconstitutional in that it requires the attorney general, a member of the Executive Branch of government, to reclassify sex offenders, by a new definition, who had previously been adjudicated and classified pursuant to a final order of a court.

The General Assembly may not overturn a final judgment at law by legislative mandate. Plaut v. Spendthrift Farm, Inc., 514 U.S. 211, 115 S.Ct. 1447 (1995). This is not a collateral consequence but an infringement upon the Movant's Constitutional rights.

As such this Motion to Dismiss is based soley on the allegation contained in the "Petition pursuant to the SVPA," filed on September 4, 2012, Gressette v. SCE&G, 635 SE2d 538 (SC 2006), and as such should be Dismissed with prejudice pursuant to Rule 12(b), SCRCP, based on a violation of the Separation of Powers doctrine incorporated in the State's Constitution.

THIS THE MOVANT HUMBLY PRAYS!

October 28th, 2013

Respectfully Submitted,

Larry Edward Hendricks

Larry Edward Hendricks
10 Faith Lane, A-15
Winnsboro, SC 29180-5909

CERTIFICATE OF SERVICE BY MAIL

By the above signature, this date, a copy of this Motion has been forwarded via First Class U.S. mail, TO: James C. Bogle, Jr., Senior Asst. Attorney general, PO Box 11549, Columbia, SC 29211, and Ernest Spong III, 110 S. Vanderhost Street, Winnsboro, SC 29180.

2013 OCT 30 AM 10 52
FAIRFIELD COUNTY
CLERK OF COURT
BETTY JO BECKHAM

COPY

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
County of FAIRFIELD) SIXTH JUDICIAL CIRCUIT

2014 JAN 9 PM 3:10
FAIRFIELD COUNTY
CLERK OF COURT
BETTY JO BECKHAM

State of South Carolina,
Petitioner,
v.
Larry Edward Hendricks,
Respondent.

CASE No.: 2012-CP-20-0358

MOTION TO DISMISS PURSUANT TO Rules 12(b) & 41(b) SCRCP

The Respondent, above named, hereby motions this Honorable Court to dismiss the above referenced case pursuant to Rule 12(b)(1) and 41(b) of the South Carolina Rules of Civil Procedurce (SCRCP). The reason matter should be dismissed is because this Court lacks jurisdiction to entertain this subject matter.

This Case was erroneously filed in this jurisdiction. IT was filed based on S.C. Code of LAW (ANN.) §44-48-10 et. seq. (2012), which contains specific language that States, "The attorney general must file a petition with the count in the jurisdiction where the person committed the offense ...." S.C. Code §44-48-50.

The erroneously qualifying offense, Lewd Act upon a Minor, was repealed by Legislative Act 255 effective June 12, 2012. Though a saving clause existed, the State did not start this action before the effective date of the repeal.

The question of subject matter jurisdiction is a

question of law, for the court. Hammer v. Hammer, 730 SE2d 874 (SC App 2012). The concept of jurisdiction refers to the authority of a court over a particular person or the authority of a court to entertain a particular action, but the concept does not refer to the validity of the claim on which an action or person is based. Cribb v. Spatholt, 676 SE2d 714 (Ct. App. 2009).

The subject matter here, a hearing to determine whether the Respondent fits the requirements to be involuntary civilly confined, requires a particular predicate offense. That offense must be one adjudicated by the Court in which a conviction was upheld. The fact that the legislature choose to repeal the statute §16-15-140, without putting in a saving clause referencing the SVPA, or a conforming amendment, clearly meant that onee the effective date occurred, that statute was repealed and any claim referencing it, thereafter, done away with it.

The Respondent has a state and federal constitutional right to liberty, through the Due Process Clause. Subject matter jurisdiction can not be waived or forfeited. Gonzalez v. Thaler, 132 S.Ct. 641, 648 (2012). As such, this matter can no longer be persued in this venue because there is no relative offense to bring the SVPA into play in this judicial circuit.

The Rules of Statutory construction and legislative intent clearly come into play here. Gay v. Arial, 673 SE2d 418 (SC 2009). The legislature repealed the

offending statute, making it not valid as a qualifying offense after the effective date of the repeal. There was no saving clause or conforming amendment to Act 255. Chem-nuclear Systems, LLC v. S.C. Bd. of Health and Env'l Ctrl., 648 SE2d 601 (SC 2007).

As such, Rule 12(b)(1), and Rule 40(b) SCRCP allows for this matter to be dismissed because of the Court's lack of jurisdiction to entertain this subject matter.

CONCLUSION

Based on the above argument and cited facts, The Motion to Dismiss should be GRANTED.

Respectfully submitted;

Larry Edward Hendricks

Larry Edward Hendricks
Respondent, Pro-se
10 Faith Lane, A-15
Winnsboro, SC 29180

January 7th, 2014

COPY

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
County of FAIRFIELD) 5TH JUDICIAL CIRCUIT

2014 JAN 13 PM 3:10
FAIRFIELD COUNTY
CLERK OF COURT
BETTY JO BECKHAM

State of South Carolina,
Plaintiff,
v.
Larry Edward Hendricks,
Respondent.

Case No.: 2012-CP-20-0358

MOTION TO DISMISS
Pursuant to Rule 41, SCRCP

The Respondent, Larry Edward Hendricks, proceeding pro-se, moves this Honorable Court to Dismiss the above referenced proceedings' petition pursuant to Rule 12(b), and Rule 41(b) of the South Carolina Rules of Civil proceedure (SCRCP).

The basis for this Motion is the Plaintiff's violation of the Respondent's right to Due Process as entitled to him under both the state and federal constitution, through its failure to prosecute. McComas v. Ross, 626 SE2d 902, 904 (Ct. App. 2006). The Plaintiff is obligated under state statutory law to have this matter before the Court "within ninety days of the date the court appointed expert issue[d] the [psych] evaluation...." The language of the statute, S.C. Code of Law § 44-48-90(B) is of a mandatory construction that must be adhered to and creates a state-created liberty interest in its timeline, being obeyed. In re Care + Treatment of Matthews, 550

SE2d 311 (2001).

The court appointed expert issued her report on July 9, 2013. The Respondent received a copy on July 11, 2013. For The Plaintiff to abide by the statutory intent, the SVPA commitment hearing would be held no later than during the October, 2013 term. Though There is no record of a continuance or a request for a trial date being filed with the Court, The Chief Administrative Judge did file with the Court's Clerk an "Order Setting Jury Trial," for January 27, 2014, last September, 2013. This would be six months after the Court appointed expert's report.

The Respondent understands that The State may have the authority to create, or not, a standard in a statute, but once that State-created right is instituted then Article 1, §3 of The South Carolina Constitution and the Fourteenth Amendmsnt requires, through the Due Process Clause insurances that the state-created right is not arbitrarily abrogated. Wolff v. McDonnell, 418 U.S. 539 (1974); Sander v. Conner, 515 U.S. 472, 483-484 (1995)(the States may, under certain circumstances, create liberty interests which are protected by the Due Process Clause).

Clearly Substantial prejudice has occurred because the Respondent's liberty was deprived him, after he finished his term of incarceration, while awaiting a hearing. Any delays furthers that

loss of liberty. Because of the mandatory pre-trial detention scheme of S.C. Code §44-48-80 and §44-48-90, the Respondent's constitutional rights were seriously put in jeopardy due to the state's non-adherence to its legislature's expressed intention to have these types of cases before the court in a timely manner.

As such, the State's petition should be dismissed with prejudice due to the State's failure to pursue the prosecution of this matter in a reasonably timely manner. The South Carolina Supreme Court has noted that, "It is not a significant burden on the State or the trial court to require the issuance of a continuance, or even a notation in the record, indicating: (1) the trial cannot be held within [ninety] days; (2) good cause for the delay; and the respondent will not suffer prejudice." Matthews, 550 SE2d at 314.

Based on the precedent incorporated in The matter of Care of Miller, 713 SE2d 263 (SC 2011), and Rule 41(B) SCRCP, this court is authorized to grant a dismissal with prejudice and release the Respondent for failure to prosecute which denied the Respondent liberty through the State's procedural malfeasance.

THIS THE RESPONDENT HUMBLY PRAYS!

Respectfully submitted,

Larry Edward Hendricks

Larry Edward Hendricks
Respondent, Pro-se
10 Faith Lane, A-15
Winnsboro, SC 29180

January 7th, 2014

CERTIFICATE OF SERVICE

By the above signature, I, the Respondent, has served a copy of the above Motion to Dismiss and a second Motion to Dismiss, to the Petitioner's attorney, James G. Bogle, Jr., Senior Asst. Attorney General, P.O. Box 11549, Columbia, SC, by utilizing the U.S. Postal Service, with First Class Postage affixed, this date.

FAIRFIELD COUNTY
CLERK OF COURT
BETTY JO BECKHAM
2014 JAN 9 PM 3 11

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Fairfield County

R. Knox McMahon, Circuit Court Judge

IN THE MATTER OF THE CARE AND TREATMENT
OF LARRY HENDRICKS,

APPELLANT.

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Return to *Pro Se* Motion to Expand Record on Appeal in the above referenced case has been served upon Deborah R.J. Shupe, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of same has been served on Larry Edward Hendricks, at 7901 Farrow Road, Bldg #3, 3rd Floor, Columbia, S.C. 29203 this 13th day of March, 2015.

Laura R. Baer
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 13th day of March, 2015.

Rhonda Denise Foxworth (L.S.)
Notary Public for South Carolina
My Commission Expires: October 17, 2021 .