

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas
Post-Conviction Relief

Edgar W. Dickson, Presiding Judge

Case No.: 2015-000105

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AUG 31 2015

S.C. Supreme Court

Alwin Jones #260800Petitioner,

vs.

State of South CarolinaRespondent.

PETITION FOR WRIT OF CERTIORARI

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S.C. Code §14-25-15.

South Carolina Supreme Court Order 1994-05-02-01 effective January 1, 1995

QUESTION PRESENTED

- I. Did the PCR Court err in not granting relief on the basis that the Appellant's arrest warrant was issued by a ministerial recorder who was not properly qualified to issue warrants?

STATEMENT OF THE CASE

Petitioner is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Lexington County. Petitioner was indicted for armed robbery; criminal conspiracy, possession of a firearm or knife during commission of a violent crime, unlawful possession of a pistol by person under the age of twenty-one, burglary, second degree; burglary, first degree; and petit larceny. Cam Littlejohn, Esq. represented Petitioner. On August 26, 1999, Petitioner pled guilty to three counts of burglary, second degree (1999-GS-32-2460; 2472; 2473) and one count of armed robbery (1999-GS-32-2654). The Honorable William P. Keesley sentence Petitioner to fifteen (15) years confinement on each count of burglary, second degree; thirty (30) years confinement on each count of burglary, first degree; and to thirty (30) years for armed robbery. The sentences were to be served concurrently. The Petitioner did not appeal his sentence and conviction.

The Petitioner subsequently filed an Application for post-conviction relief (PCR) on December 28, 1999 (1999-CP-32-3546). Petitioner alleged he was being held unlawfully for the following reasons:

1. Ineffective Assistance of Counsel.
2. False representations, from trial or plea counsel.

An evidentiary hearing was held before the Honorable J.C. Nicholson, Jr., at which Petitioner was present and was represented by Elizabeth Fullwood, Esq. By Order dated July 31, 2001, Judge Nicholson denied and dismissed the Application. Judge Nicholson denied Petitioner's motion for relief from judgment in a short order dated April 23, 2002 and filed May 21, 2002. A timely Notice of Appeal was filed on Applicant's behalf and a Johnson Petition for Writ of Certiorari was submitted by the South Carolina Office of Appellate Defense. On April

18, 2002, the South Carolina Supreme Court denied the Petition and the Remittitur was sent on May 6, 2002.

The Petitioner filed a second Application for post-conviction relief on July 25, 2002 (2002-CP-32-2531). Petitioner alleged he was being held unlawfully for the following reasons:

1. Subject Matter Jurisdiction.
2. Involuntary Guilty Plea
3. Ineffective Assistance of Counsel
4. Newly Discovered Evidence.
5. Brady violation
6. Due Process Violation
7. Fourth, Fifth and Sixth Amendment violations.

A hearing was held on Respondent's Motion to Dismiss on February 24, 2004, before the Honorable Marc H. Westbrook, at which Petitioner was present and was represented by Lori Murray, Esq. By order dated March 14, 2004, and filed March 15, 2004, Judge Westbrook denied and dismissed the Application as successive and barred by the one-year statute of limitations. A timely Notice of Appeal was filed on Petitioner's behalf and a Johnson Petition for Writ of Certiorari was submitted by the South Carolina Office of Appellate Defense. In an Order dated September 7, 2005, the South Carolina Supreme Court denied the Petition and granted counsel's request to withdraw. The Remittitur was sent on September 23, 2005.

Petitioner filed a third Application for post-conviction relief on September 1, 2006 (2006-CP-32-3178). Petitioner alleged he was being held unlawfully for the following reasons:

1. Ineffective Assistance of Counsel
 - a. Counsel's failure to submit evidence into courts, raise particular arguments and to follow-up on transcript.

The Honorable James W. Johnson issued a Conditional Order of Dismissal dated April 26, 2007 and filed May 3, 2007 finding the application successive and barred by the one-year

statute of limitations. By Final Order of Dismissal dated June 22, 2007, and filed June 27, 2007, Judge Johnson denied and dismissed the Application. Petitioner did not file a timely Notice of Appeal.

In his current application, Petitioner set forth the following basis for relief:

1. Newly Discovered Evidence – Discovered on March 17, 2011, that John C. Sharpe who signed arrest warrant as issuing Judge lacked the authority to do so.

This matter comes before the lower court by way of an Application for post-conviction relief filed March 6, 2012. Respondent made its Return dated June 12, 2012, requesting that the Application be summarily dismissed based on the statute of limitations, successiveness and laches. A hearing was convened on August 16, 2013, at the Lexington County Courthouse. Petitioner was present and represented by Tommy Thomas, Esq. and Tristan Shaffer, Esq. Following a hearing, the Court requested and received memoranda from the parties. This Court has before it the records of the Lexington County Clerk of Court, the guilty plea transcript, the Petitioner's records from the South Carolina Department of Corrections and the memoranda with attachments submitted by the parties.

The PCR Court found that the Petitioner had not established any constitutional violations or deprivation that would require the Court to grant the Application for Post-Conviction Relief and the Application was dismissed with prejudice.

ARGUMENT

The above case was presented before the Honorable Edgar W. Dickson originally as a Motion Hearing. The case was set to be heard on the State's Motion to Dismiss. (App. p. 34, line 3-10) However, the Court after hearing argument and receiving written argument, issued an order that addressed the merits of the Petitioner's claim. The Court denied the State's Motion for Summary Dismissal and addressed the merits of the Petitioner's claim. (App. p. 80).

Applicant asserts that his arrest for armed robbery was invalid based on a defective arrest warrant in that the man who signed the warrant, John Sharpe, was not properly a ministerial recorder in Cayce. Applicant asserts that he was prejudiced by this because after his arrest he confessed to the robbery.

Applicant contends that the individual who signed his arrest warrant for armed robbery, John Sharpe, lacked authority to sign the warrant based on failure to comply with the South Carolina Court Administration's annual continuing education requirements. Applicant attaches excerpts from the PCR hearing of Julius Irick Gilyard v. State of South Carolina (2001 -CP-32-3 154) in support of his allegation. (App. pp. 136-151 and pp. 153-165)

During hearings in the Gilyard case, Sharpe testified that he was a ministerial recorder in the town of Cayce. (App. p. 157, lines 3-12) For many purposes, ministerial recorders are afforded the same capacity as that of municipal judge. Sharpe testified that he assumed duties as a ministerial recorder in Cayce in 1977. (App. p. 157, lines 6-8) He was both a ministerial recorder and also the Clerk/Treasurer for the City of Cayce. (App. p. 138, lines 4-15) Sharpe stated that during the years in question he was not aware that educational requirements existed. (App. p. 139, lines 7-16) Sharpe did attend seminars but was unsure of the exact dates. He did

not report attendance at these seminars, unaware of the requirement to do so. (App. p. 158, lines 19-25 p. 159, lines 1-10)

During the Gilyard case, testimony was also taken from Mary Joyce Marshall, then a staff attorney with South Carolina Court Administration. Marshall reported that during 1998, ministerial recorders were required to have twelve hours of continuing education. Marshall stated that she had been unable to find any record of Sharpe. Marshall testified that reporting would not have been required until 2000 and most recorders did not report prior to 2000. (App. p. 141, lines 8-25, p. 142, lines 6-25, p. 143, lines 1-25, p. 144, lines 1-20)

The PCR Court found on the merits of the case that:

1. Mr. Sharpe properly signed the Petitioner's arrest warrant on September 1, 1998 and that no violation was established.
2. That there is no evidence to support Petitioner's claim that Sharpe was acting as an evidence custodian for the Police Department at the time of Petitioner's warrant.
3. That even if Petitioner's claim was successful that there is no evidence of prejudice.

Generally, officers may not arrest a suspect for a crime, not committed in their presence, without a warrant unless there is an exception to the warrant requirement. *See* S.C. Code § 23-13-60. Although an arrest warrant does not confer jurisdiction, due process requires that a "valid" warrant is necessary to initiate an arrest. *See Bayly v. State*, 397 S.C. 290, 296, 724 S.E.2d 182, 185 (2012) In all court with our pronouncement in *Gentry*, we find that neither a uniform traffic ticket nor and arrest warrant operates to confer subject matter jurisdiction to the magistrate court. *State v. Smalls*, 364 S.C. 343, 347, 613 S.E.2d 754, 756 (2005) ("Although an indictment does not confer subject matter jurisdiction, due process requires that a criminal defendant be properly

served with a valid indictment.”). The violation of due process can be grounds for granting PCR. S.C. Code § 17-27-20(a)(1).

The Petitioner contends that his rights were violated when he was arrested under an invalid warrant. That John Sharpe lacked the authority to issue the warrant. The basis of this argument is in an order dated May 3, 2004, where the Supreme Court required all municipal judges to complete 18 hours of legal education per year and report them to the office of Court Administration. Mr. Sharpe previously indicated that he was unaware of any continuing legal education requirement. (App. p. 139, lines 7-16) Furthermore, Court Administration had no record of Mr. Sharpe ever being a ministerial recorder. (App. p. 143, lines 4-11) Therefore, Mr. Sharpe would not qualify as a ministerial recorder and Petitioner’s armed robbery arrest warrant is invalid.

The Petitioner would further contend that during this time, Mr. Sharpe assisted law enforcement as custodian of all currency evidence that was seized by the Cayce Police Department. (App. p. 138, lines 11-14) This connection would defeat Mr. Sharpe’s “neutral and detached” status. *See Shadwick v. City of Tampa*, 407 U.S. 345, 92 S.Ct. 2119 (1972) (“Whatever else neutrality and detachment might entail, it is clear that they require severance and disengagement from activities of law enforcement.”). Therefore, Mr. Sharpe would not be able to sign an arrest warrant even if he was properly serving as a ministerial recorder.

Lastly, the Petitioner would argue that he was prejudiced by this invalid arrest because of the evidence the police obtained after arresting him. According to trial counsel, after he was arrested under the invalid search warrant he confessed to the robbery. (App. p. 24, lines 10-12 and App. p. 44, lines 5-7). The Supreme Court has held that evidence obtained as a result of an

unconstitutional arrest is fruit of the poisonous tree and therefore admissible at trial. *See State v. Boswell*, 391 S.C. 592, 707 S.E.2d 265 (2011) (holding that a criminal defendant's confession was inadmissible when it was a product of an unlawful arrest.). Therefore Petitioner was prejudiced by the unlawful arrest.

Additionally, Petitioner was prejudiced by his subsequent arrest because it was the reason applicant lost his "very good" plea offer. (App. p. 40, lines 5-25; p. 41, lines 22-24). Prior to the arm robbery, Petitioner was supposed to plead guilty with a very good plea offer. However, after the invalid arrest for armed robbery his trial counsel had to "start the plea negotiations all over again." Petitioner asserts that had he not been arrested under the invalid warrant, he would have been able to plea under a more favorable recommendation. (App. p. 47, lines 5-10)

Petitioner's claim is based on evidence that would invalidate his arrest warrant.

In 1980, the Legislature enacted S.C. Code §14-25-115, allowing a city council to appoint "one or more full-time or part-time ministerial recorders, who shall hold office at the pleasure of the counsel." Ministerial recorders powers include the issuance of arrest warrants:

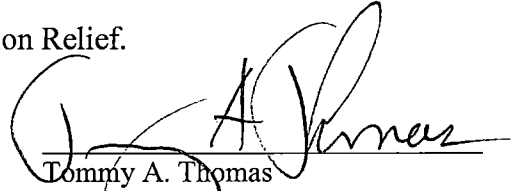
Ministerial Recorders must:

1. Take and subscribe the oath of office §14-25-15; and
2. Meet the educational requirements pursuant to the South Carolina Supreme Court Order 1994-05-02-01 effective January 1, 1995.

Clearly in this case John Sharp lacked the authority to issue the warrant in question. That the Petitioner was prejudiced by issue of an invalid warrant.

CONCLUSION

Therefore, based upon the foregoing arguments the Petitioner respectfully requests that the Court grant the Petitioner's request for Post-Conviction Relief.



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August 31, 2015

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Case No.: 2012-CP-32-1046

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S.C. Supreme Court

Alwin Jones #260800Petitioner,

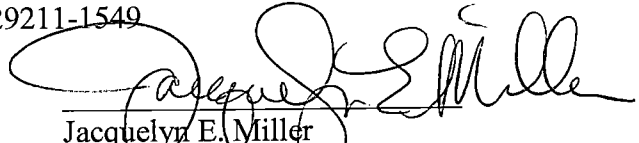
vs.

State of South CarolinaRespondent.

CERTIFICATE OF SERVICE BY MAIL

I, Jacquelyn E. Miller, Secretary to Tommy A. Thomas, Attorney for the
Petitioner, hereby certify that I placed in the United States Mail, a copy of a the Petitioner
for Writ of Certiorari and Appendix with postage prepaid, and the return address clearly
shown on said envelope to Mary Williams, Esq. with the Office of the Attorney General
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