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Court of Appeals

STATE of South Carolina
In the Court of Appeals

Appeal from Fairfield County
R. Knox Maddox, Circuit Court Judge

In the Matter of the Care and Treatment of Larry Hendricks,

Appellant.

Appellant Case No.: 2014-000295

APPELLANT'S PRO-SE MEMORANDUM

The Appellant, Larry Edward Hendricks, after being Granted a MOTION TO EXPAND RECORD on April 20, 2015, had 30 days to file his pro-se response To Appellate Counsel's Ander's Brief, after receiving The Supplemental Record on Appeal on April 26, 2015. The Appellant in filing This responsive Memorandum has Standing in which To have this appeal GRANTED.

First, it is the Appellant's understanding that any motion or objection raised at trial, or pre-Trial, is open To this appellate panel's review. Hagood v. Sommerville, 362 S.C. 191, 194, 607 SE2d 707, 708 (2005). The Ander's Brief (hereafter "Anders")

does not contain the elements necessary To Support its argument. It does not cite established precedent or even the verbage used in the motions ruled upon by The Honorable Judge Maddox in open court.

The Appellant stood before the Court and attempted to argue That The standards of subject matter jurisdiction, seperation of powers, and traditional due process by a failure To prosecute, had been violated. Appellant had filed a Motion To Dismiss Counsel before filing any pro-se motion. Upon hearing, The precedent That The motions stood upon, The Court denied The Three motions To Dismiss. The Appellant herein will illustrate why Those decisions were erroneous based on The precedent presented herein.

Because Appellant Counsel's Anders asked essentially The question; whether The Trial Court erred by filing The Petition in the Wrong county, denying The Court jurisdiction, The Appellant's Memorandum will start There.

Appelkant counsel's argument as presented is voided of any established precedent, as indicated in The Supplemental Record on Appeal, (hereafter "Supp. ROA") page 17, because There Was no saving clause or confirming amendment

To Act 255, the qualifying Act of Lewd Act upon a minor could not be used to establish jurisdiction. Chem-nuclear Systems, LLC v. S.C. Board of Health and Env'l Control, 374 S.C. 201, 648 SE2d 601 (SC 2007). That case clearly illustrated what options were available after an act by the legislature had changed the status of a statute. It specifically explained the use of either a saving clause or confirming Amendment. 374 S.C. 205.

As described on pages 5 and 6 of the Anders, S.C. Code of Law §16-15-140 had been repealed. The effective date of the repeal of Act 255 was June 12, 2012. The Confirming Amendment in this Act do not include any language regarding §44-48-10 et seq. By the attorney general filing his Petition after the effective date, in Fairfield County, jurisdiction over the subject matter could not be obtained. Skinner v. Westinghouse, 688 SE2d 795 (SC 2008). Subject Matter jurisdiction is a question of law for a court. Hammer v. Hammer, 730 SE 2d 874 (Ct App. '12).

The State's Attorney admitts there is no saving clause. ROA 21, ll 6-7. The Appellant's Motion To Dismiss, pp. 15-17, should have been granted based on established precedent. The mandatory language utilized in S.C. Code

§44-48-50 is very specific. A qualifying offense must come from the list of offenses available at the time the petition was filed. Lewd Act upon a minor is not incorporated in the list of qualifying offenses based on the ratifying of the Act. See: Section 11, pages 27-29 of Act 255 of 2012.

The Repeal of §16-15-140 in Act 255 of 2012 at Pg. 30-31 does not include a confirming Amendment, only a saving clause that does not cover the necessary components to give the Commitment Court jurisdiction. The Rules of Statutory Construction and legislative intent clearly comes into play to reenforce the Appellant's argument. Gay v. Arial, 673 SE2d 418 (SC 2009).

As such the Appellant believes the trial Court erred and should have Granted the Motion to Dismiss based on Rule 12(b)(1) and 41(b) of the South Carolina Rules of Civil Procedure. Because the Appellant's Due Process rights were violated the Dismissal should be with prejudice.

Next, the Appellant believes the Trial Court erred when it did not grant the Appellant's Motion to Dismiss based on Failure to Prosecute.

The Appellant relies on the Precedent established by this State's Supreme Court in The Matter and

Care of Miller, 713 SE2d 263 (SC 2011). The Appellant had filed a Motion To Show Cause, Supp. ROA pages 11-13, on November 1, 2013. In that Motion the Appellant brought forth that there were ex-parte Communications occurring That were not being filed with The Court.

For both the March 14, 2013 and May 28, 2013, orders There were no corresponding Motions or requests filed with the clerk of Court for Fairfield County. The Appellant there argued That his right To procedural due process was violated by The ex parte communications. Kurshner v. City of Camden et al, 656 SE2d 346 (SC 2008). Rules of Civil Procedures dictate for a Continuance To be held a motion or request must be filed and parties served. Neither happened.

As such the Rules set by precedent and Statute That "within ninety days of the date the Court appointed expert issued The [psych] evaluation ..." S.C. Code §44-48-90(B); In The Care + Treatment of Matthews, 550 SE2d 311 (2001), was clearly violated. The statute created a right which was violated in defiance of Article 1, §3 of The S.C. Constitution. This State created right To be prosecuted within The statutory Time limit cannot be arbitrarily abrogated. Wolff v. McDonnell, 418 U.S. 539 (1974); Sandin v. Conner, 515 U.S. 472, 483-484 (1995).

This issue was argued before the trial court, ROA p. 22, L. 20 to P. 29, L. 9. The Court admitted it did not have corresponding paperwork regarding the Continuances but assumed, rather than question whether this violated the Appellant's procedural due process.

Because there is a liberty issue involved the Appellant's Motion to Dismiss should have been Granted because he was prejudiced by the actions of the Respondent. Miller specifically clarified Matthews and that is the precedent the Court should have followed. Miller at 713 SE2d 266.

As such the Plaintiff believes the decision of the Trial court should be reversed and the Appellant's Motion be Granted with prejudice.

Finally the Appellant brings a novel argument to the Appellate Court. The Appellant filed a Motion to Dismiss, Supp. ROA pp 4-7, October 30, 2013, that challenged whether the enforcement of §44-48-10 et seq violated the Seperation of Powers Act, Article 1, §8 of the S.C. Constitution.

The argument was address in the ROA at P. 29, L. 10 to p. 33, L. 5. It is the Appellant's position that the Trial court erred in not making a declaratory judgment to the question whether the Taking of what the judicial interpreted as a non-violent offense and the legislature altering its standing later to violent, to make a qualifying

offense for the sexual violent predator act, violated the seperation of powers act. The Trial Court relied on State v. Langford, 735 SE2d 471 (2012), instead of McConnell v. Haley, 711 SE2d 886 (2011), and The State's Constitution to garner its Conclusion.

The Article of the Constitution clearly states, "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." Id.

The determination of an offense is declared at the time of its occurrence. The judge at sentencing makes all final declarations of the classification of the offense. Hill v. U.S. ex rel. Wampler, 298 U.S. 460 (1936); Jones v. Cunningham, 370 U.S. 236, 240-243 (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). As such, 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 and argue the Appellant's previous offenses to be a classification that they were not at the time the Appellant appeared before the judicial branch by mandating the reopening, for civil purpose, what was criminal, to satisfy a legislative requirement to have the Executive Branch institute proceedings to commit the Appellant.

The fact is this, if at the time that the Appellant commit his offenses, if they were violent, they would be listed in the S.C. Code at §16-1-60 (1992). None of the Appellant's conviction had ever been classified as violent, at the time of the offense, in a statutory code. Any attempt by a later legislative act to change that classification violates both the Appellant's right to Due Process, Seperation of Powers doctrine, and possibly the ex posto facto clause.

It is a 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 trial court should have based its decision on the precedent cited in the Motion

To Dismiss. Fidelity to precedent is "vital to the proper exercise of the judicial function . . . [and] is the preferred course because it promotes the even handed, predictable, and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual perceived integrity of the judicial process." Citizen United v. Fed. Election Comm., 130 S.Ct. 876 (2010), quoting Payne v. Tenn., 111 S.Ct. 2597 (1991).

The U.S. Supreme Court when presented a similar situation in essence said, the General Assembly may not overturn a final judgment at law by legislature mandate. Plaut v. Spendthrift Farm, Inc., 514 U.S. 211, 115 S.Ct. 1447 (1995). The Change of the offense type from non-violent to violent is not a collateral consequence but an 'infringement' upon the Appellant's Constitutional Rights.

Because the trial court failed to declare whether the adjustment of a classification from non-violent to violent violated The Seperation of Powers Act as established Through a long line of precedent, the Motion to Dismiss should be Granted and the Petition filed on September 4, 2012, be Dismissed with prejudice. Gressette v. SCE+G, 635 SE2d 538 (SC 2006). At a

minimum a Declaratory Judgment should be entered clearly defining The question posed, with appropriate Relief ordered.

CONCLUSION

Based on the aforementioned Arguments, and Controlling precedent, the Appellant believes that To ensure fidelity in The judicial, The Anders Brief should be looked upon with The substance of This Pro-se Memorandum To Come to The Conclusion That The Order of Commitment Should be Vacated with Prejudice and The Appellant Subsequently be Released.

THIS THE APPELLANT HUMBLY PRAYS!

Respectfully Submitted,

Larry Edward Hendricks

Larry Edwards Hendricks
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This 19th day of MAY, 2015

Larry Edward Hendricks
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MAY 19, 2015

Re: Hendricks v. State, Appellant Case #2014-000205.

Dear Sir or Madam,

Please find enclosed for filing The Appellant's Pro-Se Memorandum, in response To The Appellate Defense's filing of an Anders Brief.

The Appellant is sending a Copy of The Memorandum To both The State's attorney along with The Div. of Appellate Defense.

It is The Appellant's pray That deep Consideration is Taken To The Issues raised within The Memorandum, and appreciate your serious attention To my Issues.

Sincerely,

Larry Hendricks

CC: Laura R. Baer
Deb. R. Shupe
File

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