

STATE of SOUTH CAROLINA
IN THE COURT of APPEALS.

RECEIVED

JAN 25 2016

SC Court of Appeals

APPEAL FROM EDGEFIELD COUNTY
FRANK ADDY, JR. CIRCUIT COURT JUDGE

THE STATE,

RESPONDENT.

v.

SHERLOCK WELFALL

APPELLANT.

PRO-SE BRIEF of APPELLANT

PRO-SE, WITELANT

SHERLOCK WELFALL #90323

MC CONNOR CONSTRUCTION INST.

386-REDEMPTION MAY 7-1-3

STATEMENT OF ISSUES ON APPEAL

1. APPELLANT WAS NEVER WAIVED OVER FROM A JUVENILE TO ADULT.
2. APPELLANT WAS NEVER APPOINTED TWO (2) ATTORNEYS AS BY LAW; PURSUANT TO SECTION - 16-3-26
3. APPELLANT WAS NOT AFFORD, A HEARING ON FITNESS TO STAND TRIAL. PURSUANT TO § 44-23-430
4. APPELLANT WAS NOT AFFORD, A PRELIMINARY EXAMINATION.

ISSUE - 1

APPELLANT WAS NEVER WAIVED OVER FROM A JUVENILE TO ADULT.

ARGUMENT - 1

APPELLANT HAS A FUNDAMENTAL RIGHT TO BE WAIVED OVER FROM A JUVENILE TO A ADULT. THIS NEVER HAPPEN IN NOVEMBER, 1977

APPELLANT PLEAD GUILTY, IN FEBRUARY, 1978 WITHOUT BEING WAIVED OVER FROM JUVENILE COURT.

APPELLATE WAS (16) WHEN HE WAS ARRESTED AND CHARGED WITH MURDER AND ARM ROBBERY.

ON Nov-11-1977 THERE WASNT A EVIDENTIARY HEARING, TO DETERMINE WHETHER APPELLATE SHOULD BE TRIED AS A JUVENILE IN THE JURISDICTION OF THE FAMILY COURT OR BE BOUND OVER TO COURT OF GENERAL SESSION AND BE TRIED AS AN ADULT.

THERE IS NO ORDER SIGNED BY A HONORABLE JUDGE, IN 1977 FOUND, THAT BASED ON MENTAL EVALUATION AND TESTIMONY AT THE EVIDENTIARY HEARING, THAT PLAINTIFF SHOULD BE TRIED IN THE COURT OF GENERAL SESSIONS AS AN ADULT.

DESPITE NUMEROUS ATTEMPTS NEITHER RECORDS NOR TRANSCRIPTS OF THAT HEARING HAVE EVER BEEN AVAILABLE TO THE APPELLANT, APPELLANT'S PAST COUNSEL (GUILTY PLEA) ANY REVEALING JUDGE, OR THE SOUTH CAROLINA SUPREME COURT.

APPELLANT CONTENDS THAT THE ORDER ENTERED BY HONORABLE JUDGE, W. FRANK ROGERS, JR. ON NOV-11-1977 IS NULL AND VOID DUE TO THE BASES OF THE ORDER IS BASED ON HEARSAY SINCE THERE ARE NO EVIDENCE OF ANY TESTIMONY AT ANY HEARING.

SOUTH CAROLINA CODE OF LAWS § 14-5-10 STATES:

COURTS "SHALL" BE COURTS OF RECORD; PUBLIC INSPECTION OF RECORDS. THE GRACUO COURTS HERETAL ESTABLISHED SHALL BE COURTS OF RECORDS, AND THE BOOKS OF RECORD THEREOF SHALL, AT ALL TIMES, BE SUBJECT TO THE INSPECTION OF ANY PERSON INTERESTED THEREIN.

APPELLANT WAS AND STILL REQUIRED BY THE SOUTH CAROLINA CODE OF LAWS § 14-5-10 TO ALL TIMES, HAVE ALL DOCUMENTS FROM THE APPELLANT'S COURT PROCEEDINGS.

THE APPELLANT'S DUE PROCESS RIGHTS, PROTECTED BY THE SIXTH AND FOURTEENTH AMENDMENTS, WERE VIOLATED IN HIS WAIVER HEARING FROM THE FAMILY COURT TO THE GENERAL SESSIONS.

APPELLANT TRANSCRIPTS HAVE BEEN MISSING FROM DAY ONE.

THE UNITED STATES DISTRICT COURT, D. SOUTH CAROLINA COLUMBIA DIVISION HAS SPOKEN VERY CLEARLY IN A CASE IDENTICAL TO THIS ONE PATTON V. TOY, 867 F. Supp. 356 (1994). DISTRICT COURT JUDGE GLATT IN HIS ORDER THAT:

"APPLICATIONS OF GAULT, 387 U.S. 1, 30; 87 S.Ct. 1428, 1445, 18 L. Ed. 2d 527 (1967) QUOTING FROM KENT V. UNITED STATES, 383 U.S. 541, 560-62 86 S.Ct. 1045, 1057, 16 L. Ed. 2d 84 (1966) STATES: JUVENILE WAIVER HEARING MUST MEASURE UP TO THE ESSENTIALS OF DUE PROCESS AND FAIR TREATMENT.

KENT AND GAULT MAKE IT UNQUESTIONABLY CLEAR THAT JUVENILE COURT PROCEEDINGS THAT AFFECT A YOUNG PERSON'S SUBSTANTIAL RIGHTS MUST MEASURE UP TO THE ESSENTIALS OF DUE PROCESS AND FAIR TREATMENT. KEMPLEN V. MARYLAND, 428 F.2d 169, 172 (4th Cir. 1970)."

THE JUDGE _____ FURTHER STATES IN HIS ORDER.

"THE STATEMENT OF REASONS MUST DEMONSTRATE THAT THE STATUTORY REQUIREMENT OF A FULL INVESTIGATION" HAS BEEN MET AND MUST SET FORTH THE BASIS OF THE ORDER WITH SUFFICIENT SPECIFICITY. THE STATEMENT MUST SHOW THAT THE QUESTION RECEIVED CAREFUL CONSIDERATION FROM THE FAMILY COURT. UPON REVIEW OF THE SPARSE TRANSCRIPT OF THE HEARING AND THE GENERAL NATURE OF THE JUDGE'S ORDER HERE, THIS COURT FINDS THAT THE RECORDS DOES NOT REVEAL THAT THE FAMILY COURT CAREFULLY CONSIDERED THE MATTER. . . . IT IS NOT SUFFICIENT FOR A JUDGE MERELY TO STATE, IN SUCH A CRITICAL ORDER, THAT HE OR SHE FINDS FROM THE RECORD AND ALL THE TESTIMONY THAT A CHILD CANNOT BE REHABILITATED. THE ORDER MUST SET FORTH VERY SPECIFIC REASONS WHY THE JUDGE FEELS THAT A CHILD CANNOT BE REHABILITATED, AT LEAST SUFFICIENTLY SPECIFIC FOR A REVIEWING COURT TO UNDERTAKE A MEANINGFUL REVIEW.

THE APPELLANT CONTENDS THAT DUE TO THE STATE'S LACK OF PERFORMING THEIR STATUTORILY DEFINED DUTIES, THE ERROR OF LAW CAN ONLY BE CLASSIFIED AS MONUMENTAL: IN KEMPLEN VS. MARYLAND, 428 F.2d 169, THE COURT FINDS THE FOLLOWING:

" JUVENILE COURT PROCEEDINGS THAT AFFECTS A YOUNG PERSON'S SUBSTANTIAL RIGHTS, MUST MEASURE UP TO ESSENTIALS OF DUE PROCESS AND FAIR TREATMENT IN SAME MANNER AS MOST CRIMINAL PROCEEDINGS AFFECTING SUBSTANTIAL RIGHTS OF ADULTS.

AGAIN, JUVENILE WAIVER PROCEEDING "MUST" BE VIEWED AS MONUMENTAL IN ANY CASE OF A JUVENILE.
S.C. CODE § 14-21-560

IN THE CASE OF DAVID ALLEN MOORE V. COMMONWEALTH OF VIRGINIA, 527 SE 2d 406 (U.A. 2000),
WE FIND THIS

" A COURT AUTHORITY TO EXERCISE ITS SUBJECT MATTER JURISDICTION OVER A CASE MAY BE RESTRICTED BY A FAILURE TO COMPLY WITH STATUTORY REQUIREMENTS THAT ARE MANDATORY IN NATURE AND, THUS ARE PRE-REQUISITE TO A COURT'S lawful EXERCISE OF THAT JURISDICTION.

THE APPELLATE CONTENDS THAT HE WAS NEVER PROPERLY BOUND OVER TO THE COURT OF GENERAL SESSION, FROM FAMILY COURT, WHERE THE CASE ORIGINALLY BEGAN.

APPELLATE WAS 16-YEARS OLD AT THE TIME OF CRIME.
HE WAS — YEARS OLD WHEN HE WAS SENTENCED. THE LAW
IS CLEAR ON THE WAIVER ISSUE. CLEAR AND PRECISE.

PATTON V. TOY CITE AS 867 F. Supp. 356
D.S.C. 1994

HABEAS CORPUS - 798

ISSUE - 2

APPELLANT WAS NEVER APPOINTED TR(6) (A) ATTORNEY'S AS REQUIRED BY LAWS, PURSUANT TO SECTION - 16-3-26

ARGUMENT - 2

APPELLANT CONTENDS THAT HE "SHOULD NOT" HAVE BEEN DENIED AT HIS STATE HABEAS CORPUS, HEARING ON MARCH 18TH 2015 AT THE EDGEFIELD COUNTY COURTHOUSE. APPOINTMENT OF COUNSEL TR. P. 4. LINE 1-7

APPELLANT HAD A CONSTITUTIONAL RIGHT TO BE APPOINTED COUNSEL. U.S. AND SC. CONSTITUTION. GIDEON V. WAINWRIGHT, 372 U.S. 335.

TR. P. 7. LINE - 14-18

MARSTON V. OBEVEL, 324 F. Supp. 691 (1971)

SILAZO V. WYO DEPT of CORR STATE PERC. WAINWRIGHT, 23 F. 3^d 332

APPELLANT CONTENDS THAT THE LAWS, SC. CODE ANN. 16-3-26 (B) 1996 PROVIDES:

WHENEVER ANY PERSON IS CHARGED WITH
MURDER AND THE DEATH PENALTY IS SOUGHT
THE COURT, UPON DETERMINING THAT SUCH PERSON
IS UNABLE FINANCIALLY TO RETAIN ADEQUATE
LEGAL COUNSEL, (SHALL) APPOINT TWO ATTORNEYS
TO DEFEND SUCH PERSON IN THE TRIAL OF THE
ACTION ONE OF THE ATTORNEYS SO APPOINTED

"SHALL"

HAVE AT LEAST THREE YEARS EXPERIENCE IN THE
ACTUAL TRIAL OF FELONY CASE, AND ONLY ONE
OF THE ATTORNEYS SO APPOINTED SHALL BE PUBLIC
DEFENDER OR A MEMBER OF HIS STAFF.

TR. Pg. 7. LINES. 1-6

STATE V. DIDDLEMEYER, CITE AS 371 SE 2d 793

(SC. 1988)

DAVIS V. STEVENS, CITE AS 326 F. Supp. 1182 (1971)

THE NOTICE OF INTENTION TO SEEK DEATH PENALTY,
WAS DATE: JANUARY 5TH 1978, GUILTY PLEA WAS
ON FEBRUARY 7TH 1978. THIRTY TWO (32) DAYS LATER.

MR HEARY HEALONG JR., WAS COURT APPOINTED NOVEMBER
10TH 1977 AT 3:15 P.M.

BY DEFENSE OF INDELBENTS ACT. SEE EDGEFIELD
CLERK'S OFFICE.

ISSUE-3

APPELLANT WAS NOT AFFORD, A HEARING ON FITNESS TO
STAND TRIAL. PURSUANT TO § 44-23-430

ARGUMENT-3

APPELLANT "WAS NOT" AFFORD A HEARING AS REQUIRE BY LAW
UNDER SOUTH CAROLINA CODE OF LAWS, SECTION 44-23-430,
HEARING ON FITNESS TO STAND TRIAL; EFFECT OF OUTCOME.

TR. Pg. 6 LINES 15-19

SEE SECTION - 44-23-430.

WHICH STATES,

UPON RECEIVING THE REPORT OF THE DESIGNATED EXAMINERS THE COURT "SHALL" SET A DATE FOR AND NOTIFY THE PERSON AND HIS COUNSEL OF A HEARING ON THE ISSUE OF HIS FITNESS TO STAND TRIAL.

ADDITIONAL, SUPERINTENDENT - KARL V. DOSKOCEL, M.D. RESPECTFULLY REQUEST AN EXTENSION OF FIFTEEN (15) DAYS IN WHICH TO COMPLETE OUR EXAMINATIONS.

BUT "WAS NOT" AFFORD EXTENSIONS, AS REQUIRE BY 44-23-410 REQUEST, BY APPELLANT'S MEDICAL STAFF, AND M.D.

THEREFORE APPELLANT "WAS NOT" AFFORD A COMPLETE EXAMINATION.

IF APPELLANT "WAS NOT" AFFORD, A COMPLETE EXAMINATION. THE COURT DIDN'T HAVE JURISDICTION TO EXCEPT HIS PLEA.

STATE V. BUCHANAN, (S.C. APP. 1990) 302 S.C. 83, 394 SE2D 1.

ISSUE 4

APPELLANT WAS NOT AFFORD, A PRELIMINARY EXAMINATION.

ARGUMENT-4

APPELLANT "WAS NOT" AFFORD, A PRELIMINARY EXAMINATION. THE

NOTICE TO CLERK OF COURT

AND

SUBJECTOR OF JUDICIAL CIRCUIT

SIGNED BY THE HON. JUDGE.

WITHOUT STATE'S, THE SUBJECTOR OF JUDICIAL CIRCUIT IS REQUESTED TO TAKE NOTICE THAT THE DEMAND FOR A PRELIMINARY EXAMINATION HAS BEEN GRANTED AND THAT THE CASE "SHOULD NOT" BE SUBMITTED TO THE GRAND JURY UNTIL THE PRELIMINARY EXAMINATION HAS BEEN HELD.

DATE: 1-11-78

THE HEARING WAS SCHEDULED FOR, JANUARY-19-1978 AT 2:00 PM.

THE PRELIMINARY EXAMINATION "WAS NOT"
CONDUCTED, AS ORDER BY THE HON. JUDGE
WHEAT STATES, A PRELIMINARY EXAMINATION HAS
BEEN GRANTED, AND THAT THE CASE "SHOULD NOT"
BE SUBMITTED TO GRAND JURY, UNTIL THE
PRELIMINARY EXAMINATION HAS BEEN HELD.

SEE: STATE V. FUNDER BURK, CITE AS 191 SE2 520
No. 19480

APPELLANT WAS CONVEYED BEFORE THE COURT OF GENERAL
SESSIONS OF EDGEFIELD COUNTY, BY GEORGE B. FIMMERMAN,
PRESIDENT JUDGE, OF MURDER AND ARM ROBBERY.

THE SUPREME COURT, SUSSEY, J. HELD THAT WHERE DEMAND
FOR PRELIMINARY HEARING, FOLLOWING ARREST ON TULO WARRANT
ISSUED BY MAGISTRATE JUDGE, CHARGING OFFENSES OF
MURDER AND ARM ROBBERY, WAS MADE TEN DAYS BEFORE
CONVENING OF NEXT TERM OF COURT OF GENERAL SESSION,
BUT SUCH HEARING WAS "NEVER" HELD. THE INDICTMENT
WAS SUBMITTED TO GRAND JURY AND TRUE BILL AND
RETURNED. THE COURT WAS WITHOUT JURISDICTION, AND
THE JURISDICTION OF THE GRAND JURY, BEING EXTENSIVE
WITH THE CRIMINAL JURISDICTION OF THE COURT.

THE INDICTMENT WAS, A NULLITY AND CONVICTION AND SEATEACE, IS REQUIRED TO BE VACATED.

SEE: NOTICE TO CLERK OF COURT AND SUPERIOR OF JUDICIAL CIRCUIT.

INDICTMENT - 78-125-19-56

TR. Pg. 5. LINES 2-5

TR. Pg. 6. LINES 7-9

TR. Pg. 6. LINES 10-12

TR. Pg. 7. LINES 7-8

TR. Pg. 8. LINES 4-8

TR. Pg. 8. LINES 8-11

APPELLANT CONSTITUTIONAL DUE PROCESS RIGHTS, HAS BEEN VIOLATED. 4TH 5TH 6TH 8TH AND 14TH STATE AND FEDERAL CONSTITUTIONAL DUE PROCESS RIGHTS.

McCall V. STATE, (1965) 247 SC 15, 145 SE2D 419.

THE ONLY REMEDY WHICH CAN BE GRANTED ON STATE HABEAS CORPUS IS RELEASE FROM CUSTODY.

CONCLUSION.

APPROPRIATE REMEDY UNDER (A) CIRCUMSTANCES OF CASE
IS TO ORDER OF RELEASE.

RESPECTFULLY SUBMITTED,

4 Shedrick Wiggfall

SWORN TO AND SUBSCRIBED BEFORE ME

THIS 21st day of January, 2016

Jeremy G. Mator

NOTARY PUBLIC FOR SOUTH CAROLINA

MY COMMISSION EXPIRES: Feb 28, 2018

Sheela K. Kitchens, 90323

386-REDEMPTION WAY

McCormick County, GA

McCormick, SC 29899

JANUARY 22 2016

RECEIVED

JAN 25 2016

SC Court of Appeals

RE: BRIEF.

DEAR HON. KITCHENS

ENCLOSED IS A COPY OF PRO-SE BRIEF OF APPELLANT,
PLEASE STAMP CLOCK IN FILE, AND SERVE BACK TO ME.

SINCERELY,

Sheela Kitchens

cc: file

COURTNEY EDWARDS LOWELL, ESQUIRE.

BRIEK K. HIGGINS, # 90323
REDEMPTION INQUIRY
SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
COLUMBIA, SOUTH CAROLINA, 29899



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SC Court of Appeals
JENNY ABBOTT KETCHINGS, CLERK
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