THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM EDGEFIELD COUNTY

Frank R. Addy, Jr., Circuit Court Judge

Appellate Case No. 2015-001190

Shedrick Wigfall, ...Appellant,

v.

The State of South Carolina, ...Respondent.

INITIAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

I. Did the Circuit Court err by granting the Respondent's motion to dismiss when it lacked subject matter jurisdiction and the Appellant failed to state facts sufficient to constitute a cause of action?

STATEMENT OF THE CASE

Appellant filed for Writ of Mandamus and for Appointment of Counsel on or about August 6, 2014 alleging that (1) he was denied his Sixth and Fourteenth Amendment rights because the Court failed to follow requirements of S.C. Code Ann. Section 16-3-26 and provide Appellant with adequate representation; (2) a preliminary hearing was not held prior to the grand jury issuing the indictment; and, (3) there was no hearing on his fitness to stand trial. (Compl., R. p.__.) Through this action, Appellant sought to be released from custody and to have his 1977 armed robbery and murder convictions vacated.

On December 12, 2014, Defendant State of South Carolina filed a Motion to Dismiss the Complaint. (Mot., R. p. __.). On December 22, 2014, Appellant filed a Reply to Respondent's Motion to Dismiss. Respondent's Motion to Dismiss was heard on Wednesday, March 18, 2015.

By an Order filed on March 19, 2015, the Circuit Court ruled that the Appellant's action was a collateral attack on his sentence. The action was barred by the statute of limitations and was completely lacking in merit, and was nothing more than an attempt to circumvent the well-established procedures for challenging a conviction or sentence by direct appeal or post-conviction relief. (March 19, 2015 Order, R. p. __.) Additionally, Appellant failed to state facts sufficient to constitute a cause of action. (March 19, 2015 Order, R. p. __.) On September 18 2014, the Appellant filed a Motion for Rehearing, which Respondent interpreted as a Motion to Alter or Amend Judgment under Rule 59(e), SCRCP. (Mot. To Alter or Amend, R. p. __.) On April 6, 2015, Respondent filed a Response in Opposition (Resp. in Opp., R. p. __). On July 23, 2015, the Circuit Court

denied the Appellant's Motion to Alter or Amend the Judgment. (July 23, 2015 Order, R. p. __.) Appellant filed the Notice of Appeal on June 3, 2015.[1]

[1] Appellant filed the Notice of Appeal with the South Carolina Supreme Court. The appeal was transferred to the South Carolina Court of Appeals on June 4, 2015.

STATEMENT OF THE FACTS

Appellant is a prisoner in the custody of the South Carolina Department of Corrections. (Mot., R. p.__.) On or about November 9, 1977, the Appellant, along with two other individuals, entered a grocery store and, during the commission of armed robbery, committed murder. (Mot., R. p.__.)

On November 11, 1977, an "Affidavit and Request for Waiver" and "Motion for Waiver" was filed to have the Appellant's case transferred to the Court of General Sessions. (Mot., R. p.__.) The Court issued an order waiving the jurisdiction of the Family Court and allowing the Court of General Sessions to assume jurisdiction over the Appellant's case. (Mot., R. p.__.) On November 16, 1977, Appellant was admitted to the hospital to determine his capacity to stand trial pursuant to Section 32-977 (1962). (Mot., R. p.__.) On December 1, 1977, the Court ordered bail be set at One Hundred Thousand Dollars ($100,000) and acknowledged that Appellant was committed to the state hospital for a fifteen (15) day observation period. (Mot., R. p.__.) In Dr. Doskocil's Report of Finding he found that Appellant was ***not mentally ill***, that he was capable of understanding the nature of the charges, and able to assist counsel in his own defense. (Mot., R. p.__.) Dr. Doskocil recommended that Appellant be returned to the jurisdiction of the court. (Mot., R. p.__.)

On January 11, 1978 the Court demanded a preliminary examination in writing and at least ten (10) days before the convening of the next Court of General Sessions with regard to the Appellant's charges of murder and armed robbery. (Mot., R. p.__.) Also, the Court stated the case should not be submitted to the grand jury until the ***preliminary examination*** has been held which should take place on January 19, 1978. (Mot., R. p.__.)

Appellant was indicted on February 6, 1978 for armed robbery and murder. (Mot., R. p.__.) On or about February 7, 1978, Appellant pleaded guilty and was sentenced to life for murder and twenty-five (25) years for armed robbery, both sentences to run concurrently. (Mot., R. p.__.) Appellant filed a Post-Conviction Relief ("PCR") Application on November 21, 1990 and a hearing was held on July 15, 1991. (Mot., R. p.__.) At the PCR hearing, the Appellant informed the Court that the Appellant wished to withdraw his PCR Application. (Mot., R. p.__.)

SUMMARY OF ARGUMENT

The Circuit Court lacked subject-matter jurisdiction and did not err in granting Respondent's motion to dismiss because the nature of Appellant's action was not a Writ of Mandamus, but a collateral attack of his conviction under § 17-27-20(A). Moreover, Appellant was not entitled to the assistance of counsel because this was not a criminal proceeding and he failed to state facts sufficient to constitute a cause of action requiring dismissal pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

ARGUMENT

When reviewing a motion to dismiss for failure to state facts sufficient to constitute a cause of action, the pleadings must be construed liberally, and all well pled facts must be presumed true. *Charleston County School Dist. v. Harrell,* 393 S.C. 552, 557, 713 S.E.2d 604, 607 (2011). However, the interpretation of a judgment is a question of law for the court. 46 Am.Jur.2d Judgments § 73. Questions of law are reviewed *de novo. Town of Summerville v. City of North Charleston,* 378 S.C. 107, 110, 662 S.E.2d 40, 41 (2008).

I. THE CIRCUIT COURT LACKED SUBJECT MATTER JURISDICTION.

The Circuit Court correctly held that it lacked subject matter jurisdiction over this action because it is an improper collateral attack challenging the validity of Appellant's conviction and sentence. Lack of subject matter jurisdiction can be raised at any time, can be raised for the first time on appeal, and can be raised *sua sponte* by the court. *State v. Guthrie,* 352 S.C. 103, 107, 572 S.E.2d 309, 311–12 (Ct. App. 2002) (citing *State v. Brown,* 351 S.C. 522, 570 S.E.2d 559 (Ct. App. 2002)). Furthermore, lack of subject matter jurisdiction may not be waived, even by consent of the parties. *Id.* (citing *State v. Brown*, 343 S.C. 342, 346, 540 S.E.2d 846, 848 (2001)). "The acts of a court with respect to a matter as to which it has no jurisdiction are void." *Id.*

"The character of an action is not necessarily determined by such recitation in the pleadings. Rather, it is the nature of the issues and the remedies which are sought that is determinative." *South Carolina v. Yelsen Land Co.*, 257 S.C. 401, 403, 185 S.E.2d 897, 898 (1972).

"PCR is a proper avenue of relief *only when the applicant mounts a collateral attack challenging the validity of his conviction or sentence* as authorized by Section 17–27–20(a)." *Al-Shabazz v. State*, 338 S.C. 354, 367, 527 S.E.2d 742, 749 (2000) (emphasis in original). A PCR application filed pursuant to S.C. Code Ann. § 17-27-45(A) (2013), must be filed within one (1) year after the entry of a judgment of conviction or within one (1) year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later. All applicants are entitled to a full and fair opportunity to present claims in ***one*** PCR application. *Odom v. State,* 337 S.C. 256, 523 S.E.2d 753 (1999).

Appellant brought this action for the sole purpose of challenging the validity of his convictions and the only relief he has sought is to have his convictions vacated and to be released from custody. (App. Br., R. p. __.) Therefore, the Circuit Court correctly held that the nature of Appellant's action was not a Writ of Mandamus, but a second collateral attack of his 1978 conviction under § 17-27-20(A). (March 19, 2015 Order, R. p.__.) Thus, the Court held that the action was barred by the statute of limitations, lacked merit, and was nothing more than an attempt to circumvent the well-established procedures for challenging a conviction or sentence by direct appeal or post-conviction relief. (March 19, 2015 Order, R. p.__.)

Since Plaintiff failed to appeal his sentence, withdrew his PCR Application, and waited thirty-six (36) years after his conviction to file this action, the Circuit Court did not err in granting the Respondent's motion to dismiss because Appellant's case was untimely and barred by the statute of limitations. Accordingly, Circuit Court correctly

held that it lacked subject-matter jurisdiction and did not err in granting Respondent's motion to dismiss.

II. APPELLANT WAS NOT ENTITLED TO COUNSEL FOR THIS ACTION.

Appellant alleges that the Circuit Court erred when failing to provide him with counsel during this civil case. A criminal defendant's right to an attorney is found in the Sixth Amendment to the U.S. Constitution, which requires the "assistance of counsel" for the accused "in all criminal prosecutions." This means that Appellant had a constitutional right to be represented by an attorney during his criminal trial, a right he was afforded during the 1978 criminal proceedings, but not in civil matters such as the one instituted by the Appellant in this case. Furthermore, Appellant has failed to cite to any authority to support his position. Because this is not a criminal prosecution, the Appellant was not entitled to appointment of counsel.

III. APPELLANT FAILED TO STATE FACTS SUFFICIENT TO CONSTITUTE A CAUSE OF ACTION.

The Circuit Court correctly held that Appellant failed to state facts sufficient to constitute a cause of action requiring dismissal pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

A trial judge in the civil setting may dismiss a claim when the defendant demonstrates the plaintiff has failed to state facts sufficient to constitute a cause of action in the pleadings filed with the court. Rule 12(b)(6), SCRCP; *see Ashley River Properties I, LLC v. Ashley River Properties II, LLC*, 374 S.C. 271, 277, 648 S.E.2d 295, 298 (Ct. App. 2007); *Williams v. Condon,* 347 S.C. 227, 553 S.E.2d 496 (Ct. App. 2001). Dismissal of a complaint pursuant to Rule 12(b)(6) is appropriate where the allegations set forth on the face of the complaint and inferences reasonably deducible therefrom,

even when viewed in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, fail to state any valid claim for relief. *Spence v. Spence,* 368 S.C. 106, 116, 628 S.E.2d 869, 874 (2006); *Gentry v. Yonce,* 337 S.C. 1, 5, 522 S.E.2d 137, 139 (1999); *Baird v. Charleston County,* 333 S.C. 519, 511 S.E.2d 69 (1999).

A. Failure to State Facts Sufficient to Vacate Appellant's Convictions Based on a Waiver from Juvenile to General Sessions.

On November 11, 1977, an "Affidavit and Request for Waiver" and "Motion for Waiver" was filed to have the Appellant's case transferred to the Court of General Sessions. (Order, R. p.__.) The Court issued an order waiving the jurisdiction of the Family Court and allowing the Court of General Sessions to assume jurisdiction over the Appellant's case. *Id.*

Since Appellant's case was in fact waived over to General Sessions, the Circuit Court properly dismissed his argument that he pleaded guilty without being waived over from Juvenile Court.

B. Failure to State Facts Sufficient to Vacate Appellant's Convictions Based on Ineffective Assistance of Counsel.

Appellant failed to state facts sufficient to vacate his convictions based on ineffective assistance of counsel. "The mere fact that an accused was represented at his arraignment by counsel of less than five years' experience did not deprive him of any right afforded under this section [Code 1962 § 17-507], in the absence of prejudice therefrom, and where the record contains no such showing of prejudice." *State v. Marshall*, 260 S.C. 323 195 S.E.2d 709 (1973).

In 1978, Section 16-3-26(B)(1) was enacted and stated:

> 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 cases***, and only one of the attorneys so appointed shall be the Public Defender or a member of his staff.

S.C. Code Section 16-3-26(B)(1) (emphasis added).

Section 16-3-26(B)(1) has been modified to include: [o]ne of the attorneys so appointed ***shall have at least five years' experience*** as a licensed attorney and ***at least three years' experience*** in the actual trial of felony cases, and only one of the attorneys so appointed shall be the Public Defender or a member of his staff..." S.C. Code Section 16-3-26(B)(1) (emphasis added).

Appellant has not asserted a position in his Initial Brief with regard to his trial counsel, but only cites to S.C. Code Ann. 16-3-26. (App. Br., R. p. __.) In Appellant's Complaint, he asserted that one of his attorneys had only tried one (1) capital case and assisted on two (2) other capital cases, and the *second attorney* had tried only one (1) felony noncapital murder case. (Compl., R. p.__.) Appellant bases his ineffective assistance of counsel argument on the number of cases previously tried by his appointed counsel. (Compl., R. p.__.) This argument is of no merit, as the statute looks to the number of years an attorney has been licensed, not the number of cases that attorney has tried, in determining whether an attorney is qualified to be appointed in a capital case. Furthermore, not only did Appellant fail to produce any documentation showing that the lead attorney did not have the required ***five years' experience*** as a licensed attorney, but this action should have been raised on appeal or in his withdrawn PCR Application.

Accordingly, the Circuit Court correctly held that Appellant failed to state facts sufficient to vacate his convictions based on ineffective assistance of counsel.

C. Failure to State Facts Sufficient to Vacate Plaintiff's Convictions based on allegations Appellant was not afforded a preliminary hearing and a hearing to determine Appellant's fitness to stand trial.

Appellant incorrectly asserts that he was not afforded two (2) hearings because a preliminary hearing was not held ten (10) days before the convening of the next term of court of General Sessions and before the warrant, for armed robbery and murder, was issued by magistrate. (App. Br., R. p. __.) This argument is factually incorrect, as on January 11, 1978, the Court demanded a preliminary ***examination***, not a preliminary ***hearing***, be conducted at least ten (10) days before the convening of the next Court of General Sessions with regard to the Appellant's charges of murder and armed robbery. (Mot., R. p.__.) The Court also stated "the case should not be submitted to the grand jury until the **preliminary examination** has been held which should take place on January 19, 1978." (Mot., R. p.__.)

Appellant also alleges that he was entitled to a hearing to determine whether he was fit to stand trial. (App. Br., R. p. __.) While there was no hearing, Appellant was admitted to the hospital on November 16, 1977 to determine his capacity to stand trial pursuant to Section 32-977 (1962). (March 19, 2015 Order, R. p.__.) Appellant was found not mentally ill, that he was capable of understanding the nature of the charges, and able to assist counsel in his own defense. (March 19, 2015 Order, R. p.__.) Furthermore, the Circuit Court correctly held that Appellant was not entitled to a hearing prior to the issuing of a warrant, and that the lack of a hearing was neither harmful nor prejudicial to the Appellant. (March 19, 2015 Order, R. p.__.)

Because a preliminary examination was in fact conducted and Appellant was admitted to the hospital to determine his capacity to stand trial pursuant to Section 32-977

(1962), the Circuit Court correctly held that Appellant had failed to state facts sufficient to vacate his 1978 convictions based on allegations regarding his preliminary examination.

CONCLUSION

For all of the foregoing reasons, this Court should AFFIRM the Circuit Court's Order finding and DENY the Appellant's requested relief.

Respectfully submitted,

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April 26, 2016

THE STATE OF SOUTH CAROLINA
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Frank R. Addy, Jr., Circuit Court Judge

Appellate Case No. 2015-001190

Shedrick Wigfall, ...Appellant,

v.

The State of South Carolina, ...Respondent.

CERTIFICATE OF SERVICE

I hereby certify that I served the Initial Brief and the Designation of the Matter to be Included in the Record on Appeal of the Respondent State of South Carolina on the Appellant in the above-captioned matter by depositing a copy of said document in the United States mail, postage prepaid, on April 26, 2016, addressed to:

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Columbia, South Carolina
April 26, 2016

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April 26, 2016

The Honorable Jenny Abbott Kitchings
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Re: *Shedrick Wigfall v. The State of South Carolina*
Appellate Case Number: 2015-001190

Dear Ms. Kitchings:

Please find enclosed for filing the original and one (1) copy of the Initial Brief and Designation of the Matter to be Included in the Record on Appeal of the Respondent State of South Carolina.

I would appreciate your acknowledging receipt of these documents by date-stamping the extra copies enclosed and returning them to me via the enclosed return envelope. Also, enclosed is certificate of service for the Initial Brief and Designation of Matter to be Included on Appeal.

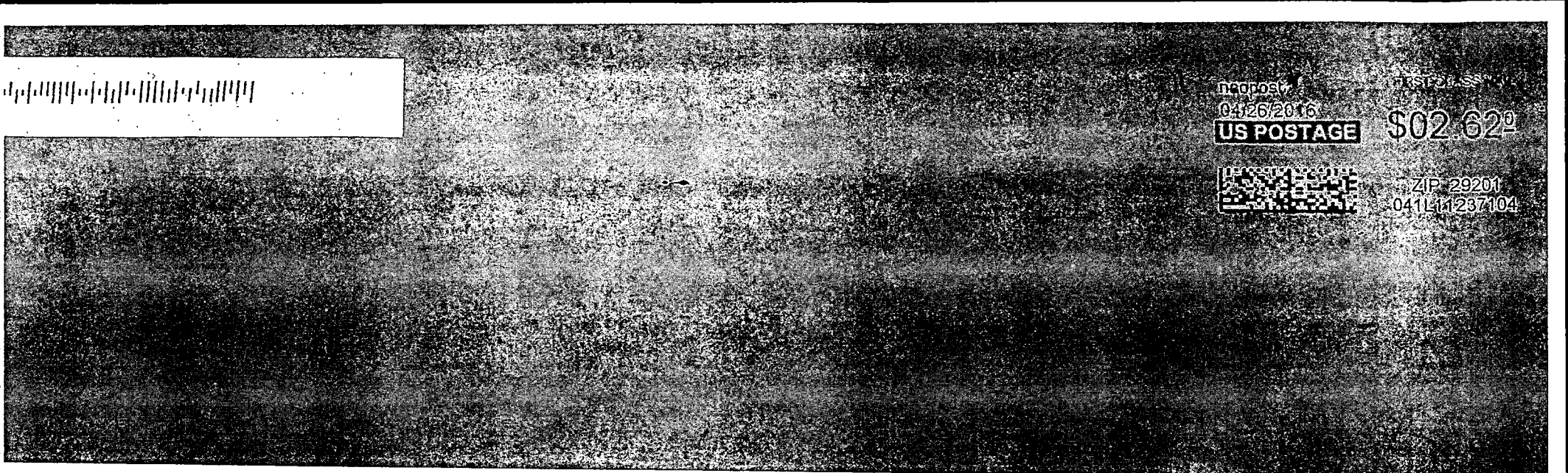
Should you have any questions, please do not hesitate to contact me.

Very truly yours,

Courtney E. Lowell

Courtney E. Lowell
Assistant Attorney General

cc: Shedrick Wigfall, #90323



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