STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Certiorari to Lexington County

William P. Keesley, Circuit Court Judge

Order (S.C. Ct. App. filed 1/13/2015)
2014-CP-32-01449

THE STATE,

RESPONDENT,

V.

QUENTIN RAYMAR PRICE

PETITIONER

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS

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CERTIFICATE OF COUNSEL

Counsel for Petitioner certifies that the petition for rehearing was made and finally ruled on by the Court of Appeals on May 12, 2016. App. 456.

QUESTIONS PRESENTED

I. Did the Court of Appeals err in dismissing Petitioner's appeal where Petitioner is an aggrieved party and the issue presented is capable of repetition but evading review, presents a question of imperative and manifest urgency to establish a rule for future conduct in matters of important public interest involving constitutional rights, and may affect future events bearing upon Petitioner's rights?

II. Do magistrate judges have subject matter jurisdiction to cite and punish a defendant for constructive criminal contempt of court where the basis for the charge of contempt is an alleged violation of a condition of the defendant's bond that occurred outside the presence of the magistrate?

STATEMENT OF THE CASE

On November 19, 2013, Petitioner was arrested and charged with Criminal Domestic Violence (CDV), First Offense. App. 1-2. A surety bond was set by the Honorable Brian Jeffcoat on November 20, 2013 and included a condition of no contact with the alleged victim, Camisha Mims. App. 3-4. Petitioner was released on bond on November 20, 2013. App. 3-4.

Petitioner was subsequently accused of violating the conditions of his bond by having contact with Mims. App. 5. As a result of the accusations, the State approached the Honorable Scott Whittle, the presiding magistrate judge at the Swansea Magistrate Court where the underlying charge was pending, and obtained a bench warrant for Petitioner's arrest. App. 5. The magistrate issued the bench warrant based solely on oral statements made by the State regarding an allegation made by Mims that Petitioner had violated the no-contact condition of his bond. App. 5, 268. Petitioner was subsequently served with this bench warrant on March 27, 2014. App. 268.

After Petitioner's motion to vacate the bench warrant was denied on April 7, 2014, by another magistrate, the Honorable Gary Reinhart, the contempt hearing was continued to April 9, 2014. App. 6-29. After Petitioner and the state renewed all prior objections from the April 7 hearing, the contempt hearing went forward on April 9, 2014. App. 30-68. Before calling the first witness, the State, represented by the CDV Prosecutor for the Lexington County Sheriff's Department, requested that the Court "give directions as far as limiting the scope of examination[,]" stating that "[w]e are not getting into the underlying criminal charge[,]" and that she "[did] not want to get prior sworn testimony." App. 34. The court did not give a clear limiting instruction at that time but requested that the State "set the basis of the violation" and proceeded to "take notice" that, among other things, Petitioner had been charged with CDV, that

his five thousand dollar surety bond included a condition of no contact with Mims, and that he had signed his bail form, "acknowledging that he understands that if [he] violate[d] any condition of this order . . . a warrant for [his] arrest [would] be issued." App. 34-35.

The hearing proceeded with the State's case, which included testimony from Meagan Penny and Mims. App. 36-49. Penny claimed she had seen Petitioner, whom she knew as "Jeffrey," in her River Oaks neighborhood around 10:00 p.m. on March 9, 2014, and that she had witnessed Mims outside yelling at Petitioner "to stop kicking her window." App. 36-39. Mims testified that she saw Petitioner on March 9, 2014 at the River Oaks Apartments and that although she did not know what time it was when she saw him, he had a conversation with her at that time. App. 46-47.

After the State's direct examination of both Penny and Mims, counsel for Petitioner attempted to cross-examine each witness regarding what they had seen and prior statements they had made to police and an investigator from the Public Defender's Office; however, in response to numerous objections from the State, the magistrate limited cross-examination to the issue of identification only and ultimately took over questioning the witnesses *sua sponte*. App. 39-49. In cutting short the cross-examination of Mims, the magistrate stated that "this whole issue is a matter of an issue between the Court and [Petitioner]" and began questioning Mims. App. 48-49. After the close of the State's case, counsel for Petitioner called Shannon O'Cain, an investigator from the Public Defender's Office, and Petitioner testified in his own defense. App. 51-56. Petitioner testified that he was at work at the Wal-Mart in West Columbia around 8:00 p.m. and that he did not leave work at any time that night. App. 55-56. Petitioner was subsequently found guilty of contempt of court for violating the conditions of his bond and was sentenced to thirty days in jail, with the thirty days to begin on April 2, 2014. App. 59-61.

Petitioner timely filed a notice of appeal on April 15, 2014. The magistrate's return was filed on July 10, 2014, and oral arguments were heard in the Court of Common Pleas by the Honorable William P. Keesley on September 4, 2014. App. 186-246. At the request of Respondent, made after the close of oral arguments, Judge Keesley permitted both parties to submit supplemental memoranda on the issue of due process. App. 235-36, 247-66. In an order dated October 6, 2014, Judge Keesley held that "Magistrates have the power to cite and punish a defendant for constructive criminal contempt of court for violating a condition of bond concerning an offense that is within the jurisdiction of the summary courts." App. 267-87. The court also held, however, that the use of a bench warrant for the purpose of bringing Petitioner before the court in a criminal contempt of court proceeding was improper in this case because "no exigent circumstances [were] shown to the court, supported by oath or affirmation, that required the immediate arrest of [Petitioner]." App. 267.

On October 14, 2014, Petitioner timely filed a notice of appeal in the Court of Appeals to challenge the circuit court's holding regarding subject matter jurisdiction. Nevertheless, Respondent filed a Petition for Rehearing in the circuit court on October 17, 2014. App. 288-305. On March 25, 2015, Judge Keesley sent a letter to the parties asking whether it was necessary for him to rule on Respondent's Petition. App. 339. Respondent then filed a motion to dismiss or, alternatively, to remand the appeal to the circuit court with the Court of Appeals on April 3, 2014. App. 306-33. Petitioner filed a Return to the Motion on April 24, 2015, opposing Respondent's motion to dismiss but consenting to a remand to circuit court for disposition of the pending Petition for Rehearing. App. 334-57. The Court of Appeals dismissed without prejudice, pursuant to Rule 59, SCACR, on June 5, 2015. App. 358. On July 8, 2015, Respondent withdrew its petition for rehearing. App. 364, 377. Judge Keesley issued a final order on August 13, 2015. App. 359-60.

Appellant filed a Notice of Appeal from the final order on August 21, 2015, and an Amended Notice of Appeal on August 28, 2015. Prior to the filing of initial briefs, Respondent filed

a new motion to dismiss the appeal on October 23, 2015, to which Petitioner filed a return. App. 361-431. On January 13, 2016, the Court of Appeals dismissed the appeal, finding that Petitioner was not an aggrieved party. App. 432. Petitioner filed a Petition for Rehearing on January 27, 2016, which was denied in an order dated May 12, 2016. App. 433-56. Petitioner now seeks a writ of certiorari from this Court.

ARGUMENT

This Court should grant a writ in this case because it involves novel questions of law that bear upon substantial constitutional issues. See Rule 242(b)(1) & (4), SCACR. The question of magistrate jurisdiction to punish alleged violations of bond conditions using contempt proceedings is novel in this state. Additionally, it necessarily involves substantial due process concerns because it relates to the ability to punish a defendant in criminal proceedings. See U.S. CONST. amend. XIV, § 1; U.S. CONST. amend. VI; S.C. CONST. art. I, § 3; S.C. CONST. art. I, § 14. The Court of Appeals failed to address these issues, finding only that Petitioner was not an aggrieved party, leaving the important substantive question in this case unanswered. App. 428.

For these reasons, and the ones discussed in greater detail below, this Court should grant a writ of certiorari to review the Court of Appeals' dismissal of the appeal. Further, this Court should grant a writ of certiorari to review the question of whether magistrates have subject matter jurisdiction to cite and punish a defendant for contempt where the alleged contemptuous conduct is a violation of a condition of bond.

I. The Court of Appeals Erred in Dismissing Petitioner's Appeal

A. Appellant is an aggrieved party within the meaning of Rule 201(b) of the South Carolina Appellate Court Rules.

The right of a party to appeal is conferred by statute: "Any party aggrieved may appeal in the cases prescribed in this title." S.C. Code § 18-1-30 (2003). This Court has set forth the definition of aggrieved party:

> …an aggrieved party within statute relating to appeals is a person who is aggrieved by the judgment or decree when it operates on his rights of property or bears directly upon his interest, the word aggrieved referring to a substantial grievance, *a denial of some personal or property right or the imposition on a party of a burden or obligation.*

Bivens v. Knight, 254 S.C. 10, 13, 173 S.E.2d 150, 152 (1970) (emphasis added).

By this definition, a person is aggrieved when the decision of the court denies the person of some right or imposes on the party a burden or obligation. Id. Whether a party is aggrieved is not solely reliant on the status of a criminal conviction. See State v. Gregorie, 339 S.C. 2, 4, 528 S.E.2d 77, 78 (2000) ("The test is not whether the appeal involves a double jeopardy claim . . . but whether the party bringing the appeal is aggrieved."). A decision of any court that subjects a person to unlawful prosecution is an inherent violation of a personal right – the right to due process of law, as guaranteed by the state and federal Constitutions – and imposes upon that person an undue burden. See U.S. CONST. amend. V; U.S. CONST. amend. XIV, § 1; S.C. CONST. art. I, § 3.

In the motion to dismiss the appeal, Respondent suggested that the only way that a criminal defendant can be aggrieved is by having his conviction affirmed. App. 366. However, the test set forth by this Court in Gregorie makes no mention of the need for an upheld conviction, but instead focuses on whether a party has been aggrieved, which, under the definition set forth in Bivens, requires only that the court's "judgment or decree . . . operate[] on his rights of property or bear directly upon his interest, the word aggrieved referring to a substantial grievance, a denial of some personal or property right or the imposition on a party of a burden or obligation." Bivens, 254 S.C. at 13, 173 S.E.2d at 152.

In determining whether an appeal is proper, appellate courts are concerned with "correcting errors that have practically wronged the appealing party." Cisson v. McWhorter, 255 S.C. 174, 177-78, 177 S.E.2d 603, 605 (1970). Additionally, even if some relief was granted in the form of the overturning of the conviction and the vacating of the sentence on one issue, this would be merely alternative relief in this case, as the primary relief requested by Appellant was a

decision that the magistrate did not have subject matter jurisdiction to punish the alleged bond violation via contempt, rendering the conviction a nullity and prohibiting further unlawful prosecution. See Sickora v. Metropolitan Life Ins. Co., 278 S.C. 99, 101, 292 S.E.2d 593, 595 (1982) ("The motion for a new trial *nisi* was merely alternative relief. The alternative relief did not prevent a review by this Court on the basic contention. If the primary relief had been granted, as it should have been, the alternative motion would have been unnecessary."); see also State v. Guthrie, 352 S.C.103, 107, 572 S.E.2d 309, 311 (2002) ("The acts of a court with respect to a matter as to which it has no jurisdiction are void.").

B. Dismissal of this appeal is not proper because the issue presented is capable of repetition but evading review, presents a question of imperative and manifest urgency to establish a rule for future conduct in matters of important public interest involving constitutional rights, and may affect future events bearing upon Petitioner's rights or resulting in collateral consequences for Petitioner.

1. Mootness

This Court has found an appeal to be proper where the issue on appeal could have a "practical effect upon an existing case or controversy." State v. Green, 337 S.C. 67, 71, 522 S.E.2d 602, 604 (1999). "A criminal case is moot only if there is no possibility that any legal consequences will be imposed." Id. (quoting Sibron v. New York, 392 U.S. 40, 57, (1968)).[1]

[1] This Court went on to find that although a defendant had already pled guilty on some charges, the State's appeal relating to a subject matter jurisdiction issue was not moot as it pertained to the remaining charges. Green, 337 S.C. at 71, 522 S.E.2d at 604. Similar to Green, Petitioner still had a pending magistrate charge that was brought by the same prosecutor and that included a bond condition of no contact with the alleged victim. However, on October 29, 2015, two days after receiving Respondent's motion to dismiss, Petitioner learned that his other charge had been nolle prossed and was being expunged, despite his having not yet completed the requirements set forth in a plea agreement entered on October 28, 2014. The notice that the charge had been nolle prossed was dated October 22, 2015, one day prior to Respondent's filing the motion to dismiss. App. 381, 427-31.

The dismissal of Petitioner's case essentially amounts to an assertion that the issue is moot because Petitioner's conviction was vacated on other grounds.

2. Exceptions to Mootness

Even if Petitioner's case were otherwise moot, this Court has recognized the existence of "exceptions to the mootness doctrine." Byrd v. Irmo High School, 321 S.C. 426, 431, 468 S.E.2d 861, 864 (1996). In Curtis v. State, this Court identified "three general exceptions to the mootness doctrine." 345 S.C. 557, 568, 549 S.E.2d 591, 596 (2001). The first exception permits appellate courts to assume jurisdiction, "despite mootness, if the issue raised is capable of repetition but evading review." Id.

The second exception provides that "an appellate court may decide questions of imperative and manifest urgency to establish a rule for future conduct in matters of important public interest." Id. "[Q]uestions of public interest originally encompassed in an action should be decided for future guidance however abstract or moot they may have become in the immediate contest." Id. (citing Berry v. Zahler, 220 S.C. 86, 66 S.E.2d 459 (1951)).

The final exception recognizes that an appeal is not moot "if a decision by the trial court may affect future events, or have collateral consequences for the parties . . . even though the appellate court cannot give effective relief in the present case." Id. Although Curtis recognized these exceptions to the mootness doctrine in the civil context, this Court has found these exceptions applicable in the context of a criminal contempt appeal. See, e.g., State v. Passmore, 363 S.C. 568, 611 S.E.2d 273 (2005).

a. Capable of Repetition But Evading Review

This Court explained the evolution of the common law exceptions to the mootness doctrine from stricter to more lenient requirements in Byrd by clarifying the first exception to the

mootness doctrine, "capable of repetition but evading review." See Byrd, 321 S.C. at 432, 468 S.E.2d at 864. The Byrd Court documented the original, stricter prerequisites for qualifying under the exception, noting that both this Court and the Court of Appeals had previously held that,

> under the exception, a court can take jurisdiction only if (1) the challenged action in its duration was too short to be fully litigated prior to its cessation or expiration; and (2) there is a reasonable expectation that the same complaining party will be subjected to the same action again.

Id. However, this Court went on to adopt the "less restrictive" approach taken by other cases that required only that an appeal present an issue that is "'capable of repetition but evading review,'" eliminating the requirement that "the same complaining party be subjected to the action again." Byrd, 321 S.C. at 432, 468 S.E.2d at 864 (quoting In re Darlene C., 278 S.C. 664, 665, 301 S.E.2d 136, 137 (1983)).

Cases that are capable of repetition but evading review are frequently characterized by the brevity of the underlying proceedings or sentence. See Passmore, 363 S.C. at 583, 611 S.E.2d at 281; Byrd, 321 S.C. at 432, 468 S.E.2d at 864. In applying this standard, this Court has found that a one year sentence for criminal contempt of court was too brief to survive appellate litigation, noting that even "the State concede[d] in its brief: 'the sentence was in fact too brief to be fully litigated through appeal prior to its expiration.'" Passmore, 363 S.C. at 583, 611 S.E.2d at 281. In cases such as this, the test is "whether the unconstitutional violation suffered by Appellant could be inflicted on a contemnor in the future." Id. Finding that the unconstitutional sentence imposed was "evidence enough a judge could make the same error in the future[,]" the Passmore Court "[found] it necessary to remind the bench of the constitutional limitation on a judge's power of contempt." Id. Thus, where a court's decision demonstrates the potential to

evade review due to the nature and brevity of the case and a likelihood that future harm may occur to either the appealing party or other parties in the future, the appeal is not moot, and appellate courts should address the issue raised, regardless of whether the underlying litigation and sentence are complete.

In applying the "evading review" prong of the test for the first exception to mootness, this Court should consider the nature and brevity of magistrate cases in general and in the context of contempt cases. Similar to the types of cases presented in Byrd and Passmore, magistrate cases, and especially magistrate contempt cases, are too brief to be fully litigated in the appellate courts prior to the resolution of the underlying case. With limited exceptions, magistrate criminal jurisdiction is limited to cases in which the punishment does not exceed a fine of five hundred dollars or imprisonment for thirty days or both, and the magistrate may not "sentence a person to consecutive terms of imprisonment totaling more than ninety days." S.C. Code Ann. § 22-3-550 (Supp. 2014). Where magistrates have the power to punish for contempt, the punishment is limited to the confines of magistrate sentencing authority under Section 22-3-550. S.C. Code Ann. § 22-3-950 (2003). As a result, for purposes of appellate litigation, the timeline for magistrate cases, from arrest to completion of sentence, is almost always "too brief to be litigated through appeal prior to [their] expiration." See Passmore, 363 S.C. at 583, 611 S.E.2d at 281. The brevity of these cases for appellate purposes is compounded by the fact that magistrate appeals are made first to the circuit courts before an appeal may be made to the Court of Appeals. S.C. Code Ann. § 18-3-10 (2003).

Also important to the determination that this matter is "capable of repetition" is the fact that the unlawful pursuance of criminal contempt convictions against criminal defendants for allegedly violating the no-contact provision of a defendant's bond is used in a majority of

magistrate level criminal cases prosecuted by the CDV Prosecutor for the Lexington County Sheriff's Department.[2] As a result, not only is the likelihood great that the "constitutional violation suffered by [Petitioner] could be inflicted on [another party] in the future," these violations continue to occur in a majority of CDV and related magistrate cases in Lexington County. See Passmore, 363 S.C. at 583, 611 S.E.2d at 281.

Furthermore, because the court's order overturning Appellant's conviction was based solely on the holding that "the use of a bench warrant in this instance was improper," the order has been, and will continue to be, construed as not binding on future cases. App. 267 (emphasis added). As a result, the State can continue to use bench warrants for the purpose of bringing defendants before the court in criminal contempt proceedings, and upon appeal of a conviction to the Court of Common Pleas, the circuit court judge could continue to overturn convictions on the basis that the use of the bench warrant was improper in that instance, preventing the issue of subject matter jurisdiction from ever being heard by an appellate court.

Additionally, the likelihood is great that defendants in other parts of the state might be subjected to the same unlawful and unconstitutional prosecution. Although the South Carolina Attorney General's Office has issued conflicting opinions over the years on the issue, a March 1, 2013 Opinion suggested that magistrates and municipal judges may use bench warrants and contempt proceedings to punish alleged bond violations. Opinion of the Attorney General to The Honorable Ernest O'Brien, 2013 WL 1695519 (S.C.A.G.) (March 1, 2013). In a memorandum dated April 9, 2013, South Carolina Court Administration notified magistrates and municipal courts of the March 1, 2013 Attorney General Opinion's conclusion that "pursuant to S.C. Code

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[2] It should be noted that although this practice is most common in domestic violence cases, it is also used in other types of cases, such as assault and battery in the third degree, unlawful use of telephone, and violations of orders of protection.

Ann. §§ 17-15-30(D) and 17-15-100, magistrate and municipal court judges are authorized to use their contempt powers to enforce conditions of release on bond." (emphasis added).

For each of these reasons, the issue of whether magistrates have subject matter jurisdiction to punish alleged bond violations using contempt powers is the epitome of an issue that is capable of repetition but evading review.

b. Matters of Important Public Interest Involving Constitutional Rights

The second exception permits courts to hear an appeal that would otherwise be moot where a question would be decided that is "of imperative and manifest urgency to establish a rule for future conduct in matters of important public interest." Curtis, 345 S.C. at 568, 549 S.E.2d at 596. This exception is rooted in the long standing principle that "questions of public interest originally encompassed in an action should be decided for future guidance, however abstract or moot they may have become in the immediate contest." Ashmore v. Greater Greenville Sewer Dist., 211 S.C. 77, 96-97, 44 S.E.2d 88, 96 (1947). This Court recently applied the same logic in State v. Langford, where it considered on appeal arguments relating to the control of criminal dockets, which were not preserved for appellate review but instead were raised for the first time on appeal by way of an amicus brief filed by a third party. 400 S.C. 421, 432-33, 735 S.E.2d 471, 477 (2012). This Court's willingness to address the constitutionality of the statute, despite the issue not being preserved for review highlights the importance of appellate review of issues that bear upon the public interest and that could have consequences for parties that are not involved in the case at hand. Id. at 446, 735 S.E.2d at 484.

Issues of subject matter jurisdiction are, in and of themselves, important matters of public interest because whether subject matter jurisdiction exists determines the validity of a court's

actions with respect to the matter at hand. See Guthrie, 352 S.C. at 107, 572 S.E.2d at 311. Thus, subject matter jurisdiction has been deemed a question of such fundamental importance that it may be raised for the first time on appeal or *sua sponte* by the court. Id.; see also Brown v. State, 343 S.C. 342, 540 S.E.2d 846 (2001).

Furthermore, a court's authority to punish a defendant necessarily involves questions of substantial constitutional rights, and contempt cases are no exception. It is well-established that criminal contempt proceedings trigger certain Constitutional protections. Bloom v. Illinois, 391 U.S. 194, 201-05 (1968); see also Poston v. Poston, 331 S.C. 106, 116-17, 502 S.E.2d 86, 91 (1998) (distinguishing civil from criminal contempt); Ex Parte Cannon, 685 S.E.2d 814; Hornsby v. Hornsby, 187 S.C. 463, 198 S.E.2d 29 (1938); Hicks v. Feiock, 485 U.S. 624, 632, 108 S.Ct. 1423, 1429-30 (1988). "Criminal contempt is a crime in the ordinary sense; it is a violation of the law, . . . [and] convictions for criminal contempt are indistinguishable from ordinary criminal convictions, for their impact on the individual defendant is the same." Bloom, 391 U.S. at 200. Consequently, Constitutional protections, including due process rights, as guaranteed by the federal and state constitutions, must be observed in criminal contempt proceedings, and criminal penalties may not be imposed unless the person against whom proceedings are brought has been afforded these protections. See U.S. CONST. amend. XIV, § 1; S.C. CONST. art. I, § 14; see also Poston, 331 S.C. at 116-17, 502 S.E.2d at 91; Ex Parte Cannon, 685 S.E.2d at 814; Hornsby, 187 S.C. 463, 198 S.E.2d 29; see also Bloom, 391 U.S. at 201-05; Hicks, 485 U.S. at 632.

Additionally, as it relates to this case, whether a magistrate has subject matter jurisdiction to use contempt powers to punish alleged bond violations is a question of public importance because of the procedure's widespread use in magistrate cases that involve an alleged victim, particularly in Lexington County. Furthermore, as a result of the aforementioned recent Court

Administration Memorandum and Attorney General Opinion, it is likely that this unlawful practice is being or will be used in other counties throughout the state, subjecting a much larger percentage of the public to the same constitutional violations.

Because of the important constitutional rights at stake, it is necessary for the appellate courts to define the limits of magistrate contempt authority as it relates to alleged bond violations in order to create continuity in the law throughout the state. Traditionally, magistrate contempt authority was widely construed as being limited to cases of direct contempt where the conduct occurred in the presence of the court, consistent with historical interpretations. See, e.g., TO: Neal Forney, 1978 S.C. Op. Atty. Gen. 214 (1978) (citing Lining v. Bentham, 2 S.C.L. (2 Bay) 1 (1796)); The Honorable B. Lee Miller, 2004 WL 3058232 (2004) (noting the absence of "any absolute basis" to cite a defendant for contempt for an alleged bond violation and the "very inferior jurisdiction" of magistrates (quoting State v. Applegate, 13 S.C.L. 110 (1822))). Similarly, the Fourth Circuit Court of Appeals has also interpreted South Carolina law as granting magistrates the power to punish for direct contempt only. See Dean v. Shirer, 547 F.2d 227, 230 (4th Cir. 1976) (interpreting South Carolina law). Thus, the aforementioned 2013 Attorney General opinion was a drastic departure from its prior opinions and other historical interpretations of magistrate contempt powers, which is explicitly noted in the opinion and highlights the need for appellate review of this issue. See Opinion of the Attorney General to The Honorable Ernest O'Brien, 2013 WL 1695519 (S.C.A.G.).

As a result, the issue is ripe for review by the appellate courts, and this Court should decide the issue in order to establish a rule for future conduct.

c. Collateral or Future Consequences Affecting Appellant

The third exception articulated in Curtis recognizes the need for appellate review where

the lower court's decision creates the potential for collateral or future consequences for the parties. Curtis, 345 S.C. at 568, 549 S.E.2d at 596. Collateral or future consequences are not limited to any particular set of circumstances and need not be legal certainties in order to qualify the issue for review. In Passmore, the Supreme Court listed several examples of potential collateral consequences that were "enough to surmount the mootness doctrine":

> Although Appellant's time has been served, she may yet experience the repercussions of having been sentenced to a year in prison for contempt of court. For example, she might be obliged to indicate jail time served on an employment application. Thus, the sentence could affect her ability to obtain future employment. Likewise, she could be required to disclose the conviction on a credit application, thereby hindering her chances of securing credit. Further, drivers' license applications, voter registration applications, and other documents may mandate the divulgence of prior convictions. Hence, Appellant's unconstitutional conviction will continue to stigmatize and prejudice her. These significant collateral consequences are enough to surmount the mootness doctrine.

Passmore, 363 S.C. at 583, 611 S.E.2d at 281. These consequences are separate and apart from the possibility of any future incarceration and trumped the fact that the Passmore had already served her sentence on the underlying criminal contempt. Id. The examples provided also indicate that the potential future harm need not be a strictly legal harm, but may bear upon any aspect of life. See id.

Similarly, the circuit court's decision in this case may affect future events and have collateral consequences for Petitioner. In addition to the potential that Petitioner may be confronted with similar contempt charges again in the future, other collateral consequences, similar to those noted in Passmore, could also result. Furthermore, the contempt conviction,

though overturned, could be used during sentencing or during any future hearings[3] with Petitioner and could have to be disclosed to, among others, potential employers if asked about prior arrests on criminal charges.

As a result, Petitioner's case is not moot, but ripe for review, because of the collateral consequences and likelihood that the circuit court's decision may affect future events.

II. Magistrates lack subject matter jurisdiction to cite and punish a defendant for constructive criminal contempt for an alleged violation of a condition of the defendant's bond

Magistrate courts are not courts of general jurisdiction; they are creatures of statute, whose jurisdiction is established by the General Assembly. See S.C. CONST. art. V, § 1 ("The judicial power shall be vested in a unified judicial system, which shall include a Supreme Court, a Court of Appeals, a Circuit Court, and such other courts of uniform jurisdiction as may be provided for by general law."); S.C. CONST. art. V, § 26; Bayly v. State, 397 S.C. 290, 295, 724 S.E.2d 182, 184 (2012). The appointment of magistrates by the South Carolina Governor and the establishment of their jurisdiction by the Legislature are authorized by Article V, Section 26 of the South Carolina Constitution, which provides,

> The Governor, by and with the advice and consent of the Senate, shall appoint a number of magistrates for each county as provided by law. *The General Assembly shall provide for their terms of office and their civil and criminal jurisdiction.* The terms of office must be uniform throughout the State.

S.C. CONST. art. V, § 26 (emphasis added). The constitutional limitation of magistrate jurisdiction to that which has been codified by the Legislature has been recognized by this Court as recently as 2012. In Bayly, the Court cited Article V, Section 26 as the authority investing the

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[3]For example, in each of the proceedings below, the Prosecutor noted to the courts that the alleged bond violation in question was Petitioner's second time being charged with contempt for having contact with the alleged victim. App. 60, 268.

General Assembly with the power to establish the jurisdiction of magistrate courts and noted that "the General Assembly enacted Title 22 of the South Carolina Code to establish the jurisdiction of magistrate courts and the proceedings utilized to exercise this jurisdiction." Bayly, 397 S.C. at 295, 724 S.E.2d at 182. Consequently, in order to determine whether magistrates have subject matter jurisdiction to hear a particular kind of case, courts must first look to Title 22 to see whether the Legislature granted that type of authority by statute.

A. Statutory Construction

Because the determination of magistrate jurisdiction is an exercise in statutory interpretation, the rules of statutory construction must be applied. "The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature." Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). In determining the intent of the legislature, courts must look to the plain language of the statute, giving words their plain and ordinary meaning. Peak v. South Carolina Dept. of Motor Vehicles, 375 S.C. 589, 598, 654 S.E.2d 284, 289 (2007). The plain language of the statute is considered to be the strongest evidence of legislative intent, outweighing all other rules of statutory construction. Jones v. State Farm Mut. Auto. Ins. Co., 364 S.C. 222, 230, 612 S.E.2d 719, 723 (2005). Where the language of the statute is unambiguous, courts may not change its meaning or impose a different one, but must give effect to the expressed intent of the legislature. Rainey, 341 S.C. at 85, 533 S.E.2d at 581.

B. General Contempt Jurisdiction of Magistrate Courts

The general jurisdiction of Magistrate courts with respect to contempt proceedings is governed by Section 22-3-950 of the South Carolina Code of Laws. State v. Harper, 297 S.C. 257, 376 S.E.2d 272 (1989). This section provides,

> Every magistrate shall have the power to enforce the observances of decorum in his court while holding the same and for that purpose he may punish for contempt any person who, *in the presence of the court*, shall offer an insult to the magistrate or a juror or who is willfully guilty of an undue disturbance of the proceedings *before the magistrate while sitting officially.* A magistrate shall have the power to punish for contempt of court by imposition of sentences up to the limits imposed on magistrates' courts in Section 22-3-550.

S.C. Code Ann. § 22-3-950 (Supp. 1976) (emphasis added). Notably absent from this section is the grant of any authority to punish for contempt of court where the alleged contempt is committed outside the presence of the court. Neither does the statute include any language granting authority to punish for contempt of court where the basis for the contempt is an alleged bond violation. By the plain language of the statute, magistrate judges have no authority to punish for contempt of court where the alleged contemptuous conduct occurs outside the presence of the court.

The reason for the strict limitation on magistrate contempt power is that "[c]ontempt is an extreme measure and the power to adjudge in contempt is not to be lightly asserted." <u>Harper</u>, 297 S.C. at 258, 376 S.E.2d at 272. In order for a magistrate to punish for contempt of court, a clear and specific violation of Section 22-3-950 must be shown. <u>Id</u>. at 259, 376 S.E.2d at 274. Conduct that does not clearly and specifically violate a provision of Section 22-3-950, is not punishable by contempt in magistrate's court. <u>Id</u>. <u>See also</u> <u>Shirer</u>, <u>supra</u>, 547 F.2d at 228-30 ("[t]he contempt power under the South Carolina Statute is thus limited to instances where the contempt is committed <u>in the presence of the court</u>, or where the party is willfully guilty of an undue disturbance of the proceedings <u>before the magistrate while sitting officially</u>." <u>Id</u>. at 230 (interpreting South Carolina law) (emphasis added); <u>Wilkes v. Young</u>, 28 F.3d 1362, 1372 (1994) (Phillips, J., dissenting) ("In [South Carolina], a magistrate has no authority to hold an

absent defendant in criminal contempt for failure to appear, because his power to punish for contempt is limited by statute to acts of contempt committed in his presence while he is performing the duties of his office." (citing S.C. Code Ann. § 22-3-950 (Law. Co-op. 1989), and an Attorney General's opinion to J.M. McLendon, Esquire:

> The language of that section clearly limits that power to contempts committed in the magistrate's presence. Therefore, one who is not in the presence of the court could not be subject to the punishment prescribed by Section 22-3-950. Furthermore, municipal courts not being courts of general jurisdiction have no power under the common law to punish for contempt other than that power specifically provided by statute.

S.C. Op. Att'y. Gen. No. 77–406 (Dec. 27, 1977))).[4]

Although Section 22-3-950 sets forth the general contempt powers possessed by magistrates, as the circuit court noted, the Legislature has articulated other specific circumstances in which magistrates may exercise their contempt powers. See App. 275-76; see also, e.g., S.C. Code Ann. § 22-3-930 (Supp. 1976) (permitting use of contempt powers to compel the attendance of witnesses and the giving of testimony); S.C. Code Ann. § 22-3-550(A) (Supp. 1976) (permitting use of contempt powers to punish a person for willful failure to pay restitution); S.C. Code Ann. § 22-2-130 (Supp. 1976) (permitting use of contempt powers to punish for contempt where summonsed juror fails to pay civil penalty imposed for failure to appear for jury duty). Notably, each statute involves instances of direct contempt, contempt that

[4] Finding that a plaintiff failed to establish a cause of action for damages under 42 U.S.C. § 1983 or under South Carolina tort law, the majority in Wilkes did not address the issue of magistrate contempt authority. However, noting that a defendant's failure to comply with a magistrate summons was never grounds for a charge of criminal contempt in South Carolina, the dissenting judge interpreted Section 22-3-950, which replaced Section 43-134, and found that magistrate contempt authority is limited to Section 22-3-950. Id. at 1372.

occurs in the presence of the magistrate, or instances where the contemptuous conduct may be observed by the magistrate while sitting officially.

C. Bond Statutes

Contrary to the circuit court's assertion, Section 17-15-30(D) does not confer any power to punish a defendant for an alleged violation of bond conditions through contempt of court. Section 17-15-30 sets forth factors to be considered by the court when setting a defendant's bond and imposes on law enforcement a duty to provide certain information to the court prior to or at the time of the bond hearing. S.C. Code Ann. § 17-15-30 (Supp. 2012). Subsection (A) lists factors that the court may consider, such as family ties, employment, and record of flight. Subsection (B) provides a list of factors that the court must consider, if available, including the defendant's criminal history and charges pending against the defendant. Subsection (C)(1) places the burden on the arresting agency to provide the court with information that must be considered by the court under subsection (B), as well as "any other information that will assist the court in determining conditions of release." If any of the information that is to be provided by law enforcement is not available for the bond hearing, Subsection (C)(2) requires law enforcement to notify the court and provide the reason that it is not available. S.C. Code Ann. § 17-15-30(C)(2). Finally, Subsection (D) states that "[a] court hearing these matters has contempt powers to enforce <u>the provisions of this section</u>." S.C. Code Ann. § 17-15-30(D) (emphasis added).[5]

[5] Though not raised in any of the proceedings below, Section 22-5-510, also addresses the setting of bond and is, substantively, nearly identical to Section 17-15-30, differing only in its outlining of specific duties of magistrates and adding additional considerations for the magistrate in setting bond. Neither section imposes affirmative duties on a defendant, and like subsection (D) of 17-15-30, 22-5-510(G) also indicates that "[a] court hearing this matter has contempt powers to enforce these provisions."

By the plain language of the statute, contempt powers are conferred only for the enforcement of Section 17-15-30, which does not impose any duties, requirements, or restrictions on a defendant. Instead, Section 17-15-30 may only be said to impose duties on the court determining conditions of release and on the arresting law enforcement agency as part of its participation in the bond setting hearing. Because no provision of Section 17-15-30 pertains to duties, obligations, or actions of a defendant, but only to that of courts and law enforcement, Subsection (D), then, in authorizing the use of contempt powers for the enforcement of the provisions of Section 17-15-30, may not be interpreted as applying to a defendant. The plain language of the statute does, however, suggest that a finding of contempt would be permissible where law enforcement does not comply with any of their duties articulated in this section.

Had the Legislature intended to grant contempt powers for violations of conditions of bond, it could have done so in a number of ways. The Legislature could have crafted Subsection (D) to permit punishment by contempt for a violation of this title or chapter, as opposed to explicitly limiting the authority conferred to "this section." S.C. Code Ann. 17-15-30(D). Notably, the Legislature did not include a similar subsection in Section 17-15-10, which specifically addresses permissible conditions of release that may be required of defendants. Had the Legislature included a subsection similar to Section 17-15-30(D), permitting enforcement of the conditions of release by contempt powers, the question would then arise as to whether this could be interpreted as an exception to the general limitation on magistrate authority to punish for contempt, as set forth in Section 22-3-950. However, the conspicuous absence of a grant of any such authority, either to magistrates in general, or in the statute governing conditions of release on bond, demonstrates that the Legislature did not intend to confer such power.

To the contrary, and perhaps most notably, Section 17-15-100 confirms that the Legislature did not intend to confer any additional contempt powers to any court, magistrate or otherwise, in its enactment of the statutes relating to bond conditions: "Nothing contained in Sections 17-15-10 through 17-15-60 shall *affect* the power of any court of the State to punish for contempt." S.C. Code Ann. § 17-15-100 (Supp. 1976) (emphasis added). By the plain language of this statute, the Legislature indicated a clear intent that no provision contained in Sections 17-15-10 through 17-15-60 should be construed as either expanding or limiting the contempt powers of any court. Therefore, interpreting Section 17-15-30 as granting any additional contempt power to a magistrate court is inconsistent with the plain language of the statute.

Further, Section 17-15-40 indicates that a person released on bond must be notified of the terms and conditions of his release and "shall acknowledge his understanding [of those conditions] <u>and the penalties and forfeitures applicable in the event of a violation thereof</u> on a form to be prescribed by the Attorney General." S.C. Code Ann. § 17-15-40 (Supp. 2015) (emphasis added). The bail form signed by defendants provides no notice that a violation of the conditions of their release may result in the initiation of contempt proceedings against them. App. 184-85. Rather, the appropriate means for addressing a violation of a condition of bond is through a bond modification or revocation proceeding, for which a defendant is given notice and a hearing. <u>See</u> S.C. Code Ann. § 17-15-50, 55 (Supp. 2015).[6]

Furthermore, with its 2015 amendments to the domestic violence laws, if the Legislature had contemplated or wanted to ensure that magistrates possess the power to punish alleged bond

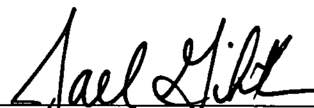
[6] Additionally, nothing prevents an alleged victim from seeking an order of protection or restraining order from the appropriate court, violations of which are clearly punishable as a criminal offenses. <u>See</u>, <u>e.g.</u>, S.C. Code Ann. § 16-25-20 (Supp. 2015); S.C. Code Ann. § 16-3-1910 (Supp. 2015); S.C. Code Ann. § 16-3-1920 (Supp. 2015).

violations using contempt powers, it certainly could have ensured that an explicit grant of authority was made, either in the domestic violence statutes of Title 16, Chapter 25; the general bond statutes of Title 17, Chapter 15; or the magistrate bond statutes of Title 22, Chapter 5. The lack of any explicit grant of authority by the Legislature is perhaps the best evidence that magistrates do not possess this power. Although the circuit court is correct that all courts possess contempt powers, not all contempt powers are created equally. Just as magistrates have significantly more inferior general jurisdiction than circuit courts, so, too, is their jurisdiction to punish for contempt. Therefore, charging a defendant with criminal contempt of court for violating a condition of bond violates the due process guarantees of the state and federal Constitutions because the Legislature did not create a separate offense of criminal contempt for violations of the conditions of a defendant's bond for courts of any jurisdiction, and, as a result, defendants have no notice that they may be charged with criminal contempt for alleged bond violations. U.S. CONST. amend. XIV, § 1; U.S. CONST. amend. VI; S.C. CONST. art. I, § 3; S.C. CONST. art. I, § 14.

CONCLUSION

Petitioner respectfully requests that this Court grant the petition for writ of certiorari to review the decision of the Court of Appeals dismissing Petitioner's appeal and to decide the issue of whether magistrates possess subject matter jurisdiction to cite and punish defendants for constructive criminal contempt of court for allegedly violating conditions of bond.

Respectfully submitted,



Jael D. Gilreath
Assistant Public Defender
ATTORNEY FOR PETITIONER.

This 10th day of June, 2015

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

RECEIVED
JUN 10 2016
SC SUPREME COURT

Certiorari to Lexington County

William P. Keesley, Circuit Court Judge

Order (S.C. Ct. App. filed 1/13/2016)
2014-CP-32-01449

THE STATE,

RESPONDENT,

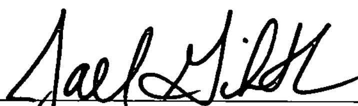
V.

QUENTIN RAYMAR PRICE,

PETITIONER

CERTIFICATE OF SERVICE

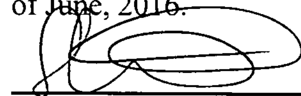
I certify that a true copy of the petition for writ of certiorari and a copy of the appendix, in this case has been served on John Benjamin Aplin, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; Quentin Raymar Price at 1509 Ross Street, West Columbia, SC 29169; and the S.C. Court of Appeals this 10th day of June, 2016.



Jael Gilreath
Assistant Public Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 10th day
of June, 2016.



Notary Public for South Carolina
My Commission Expires: March 10, 2020

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June 10, 2016

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JUN 10 2016
SC SUPREME COURT

John Benjamin Aplin, Esquire
Assistant Attorney General
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211

Re: The State v. Quentin Raymar Price

Dear Mr. Aplin:

Enclosed are two copies of the petition for writ of certiorari and the appendix in the above case that I filed with the S.C. Supreme Court today.

If you have any questions concerning this matter, please contact me.

Sincerely,

Jael D. Gilreath
Assistant Public Defender

JDG

Enclosures

cc: Court of Appeals