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JUL 05 2016

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

JAMES B. BARBER, III, CIRCUIT COURT JUDGE

Appellate Case No. 2016-000146
[Filed 6-10-2016]

2005 CP4002795

ISAIAH JAMES, JR., Petitioner,
vs.

SOUTH CAROLINA DEPARTMENT OF PROBATION,
PAROLE AND PARDON SERVICES [SCDPPPS], Respondent.

PETITION FOR WRIT OF CERTIORARI
TO S.C. COURT OF APPEALS

Isiah James, Jr., 096883
WCF, IC 6T, 4340 Broad River Road
Columbia, SC 29210

Other Counsel of Record:

Tommy Evans, Jr.
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POB 50666
Columbia, SC 29250

Certificate of Petitioner
Question(s) Presented
Statement of the Case
Argument(s):

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I. THE COURT OF APPEALS ERRED DENYING
APPEAL
II. THE COURT OF GENERAL SESSIONS FOR
SUMNER COUNTY DID NOT HAVE JURISDICTION
ON THE ARMED ROBBERY OFFENSE

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State v. Howins, 760 SE2d 814 (2014)

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CERTIFICATE OF PETITIONER SC Court of Appeals

James hereby certifies that the petition for rehearing was made and finally ruled on by the South Carolina Court of Appeals' panel on 6-10-16

QUESTION(S) PRESENTED

I. DID THE COURT OF APPEALS ERB HOLDING PETITIONER IS NOT AGGRIEVED BY THE CIRCUIT COURT'S ORDER?

II. WHETHER THE COURT OF GENERAL SESSIONS FOR SUMTER COUNTY [JUNE 1979 TERM] HAD POWER (JURISDICTION) TO CONVICT AND SENTENCE PETITIONER FOR ARMED ROBBERY?

STATEMENT OF THE CASE

There was the 12-14-78 arrest of petitioner who was charged and indicted for two (2) counts of murder and armed robbery; after pre-trial proceeding James entered guilty pleas to armed robbery and two (2) counts of voluntary manslaughter in Sumter County. The [Janey] Court imposed 30, 30, and 25 year sentence consecutively. James became eligible for parole release on or about 12-17-8; it was dis-approved. He made subsequent applications for parole release thereafter.

When he was denied parole release in March 2001, he brought this action (appeal) before the Administrative Law Court [ALC] raising the claims which included the JAMES - Cooper claim or issue. The ALC issued an Order on 5-19-05; it was timely appealed to the circuit court. The circuit court conducted an 8-31-11 hearing where it entertained respondent's motion to dismiss; James presented all issues to the circuit court, including the jurisdictional issue set forth above herein by question.

The circuit court issued an order granting SCDPPPS's motion to dismiss on appellate jurisdiction ground; he appealed to South Carolina Court of Appeals. The court of appeals issued unpublished opinion no. 2012-UP-503 (filed 9-5-12) [see at 50 2012 WL 1086239, App. Cas. no 2011-199967]. Petitioner filed a timely petition for rehearing; the court's panel ruled on the petition for rehearing on 12-5-12; he petitioned this Court on petition for writ of certiorari — the High Court issued the 5-14-14 Memo. Op. No. 2014-MO-012 which granted certiorari, reversing the court of appeals decision dismissing James 2011 appeal.

That affirmed the circuit court's 2011 Order of Dismissal. The appeal was remanded to the [BARBER] Circuit Court; he conducted the 10-6-14 hearing and granted the Cooper claim but ignored the jurisdictional issue set forth above herein. After there was receipt of the 12-5-14 order, Petitioner filed a timely notice of appeal to this Court; the appeal was subsequently transferred to the Court of Appeals; the court

of appeals issued 3-1-16 Order of Dismissal. Petitioner filed a timely petition for rehearing; the court's panel denied the petition for rehearing on 6-10-16 [see App. p. 4]

Argument(s)

I. THE COURT OF APPEALS ERRED HOLDING "APPELLANT IS NOT AGGRIEVED BY THE CIRCUIT COURT'S ORDER"

The court of appeals erred holding, "Appellant is not aggrieved by the circuit court's order"; thereby issuing 3-1-16 Order of Dismissal. Although there was a timely petition for rehearing with suggestion rehearing en banc; the court's panel ignored what James pointed thereto where the case (appeal) was before the circuit court in 2012 WL 10862739 and the jurisdictional issue was raised and the court's panel ruled under 2012-UP-503 concerning it; he stated herein on remand that he did not abandon the claim. *State v. Gentry*, 610 S.E2d 494, (2005) ("issues related to subject matter jurisdiction may be raised at anytime")

Moreover, "The lack of subject matter jurisdiction may not be waived, even by consent of the parties, ... by this court." *Ibid.* In *Gentry* the High Court quoted United States Supreme Court's precedent stressing:

"This latter concept of subject matter jurisdiction, because it involves a court's power to hear a case, can never be forfeited or waived ... 610 S.E2d ---"

This is the same aspect James has, will present to this Court. See Rule 4(b) of South Carolina Rules of Criminal Procedure [SCR Crim P]. It follows, the court of appeals erred by prohibiting briefing and appeal on the jurisdictional claims and going contrary to the Rule of Law.

II. THE [Laney] COURT OF GENERAL SESSIONS (JUNE 1979 TERM) DID NOT (POWER) JURISDICTION TO CONVICT AND JAMES FOR ARMED ROBBERY

The Court of General Sessions for Sumter County did not have power to convict and sentence petitioner on 6-18-79 for numerous reasons and going against the Rules of Law(s), Rule 60 of Circuit Court Rules of Practice [CCRP] was in most control and effect in the 1970's. *Cook v. Taylor*, 252 S.E2d 923 (1979) ("See Rule 60 of the Circuit Court Rules") (cf. *State v. Culbert*, 316 S.E2d 681 (1984) (for a discussion of could a circuit court rule be jurisdictional vs mandatory). See also *Edward D. v. Baby Girl B*, 2015-MQ-022, 2015 WL 1881188.

Which points or refers to circuit court judge's power, "If upon such subsequent motion any order be made, it shall be void." Rule 4(b) contains, expresses and sounds in mandatory language "shall" and emphasizes stress jurisdiction "void". See *Simmons v. State*, 471 S.E2d 455 (1993) ("A sentence imposed by a court without jurisdiction is void.") There was the 3-26-79 arraignment on the homicide offenses [see indictment no. 79GS43-140]. At the 6-1-79 pre-trial motion hearing the record reveals,

"The defendants Maurice MACK and Isiah James were indicted on Indictment Numbers 79GS43-139 and 140, respectively, for two counts of murder as to each indictment." p. 4 ll. 1-3.

The record shows that the [FINNEY] Court adhered to the rule of law, law of the case doctrine. *Cook v. Taylor supra*; but see *Fleyon v. PHL Jasper, Inc.*, 776 SE2d 397 (S.C. App. 2015) ("closely related to the doctrine of claim and issued preclusion is the doctrine of law of case which holds that a decision on a issue of law made at one stage of the case becomes binding precedent to be followed in subsequent stages of the same litigation") *Id.* at 403; See also *Atkins v. Wilson*, 2016 WL 912671 (Ch. App.) [citing *U.S. v. Aramony*, 166 F.3d 6, 661 (CA4 1999)]. There was the adherence, ruling(s) or holding(s) of the law of the case doctrine by the 2nd Circuit [Finney] Court Judge from more than one point of view where the court ruled on "BRADY" discovery motion (p. 6, 1, 22) and there was the severance denial in *State v. Maurice Mack et al.* (See *Davis v. Parkview Apartments*, 762 SE2d 535, 543 (2014) (discovery establishes the law of the case)).

It is noteworthy important to view the State (government) did not appeal any of the Finney Court's decisions/rulings. *State v. Amerson*, 428 SE2d 871, (1993) ("Appellate courts are bound by fact findings in response to motions preliminary to trial where the findings are supported by evidence and not clearly wrong or controlled by error of law.") See also *State v. HEWINS*, 760 SE2d 811, 819, 824 (2014). The doctrine(s) of res judicata and/or collateral estoppel attached to *State v. Mack et al.* case, the record shows further:

BY SOL McLEOD: I might point out, Judge, that the list that he is talking about, the information for his defense in the armed robbery case, the case has been called and will be called as murder. p 5 11, 1-4

Even though the State (government) had already secured indictment (# 796543-141) [armed robbery] true billed at the March 1979 term or perhaps it was an illegal, unlawful term of court as the reason why it did not surface at the 3-26-79 arraignment, 21 S.C. Court § 149 comparison set forth, "The law of the case, however, is distinct from res judicata, in that, the law of the case does not have the finality of the doctrine of res judicata and applies only to one case whereas res judicata forecloses parties or privies in one case by what has been done in another case."

Furthermore, see *State v. Blakely*, 742 SE2d 29, at 35 (S.C. App. 2015) (for a discussion on South Carolina mandatory joinder rule) and 22A C.J.S. § 560 (a) Criminal Law and Rule 8 Federal Rules of Criminal Procedure [FRCP]. When James engaged the first APCH, the record showed:

Q. Was you or was you not at applicant's motion for severance?

A. No, I was not there. As I remember at that time, I believe, if I'm not mistaken, that I was not present at the time the motion was made by Mr. Gray before Judge Finney for a severance. [p. 9 11, 49]

How the [Larney] court adhered or followed the rule of law, law of the case teaching and etc. concern MACK, M. and violated it on petitioner in the same case points to cabot(s), collusion and conspiracy by the parties who engaged it in 1979. Cf. *State v. Blakely*, 763 SE2d 622 (S.C. App. 2014) Even more one would surmise if there were Gray area(s) on what jurisdiction entails that the High Court clarified or explained exactly what jurisdiction in *In Re Estate of Haver*, 754

§ 24 815, 882 (2014): "the word 'jurisdiction' does not in every context connote subject matter jurisdiction, but rather is 'a word of many, too many meanings,'"

This Court seemed to unify South Carolina law along with Federal law in Hover when it declared:

Butter, "[j]urisdiction is generally defined as 'the authority to decide a ~~given~~ case one way or the other. Without jurisdiction, a court cannot proceed at all ...'"

"Specifically, '[j]urisdiction is composed of three elements (1) personal jurisdiction; 2 subject matter jurisdiction; and (3) the court's power to render the particular judgment requested'"

Id. at 882

It is even more clearer, the [Haney] Court adhered and violated a number of rules of law(s) and Rule 60 CCRP along with a number of controlling precedent(s) which prohibited the Court from accepting guilty plea and imposing sentence on the armed robbery offense. The armed robbery part must be vacated, set aside forthwith. James maxed out the 60 year sentence in 2010. See SCD record p. 11; he must be released immediately.

This 1 day of July 2016.

S/ Lorah James, # 096883

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he has caused true and correct copies of the 'PETITION FOR WRIT OF HABEAS CORPUS' to be mailed, postage prepaid, to the parties set forth below herein this 3 day of July 2016.

Tommy Evans, Jr.
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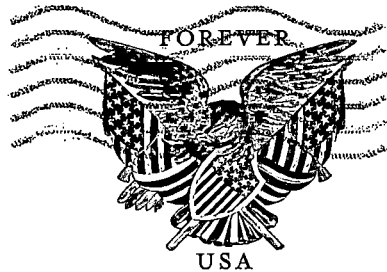
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