

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to the Court of Appeals
Appeal From Lexington County
Hon. William P. Keesley, Circuit Court Judge
Appellate Case Tracking No. 2016-001237

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SC SUPREME COURT

The State,

Respondent,

v.

Quentin Raymar Price,

Petitioner.

Order (S.C. Ct. App. filed January 13, 2016)

**RETURN TO PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF APPEALS**

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TABLE OF CONTENTS

STATEMENT OF QUESTIONS PRESENTED..... 1

STATEMENT OF THE CASE..... 2

ARGUMENT..... 4

 I. The Court of Appeals correctly determined Petitioner is not an
 aggrieved party, and therefore, properly dismissed his appeal..... 4

 II. The Court of Appeals did not address the merits of Petitioner’s
 appeal regarding the jurisdiction of the magistrate court to hold a
 person in contempt for a bond violation, and therefore, the proper
 remedy would be to remand if this Court determines Petitioner had
 the right to appeal..... 10

CONCLUSION..... 11

STATEMENT OF QUESTIONS PRESENTED

- I. The Court of Appeals correctly determined Petitioner is not an aggrieved party, and therefore, properly dismissed his appeal.
- II. The Court of Appeals did not address the merits of Petitioner's appeal regarding the jurisdiction of the magistrate court to hold a person in contempt for a bond violation, and therefore, the proper remedy would be to remand if this Court determines Petitioner had the right to appeal.

STATEMENT OF THE CASE

Petitioner was arrested and charged with Criminal Domestic Violence, first offense. (App.1-2). He was released on a surety bond, which included the condition he have no contact with the victim. (App.3-4). The State subsequently sought a bench warrant from the magistrate based upon Petitioner's breach of that condition. (App.5). A hearing was held to determine whether to hold Petitioner in contempt for the bond violation. Petitioner was found in contempt of court for violating the terms of his bond and was sentenced to thirty days in jail. (App.59-61).

Petitioner filed a notice of appeal to the circuit court maintaining, inter alia, the magistrate did not have subject matter jurisdiction to find Petitioner in criminal contempt for the bond violation and the magistrate erred in failing to vacate the bench warrant issued for the criminal contempt as it was a violation of Petitioner's due process rights. (App.69-21). After a hearing, the circuit court issued an order finding the magistrate did have jurisdiction to consider the criminal contempt for the bond violation, but finding the contempt citation should be overturned and the sentence vacated based on a violation of due process. (App.285).

Petitioner filed a Notice of Appeal to the Court of Appeals on October 14, 2014. Respondent filed a timely Petitioner for Rehearing in the circuit court on October 17, 2014. (App.288). Respondent moved the Court of Appeals to dismiss the appeal, or in the alternative, remand for consideration by the circuit court of the timely Petition for Rehearing. (App.306). The Court of Appeals dismissed the appeal without prejudice to allow the circuit court to consider the Petition for Rehearing. (App.358). Respondent subsequently withdrew its Petition and the circuit court issued a final order on August 13, 2015. (App.359).

Petitioner then filed a Notice of Appeal from the circuit court's final order on August 21, 2015, and an Amended Notice of Appeal on August 28, 2015. Respondent moved to dismiss the

appeal asserting Petitioner is not an aggrieved party because his citation for contempt was overturned and his sentence vacated. (App.361). Petitioner filed a Return to the motion. (App.371). The Court of Appeals issued an Order on January 13, 2016, dismissing the appeal and finding Petitioner was not an aggrieved party. (App.432). Petitioner filed a Petition for Rehearing, which was denied on May 12, 2016. Petitioner served his Petition for Writ of Certiorari on June 10, 2016. This Return follows.

ARGUMENT

I. **The Court of Appeals correctly determined Petitioner is not an aggrieved party, and therefore, properly dismissed his appeal.**

The Court of Appeals correctly found Petitioner is not an aggrieved party and properly dismissed this appeal. The circuit court overturned Petitioner's citation for criminal contempt and vacated his sentence. As a result, he was not an aggrieved party as he obtained the relief he sought, only not on the ground he sought it. Petitioner's appeal can provide him no more relief and merely seeks an advisory opinion. Further, Petitioner seems to conflate the concepts of being an aggrieved party with whether his appeal is moot. Finally, even if considered, Petitioner's appeal was properly dismissed because it is moot and can be reviewed by a subsequent court if similar circumstances arise.

Pursuant to section 18-1-30 of the South Carolina Code: "Any party **aggrieved** may appeal in the cases prescribed in this title." S.C. Code Ann. § 18-1-30 (Supp. 2014) (emphasis added); see also, State v. Gregorie, 339 S.C. 2, 4, 528 S.E.2d 77, 78 (2000) ("Any **aggrieved** party may appeal the circuit court's final judgment.") (emphasis added). Additionally, as has been explained by the appellate courts: "Rule 201(b), SCACR 'limits the ability to appeal to '[o]nly a **party aggrieved** by an order, judgment . . . or decision' Powell ex rel. Kelley v. Bank of America, 379 S.C. 437, 447, 665 S.E.2d 237, 243 (Ct. App. 2008) (emphasis added).

The Court of Appeals explained: "[t]he word '**aggrieved**' refers to a substantial grievance, a denial of some personal or property right, or the imposition on a party of a burden or obligation." Id., (Emphasis added), citing Beaufort Realty Co. v. Beaufort County, 346 S.C. 298, 301, 551 S.E.2d 588, 589 (Ct. App. 2001). "An aggrieved party is aggrieved by a judgment or decree when it operates on **his or her** rights of property or **bears directly on his or her**

interest.” Beaufort Realty Co. v. Beaufort County, at 301, 551 S.E.2d at 589 (emphasis added); see also Powell ex rel. Kelley v. Bank of America, 379 S.C. 437, 665 S.E.2d 237 (Ct. App. 2008) (stating bank is not an aggrieved party necessary to initiate an appeal from an order where the bank was not a party to the severed action, had no interest in the escrowed funds, and was not aggrieved by the trial court’s apportionment of the funds between plaintiffs). “A party . . . cannot appeal from a decision which does not affect his interest, however erroneous and prejudicial it may be to the rights and interests of some other person.” Bivens v. Knight, 254 S.C. 10, 13, 173 S.E.2d 150, 152 (1970); First Union Nat. Bank of South Carolina v. Soden, 333 S.C. 554, 565, 511 S.E.2d 372, 378 (Ct. App. 1998); see also Burns v. Gardner, 328 S.C. 608, 493 S.E.2d 356 (Ct. App. 1997) (stating that appellant may not challenge the imposition of sanctions against his attorney because the attorney and not appellant is aggrieved by the assessment of sanctions).

The law recognizes that that despite having been a “winning” party below, a party can still be aggrieved by a judgment of the court. See Cobb v. Benjamin, 325 S.C. 573, 580, 482 S.E.2d 589, 592-93 (Ct. App. 1997). However, “a mere interest in a problem is not enough” to establish that an appellant suffered an individualized injury sufficient to find they are aggrieved and, therefore, may appeal the judgment of the lower court. Beaufort Realty Co., Inc. v. Beaufort County, 346 S.C. 298, 551 S.E.2d 588 (Ct. App. 2001), citing Carolina Alliance for Fair Employment v. S.C. Dep’t of Labor, Licensing & Regulation, 337 S.C. 476, 487, 523 S.E.2d 795, 800 (Ct. App. 1999).

Once an appeal is properly before the circuit court from magistrate’s court and the circuit court renders its final judgment, the right to appellate review thereafter is controlled by statute. Only an aggrieved party may appeal the circuit court’s order. See Rule 201 (b), SCACR; S.C.

Code Ann. §18-1-30 (2014); S.C. Code § 18-9-10 (2014); State v. Gregorie, 339 S.C. 2, 528 S.E.2d 77 (2000); State v. Looper, at 364, 772 S.E.2d at 516. In State v. Gregorie, this Court iterated the test for determining whether a party may file an appeal after the circuit court has reviewed a magistrate court conviction is whether the party is aggrieved by the decision of the circuit court. In Gregorie, the Court found a party could be aggrieved under the specific facts of that case when: 1) a circuit court order vacated a magistrate's court conviction and sentence; 2) the case was remanded for a new trial; and 3) the facts of the particular case reflect that the new trial would violate the **defendant's right** against double jeopardy because the State did not appeal the circuit court's finding that the State failed to meet its burden of proof. Gregorie, 339 S.C. at 3-4; 528 S.E.2d at 78.

The order in question overturns the finding of criminal contempt entered against Petitioner and vacates Petitioner's criminal contempt sentence **without remanding** for a new contempt proceeding. Petitioner does not face the possibility of double jeopardy, any individualized injury, a burden or obligation operating on **his** rights or bearing directly on **his** interest. All of the magistrate's court charges arising from and related to this incident have been resolved. Petitioner cannot obtain any further relief than the relief already provided by the circuit court. As was stated in our supreme court in Cisson v. McWhorter, 255 S.C. 174, 177 S.E.2d 603 (1970):

Our statutory provision limiting appellate review to those who have been aggrieved by the judgment below is, in our opinion, a wise and well reasoned requirement, as our court is concerned with correcting errors that have practically wronged the appealing party. It, therefore, follows that it is our duty to reject an appeal that is prosecuted by a party who is not aggrieved in a legal sense by the judgment of the trial court.

Cisson v. McWhorter, at 177 – 78; 177 S.E.2d at 605.

“This Court is concerned with correcting errors that have practically wronged the appealing party and, where, as here, the appeal is prosecuted by a party who is not aggrieved in the legal sense by the order below, it becomes (the appellate court’s) duty to reject that appeal.” Knight v. Autumn Co., Inc., 271 S.C. 112, 115, 245 S.E.2d 602, 604 (1978), citing Cisson v. McWhorter, 255 S.C. 174, 177 S.E.2d 603 (1970). The order on appeal vacates the criminal contempt finding and sentence and ends the matter. There can be no benefit or improvement in **Petitioner’s position** should this Court consider and reverse the contempt finding and sanction on the alternative ground advanced by Petitioner. In actuality, Petitioner urges this Court to consider arguments he wishes to advance on appeal for the benefit of **future litigants** and speculates as to the findings and outcome of those future proceedings. Petitioner asks this Court for an improper advisory opinion on a matter that may or may not arise in future proceedings but that will have no impact on him. This is contrary to the law. See Bivens v. Knight, at 13, 173 S.E.2d at 150 (“A party, therefore, cannot appeal from a decision which does not affect his interest, however erroneous and prejudicial it may be to the rights and interests of some other person.”). The contempt proceedings regarding Petitioner’s bail violation has been declared a nullity. The ground Petitioner advances for consideration on appeal, at most, is a matter for another litigant on another day. Petitioner cannot appeal an issue which does not affect his interest, however erroneous and prejudicial it may be to the rights and interests of some other defendant at some later time. Petitioner is not an aggrieved party within the meaning of the law and his appeal is not proper. See Dunson v. Dunson, 278 S.C. 210, 294 S.E.2d 39 (1982) (Wife is not an aggrieved party where wife sought a divorce and the family court granted it on the ground of separation for one year as opposed to desertion and wife was not prejudiced by the

determination. The award of the divorce on the ground of separation for one year did not deny wife any personal or property right nor did it impose a burden or obligation on wife).

Petitioner attempts to argue concepts related to mootness in order to claim his appeal should be heard. He asserts the holding of the circuit court that the magistrate has jurisdiction to consider criminal contempt for a bond violation is a matter which is capable of repetition yet evading review or is of such imperative and manifest urgency that this Court needs to establish a rule for future conduct. The question before the Court is not one of mootness, as it does not even reach that question because Petitioner is not an aggrieved party and has no right to appeal. Even if mootness, or the factors this Court considers for hearing a moot case, were considered, Petitioner's case does not meet the exception to the rule.

First, this case is clearly not capable of repetition yet evading review. If another person is found in criminal contempt by a magistrate court, they may raise that issue to the circuit court and, as long as it is properly raised, continue to assert that claim all the way to this Court. In the instant case, the issue would have been proper for the Court of Appeals to consider if the circuit court had not overturned Petitioner's criminal contempt citation and vacated the sentence on due process grounds. This demonstrates that the issue is not capable of evading review.

Petitioner also maintains it is a crucial question for this Court to answer regarding whether the magistrate court has jurisdiction to consider criminal contempt for a bond violation occurring outside the presence of the magistrate. Again, Petitioner cannot raise a question which has no bearing on his interests and seek an advisory opinion on the question. Further, if magistrates continue to find people in criminal contempt, the case will likely find its way to this Court upon a proper record after having been thoroughly considered by the circuit court and Court of Appeals. Finally, Petitioner's argument that this Court should consider the issue

because it involves subject matter jurisdiction, when stretched to its logical conclusion, should mean the Supreme Court should establish the subject matter jurisdiction of every court in South Carolina and never again have to consider the issue on a case by case basis. It is unlikely there will be such a rash of criminal contempt citations in magistrate court such that this Court needs to allow a case which is not properly before it to continue so that the issue may be addressed out of its manifest for an established rule of future conduct. If a future person is found in criminal contempt by a magistrate for a bond violation committed outside the presence of the magistrate, and they raise the issue of subject matter jurisdiction, the issue can be considered at that time.

Accordingly, this Court should find Petitioner is not an aggrieved party and, therefore, may not appeal the judgment of the circuit court. As a result, this Court should deny the Petition for Writ of Certiorari as to Question I.

II. The Court of Appeals did not address the merits of Petitioner's appeal regarding the jurisdiction of the magistrate court to hold a person in contempt for a bond violation, and therefore, the proper remedy would be to remand if this Court determines Petitioner had the right to appeal.

The Court of Appeals never considered the issue raised by Petitioner in Question II. Accordingly, the issue is not properly before this Court for consideration. The proper remedy should this Court find Petitioner is an aggrieved party and his appeal should proceed would be to remand this case to the Court of Appeals to allow the Court of Appeals to properly consider the issue now being raised. See State v. Larmand, 415 S.C. 23, 33, 780 S.E.2d 892, 896 (2015), *reh'g granted* (Dec. 23, 2015), *reh'g denied* (Feb. 11, 2016) (finding because the Court of Appeals did not address the remainder of Respondent's arguments on appeal, the proper remedy was to remand the matter to the Court of Appeals for further action). Accordingly, this Court should deny the Petition for Writ of Certiorari as to Question II regardless of whether it grants or denies the Petition as to Question I.¹

¹ As to the merits, the State believes the magistrate had jurisdiction to consider the criminal contempt citation pursuant to Section 22-5-510(A) and (G) of the South Carolina Code (Supp. 2014). If this Court grants the Petition for Writ of Certiorari, a more thorough examination of the issue can be presented in Respondent's brief.


CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that this Court should deny the Petition for Writ of Certiorari to the Court of Appeals.

Respectfully submitted,

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June 30, 2016

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PROOF OF SERVICE

I, Sally Ellison, certify that I have served the within Return to Petition For Writ of Certiorari to the Court of Appeals by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Jael D. Gilreath, Esquire
Assistant Public Defender
Lexington County Public Defender's Office
407 West Main Street
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I further certify that all parties required by Rule to be served have been served.
This 30th day of June, 2016.



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