

ORIGINAL

STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

JUL 26 2016

APPEAL FROM GEORGETOWN COUNTY
Paula Thomas, Circuit Court Judge

SC Court of Appeals

Appellate Case No. 2014-002775

THE STATE,RESPONDENT

v.

DAMEON MYERS,APPELLANT.

FINAL BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

V. HENRY GUNTER, JR.
Assistant Attorney General
S.C. Bar No. 102259

Post Office Box 11549
Columbia, SC 29211-1549
(803) 734-3727

JIMMY A. RICHARDSON
Solicitor, Fifteenth Judicial Circuit

Post Office Drawer 1276
Conway, SC 29526

ATTORNEYS FOR RESPONDENT

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GEORGETOWN COUNTY
Paula Thomas, Circuit Court Judge

Appellate Case No. 2014-002775

THE STATE,RESPONDENT

v.

DAMEON MYERS,APPELLANT.

FINAL BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

V. HENRY GUNTER, JR.
Assistant Attorney General
S.C. Bar No. 102259

Post Office Box 11549
Columbia, SC 29211-1549
(803) 734-3727

JIMMY A. RICHARDSON
Solicitor, Fifteenth Judicial Circuit

Post Office Drawer 1276
Conway, SC 29526

ATTORNEYS FOR RESPONDENT

TABLE OF CONTENTS

	Page
Table of Contents	i
Table of Authorities	ii
Respondent's Statement of Issues on Appeal	3
Statement of the Case.....	4
Statement of Facts.....	6
Argument:	
1. The lower court judge did not err in denying Appellant's writ where Appellant failed to establish that his trial court lacked jurisdiction, where writ relied upon by Appellant has been abolished in South Carolina and where the writ was filed more than ten days after Appellant was sentenced. (Appellant's issues I, III, IV, and V)	9
2. The trial judge did not err in denying Loushonda Myers the opportunity to present her petition, where doing so would facilitate the unauthorized practice of law	13
Conclusion	15

TABLE OF AUTHORITIES

Cases:

<u>In re Duncan</u> , 83 S.C. 186, 65 S.E. 210 (1909)	ii, 14
<u>State v. Despain</u> , 319 S.C. 317, 460 S.E.2d 576 (1995)	ii, 14
<u>State v. Douglas</u> , 245 S.C. 83, 138 S.E.2d 845 (1964)	ii, 12
<u>State v. Dudley</u> , 364 S.C. 578, 614 S.E.2d 623 (2005)	ii, 12
<u>State v. Gentry</u> , 363 S.C. 93, 610 S.E.2d 494 (2005)	ii, 12
<u>State v. Johnson</u> , 333 S.C. 459, 510 S.E.2d 423 (1999)	ii

Constitutions and Statutes:

42 U.S.C. 1988	7
S.C. Code Ann. § 40-5-310	ii, 14
S.C. Const. Art. V, §11	iii, 12

Rules:

Rule 29 (b), SCRCrimP	ii
Rule 29(a), SCRCrimP	13
Rule 60 (b), SCRCP	ii

RESPONDENT'S STATEMENT OF ISSUES ON APPEAL

1. The lower court judge did not err in denying Appellant's writ where Appellant failed to establish that his trial court lacked jurisdiction, where the writ relied upon by Appellant has been abolished in South Carolina and where the writ was filed more than ten days after Appellant was sentenced. (Appellant's issues (Appellant's issues I, III, IV, and V)
2. The trial judge did not err in denying Loushonda Myers the opportunity to present her petition, where doing so would facilitate the unauthorized practice of law.

STATEMENT OF THE CASE

Appellant was indicted at the October 2002 term of the grand jury for Georgetown County for trafficking in crack cocaine (2002-GS-22-862A), possession of crack cocaine within proximity (2002-GS-22-863); possession with the intent to distribute marijuana (2002-GS-22-864), and failure to stop for a blue light and/or siren (2002-GS-22-861). He was represented at trial by Michael T. Hursey, Esquire. Appellant was tried in his absence in Georgetown County and was subsequently found guilty on December 5, 2002 of failure to stop for a blue light, possession with intent to distribute crack cocaine 2nd offense as the lesser offense of trafficking, and possession of marijuana 2nd offense as the lesser offense of possession with intent to distribute. He was acquitted of the proximity charge. The Honorable Paula Thomas sentenced Appellant to three years imprisonment for failure to stop for a blue light, one year imprisonment for possession of marijuana, and twenty years imprisonment for possession with intent to distribute crack cocaine, with all sentences to run concurrently. Appellant's sentences were sealed and remained sealed until he was arrested and appeared before the Honorable Steven H. John on October 17, 2011. Judge John unsealed and pronounced Judge Thomas' sentences. Appellant was represented at this proceeding by T. Kirk Truslow, Esquire. Judge John denied Appellant's motion to vacate sentence, motion for a new trial, and motion to reduce sentence.

Appellant filed and served notice of appeal. The South Carolina Court of Appeals dismissed Appellant's appeal on October 4, 2012. The Court of Appeals denied a motion for reconsideration on March 11, 2013. The remittitur was returned to the circuit court on April 17, 2013.

Appellant then, through Loushonda Myers as Petitioner/Administrator/Private Attorney General challenged his convictions and sentence through a "Writ of Error, Coram Nobis and a

Demand for Dismissal for Failure to State the Proper Jurisdiction and Venue.” The Writ was filed on May 29, 2013 with the Georgetown County Clerk of Court. A hearing was held on the writ on December 19, 2013. In an order dated August 12, 2014, the Honorable Larry Hyman denied the “Writ of Error, Coram Nobis, and a Demand for Dismissal,” finding the writ was not properly before the court of general sessions. Appellant subsequently appealed and submitted a pro se brief. This Brief of Respondent follows.

STATEMENT OF FACTS

On December 19, 2013, a hearing was held on Appellant's "Writ of Error, Coram Nobis, and a Demand for Dismissal." At the beginning of the hearing, Loushonda Myers attempted to act as Appellant's attorney. R. pp. 18-20. Loushonda Myers sought to appear as "petitioner administrator private attorney general agent for Dameon Myers." R. p. 18. When asked whether she was admitted to the practice of law in South Carolina, Ms. Myers replied "I don't practice law, I exercise rights." R. pp. 18-19. Upon being told that she could not represent Appellant, Ms. Myers asserted that "Title 42 U.S.C. 1988 says differently. R. p. 19. Ms. Myers went on to accuse Judge Hyman of suspending the constitution. R. p. 20.

Following Ms. Myer's attempt at engaging in the unauthorized practice of law, Appellant proceeded pro se. R. p. 21. Appellant continuously asserted that the trial court lacked jurisdiction over the criminal case that resulted in his conviction. R. pp. 22-30. Appellant elaborated "Because it specifically explains that in Article 3, Section 2 of the Constitutional law that says you all don't have the right, you all don't have the right, and I'm not a corporation." R. p. 22. Appellant also challenged jurisdiction on the ground that there was no injured party. R. p. 30. Judge Hyman stated that "The only jurisdiction that needed to be proved, to prove jurisdiction of the court, was that a crime was committed and the crime occurred in Georgetown County, that is what was required. They don't have to show an injured party. The State was an injured party." R. p. 30. Appellant responded "that's not true." R. p. 30. Judge Hyman tried to explain to Appellant that Court of General Sessions was the improper forum for him to seek relief and that one circuit judge does not have the authority to review the decisions of another circuit judge. R. p. 27.

Appellant then called Loushonda Myers as a witness. R. p. 31. Ms. Myers began her testimony by admitting that she filed the demand for dismissal with the Court. R. p. 32. Ms. Myers continued by providing a variety of nonsensical constitutional arguments. R. pp. 32-42.

Specifically, Ms. Myers seems to have asserted that for a person to be found liable under any statute, the Court must produce a contract that the person knowingly and willingly entered. R. p. 33. Myers also stated that since South Carolina was the “person that appeared on the face of the indictment,” jurisdiction could not exist unless the State of South Carolina was present in the courtroom on December 5, 2002. R. p. 37. According to Ms. Myers, “The State can only appear in court if every last citizen in the State of South Carolina, natural human beings, appeared in the Court of General Sessions and filed and swore out an affidavit against you. R. p. 39. Myers further averred the State tried to convert Appellant into a corporate entity, which rendered jurisdiction improper. R. p. 37. Myers elaborated that the State of South Carolina brought Appellant into court as a corporate entity, which caused Appellant’s citizenship to be relinquished. Ms. Myers further stated “Well. In Horry County, for anyone to be brought up on criminal charges, statutory charges, that have not willingly and knowingly submitted themselves to the jurisdiction of the court, they have to strip them of their citizenship in order to get them under admiralty (sic) law.” R. p. 41.

Appellant then called Eric McNeil to the stand. R. p. 42. During McNeil’s testimony, Appellant told Judge Hyman that “I must disqualify you for failing to uphold the U.S. Constitution. R. p. 43. Judge Hyman refused to be recused. R. p. 44. While McNeil was on the stand, Judge Hyman had to caution Loushonda Myers that “you’re treading on very, very thin ice. You are practicing law in this courtroom, and I can’t let you do that.” R. p. 48. Appellant’s questioning of McNeil also revolved around McNeil’s non-expert opinion on whether jurisdiction had to be proven. R. p. 48. Following McNeil’s testimony, Appellant continued his vague assertions regarding a lack of subject matter jurisdiction. R. pp. 49-54. Appellant demanded that the case be dismissed. R. p. 54. The State argued that Appellant’s motion was an

improper motion in an improper court. R. p. 54. Judge Hyman agreed with the State's position and denied the motion. R. p. 54.

ARGUMENT

I.

The lower court judge did not err in denying Appellant's writ where Appellant failed to establish that his trial court lacked jurisdiction, where the writ relied upon by Appellant has been abolished in South Carolina and where the writ was filed more than ten days after Appellant was sentenced. (Appellant's issues (Appellant's issues I, III, IV, and V).

Appellant filed a Writ of Error Coram Nobis in the Georgetown County Court of General Sessions claiming his trial court lacked jurisdiction to convict and sentence him because, *inter alia*, the court of general sessions is an administrative court, his trial judge lacked authority, and Appellant is a "human being" and not a person. On appeal, Appellant makes a series of arguments asserting that the trial court lacked jurisdiction. The State submits that the trial court correctly concluded the action was not properly before it when the court of general sessions lacked jurisdiction to hear a post-trial motion, when the post-trial motion initiated by Appellant does not exist, and when Appellant failed to establish a lack of jurisdiction. Appellant's contentions are difficult to understand, misapply a wide range of constitutional authority, and misinterpret the nature of the South Carolina judicial system.

Appellant's first issue pertaining to jurisdiction concerns whether the Court of General Sessions possesses judicial power. Specifically Appellant contends that "General Sessions is an administrative court, and does not have jurisdiction over me or the alleged subject matter." App. Br. p. 6. Appellant further averred "The Court of General Sessions is a statutory court, created by inferior statutes and codes. Its authority can only govern those that give consent or contract with it. I have not knowingly and/or willingly given consent to be under the jurisdiction of the Court of General Sessions." Ap. Br. p. 7. Appellant also argued that "The administrative judges of the Court of General Sessions and Judge Paula Thomas were and are not Article III judges,

possessing the necessary requirements for lawful process and a fair and impartial trial.” App. Br. p. 7.

The third issue in Appellant’s brief alleges the Court of General Sessions acted in excess of its jurisdiction. Appellant’s argument on this issue revolves around a perception of Eleventh Amendment immunity. Appellant asserts “. . . every public office is a foreign state, even all political subdivisions; and every single court is considered a separate foreign entity.” App. Br. p. 9. Appellant further contends “The Eleventh Amendment removed all ‘judicial power’ in law, equity, treaties, contract law, and the right of the State to bring suit against the People.” App. Br. p. 9. Appellant also avers that “Public officials are not citizens but are foreign citizens. Therefore, the Court of General Sessions lacked jurisdiction as did the solicitor and judge because the court lacked jurisdiction to enforce judicial power.” App. Br. p. 10.

The fourth issue in Appellant’s brief also challenges the court’s jurisdiction to enter a judgment and conviction against him. Appellant’s muddled argument seems to take issue with him being considered a “person” for purposes of the statute. Appellant argues “I have not knowingly and/or willingly entered into any contract with the State of South Carolina for it to assume that I am a person under the language of its statutes.” App. Br. p. 11. Appellant also asserts “At no time was there proof of corpus delicti and/or proof of a real harm or damage to the STATE OF SOUTH CAROLINA, the alleged accuser. App. Br. p. 13.

The fifth and final issue in Appellant’s brief asserts that the General Sessions Court of Georgetown, South Carolina does not have the authority to decide issues, questions, and/or matters of the U.S. Constitution. Appellant argues “This Court’s jurisdiction and that of the Circuit Court in general does not possess the necessary requirements to entertain matters of de jure law or the United States Constitution.” App. Br. p. 14.

All four of Appellant's above arguments lack any merit whatsoever. Appellant's arguments blur the lines between subject matter and personal jurisdiction. However, this is of little consequence as the Georgetown Court of General Sessions clearly had subject matter jurisdiction as well as personal jurisdiction over Appellant's case. As to the court's subject matter jurisdiction, it is axiomatic in South Carolina that the Circuit Court has jurisdiction to try criminal matters. S.C. Const. Art. V, §11 provides that "The Circuit Court shall be a general trial court with original jurisdiction in civil and criminal cases. . ." Circuit Courts obviously have jurisdiction to try criminal matters. State v. Gentry, 363 S.C. 93,101, 610 S.E.2d 494, 499 (2005). Circuit Courts have subject matter jurisdiction over drug trafficking charges. State v. Dudley, 364 S.C. 578, 582, 614 S.E.2d 623, 625 (2005). In Appellant's case, the trial involved general sessions' criminal charges.

As to the Circuit Court's personal jurisdiction, generally, jurisdiction of the subject matter is satisfied when appropriate charges are filed in a competent court, while jurisdiction of the person is acquired when the party charged is arrested or voluntarily appears in court and submits himself to its jurisdiction. State v. Douglas, 245 S.C. 83, 87, 138 S.E.2d 845 (1964). Appellant fails to establish a lack of jurisdiction.

Nevertheless, the trial court correctly found the action initiated by Appellant's Writ of Error Coram Nobis was not properly before the court of general sessions. Writs of error coram nobis have been abolished in South Carolina, rendering the action improper. See Rule 60 (b)(5) (Writs of error coram nobis are abolished).

Moreover, the court of general sessions lacked jurisdiction to consider the merits of the writ presented by Appellant. Under Rule 29(a), SCRCrimP, Appellant was required to make all post-trial motions within ten days after imposition of his sentence. Appellant filed his motion

more than two years after he was sentenced. The court of general sessions no longer has jurisdiction to consider the writ made two years after the time for such motion to be properly made.

The lower court's finding that the action before it was not proper for the court of general sessions was correct and must be affirmed.

II.

The trial judge did not err in denying Loushonda Myers the opportunity to present her petition, where doing so would facilitate the unauthorized practice of law.

Appellant argues the trial court made a substantive error in denying Loushonda Myers the opportunity to present the petition in court that she wrote for Appellant. The State submits that this argument is without merit. Appellant contends “Ms. Myers’s special appearance was in her full capacity as a sui juris petitioner, possessing all substantive and fundamental Rights endowed by God; not man or man-made laws.” App. Br. p. 7. The trial judge properly denied Ms. Myers the opportunity to present her petition, as allowing her to do so would violate the aforementioned “man-made laws.” S.C. Code Ann. § 40-5-310 provides that “No person may either practice law or solicit the legal cause of another person or entity in this State unless he is enrolled as a member of the South Carolina Bar pursuant to applicable court rules, or otherwise authorized to perform prescribed legal activities by action of the Supreme Court of South Carolina.” “The generally understood definition of the practice of law ‘embraces the preparation of pleadings, and other papers incident to actions and special proceedings, and the management of such actions and proceedings on behalf of clients before judges and courts.’” State v. Despain, 319 S.C. 317, 319, 460 S.E.2d 576, 577 (1995) (quoting In re Duncan, 83 S.C. 186, 189, 65 S.E. 210, 211 (1909)). The conduct of Ms. Myers is consistent with one who is engaging in the unauthorized practice of law. Ms. Myers prepared Appellant’s “Writ of Error, Coram Nobis, and a Demand for Dismissal” and attempted to argue on his behalf in court. The trial judge was correct in rebuffing her attempts to practice law in his courtroom, as she was seeking to practice law without becoming a member of the South Carolina Bar. The trial judge properly denied Loushonda Myers the opportunity to engage in unauthorized practice of law by presenting her petition and arguing on behalf of Appellant in court. The trial court’s ruling must be affirmed.

CONCLUSION

For all of the foregoing reasons, the State respectfully requests that the order of the lower court be affirmed.

Respectfully submitted,

ALAN WILSON
Attorney General

V. HENRY GUNTER, JR.
Assistant Attorney General

JIMMY A. RICHARDSON
Solicitor, Fifteenth Judicial Circuit

BY:



V. HENRY GUNTER, JR.

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211-1549
(803) 734-3727

ATTORNEYS FOR RESPONDENT

Columbia, South Carolina
July 26, 2016

RECEIVED
JUL 26 2016
SC Court of Appeals

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GEORGETOWN COUNTY
Paula Thomas, Circuit Court Judge

Appellate Case No. 2014-002775

THE STATE,RESPONDENT,

v.

DAMEON MYERS,APPELLANT.

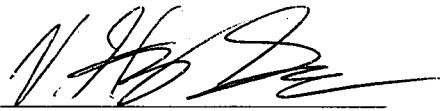
CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the April 15, 2014, order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

ALAN WILSON
Attorney General

V. HENRY GUNTER, JR.
Assistant Attorney General

JIMMY A. RICHARDSON
Solicitor, Fifteenth Judicial Circuit

BY: 
V. HENRY GUNTER, JR.

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211-1549
(803) 734-3727

ATTORNEYS FOR RESPONDENT

Columbia, South Carolina
July 26, 2016

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal From Georgetown County
The Honorable Paula Thomas, Circuit Court Judge

Appellate Case No: 2014-002775

THE STATE,

Respondent,

v.

DAMEON MYERS,

Appellant.

PROOF OF SERVICE

I, Anne Mueller, certify that I have served the Final Brief of Respondent on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to Mr. Dameon Myers, SCDC No. 279666, Walden Correctional Institution, 4340 Broad River Road, Columbia, SC 29210.

I further certify that all parties required by Rule to be served have been served.

This 26th day of July, 2016.


Anne A. Mueller
Legal Assistant
Office of Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727