

NOTICE OF APPEALS IN CIVIL CASE

STATE OF SOUTH CAROLINA

[In The Court Of Appeals]

[In The Supreme Court]

JAMAAL GITTENS,

Plaintiff,

V

J OHN R RAKOWSKY

Defendants.

**RECEIVED**

AUG 05 2016

**SC Court of Appeals**

South Carolina Court Of Appeals

Appeal from Common Pleas

Lexington county court house

Case no 2016-CP-32-263

Judge Thomas Cooper Circuit Court

COMES NOW Jamaal Gittens petitioning this court this court to vacate void judgment pursuant to South Carolinas civil procedures Rule 60(b)(4) and provide punitive damages for deprivation of rights which guaranteed pursuant to the United States Constitution 42 USC 1983

**INTRODUCTION**

Judge John Rakowsky placed a speeding violation on my MVR, suspended my commercial driver's license for failure to pay fines, when there's no judicial precedents set forth him do so, this void judgment caused me to lose my job, placed me in a position where no trucking company would hire me. Judge Rakowsky argument is the legislative branch allows him to acting in this judicial capacity, totally ignoring Supreme Court rulings, the doctrine of precedent. This petition for appeal is based of material facts, not debatable, thrived from The United Sates Supreme Court Rulings

## **MATERIAL FACTS ON REASON TO VACATE RELIEF FOR PUNITIVE DAMAGES**

The United States Constitution established the judicial powers of the courts, Article III sections 2 clause 1 states the judicial Power shall extend to all Cases, in **Law and Equity**, arising under this Constitution, the Laws of the United States; courts are limited in jurisdiction. The federal constitution established a common law system, a system of law made not by legislators, but by courts and judges. The supremacy clause in the constitution provides that state courts are bound by the Federal Constitution, "The supreme law of the land" The supreme court stated **"The judge of municipal court is acting as an administrative officer and not in a judicial capacity when Revocation drivers license, courts in administrating, do not act judicially, but merely administratively"** Thompson v Smith 155 VA 367. 154. SE. 583, VA (1930)

The United Sates Supreme Court stated" Under our system of government upon the individuality and intelligence of the citizen, the state does not claim to control him, except to his conduct to others, leaving him the sole judge as to all that affects himself" Mugler v Kansas 123 US 623 659-60

The constitution is the supreme law of the land, ordained established by the people, and all legislation must conform to the principals it lays down US v Butler 297 U.S 1 (1937)

"Any law that is repugnant to the constitution is null and void of law Marbury n Madison 5 U.S 137

"Where rights secured by the constitution are involved; there can be no rule making or legislation which would abrogate them" Miranda v Arizona 384 U.S 436,491

**"Only congress can make an act a crime affix punishment to it, and declare court shall have jurisdiction"** US Hudson 11 US 32(1812) see US v Beckford 966F.Supp 1415(1997)

The United States supreme court has ruled that standing is a necessary component of subject matter jurisdiction a "plaintiff must allege personal injury traceable to the defendant" See *Allen v Wright* 463 US 737, 751, (1984) Subject matter jurisdiction requires a competent witness or notarized affidavit demonstrating injury, and a statutory or **common law** basis for a remedy for the injury. See *Beaufort Realty Co v SC Coastal Conservation League* 346 S.C.298 551 S.E 2d 588 (S.C Ct App 2001) also *Blandon v Coleman* 285 S.C 472,330 S.E2d 298 (1985)

Subject matter jurisdiction is only determined from pleadings" *Hall v State*, 933 S.W.2d 363,326 AR 1996 see *Hague v Committee for industrial Organization* 307 U.S. 496 (1939) without a petition on record, court has no jurisdiction *Brown v VanKeuren*, 340.118.122(1930) A complaint must state a cognizable cause of action against a party *Charles V Gore*, 248 Ill App 3d 441,618 NE.2d 633 (1<sup>st</sup> Dist. 1994)

It's been ruled that an "Appearance Ticket is not accusatory instrument and its filing does not confer jurisdiction over the defendant" *People v Askinadze* 636 N.Y.S 2d 554 (1995) see "people v Gabby 670.N.Y. S.2d 421 (1997) "traffic infractions are not a crime or public offence" *people V battle* 202 CAL.App.2d 432 (1975);

An indictment or complaint in a criminal case is the main means which a court obtains subject matter jurisdiction, and is" the jurisdictional instrument upon which an accused stands trial" *State v Chatmon*, 671 p2d 531 538 (Kan 1983) The complain is the foundation of the jurisdiction of the **magistrate** or court thus if these charging instruments are invalid, there is **lack of jurisdiction** Without a formal and sufficient indictment or information, court does not acquire subject matter jurisdiction and thus an accused may not be punished for a crime *Honomichl v State* 333 NW 2d

797,798 (SD 1983) Without a valid complaint any judgment or sentence is rendered is "Void ab initio" Ralph v police court of El Cerrito 190 p.2d.632.634.84.Cal App 2d 257(1948)

#### **Lack of service Defense**

Defendant Rakowsky made affidavit stating he never received the complaint, didn't show up for court. Had his attorney testify on his behalf, when he isn't a competent fact witness with firsthand knowledge; he doesn't know if the defendant received the complaint or not. "Statements of counsel brief or in argument are not sufficient for a summary judgment" Trinsey v Pagliaro. 229 F. Supp. 647 (1964) the complaint was sent to the defendant place work, addressed in his name, I don't believe his coworkers would hinder him from receiving his mail, not in this line of work; I called his place of work to verify that he was there before I sent the service of summons

#### **Failed to Appear Defense**

A void judgment which includes a judgment entered by a court which lacks jurisdiction can be attacked at anytime directly or collaterally, provided that the party is properly before the court long v. Shorebank development corp. 182 F. 3d. 548 (7<sup>th</sup> Cir 1999) I was an over the road truck driver, plus I stayed 2 hr from Lexington SC I sent petitions to the court, they never filed them, Beth Carrigg, clerk of court, sent me a letter and said my petition was **improper**; I did have a conversation with the presiding attorney Clifford; we never came to an agreement.

#### **Judicial Immunity not absolute**

It is clear that a judge who acts in the absence of subject matter jurisdiction may be held liable for judicial acts stump v Sparkman 435 U.S. 349, 98 S CT. 1099 (1978)

Where judge presumes to exercise jurisdiction beyond understood boundaries, judge is not entitled to immunity. Dykes v Housemann, 743 F.2d 1488 (11<sup>th</sup> Cir. 1980)

When a judge knows that he lacks jurisdiction, or acts in the face of clearly valid statutes expressly depriving him of jurisdiction, judicial immunity is lost. Zeller v. Rankin, 101 S.CT. 2020(1980)

Judge must be acting within his jurisdiction as to subject matter and person, to be entitled to immunity from civil action for his acts s acts Davis V Burris Ariz (1938)

If the magistrate has not such jurisdiction, then and those advise and act with him, or execute his process, are trespassers Von Kettler et al. v Johnson 57 Ill. 109 (1870)

**Conclusion**

Judge Rakowsky initiated a void judgment under a color of law, there's no judicial proceedings; cases referenced in law, that allows this type of judicial practice. Lower courts are bound to the Supreme courts proceedings" Adam v Dept of Juvenile Justice of New York City, 143 F.3d 61, 65 (2nd Cir. 1998) see Norton v Shelby County 118 U.S 425 (1886) The decisions of the United States Supreme Court whether right or wrong are the supreme ,they are binding in all courts off the land" Hoover v Holston Valley Community Hospital 545 F. Supp. 8, 13 (E.D. Tenn. 1981) see Jordan v. Gilligan, 500 F.2d 701, 707 (6th Cir. 1974)

Judge John Rakowsky should know the elements of cause of action in a complaint; we can conclude that he didn't have an indictment, no evidence was filed with the associated cause, no affidavit on record concerning the facts "statements of counsel brief or in argument is not sufficient for a summary judgment" Trinsey v Pagliaro 229 F Supp 649 (1964)

**Remedy Sought**

I had a career as a Professional Truck driver, October, 2014 my employer special logistics let me go because their insurance company wouldn't cover me do to this speeding violation, after I left special logistics, I applied for a company called global express, they would hire me, in fact they sent me my MVR, it shows a 47 in a 30 miles zone. January 31 2015 my car was repossessed because I didn't have any income; it damaged my credit report as well; it shows repossession. Judge John Rakowsky void judgment deprived me from pleasurable lifestyle; This void judgment has caused me a great deal of stress; it affected my social life with friends and family; I wasn't able to routinely provide for my family throughout the holiday's seasons the way I usually do. For the great deal of unnecessary stress, I accumulated thought this whole ordeal. I'm seeking one hundred thousand dollars in damages

Tenisha N. Bryant

Type or printed notary name

*Tenisha N. Bryant* Seal

- Place Notary Signature Above -

August 18, 2018

My commission expires

August 1, 2016 Date

Jamaal A Gittens

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*Jamaal A Gittens*

On page 4 of defendant's petition; he references Pickens V Schmitz, to demonstrate that he had subject matter jurisdiction over traffic violation. David Schmitz was challenging the constitutionality of municipal courts existing; he wasn't challenging subject matter jurisdiction. I know municipal courts have jurisdiction to here certain cases, only through sufficient pleadings that have standing (I'm not supporting David Schmitz actions at all) the reality is that The Supreme Court has rules that "Standing is perhaps the most important of [the jurisdictional] doctrines, Standing represents a jurisdictional requirement which remains open to review at all stages of the litigation..." NOW, Inc. v. Scheidler, 510 US 249 ".Without standing, there is no actual or justifiable controversy, and courts will not entertain such cases." Clifford S. v. Superior Court, 45 Cal.Rptr.2d 333,335.

See Beaufort Realty Co v SC Coastal Conservation League 346 S.C298 551 S.E 2d 588 (S.C Ct App 2001) also Blandon v Coleman 285 S.C 472,330 S.E2d 298 (1985)

In my petition I mention that title 56 was void, because it didn't contain an Enacting clause, ,the revised laws do not contain an enacting clauses ,therefore, their void see ruling case law,Vol 25 "statues" 133,p, 884 citing LRA 1915 p 105 see In re Self v Rhay, 61 Wash 2d 261, 264, 265, 377, P. 2d 885 (1963)

I mention a whole lot of other things beside the enacting clause that proves that defendant Rakowsky acted outside his jurisdiction, my whole argument was based of Supreme Court Rulings. I'm perplexed that Honorable Judge cooper didn't rule in my favor.

Section 8 of south Carolinas constitution sates the legislative, executive, and judicial powers shall be forever separated, it forbids discharging duties to one another

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