

STATE OF SOUTH CAROLIN
IN THE SUPREME COURT

Dear Clerk:

I Am forwarding this "Jurisdictional issue" to withstand the hybrid restrictions based on appellate counsel's refusal to include the issue for appellate review, "when such issue was hotly contested during the PCR hearing". PCR counsel was asked to file a 59(e), but instead (in a attempt to block the issue), immediately filed for the appeal from the PCR hearing, "knowing the PCR court failed to fully address the concerns as outlined within this instant supplemental argument"

For the reason of "a fundamental miscarriage of justice" may ensue, "if the issue is not addressed by this Court". Does the Petitioner request the jurisdictional question to be forwarded to the Court.

Respectfully Submitted,

/s/ Demetrius Smalls
Demetrius D. Smalls
BRCI-Wateree Unit
4460 Broad River Rd.
Columbia, S.C. 29210

cc: filed
12/4/2017

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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
In The Supreme Court

Certiorari To Barnwell County
Honorable Matie Murphy, Circuit Court Judge

Demetrius D. Smalls,

Petitioner,

V.

State of South Carolina,

Respondent.

Appellate Case No.: 2017-000850

Petition for Writ of Certiorari

This matter is being respectfully brought to the Attention of this Honorable Court, "as a Threshold Subject-Matter-Jurisdictional question", in which this Court has previously determined (1) "the lack of subject-matter-jurisdiction" may not be waived, even by consent of the parties, and should be taken notice of by this Court", see Anderson v. Anderson, 299 S.C. 110, 115, 382 S.E. 2d 897, 900 (1989); (2) that it is well settled that issues related to subject-matter-jurisdiction may be raised at any time, including for the first time on appeal in this Court, Carter v. State, 329 S.C. 355, 495 S.E.2d 773 (1998); and State v. Funderburk,

259 S.C. 256, 191 S.E.2d 520 (1972) Seems to suggest, "this Court listens to issues in regards to Subject Matter Jurisdiction from either party. Even when as here, the Petitioner is represented by appellate counsel". Of which, "this issues was clearly explained to Ms. Katherine Hudgins of the Indigent Defense, and she declined to raise this important issue in this Court".

Whether the Circuit Court retained subject-matter jurisdiction "over the criminal case here, during the time period Petitioner's case proceeded to trial?

Again, because this is a pro-se supplemental brief of which the Petitioner "respectfully request leave for admitting the important jurisdictional issue because of hybrid restrictions". Coupled with Ms. Katherine Hudgins of the Appellate Defense out right after being asked to raise the claim. Petitioner is without the effective assistance of counsel for his appeal.

STATEMENT OF THE CASE

On January 24, 2011, the trial began in this case before the Honorable Doyett A. Early, III, where the State candidly admitted "NO INDICTMENT FOR THIS CASE EXISTED". And went forth with the Jackson v. Denno hearing, and afterwards, adjourned for the day.

The following day, January 25, 2011, at approximately 9:00 a.m., the State alleged "it had obtained a "true billed indictment for the charges Petitioner was convicted of". And trial coun-

sel advised that "the tardy indictment" was of no impact, and requested Petitioner "to waive the 3-day statutory notice requirement". Of which, had not been fully explained to him.

Here, trial counsel literally "conspired with the State" in a attempt to 'trick' the Petitioner into believing such waiver was only a formality and didn't deprive or confer any rights. What counsel was not, or was aware of; "is that statutorily, a defendant can 'waive' personal jurisdiction, but cannot 'waive' subject-matter jurisdiction, by consent or waivers of the parties. See State v. Howard, 564 S.E.2d 379 (S.C. App. 2002)(citing Anderson v. Anderson, 299 S.C. 110, 115, 382 S.E.2d 158 (S.C. 1982)(emphasis added). Subject-matter-jurisdiction may not be waived even with consent of the parties, and may be raised at any time, Brown v. State, 343 S.C. 342, 540 S.E.2d 846 (2001).

In addition to the 'trickory' employed by trial counsel, did the State engage in a scheme (Over prior warning by former Chief Justice Toal, to all Solicitors, involving the unlawful retaining of indictments without timely processing them through the Clerk of Court, prior to trial, See Oct. 2002 Memorandum from Chief Justice Toal, to all S.C. Solicitors).

JURISDICTION TO ENTERTAIN PETITIONER'S CLAIMS

— In Brown v. State, 540 S.E.2d 846 (2001), this Court entertained Brown's claim from a lower PCR court, involving the court's sub-

ject-matter-jurisdiction, to have initially tried his criminal case. This Court stated; "such a jurisdictional question is of a fundamental character". Citing Anderson v. Anderson, 299 S.C. 110, 115, 382 S.E.2d 897, 900 (1989). That "the lack of subject matter jurisdiction 'may not' be waived, even by consent of the parties, "and should be taken notice of by this Court". Id. That; "it is well established, that issues related to subject matter jurisdiction 'may be raised at any time, including for the first time on appeal in this Court'". See Carter v. Carter, 329 S.C. 355, 495 S.E.2d 773 (1998); State v. Funderburk, 259 S.C. 256, 191 S.E.2d 520 (1972)

Furthermore, this Court concluded; "the acts of a court with respect to a matter as to which no jurisdiction exist are void". Funderburk, 259 S.C. at 261, 191 S.E.2d at 522.

Below is a series of Due Process deprivations committed by the State in Petitioner instant case, that 'voids' operation of any continued incarceration at this time, based on a clear "lack of subject-matter-jurisdiction", to have tried the case, during the term it did, according to statutory authority. (Trial date of January 24-25, 2011)

STATUTORY CONSTRUCTION

1. It is a cardinal rule of statutory construction that the primary purpose in interpreting statutes, is to ascertain the intent of the legislature. Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d

578, 581 (2000); State v. Martin, 293 S.C. 46, 358 S.E.2d 697 (19-87). When a statute's terms are clear and unambiguous on their face, there is no room for statutory construction and a court must apply the statute according to its literal meaning. See Carolina Power & Light Co. v. City of Bennettsville, 314 S.C. 137, 139, 442 S.E.2d 177, 179 (1994). And words must be given their plain ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation. See Bryant v. City of Charleston, 295 S.C. 408, 368 S.E.2d 899 (1998).

STATUTE OF CONCERN, §14-9-210

The statutory provisions at issue are contained in section 14-9-210, and provides in pertinent part that:

"The Solicitor shall prepare and through the presiding judge of the court of General Sessions, submit to the grand jury while in attendance upon the Court of General Sessions, bills of indictments in all cases pending in the County Court in which the punishment may exceed a fine of one hundred dollars or imprisonment for thirty days, when such cases have not been previously been acted on by the grand jury. The grand jury **"shall"** report its action to the presiding judge of the Court of General Sessions and said judge "shall" direct the Clerk of Court of General Sessions to report the same to the presiding judge of the County "at it's next ensuing term". In relevant part.

Argument In Support:

Here, the statutory concerns are above "underscored and highlighted in **"BOLD"** print to call this Court's attention to the fact

that (1) Former Chief Justice Toal's directive in 2002, to all Solicitors of South Carolina, went ignored by the Solicitor prosecuting his case. When the State failed to protect the right of the accused through the proper procedures of indictment; coupled with (2), "a indictment on the day of trial, irrespective of any waiver (of which is a legal impossibility) thereof", failed to supplant the circuit court with "subject-matter-jurisdiction" of the criminal offense, during the January 2011 term of court. Here is why.

Because of the State's neglect to timely obtain the indictment, when in fact the Petitioner remained "in county jail custody for almost two years, without being indicted". For starters, there is no excuse in law of fact.

However, since the State contends it obtained the indictment on the day of trial, after candidly admitting "on the initial day of trial, there was no true billed indictment in this case". The statute of concern explains; "such acted upon indictment must first travel its legal course, be stamped and filed with the Clerk of Court, and then presented to the presiding judge of the County "at it's next ensuing term".

Under the definition of "ensuing". Such is defined as "happening or occurring afterward or as a result". Terms of S.C. Courts are fixed by S.C. Code §14-5-410, and it's accompanying subsections. When using the words "ensuing term", and giving those words their "plain, ordinary meaning". It is clear to an absolute certainty,

"the circuit court had no more authority without the indictment at all, than it did to try the case 'that term' (i.e. January 2011), with a indictment. By virtue of the statute's common, plain and ordinary meaning".

Regardless of whether this issues was raised during trial. It involves the question of subject matter jurisdiction. Before, trial, same difference; on PCR, it may be raised. For the first time on appeal from the PCR, it remains a viable concern for this Court.

What is highly suspicious, "is the reason a practicing attorney (Ms. Katherine Hudgins), declined to raise the issues brought to her verbally, and in writing". Which is the only reason Petitioner has requested leave to proceed now. Where, "if a federal habeas must be mounted, under Dye v. Hofbauer, 546 U.S. 1, (2005) (per curiam), the federal court cannot accuse Petitioner of failing to exhaust, or give the State the opportunity to address this issue.

For these reason, Petitioner relies on "the statute" to invalidate his conviction and sentence". As according to the statute, the trial court "lacked subject-matter-jurisdiction" to have proceeded with his case "that January 2011 term". For which prejudiced the accused from receiving a fair trial. When the defendant had been kept in continuous County Jail Custody for almost two years without the indictment.

Moreover, this is exactly the procedure Justice Toal, in 2002 did address to all prosecutors. AS well as restricted its continued practice. Warning; "it could lead to the identical problems the Petitioner is now faced with". In addition, "the 'win at all cost'", has also been cautioned by this Court involving South Carolina Solicitors.

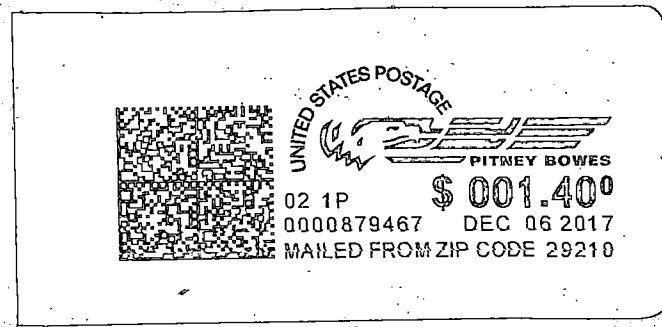
Wherefore, Petitioner respectfully request that this Court include this "JURISDICTIONAL ISSUE" and grant certiorari, finding that Petitioner's case proceeded to trial "without subject-matter jurisdiction", with instructions "to release the prisoner". And any further relief this Honorable Court deems just and proper.

Respectfully Submitted,

/s/ Demetrius D. Smalls
Demetrius D. Smalls
BRCI-Wateree Unit
4460 Broad River Rd.
Columbia, S.C. 29210

cc: K. Hudgins
12/4/2017

Demetris Smalls # 844584
BRCI WAT-287
4460 Broad River Rd.
Columbia, SC 29210



LEGAL MAIL

S. C. Supreme Court
1231 Gervais St
Columbia, SC 29201

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BRCI
MAILROOM