STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

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SC Court of Appeals

The Honorable Robert E. Hood, Circuit Court Judge

Appellate Case No. 2016-002367

Cedric L. Woods#265789,.....Appellant.

v.

State of South Carolina,.....Respondent.

APPELLANT'S REPLY TO RESPONDANT'S MOTION TO DISMISS

Herein, this Appellant replies to the Respondant's Motion to Dismiss this Appeal.

The State, in its motion has stated that the Appellant is challenging his underlying conviction. This is misstated and is misunderstood. While he is challenging his conviction, more than that he is challenging the process of his conviction and that it is void and a nullity, that the trial court was in excess of its jurisdiction because the indictments were fraudulent. These indictments were true billed four and ten days prior to the supposed terms of court, that were themselves in conflict with the legislated terms of court for Aiken County.

As such, the grand jury proceedings were not co-extensive with a court of criminal jurisdiction for which it is to make inquiry and to report, making the grand jury not legal as a body and any indictments it returned were therefore a nullity, void, and could not give the notice required by due process of law, a condition required by S.C. Const. art. I, § 3, § 11, art. V, § 22, and § 17-19-10.

The Respondant has previously cited St. v Pringle 339 SE 2d 127, (1986), "In the absence of evidence to the contrary, the regularity of proceedings... will be assumed." Pringle's assumption cannot stand with prima facia evidence of fraud right on the face of the indictments.

In addition to this, the Appellant was never served with any of these Indictments and the only copies he has ever seen are the ones he has submitted to this Court that were in his trial counsel's casefile that he used to file his PCR Application and they do not have a clock stamp from the Aiken County Clerk of Court's Office. This too, is an irregularity.

Failure to properly serve this Appellant was a violation of both of the Constitutional and statutory laws cited above. And as was stated in Faretta v CA, 95 S.Ct. 2525, (1975), "It is the accused, not counsel, who must be informed of the nature and cause of the accusation...."

Even had the grand jury been legally established and constituted and returned lawfully valid indictments, but the Solicitor failed to serve them to this Appellant, the notice requirements and conditions precedent and necessary to a criminal trial would be wanting and thus the judge's /court's authority would be lacking. This is precisely what happened and the trial verdicts should be void and the conviction a nullity.

See St v Beachum 342 SE2d 587, (1986) citing S.C. Const. art I, §11, "The law requires presentment of a grand jury as a condition precedent to the trial of a crime...," and "presentment during trial did not remedy lack of [notice] which existed at the commencement of trial." (Per Gentry, subject matter jurisdiction was replaced with "notice." While Gentry may have overruled this case, it cannot overrule the Constitutions.)

As this Appellant understands, the due process requirement of notice has two distinct conditions that are mandatory before a a criminal trial can commence: (1) a lawfully valid indictment must be returned by a legally established and constituted grand jury that is impaneled with a court of concurrent criminal jurisdiction, and (2) the indictment must be properly served to the accused, not his counsel. These conditions must be met before commencement of a criminal trial, or both the judge and the court are in excess of their jurisdiction.

A court derives its jurisdiction of the subject matter to hear and determine cases of the general class to which the proceedings in question belong. I.e. civil, criminal, probate, equity, etc. However, the judge derives his jurisdiction, authority, and power to act in a particular case by law and if any of the conditions authorizing the excercise of his general power to act in a particular case are absent or wanting, he is in excess of his jurisdiction and his

judicial power is not lawfully invoked.

See Broome v Douglas, 175 Ala. 268, 57 So. 860 @5, Alabama S.Ct. (1912), "By 'excess of jurisdiction' as distinguished from the entire absence of jurisdiction, we understand and mean that the act, though within the general power of the judge, is not authorized, and therefore void, with respect to the particular case, because the conditions which alone authorize the excercise of his general power in that particular case are wanting, and hence, the judicial power is not in fact lawfully invoked."

As was noted in St v Gentry, 610 SE2d 494, citing U.S. v Cotton, 122 S.Ct 1781, @ 1785, "This latter concept of subject matter jurisdiction, because it involves a court's power to hear a case, can never be forfeited or waived. Consequently, defects in subject matter jurisdiction require correction regardless of whether the error was raised [below]."

Excess of jurisdiction, like subject matter jurisdiction, also involves the judge's or court's power to hear and determine a particular case, and therefore, like subject matter jurisdiction, it too should not be subject to forfeiture or waiver either.

Additionally, as Justice Pleicones pointed out in his dissent in Gentry, there are at least three functions an indictment serves, two of which benefit the accused, but "the third requirement is for the benefit of the circuit court, and not subject to waiver by the defendant."

While Cotton and Gentry were focused on defects or the sufficiency, neither addressed the process of the indictment's return, a fraudulent indictment, or failure to serve an indictment to an accused. Again, this Appellant is not challenging the sufficiency or wording of his indictments, but their legallity and validity as well as the failure to even serve him copies prior to the commencement of his trial.

An accused who did not fully understand his rights to notice that an indictment secures and whom had never even seen his indictments

would have had no way to intelligently, knowingly, and voluntarily waive these rights. Especially when the trial court made no colloquy or inquiry as to waiver on the record to establish the relinquishment or abandonment of his fundamental right to notice. Johnson v Zerbst, 58 S.Ct 1019, @ 1023, (1938) held that "courts indulge every reasonable presumption against waiver of fundamental constitutional rights and... do not presume acquience in the loss of fundamental rights."

The Court in Johnson went on to say that the "guaranty" of Constitutional rights "would be nullified [if] an accused's ignorant failure to claim his rights remove[d] the protection of the Constitution."

Evans v St, 611 SE2d 510, backs all of this Appellant's claims on the illegal establishment and constitution of a grand jury and that if it is an illegal body any indictment it returns is a nullity and would fail to give the required notice. However, Evans cites § 14-7-1140 with the caveat that an objection to an illegal indictment must be made before the jury renders its verdict. This Appellant challenges the constitutionality of this aspect of Evans.

"Constitutional construction of statues are not only judicially prefered, they are mandated. A possible constitutional construction must prevail over an unconstitutional interpretation." St v McGrier, 663 SE2d 15, (2008)

Wood v Milyard, 132 S.Ct 1826, (2012), held that "waiver is the intentional relinquishment or abandonment of a known right." By not having even seen his indictments, there is no way this Appellant could have known of of the prima facia evidence of fraud on the faces of these indictments, but his trial counsel, the prosecutor, and the trial court should have noticed at least the discrepancies of four and ten days between the dates of their return and the supposed terms of court. This also imputes the error to the court under Rule 52 (b) - plain error. See U S v Olano, 113 S Ct 1770, (1993).

Additionally §14-7-1140 also states the exception, "unless the party was injured by the irregularity...." Loss of a fundamental right should be injury enough. As stated in Cotton, "such error affects the fairness, integrity, [and] public reputation of judicial proceedings."

Since these errors involve an excess of jurisdiction, "[f]ailure to comply with a jurisdictional time prescription is a jurisdictional defect that is not subject to waiver or forfeiture and may be raised at any time..., and courts are obliged to take notice of jurisdictional issues and raise them on their own initiative." Hamer v Neighborhood Housing, 138 S.Ct. 13, (2018).

As cited by the Appellant in his previous brief, U.S. v Gale, 109 U.S. 65 (1883) stated, "There are cases, undoubtedly, which admit a different consideration, and in which the objection to the grand jury may be taken at any time. These are where the whole proceeding of forming the panel is void, as where the jury is not a jury of the court or term in which the indictment is found; or some other fundamental requisite has not been complied with."

This fits with this Appellant's case. The Appellant's indictments were all returned during a term of court mandated by law to be a court of common pleas and not a court of general sessions as was printed on the face, and the dates of true bill are also in conflict with the supposed term of court by four and ten days. As such, Gale, "clearly established federal law as decided by the U.S. Supreme Court," supports the Appellants assertions as does Johnson, Wood, and Hamer cited above.

As to the failure of the Appellant to submit a Record on Appeal, this has since been rectified. The Appellant apologizes and respectfully asks for the indulgence of both this Court and the Respondant for this delay. With only the few hours a week that he is permitted to

spend in a pitifully inadequate law library, it is difficult for him to comply with procedures of which he is unaware and unaccustomed.

In conclusion, this Appellant respectfully asks that the Respondant's Motion to Dismiss be denied and that this Reply Brief be added to the Record on Appeal.

Respectfully submitted

Cedric L. Woods, 265789

Cedric L. Woods, # 265789
Pro se

TABLE OF AUTHORITIES

S.C. CASES

FEDERAL CASES

OTHER CASES

S.C. STATUES

S.C. CONSTITUTION

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PROOF OF SERVICE

I Cedric L. Woods hereby certify that I have served the Respondant and the S.C. Court of Appeals with my Reply to the Respondant's Motion to Dismiss and that I have on this the 30th day of October, places copies to each in the U.S.P.S. mail.

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