

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

**APPEAL FROM JASPER COUNTY
Court of Common Pleas**

Michael G. Nettles, Circuit Court Judge

CASE NO. 2011-CP-27-0239

STATE OF SOUTH CAROLINA Respondent

v.

JOSEPH C. SUN Appellant

FINAL BRIEF

Joseph C. Sun, pro se
18 Sixth Avenue
Bluffton, SC 29910
843-227-0963

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SEP 05 2012

SC Court of Appeals

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STATEMENT OF ISSUES ON APPEAL

1. CIRCUIT COURT ERRED IN TOTALLY OVERLOOKING APPELLANT’S RESPONSE TO MAGISTRATE’S RETURN WHICH WAS SUBMITTED TO THE COURT PRIOR TO THE HEARING WITH COPY SERVED ON THE ASSISTANT SOLICITOR AT THE SAME TIME.
2. CIRCUIT COURT ERRED IN AFFIRMING THE CONVICTION BECAUSE IT FAILED TO NOTICE THAT THERE WAS NO RECORD, NEITHER IN THE FILE OF THE CASE NOR MAGISTRATE’S RETURN, TO SHOW THAT THERE WAS ANY NOTIFICATION TO APPELLANT SUN THAT THE BENCH TRIAL WOULD BE ON MARCH 28, 2011. EVEN IF APPELLANT HAD WAIVED HIS RIGHT TO JURY TRIAL, HE SHOULD STILL BE GRANTED THE RIGHT TO A BENCH TRIAL.

STATEMENT OF THE CASE AND FACTS

As Magistrate states in her Return (R. p. 3, line 1), on or about April 27, 2009 Appellant Joseph Sun was issued a Uniform Traffic Ticket No. D777382. After a bench trial on February 2, 2010, Appellant was found guilty. But Appellant was not present because he was not given a notice to appear.

Appellant filed a motion to set aside conviction on the ground that he had not received notice of the hearing. At a hearing on or about March 24, 2011, Magistrate "ruled with the Defendant (Appellant Sun), re-opened his case" and reinstated the case to the Jury Roster. Appellant was advised to return the next day to strike the jury. As Magistrate noted in her return, (R. p. 4, line 16) after Appellant Sun waited for a period in the hall of building without knowing where the jury strike would be held, he went inside the court room for his turn. (R. p. 12, line 2)

At the end of the day, without Appellant Sun's knowledge, Magistrate called Appellant Sun's case in her chamber which was a separate room from the regular court. When Appellant Sun did not hear the call from the main court room, he went to ask the clerk and was told that he would be notified by mail. (R. p. 6, line 12)

On March 25, 2011, after Magistrate believed that Appellant had left and waived his right to a jury trial, she held a bench trial 3 days later on March 28, 2011 without any notice to Appellant Sun, found Sun guilty and assessed a fine of \$185.00 which Appellant paid soon after. (R. p. 5, line 1)

Appellant filed an appeal at the Circuit Court of Jasper County. Prior to a hearing on June 13, 2011 in open court, Appellant submitted his Response to Magistrate's Return (R. p. 6-7)

to the Circuit Judge with copy served on the Assistant Solicitor. (R. p. 11, line 20)¹ Appellant did not file it with the clerk of Court of Common Pleas the day before because he was told that the file was already gathered for the hearing next day and the Circuit Judge may not see it in the court room.

ARGUMENTS

1. Transcript of the hearing (R. p. 11, line 20) shows that Appellant made reference to his Response to the Magistrate's Return and that after Magistrate found him waived his right to trial by jury on March 25, 2011, Magistrate held a bench trial without any notification on March 28, 2011, found Appellant guilty and fined him \$185.00.

2. As shown on Transcript of Hearing (R. p.19, line 9), Appellant clarified to the Circuit Court that he was complaining about the failure of the Magistrate to notify him of the trial on March 28, 2011, not complaining about what happened on March 25, 2011 when Appellant did not hear or respond to Magistrate's call for him to strike the jury and the Magistrate found that he had waived his right to jury trial.

Nowhere in the record of the case is there a scintilla of evidence that Appellant was ever notified of the bench trial on March 28, 2011. Circuit Court simply stated in its order of September 16, 2011 that "The Defendant made no attempt to settle the record pursuant to (case, leg cite?) So I am bound by the return as the record of the case. It appears that the Magistrate exercised great care to see that Mr. Sun got justice and due process." and affirmed the conviction.

¹ The handling of Appellant's Response to the court and the solicitor was not recorded on the transcript because it was done prior to the address by Mr. Johnson, the Solicitor.

Circuit Court apparently overlooked Appellant's Response to Magistrate's Return and failed to notice that Appellant was given a bench trial on March 28, 2011 a different date than the date, March 25, 2011 when he was found to have waived his right to jury trial. There could be no way Appellant could appear at the bench trial when he was never notified the time and date of the bench trial on March 28, 2011. Appellant made clear (R. p. 19, line 9) he was not complaining about Magistrate's determination that he had waived his right to jury trial. Appellant is complaining that he was not notified of the bench trial which he had not waived.

The Magistrate should not have conducted the bench trial on Appellant's traffic citation on March 28, 2011 without first giving notice to the Appellant. Magistrate's bench trial without notice is a denial of Appellant's right to due process of the law. The Fifth Amendment of the United States Constitution provides that,

"No person shall be held to be deprived of life, liberty, or property, without due process of law;"

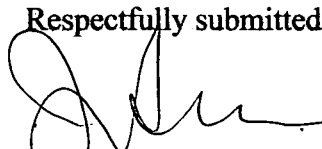
The Fourteenth Amendment of the United States Constitution again provides that,

"Section. 1. No State shall.....; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

CONCLUSION

For the foregoing reasons, this Court should reverse the judgment of the circuit court.

August 28, 2012

Respectfully submitted,

JOSEPH C. SUN, pro se
18 Sixth Avenue
Bluffton, SC 29910
843-227-0963