

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

J. C. Nicholson, Jr., Circuit Court Judge  
Trial Court Case No. 2017-CP-10-03226

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Appellate Case No. 2017-002621

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**RECEIVED**  
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SC Court of Appeals

John Gilbert Singletary, .....Appellant,

v.

The State, .....Respondent.

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FINAL BRIEF OF RESPONDENT

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**COUNTER STATEMENT OF ISSUE ON APPEAL**

- I. THIS COURT DOES NOT HAVE JURISDICTION TO DECIDE THE ISSUES PRESENTED BY APPELLANT BECAUSE THE MUNICIPAL COURT ACKNOWLEDGED THAT IT LACKED JURISDICTION AND DECLINED TO RULE ON THE ORIGINAL MOTION AS THE APPELLANT HAD PERSONAL KNOWLEDGE ABOUT THE 2010 CONVICTION IN 2015 BUT DID NOT FILE A MOTION FOR A NEW TRIAL IN THE MUNICIPAL COURT UNTIL 2017 AND THEREFORE IT WAS NOT TIMELY.

## STATEMENT OF THE CASE

On January 26, 2010, Plaintiff-Appellant John Singletary was arrested for solicitation of prostitution after he offered an undercover police officer money for sex. After several reschedulings, and a failure to appear in April, Singletary did not appear for his May 4, 2010 court date and was found guilty in his absence. His bond was forfeited on May 6, 2010. Five and a half years later, in October, 2015, during a mayoral race involving Singletary, the conviction was made public by the media. On May 31, 2017, more than seven years after his conviction and almost two years after he had notice of the conviction, Mr. Singletary filed a motion to Reopen/Motion for New Trial with the North Charleston Municipal Court. On June 15, 2017, Judge Coleman sent a letter to Singletary's counsel advising that the Motion to Reopen/Motion for New Trial was not timely and he was without jurisdiction to rule on it. On June 23, 2017, Singletary filed a Notice of Appeal to the circuit court, which stated that he was appealing "the denial of Mr. Singletary's Motion for a New Trial." (R. 39).

On November 13, 2017, a hearing was held on the Appeal. Judge Nicholson denied the appeal, because the underlying Motion to Reopen/Motion for New Trial was not timely filed. (R. 1). Appellant filed his Notice of Appeal to this court on December 20, 2017. He again misstates the issues, attempting to argue the merits of the original motion, when such matters were never ruled on by the Municipal Court. The only issue properly preserved for consideration by this court is whether the original Motion to Reopen/Motion for New Trial filed in the Municipal Court was timely when filed 2582 days after conviction, 597 days after receiving latest possible actual notice, 453 days after filing pleadings that rely on the very documents that provided actual notice with the federal district court and 345 days after the Federal Judge dismissed his action based on those very documents.

## STATEMENT OF THE FACTS

On January 26, 2010, the North Charleston Police Department was conducting a sting operation relating to prostitution. A female undercover officer was approached by John Singletary and was offered money in exchange for sex. The exchange was caught on video by the police. Singletary was arrested for solicitation of prostitution. (R. 42). He was booked into the Charleston County Detention Center, paid \$470.00, the full amount of the potential fine, and was released without the need to wait for a bond hearing. (R. 93). Singletary's initial court date was February 23, 2010. (R. 42). He appeared but, according to the court documents which were prepared contemporaneously, requested a continuance which was granted. (R. 99). The next court date was March 9, 2010. The docket sheet shows that Singletary was informed by phone of the March date on February 25, 2010. (R. 98). It is unclear whether Mr. Singletary appeared on that date or not, but a new court date was scheduled for April 14, 2010. (R. 98). The court records show that Mr. Singletary was notified by employee Linda Burgess of the April date.<sup>1</sup> (R. 97-8). Mr. Singletary did not appear for court on April 14, 2010 and the court continued the matter one last time to May 4, 2010. (R. 97). Mr. Singletary did not appear for his May 4, 2010 court date and was found guilty in his absence. (R. 96). His bond was then forfeited. (R. 94).<sup>2</sup>

In 2015, five years after the conviction, Mr. Singletary ran as a candidate in the election for the office of Mayor of North Charleston. A member of the press searched Singletary online and requested a South Carolina Law Enforcement Division (SLED) criminal background check

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<sup>1</sup> The clerk's office has indicated that they sent written notice, but per their policies, such documentation was removed from the file long before it was requested some seven years later. The clerk's office asserts that if a request for such information had been timely made, the clerk's office would have been in possession of all related documentation.

<sup>2</sup> The State takes the position that the conviction is lawful, but for the purposes of this appeal, uses October 2015 as the date Singletary first received notice of the conviction and asserts that it is the date from which time to file motions for new trials should run.

and located the Solicitation conviction, which was a matter of public record. Mr. Singletary himself had a press conference in October 2015, and talked about the conviction with the press. (R. 31-2, 91, 92). The Live 5 article even references information from the court—that the choice was made to forfeit his bond over issuing a bench warrant and that it is considered a conviction after he was given several opportunities to appear in court and did not. (R. 92). Mr. Singletary lost the election in a landslide. Singletary then filed a federal lawsuit against North Charleston, several police officers, the Police Chief, the Mayor, the clerk of court, several North Charleston City Departments, the Charleston Post and Courier, Live 5 News, reporter Harve Jacobs, and a number of other people, alleging among other things, that the conviction was made up in 2015 for the purpose of defaming his character in the 2015 election. *See Singletary v. City of North Charleston*, 2:15-cv-04463-MBS (D.S.C.). He first alleged that the conviction never happened. *See id.* Next, he claimed the arrest was the result of a separate court case he had with the City of North Charleston, even though the other court case had to do with a certificate of occupancy for a residence and went on through the court of appeals twice until it ended in 2012. *See id.; see also Singletary v. City of North Charleston*, 2:09-cv-01612-MBS (D.S.C.). He then alleged that the documents were falsified around the time of the election in order to show a conviction at the time of the election to defame him. *See 2:15-cv-04463-MBS (D.S.C.)*.

In Singletary's own Complaint, filed *pro se* with the Federal District Court on November 2, 2015, he acknowledges that on October 12, 2015, he was contacted by a reporter about the conviction. *See 2:15-cv-04463-MBS*. On January 1, 2016, in support of a motion, Mr. Singletary filed a copy of the Municipal Court's Case History document showing that he was convicted in his absence on May 4, 2010, and that his bail was forfeited on May 6, 2010. *See 2:15-cv-04463-MBS (ECF No. 10-1)*. Also attached was the booking report from the Detention Center, the Incident

Report from the Police Department, the print out from the jail showing his incarceration, and a copy of a news article referencing the 2010 conviction from October 13, 2015. All of these documents are evidence that Mr. Singletary had actual knowledge of the conviction as of October 12, 2015.

The lawsuit filed by Mr. Singletary using those documents as support was dismissed by Federal District Judge Margaret Seymour on June 20, 2016. In particular, she ruled that Mr. Singletary's claims relating to his arrest and conviction had not been filed within the necessary statute of limitations. (R. 90 at lines 13–22). During the arguments on the motion to dismiss, at no time did counsel for Mr. Singletary ever argue that he had not been provided with “proper notice” of the conviction. Instead, despite having documentation of it in his own possession, Singletary and his attorney took the position that North Charleston Officials fabricated the conviction out of whole cloth in 2015. (R. 89 at lines 12–21). Singletary filed a motion to reconsider which was also denied and then an appeal to the Fourth Circuit Court of Appeals. On April 23, 2018, the Fourth Circuit upheld the dismissal of the action. *See Singletary v. North Charleston*, App. No. 17-1569 (Apr. 23, 2018). Unfortunately for Singletary, the documents evidencing the conviction have existed continuously since 2010, and have been maintained by multiple agencies, including the South Carolina Law Enforcement Division (SLED) who maintains criminal history reports. (R. 31). The Case History showing that Singletary was tried in his absence and his bond forfeited is available to the public through the municipal court's website online. (R. 100).

Singletary waited almost two years after the press conference where he clearly had actual notice, and more than a year after the Federal District Court dismissed his federal case to file a Motion to Reopen/Motion for a New Trial with the Municipal Court. (R. 68). He claims that he was trying to get proper documentation of the conviction, but he had attached such documentation

to his federal filings. Angela Cartrette of the clerk's office and the North Charleston Legal Department provided Singletary with hundreds of pages of documents in response to his numerous Freedom of Information Act Requests, including multiple copies of the Court's Case History showing the conviction. Though Singletary refuses to acknowledge that he had the precise documentation that he needed to have in hand, the court records clearly showed the conviction. Properly, the Municipal Court declined to rule, determining the motion was untimely. On June 23, 2017, Singletary filed a Notice of Appeal to the Circuit Court and went so far as to admit that, "Mr. Singletary learned [ ] in 2015 that the City of North Charleston was claiming he had been convicted of this offense." (R. 39 at 1). Therefore, whether or not Singletary knew about the conviction in 2010, he certainly had actual notice as of October 2015, along with copies of documentation evidencing the conviction.

### **STANDARD OF REVIEW**

"In criminal cases, [the appellate court] sits to review errors of law only and is bound by the factual findings of the [circuit] court unless an abuse of discretion is shown." *State v. Laney*, 367 S.C. 639, 643, 627 S.E.2d 726, 729 (2006). "An abuse of discretion occurs when the conclusions of the [circuit] court either lack evidentiary support or are controlled by an error of law." *State v. Pagan*, 369 S.C. 201, 208, 631 S.E.2d 262, 265 (2006).

A respondent "may raise on appeal any additional reasons the appellate court should affirm the lower court's ruling, regardless of whether those reasons have been presented to or ruled on by the lower court." *I'On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 419, 526 S.E.2d 716, 723 (2000). "The appellate court may review respondent's additional reasons and, if convinced it is proper and fair to do so, rely on them or any other reason appearing in the record to affirm the lower court's judgment." *Id.* at 420, 526 S.E.2d at 723; *see also* Rule 220(c), SCACR ("The

appellate court may affirm any ruling, order, decision or judgment upon any ground(s) appearing in the Record on Appeal.”).

### ARGUMENT

Although Appellant Singletary argues six (6) sub-bases within his issue on appeal, there is only one issue that is properly preserved for this court to consider—whether Singletary timely filed his Motion for a New Trial in the Municipal Court. The only outcome under the law is that he did not.

**I. THIS COURT DOES NOT HAVE JURISDICTION TO DECIDE THE ISSUES PRESENTED BY APPELLANT BECAUSE THE MUNICIPAL COURT ACKNOWLEDGED THAT IT LACKED JURISDICTION AND DECLINED TO RULE ON THE ORIGINAL MOTION AS THE APPELLANT HAD PERSONAL KNOWLEDGE ABOUT THE 2010 CONVICTION IN 2015 BUT DID NOT FILE A MOTION FOR A NEW TRIAL IN THE MUNICIPAL COURT UNTIL 2017 AND THEREFORE IT WAS NOT TIMELY.**

**A. This Court Does Not Have Jurisdiction to Decide the Issues Presented by Appellant for Appeal.**

“The appellate court must always take notice of the lack of subject matter jurisdiction.” *Town of Hilton Head Island v. Godwin*, 370 S.C. 221, 634 S.E.2d 59, 60-61 (Ct. App. 2006); *Amisub of S.C., Inc. v. Passmore*, 316 S.C. 112, 114, 447 S.E.2d 207, 208 (1994). The lack of subject matter jurisdiction can be raised at any time, can be raised for the first time on appeal, and can be raised *sua sponte* by the court. *See, e.g., Lake v. Reeder Constr. Co.*, 330 S.C. 242, 248, 498 S.E.2d 650, 653 (Ct. App. 1998) (holding issues related to subject matter jurisdiction may be raised at any time). “The acts of a court with respect to a matter as to which it has no jurisdiction are void.” *State v. Guthrie*, 352 S.C. 103, 107, 572 S.E.2d 309, 311–12 (Ct. App. 2002).

Furthermore, the Supreme Court has made clear that “a party’s time to appeal from a judgment in a magistrate’s court or move for a new trial therein ... begin[s] [when] he has notice of the judgment.” *Ishmell v. South Carolina Highway Dep’t*, 264 S.C. 340, 215 S.E.2d 201 (1975)

(ruling that the time limit for making a new trial motion begins to run when the defendant received actual notice the conviction) *emphasis added* (citing *Brewer v. South Carolina State Highway Dep't*, 261 S.C. 52, 56, 198 S.E.2d 256, 257 (1973)). A party who fails to timely appeal or take any other timely action necessary to correct an error is procedurally barred from contesting the validity of the conviction. *State v. Martin*, 352 S.C. 32, 33, 572 S.E.2d 287, 288 (2002).

Singletary filed his appeal to the Court of Common Pleas asserting that the Municipal Judge had denied his motion for a new trial. In reality, Judge Coleman did not deny the motion, he advised both Singletary and his attorney that the motion was received “approximately 2582 days after the trial date.” (R. 45). Therefore, he determined that he was “without jurisdiction in the case” and would not issue any ruling. (R. 45) The appeal filed clearly stated it was an appeal of the “denial” of the motion for a new trial. Importantly, it was also not an appeal of the underlying conviction. Without an Order, the only question before the Circuit Court was whether the underlying motion to reopen or for a new trial was timely filed.

To the extent that it was even proper to appeal the municipal court’s determination that it lacked jurisdiction to consider the motion for a new trial, it was clearly improper for the appellant to argue the merits of his motion for new trial to the Circuit Court. Singletary argued his appeal as if the municipal court had considered and denied the motion on its merits, when in fact no such order was issued. The proper issue on appeal to the Circuit Court was whether the motion was timely filed and if so, to ask that the municipal judge be directed to issue an order on the merits of the motion, not to ask the Circuit Court to rule on the merits of the motion. The Circuit Court should have restricted itself to considering whether or not the municipal court should or should not have ruled on the motion for new trial. The only true issue in this case is whether the Municipal Court had jurisdiction to consider a motion for new trial filed 2582 days after conviction and 597

days after the last possible date for actual notice of the conviction. If so, the case should be remanded to the Municipal Court for consideration. However, it is clear that Judge Coleman was correct that he did not have jurisdiction to consider the motion and the denial of this appeal should be upheld.

**B. The Appellant had Personal Knowledge about the Conviction in 2015 and therefore his Motion for a New Trial was not Timely.**

“Generally, a trial judge is without authority to consider a criminal matter once the term of court during which judgment was entered expires.” *State v. Warren*, 392 S.C. 235, 238, 708 S.E.2d 234, 235 (Ct. App. 2011). However, there is an exception for timely post-trial motions pursuant to Rule 29, SCRCrimP. Rule 29 states that the court’s jurisdiction to hear the motion will not expire with the term of court if the party has filed a timely motion. *State v. Campbell*, 376 S.C. 212, 215–16, 656 S.E.2d 371, 373 (2008). The court does not retain authority to entertain a motion which is not made within ten days of sentencing. *Id.* at 216, 656 S.E.2d at 373.

Further, Rule 29, SCRCrimP, provides that “post-trial motions shall be made within ten (10) days after the imposition of the sentence.” Appellant misstates the rule by claiming that written notice is required. Rule 29 requires written notice of entry of the order of judgment “disposing of the appeal.” It relates only to the appeal of a municipal court conviction, not the Municipal Court action itself. On May 31, 2017, more than 2582 days after conviction and 597 days after the latest possible date he had actual notice of the conviction, Singletary filed his Motion for a New Trial, citing Rule 29. (R. 68).

Because Singletary failed to appear for court and was tried in his absence, he has claimed that he did not know about the conviction until October 2015, when various media outlets contacted him after seeing the conviction on his state-issued criminal history report. Now that he understands that knowledge in 2015 is fatal to his appeal, he asserts for the first time, that the

actual notice he had in 2015 is not sufficient, solely because of its sources.<sup>3</sup> Singletary has acknowledged that *Brewer v. S.C. State Highway Dep't*, 261 S.C. 52, 198 S.E.2d 256 (1973) supports the ten (10) day notice requirement. In *Brewer*, neither the defendant nor his attorney knew Brewer had been tried in absence until the day they received a notice that Brewer's driver's license had been suspended. The very next day Mr. Brewer filed a motion with the court for a new trial. The Court granted Mr. Brewer's motion. The *Brewer* case highlights two very important problems for Singletary's argument. First, unlike Singletary, in *Brewer* the defendant did not ignore actual notice of the conviction and wait to receive an actual ticket or docket entry from the court. Brewer filed a motion immediately after learning of the conviction from the Highway Department, an entity totally separate from the court where the conviction occurred. Thus, *Brewer* supports the idea that notice from any source starts the clock. *See also O'Rourke v. Atlantic Paint Co.*, 91 S.C. 399, 74 S.E. 930, 932 (1912) (finding time within which to file motion for new trial begins upon defendant's personal notice of the judgment). Second, Brewer acted promptly. Brewer filed his motion for a new trial the day after learning of the Trial in Absence conviction. In contrast, it is undeniable that Appellant knew of his conviction at least 18 months prior to filing a Motion for New Trial. (R. 39 at 1 ("Mr. Singletary learned only in 2015 that the City of North Charleston was claiming that he had been convicted of this offense."); *see also* R. 31-2).

Further, the Supreme Court ruled in *Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 14-15, 602 S.E.2d 772, 775 (2004) that the filing windows are to be rigidly applied. The Court concluded:

The requirement of service of the notice of appeal is jurisdictional, *i.e.*, if a party misses the deadline, the appellate court lacks

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<sup>3</sup> Singletary claims in his brief that the "media" is not a sufficient source of notice. He does not claim that the SLED report provided to him by the media, or the Court Case History that contains information on the conviction are not adequate sources of notice.

jurisdiction to consider the appeal and has no authority or discretion to 'rescue' the delinquent party by extending or ignoring the deadline for service of the notice.

South Carolina courts are equally strict in enforcing the ten (10) day rule of Rule 29, SCRCrimP on both sides of the case. In *State v. Martin*, 352 S.C. 32, 33, 572 S.E.2d 287, 288 (2002), Martin was marked down as convicted *in absentia* in August 1997 "[b]ecause of a series of administrative errors" by the state. The State received actual notice of the errant conviction in December 1997. The State took no action until June 1998 to seek an order to reopen the case so that the State could charge Martin with a greater offense. The circuit court ruled that the State's motion was untimely. The Supreme Court agreed finding that Rule 29, SCRCrimP, barred the motion as untimely because the State had actual notice of the errant conviction in December 1997 and did not file a motion to reopen the case until June 1998. The *Martin* court reiterated the rule in *Brewer*, that "a party's time to appeal from a judgment in a magistrate's court or move for a new trial therein ... begin[s] [when] he has notice of the judgment." *Martin*, 352 S.C. at 34, 572 S.E.2d at 288 (quoting *Brewer*, 261 S.C. at 56, 198 S.E.2d at 257).

The *Martin* case yielded no relief despite the errors having been made by multiple persons within the court after the defendant was specifically met with and told not to appear. *State v. Martin*, 341 S.C. 480, 482, 534 S.E. 2d 292 (Ct. App. 2000). In *Martin* the State admitted that the conviction was the result of a ticket being "signed off in error." The State does not assert that Mr. Singletary's conviction was a mistake. In *Martin* it was the State, not the defendant, who missed the filing window. Here, Mr. Singletary has only himself to blame for the slow filing. Given the Supreme Court's refusal to grant relief in *Martin*, there appears no possible way that Appellant Singletary can get relief in this case.

The Court of Appeals' decision in *Town of Hilton Head Island v. Godwin*, 370 S.C. 221,

634 S.E.2d 59 (Ct. App. 2006), is directly on point. There, Mr. Godwin was arrested for CDV in July 1995 and was convicted *in absentia* in August 1995. Godwin was arrested on a bench warrant for that charge on September 29, 1995; he paid the fine and was released the same day. Years later in August 2003, Godwin applied for a gun permit where a SLED check revealed the 1995 CDV conviction on his record. Then, in March 2004, Godwin sent a letter to the municipal court which the court treated as a motion to set aside the CDV conviction and/or a motion for new trial. The municipal court denied Godwin's motion as untimely filed. Godwin appealed to the Circuit Court who granted a new trial based on "substantial justice." The Town of Hilton Head appealed the decision to grant a new trial to the Court of Appeals.

The Court of Appeals vacated the order of the circuit court finding that Godwin's Rule 29, SCRCrimP, 10-day window to appeal from the judgment of the municipal court began when he had notice of the judgment. The Court found that Godwin had notice of his conviction no later than September 29, 1995, when he was arrested on the bench warrant and his release was secured by payment of the fine. The Court found he had until October 9, 1995, to file any post-trial motions or his notice of appeal. The Court went even further, and analyzed the case by considering the argument that Godwin did not receive notice of the conviction until August 2003 when the SLED background check revealed the conviction (notice by an independent outside agency). If that were the case, the Court opined, then Godwin still took no action until March 2004, some seven months later, to remedy the situation.

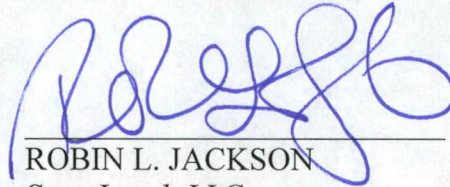
Dismissal of Mr. Singletary's appeal is mandated by *Godwin*. Just as in *Godwin*, there is an undeniable date on which Mr. Singletary had notice of his conviction. Even if one assumed he was unaware of the original trial and conviction in 2010, his own federal court pleadings and press statements show he was aware of the conviction in October 2015. Worse than in *Godwin*,

Singletary waited well over a year to file a Motion to Reopen. Just as in *Godwin*, Mr. Singletary “failed to take any remedial actions” when he learned of the conviction and his “inaction precludes his ability to challenge” his conviction.” *Godwin*, 370 SC at 225, 634 S.E.2d at 61. Because the Motion for a New Trial was untimely, the decision of the Court of Common Pleas denying the appeal should be affirmed.

**CONCLUSION**

The State asserts that the Motion to Reopen or for New Trial was untimely when filed in the municipal court, and asks this court to affirm the lower court’s decision dismissing the appeal.

Respectfully submitted,



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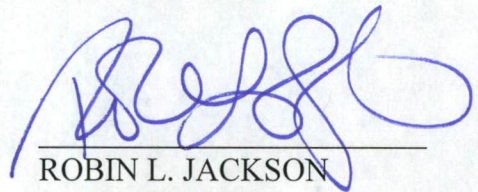
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CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief complies with Rule 211 (b) of the South Carolina Appellate Court Rules.



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