

APPELLANT'S FINAL BRIEF
THE STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from Anderson County
Court of General Sessions
R. Lawton McIntosh, Circuit Court Judge

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SC Court of Appeals

Case No. 2012-GS-23-07504
Appellate Case No. 2018-000564

The State of South Carolina.....Respondent

v.

George Cleveland III.....Appellant

APPELLANT'S FINAL BRIEF

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(a)

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(b)

Statement of Issues on Appeal

Whether the Anderson County General Sessions Court had Jurisdiction to impose 90-day Jail sentence under the Dyer Act.

Whether the Anderson County General Sessions Court had Jurisdiction to impose 90-day Jail sentence under S.C. Const. art § 19.

(c)

Statement of the Case

On October 12, 2017, Appellant Cleveland was served with a “Financial” Probation Citation from the Oconee County Probation Office in Walhalla, S.C. for three-thousand-three-hundred dollars (\$3,300.00) arrears. R.pp. 30-31.

On February 23, 2018, Circuit Court Judge R. Lawton McIntosh (hereinafter Judge McIntosh) heard arguments from Appellant Cleveland that the Court lacked Jurisdiction to hear the “financial” probation citation on the grounds that the possession of stolen vehicle conviction that connected to the citation was stolen from Georgia; crossed state lines into South Carolina triggering the Dyer Act; 18 U.S.C.A. § 2313 (“Whoever receives, possesses, conceals, stores, barter, sells, or disposes of any motor vehicle... which has crossed a State or United States boundary after being stolen, knowing the same to have been stolen, shall be fined under this title or imprisoned not more than 10 years, or both.”); R.p. 26; lines 19-25; R.p. 27; lines 1-2, and the State did not object or provide a defense, see generally R.p. 27 lines 8-10; R.p.27; lines 1-10; and that for the first time in Appellant Cleveland’s March 19, 2018 filed Rule 59 (e) SCRC Motion another Jurisdictional argument was introduced on the ground that S.C. Const. art I, § 19 barred Judge McIntosh from imposing the 90-day jail sentence, *id.* “Subject Matter Jurisdiction ... 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 in [circuit] court”... United States v. Cotton 535 U.S. 625 (2002), *id* at 630, see also State v. Gentry 363 S.C. 93 (2005), *id* at 99-100 in this case at the Anderson County Court of General Sessions, and subsequently ordered Appellant Cleveland to spend 90-days in the Anderson County detention center for “willfully violat[ing] the terms of his (Appellant Cleveland’s) probation...” R.p. 27; lines 11-15. On March 22, 2018, Judge McIntosh denied the Rule 59 (e), *id*, motion without ruling on the merits of the post-trial motion. *Id*.

On March 30, 2018, Appellant Cleveland’s Notice of Appeal was filed in this court. R.p. 9. On April 02, 2018, Appellant Cleveland’s Motion to Stay the Probation pending appeal was filed. R.p. 32. On the same day, the Clerk’s Office of this Court invited the State to file a Return. R.p. 34. On April 05, 2019, this Court denied the Motion to Stay Probation. R.p. 34. On May 11, 2018, the trial transcript was ordered. R.p. 34. After another Motion to Stay Probation pending Appeal was denied by this Court, and the South Carolina Supreme Court. An extension Granted to file the Initial Brief, this Appeal follows. R.p. 34.

Standard of Review

“Subject Matter Jurisdiction ... 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 in [circuit] court”... United States v. Cotton 535 U.S. 625 (2002), *id* at 630, see also State v. Gentry 363

S.C. 93 (2005), *id* at 99-100.

Argument

Judge McIntosh Lacked Jurisdiction to Impose the 90-Day Sentence For Restitution Arrears on February 23, 2018 Under the Dyer Act

Circuit Court Judge McIntosh (hereinafter Judge McIntosh) lacked Jurisdiction to hear the February 23, 2018 restitution arrears because the conviction of possession of stolen vehicle connected to the probation of this case under the 18 U.S.C.A. § 2312; a.k.a. the Dyer Act (“whoever transports interstate... a motor vehicle... knowing the same to have been stolen, shall be fined under this title or imprisoned not more than 10 years, or both.”).

Judge McIntosh was informed at the hearing of this very argument “[t]he vehicles in questions were stolen from Georgia.” R.p. 26; lines 21-23: “[Appellant Cleveland] bought the vehicles in South Carolina triggering Federal Jurisdiction of the Dyer Act, so that’s one of my biggest arguments.” R.p.26; lines 24-25, and R.p.27; lines 1-3. Judge McIntosh concluded: “I find it credible the agent’s statement that he doesn't have jurisdiction – the court—doesn't have jurisdiction to make him pay the restitution.” R.p. 27; lines 18-20. “I’ll give you 90 days from today.” R.p. 27; lines 23. Judge McIntosh rejected Appellant Cleveland’s argument that he review the submitted exhibits, and “make a finding on the actual evidence that [was] submitted.” R.p. 28; lines 8-9. The Court: “I’m going to find it on the testimony I

heard...” R.p.28; line 10-11. The documents submitted into evidence was the actual arrest warrant (a/w no. “2012A2330200168”) that reads in relevant part:

“that GEORGE CLEVELAND III did in Greenville County on or about the 7th of May, 2012 willfully and unlawfully receive, possess, conceal, sell, or dispose of a motor vehicle belonging to DUVALL FORD described as a 2011 Ford Fusion in violation of S.C. Ann. § 16-21-0080. R.p. 36. The sentence sheet connected to the 90-day jail sentence that is the arrest number is: “2012A2330200168”. Duvall Ford is location in Clayton, Ga., not South Carolina, see R.pp.33,36,39 triggering federal jurisdiction under the Dyer Act because the 2011 Ford Fusion was reported stolen from Georgia, crossed State lines into South Carolina; accordingly, Judge McIntosh did not have Jurisdiction under the Dyer Act to sentence Appellant Cleveland to 90-days in jail for restitution arrears; under United States v. Cotton 535 U.S. 625 (2002), *id* at 630, see also State v. Gentry 363 S.C. 93 (2005), *id* at 99-100.

Standard of Review

“Subject Matter Jurisdiction ... 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 in [circuit] court”... United States v. Cotton 535 U.S. 625 (2002), *id* at 630, see also State v. Gentry 363 S.C. 93 (2005), *id* at 99-100.

Argument

Judge McIntosh Lacked Jurisdiction to Impose the 90-Day Sentence

For Restitution Arrears on February 23, 2018 Under S.C. Const. art. I,

§ 19

Art. I, § 19 of the South Carolina Constitution states that:

“no person shall be imprisoned for debt.” *Id.* Judge McIntosh sentenced Appellant Cleveland to 90-days in jail for owing a debt of restitution. The court stated: “I think that you willfully not paid [your restitution].” R.p.27, lines 21-22. “I’ll give you 90-days from today.” *id.*, at line 23. As Appellant Cleveland argued in his Rule 59 (e) SCRCP: “[r]estitution is a [d]ebt is that which is due from one person to another, whether money, goods or services’ and whether payable at present or at a future time.” R.p. 5 Ex parte Hollman 79 S.C. 9, 60 S.E. 19, 14 (1908).

The Rule 59 (e) Motion, explicitly argued that Judge McIntosh was barred by S.C. Const. art. I, § 19 from imposing the 90-day Jail sentence because restitution is a debt under Ex parte Hollman, *id.*, R.p. 5. Judge McIntosh did not even rule on the merits of the Rule 59 (e) Motion by stating: “The Motion to Reconsider Sentence... is DENIED.” R.p.1. Regardless of whether the Jurisdiction issue was argued below, Cotton required this Court to determine whether S.C. Const. art. I, § 19 barred Judge McIntosh from imposing sentence on February 23, 2018. I submit that he did

not have Jurisdiction to impose sentence because Ex parte Hollman holds that

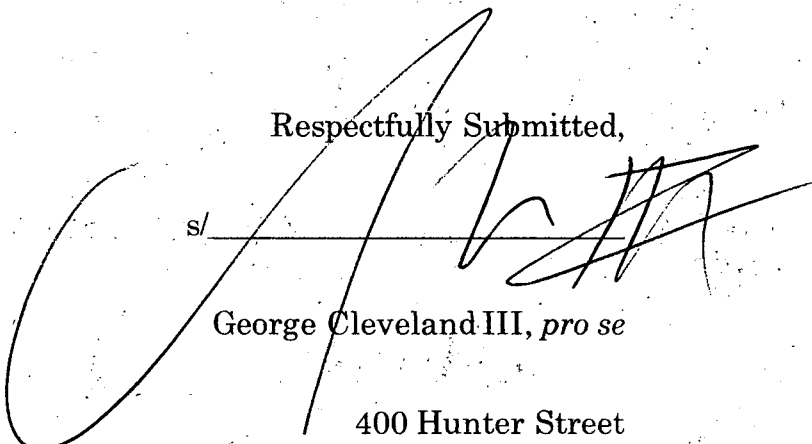
Restitution is not a debt under S.C. Const. Art. I, § 19; therefore, Judge McIntosh did not have Jurisdiction under the S.C. Const. art. I, § 19 to sentence Appellant Cleveland to 90-days in jail for restitution arrears under United States v. Cotton 535 U.S. 625 (2002), *id* at 630, see also State v. Gentry 363 S.C. 93 (2005), *id* at 99-100.

Conclusion

Judge McIntosh did not have Jurisdiction to impose the 90-day jail sentence on February 23, 2018 for Restitution arrears because the stolen vehicle connected to the conviction in this case was stolen from Georgia, and recovered across State lines in South Carolina under the Dyer Act, and S.C. Const. art. I, § 19 because Restitution is not a debt under the S.C. Const, *id.*, Jurisdiction is the power for Judge McIntosh to hear this case on February 23, 2018, Appellant Cleveland did not forfeit or waive Jurisdiction on that day, nor would Appellant Cleveland have did so in the first instance; consequently, Appellant Cleveland respectfully request that this Court remand this case back to Judge McIntosh's court to determine whether he had Jurisdiction on February 23, 2018, and vacate the 90-day jail sentence of February 23, 2018.

Respectfully Submitted,

s/

A large, stylized handwritten signature in black ink, written over a horizontal line. The signature is cursive and appears to read 'George Cleveland III'.

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Dated: December 30, 2019