



The Supreme Court of South Carolina

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CLERK OF COURT

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TO: Mr. Tyshun Mario Bessellieu, 375758

FROM: Daniel E. Shearouse, Clerk

DATE: August 17, 2020

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AUG 18 2020

SC Court of Appeals

This Court has received your recent petition.

- This Court cannot provide legal advice or assistance. Therefore, we are unable to respond to your legal questions. If you need legal advice or assistance, you should consult with an attorney.
- Since you are currently represented by counsel regarding these criminal convictions and sentences before the South Carolina Court of Appeals (Appellate Case No. 2018-000622), I cannot accept this *pro se* petition for filing and no action will be taken on it by this Court. *Miller v. State*, 388 S.C. 347, 697 S.E.2d 527 (2010); *Jones v. State*, 348 S.C. 13, 558 S.E.2d 517 (2002); *State v. Stuckey*, 333 S.C. 56, 508 S.E.2d 564 (1998); *Foster v. State*, 298 S.C. 306, 379 S.E.2d 907 (1989).
- Since you are represented by counsel in these cases, we are forwarding a copy of your correspondence to your counsel.

cc: David Alexander, Esquire (with copy of petition)
William M. Blich, Jr., Esquire (with copy of petition)

~~The Honorable Jenny Abbott Kitchings (with copy of petition)~~

STATE OF SOUTH CAROLINA
APPEAL FROM GEORGETOWN COUNTY

IN THE COURT OF APPEALS
APPELLATE CASE NO. 2018 - 000622

THE STATE,
Respondent,

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AUG 11 2020

S.C. SUPREME COURT

v.
TISHUN MARIO BESSELLIEU,
Appellant

APPELLANT PETITION FOR IMMEDIATE
RELIEF FROM PUNISHMENT

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- Basis For Petition -

SC Court of Appeals

On August 31st, 2016 Appellant "Tishun Mario Kalliem Bessellieu [Real/Natural person; I.O.B 07-21-1999]" was 17 years old when he was unlawfully arrested while traveling in the territory commonly referred to as THE COUNTY OF GEORGETOWN, SOUTH CAROLINA following this arrest by the Georgetown Police Department, numerous arrest warrants were presented to and signed by Judge Robert Harry O'Donnell (2016A2220200464 thru 72); These charges were filed with the Georgetown County Court of General Sessions. Judge O'Donnell held a bond hearing regarding the above mentioned charges where total bail amount was set at \$185,000.

On November 16th, 2016 the County Grand Jury allegedly convened at the Court of General Sessions returning numerous indictments (2016-GIS-22-01068 thru 01076) against Appellant. On March 14th - 22nd, 2018 Appellant stood trial in the 15th Judicial Circuit Court, in Georgetown County with regards to the respective indictments. Appellant was convicted by the jury of the circuit court and subsequently sentenced by the Honorable Steven H. John (circuit court judge) to a term of 16 years imprisonment in the South Carolina Department of Corrections.

Following this conviction Appellant timely filed an appeal (Appellate case no. 2018 - 000622), which is currently pending in the South Carolina Court of Appeals.

Appellant now presents this "Petition for Immediate Relief from Punishment" due to lack of competent jurisdiction, with respect to the Circuit court to try this matter; Accordingly Appellant's conviction and sentence should be vacated, and Appellant should be immediately released from his current custody.

- Legal Authorities in support of Petition -

In *State v. Gentry* 610 S.E.2d 444 (S.C. 2005) the South Carolina Supreme Court stated, "A defendant may for the first time ^{*102} on appeal raise the issue of the trial court's jurisdiction to try the class of case of which the defendant was convicted.... We note that our holding, while overruling several cases is in line with modern jurisprudence.

Turning to South Carolina jurisdiction, we note this Court has held that subject matter jurisdiction is the power of a court to hear and determine cases of the general class to which the proceedings in question belong, see *Pierce v. State* 338 S.C. 134 (2000); And that issues related to subject matter jurisdiction may be raised at any time, see *Brown v. State* 343 S.C. 342 (2001). The lack of subject matter jurisdiction may not be waived, even by consent of the parties, and should be taken notice by this court. *Id.*

State court jurisdiction is general and derived from the South Carolina Constitution, see *Smallhouse v. Husley*, 347 S.C. 49 (S.C. App. 2011)

S.C. Constitution Article V, § 11 "Jurisdiction of Circuit Court": The Circuit Court shall be a general trial court with original jurisdiction in civil and criminal matters, except these cases in which exclusive jurisdiction shall be given to inferior courts, and shall have such appellate jurisdiction as provided by law.

In determining whether the legislature has given an entity other than a circuit court exclusive jurisdiction over a case, a court must look to the relevant statute, see *Wainey v. Haley* 404 S.C. 320 (S.C. 2013)

S.C. Code Ann §§ Title 63, S.T. 63-3-510 "Exclusive Original Jurisdiction" provides in part that;

Except as otherwise provided herein, the court shall have exclusive original jurisdiction and shall be the sole court for initiating action

• Concerning any child living or found within the geographical limits of this jurisdiction who is alleged to have violated or attempted to violate any state or local law or municipal ordinance regardless of where the violation occurred except as provided in section 63-3-520

• Concerning any person 18 years of age or over, living or found within the geographical limits of the court's jurisdiction, alleged to have violated or attempted to violate any state or local law or municipal ordinance prior to having become 18 years of age and such person shall be dealt with according to law.

The definitions used in this title are defined in S.C. S.T. 63-1-4 "Definitions" provides in part that;

When used in this title (Title 63) and unless otherwise defined or the specific text indicates otherwise: (child means a person under the age of 18), (court means the family court), and Judge means the judge of the family court)

- Argument in Support of Petition -

Due to Appellants age (17) at the time of the alleged violation of South Carolina state law, the State Circuit Court is effectively deprived of its general jurisdiction whereas exclusive original jurisdiction has been granted to the state family court with respect to such matters (S.C. code Ann §§ 63-3-510).

No transfer of jurisdiction was made to the State Circuit Court from the family court as mandated by the strict provisions set forth in S.C. code Ann §§ 63-19-1210. Failure to comply with this process of law violates the constitutional provisions and protections as set forth in the "United States Constitution" and the "South Carolina Constitution". In accordance with the related Constitutional Authorities, the South Carolina Constitution Article I § 22 specifically provides in part that "... nor shall he be deprived of liberty or property unless by a mode of procedure prescribed by the General Assembly, and he shall have in all such instances the right to judicial review."

Also in accordance with related constitutional authorities, the South Carolina Constitution Article I § 3 provides that "The privileges and immunities of citizens of this state and of the United States under this constitution shall not be abridged, nor shall any person be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of laws."

The subjective laws implemented in "S.C. code Ann §§, Title 63: South Carolina Childrens Code" provides judicial protection of children from unreasonable adult prosecutions, by way of jurisdictional defect. These protections of children are extensive too the respective constitutional authorities preventing cruel and unusual punishments from being inflicted upon persons, see US and S.C. Constitution. The problem with lumping together children and adults is that it is contrary to all that we know about adolescent brain development. We know, for instance, that until around age 25, the parts of the brain involved in critical decision-making are not fully developed. Science also suggests that adolescent brains are more inclined to enter into uncertain situations in search of a thrill or some other reward without adequately assessing risks. Because juveniles possess poor abilities to assess risk as compared to adults it would be not only unlawful, but unethical to hold the actions of a child to the same degree of responsibility as an adult.

Also due to State Circuit Courts lack of jurisdiction, South Carolina State law forbids imprisonment of Appellant. (S.C. code Ann §§ 17-25-10: No person shall be punished for an offense, unless duly and legally convicted thereof in a court having competent jurisdiction of cause and of person.)

- Conclusion -

WHEREFORE, the Appellant respectfully requests that the court grant "Appellants Petition for Immediate Relief From Punishment" by way of reversal of all relevant convictions due to lack of jurisdiction, vacation of sentences, and immediate release from current custody.

August 10, 2020

William M. K. Bessellic

I did this date serve Respondent [Appellant Petition for Immediate Relief From Punishment] by placing a copy of the same in a United States Postal Service mail box, postage paid, and addressed as follows:

ALAN WILSON (Attorney General)

J. Benjamin Aplin (Senior Assistant Deputy Attorney General)

~~Robert~~ Rembert Dennis Building

1000 Assembly Street, Room 519

Columbia, South Carolina 29201

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SC Court of Appeals

August 10, 2020

William M. K. Bessellic

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