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**Jan 13 2021**  
**SC Court of Appeals**

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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Appeal from Greenville County

Honorable Letitia H. Verdin, Circuit Court Judge

Honorable Edward W. Miller, Circuit Court Judge

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THE STATE,

RESPONDENT,

V.

DAVID DWYER COCKRELL,

APPELLANT

APPELLATE CASE NO 2020-001070

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INITIAL BRIEF OF APPELLANT

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WANDA H. CARTER  
Deputy Chief Appellate Defender

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PO Box 11589  
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(803) 734-1330

ATTORNEY FOR APPELLANT

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**STATEMENT OF ISSUE ON APPEAL**

The circuit court judge erred in ordering appellant to pay restitution for back-rent owed because the case involved a landlord/tenant matter where the landlord's remedy to recover fell under a magistrate's court jurisdiction.

## **STATEMENT OF THE CASE**

Appellant David Dwyer Cockrell pled guilty to two counts of uttering a fraudulent check during the April 2020 term of the Greenville County General Sessions Court before Judge Letitia H. Verdin, who sentenced appellant to imprisonment for a period of two years, suspended upon sixteen days time served, and three years probation. A restitution hearing was held on July 23, 2020, at the Greenville County General Sessions Court before Judge Edward W. Miller, who ordered appellant pay restitution in the amount of \$10,060.00. Demi Messer, Esq. represented appellant at both proceedings. Assistant Solicitor L. Mark Mayer appeared on behalf of the state at the plea proceeding, and Assistant Solicitor Sylvia Harrison appeared on behalf of the state at the restitution hearing.

Appellant appealed. This brief follows.

### **STANDARD OF REVIEW**

A sentence will not be overturned absent an abuse of discretion when the ruling is based on an error of law. State v. Morgan, 417 S.C. 338, 790 S.E.2d 27 (2016), citing to State v. Dawson, 402 S.C. 160, 740 S.E.2d 501 (2013).

## ARGUMENT

The circuit court judge erred in ordering appellant to pay restitution for back-rent owed because the case involved a landlord/tenant matter where the landlord's remedy to recover fell under a magistrate's court jurisdiction.

In the instant case, appellant wrote two separate checks in the amount of \$5,000.00 each for rent. Both checks were returned for insufficient funds with an accompanying charge of \$60.00. Guilty Plea Transcript p.3-8. During the restitution hearing held in the case, the trial judge ordered appellant to pay the landlord \$10,060.00. Counsel objected and argued that the \$60.00 loss for the returned checks ended up being the only amount that was due to the landlord as a result of appellant's criminal actions. The circuit court judge overruled counsel's objection. Restitution Hearing Transcript p. 4, l.1 – p.9, l. 5.

S.C. Code Ann Section 17-25-322 allows for restitution for a victim as a result of the defendant's criminal acts as compensation for any pecuniary damages. Also, S.C. Code Ann. Section 16-3-1110 (12) states that restitution means payment for injuries, specific losses, and expenses sustained by a crime victim resulting from an offender's criminal conduct. However, restitution orders do not limit any civil claims that a crime victim may file. In the assault and battery case of State v. Morgan 417 S.C. 338, 790 S.E.2d 27 (2016), the Court held that civil damages were separate and distinct from restitution, and that the execution of a civil settlement and covenant not to execute in the case between the victim and defendant prior to sentencing did not preclude an award of restitution. However, State v. Morgan, supra, involved the effect of an insurance matter and settlement on restitution whereas the case at bar involved a landlord and tenant law issue where the landlord had remedies in magistrate's court to recoup his back-rent losses. See S.C. Code Ann Sections 27-39-210-360, 27-40-710 and 27-40-510.

The restitution covering back-rent was not connected to the bad check crimes. The amount owed on the returned checks (\$60.00) only would qualify as the loss from the bad check crimes. Therefore, the restitution award of 10,000.00 was improper as there was another court, that being magistrate's court, in which to properly bring an action for back-rent owed to the landlord to request a \$10,000.00 judgment.

**CONCLUSION**

Based on the foregoing argument, the lower court's restitution order should be vacated.

s/Wanda H. Carter  
Wanda H. Carter  
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 13th day of January, 2021.

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**DESIGNATION OF MATTER TO BE  
INCLUDED IN RECORD ON APPEAL**

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Appellant proposes the following be included in the Record on Appeal:

- (1) True-billed indictment(s):
- (2) Guilty Plea Transcript dated April 9, 2020
- (3) Restitution Hearing Transcript dated July 23, 2020
- (4) Guilty Plea Explanation per Rule 203, SCACR

I certify that this designation contains no matter which is irrelevant to this appeal.

January 13, 2021.

s/Wanda H. Carter  
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CERTIFICATE OF SERVICE

Pursuant to the Supreme Court's Order "RE: Operation of the Appellate Courts During the Coronavirus Emergency," dated March 20, 2020, the undersigned hereby certifies a true copy of the Initial Brief of Appellant and Designation of Matter in the above-referenced case has been served upon William M. Blich, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS), and a copy of the Initial Brief of Appellant and Designation of Matter have been served on David Dwyer Cockrell, at 139 Waddell Road, Greenville, SC 29609, this 13th day of January, 2021.

s/Wanda H. Carter  
Wanda H. Carter  
Deputy Chief Appellate Defender  
ATTORNEY FOR APPELLANT