

ORIGINAL

THE STATE OF SOUTH CAROLINA
In the Court of Appeal

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FEB 04 2021

SC Court of Appeals

APPEAL FROM HORRY COUNTY
Court of General Sessions

The Honorable Michael G. Nettles

INDICTMENT NOS: 2019GS2600254
2019GS2600255
2019GS2600256

State of South Carolina.....Respondent,

v.

Javaline Tyree Dawkins.....Appellant.

MOTION TO RULE ON JURISDICTION

NOW COMES Thomas C. Brittain, Esq., trial attorney for the Defendant Javaline Tyree Dawkins. Javaline Tyree Dawkins was convicted of murder, kidnapping, and possession of weapon during violent crime. The sentence was imposed by the Honorable Michael G. Nettles, on November 6, 2020, the same day the jury returned its verdict on these charges.

That Defendant filed timely post-trial motions and a notice of intent to appeal in the lower court of General Sessions on November 13, 2020. That Judge Michael Nettles, the State Prosecutor, Defense Counsel, and Defendant Dawkins appeared via a virtual WebEx hearing on November 24, 2020. The Defendant's post-trial motions were heard. That Judge Nettles did not make a ruling on November 24, 2020.

That Defendant Dawkins was already at Kirkland Correctional Institute on November 24,

2020. As the hearing progressed, Defendant Dawkins wanted and requested to address the Court directly. Counsel for Defendant did not want Defendant Dawkins to speak until Counsel could review his comments. That it was understood by Defense Counsel that it was agreed to by each participating party that Defendant Dawkins could address the court with his comments once reviewed by his counsel; and then a meeting and a presentation to the Court was to take place (by WebEx or video) prior to Judge Nettles submitting his final Order.

That, it was much more difficult to arrange communication between Defense Counsel and the Defendant at Kirkland Correctional Institute than at J. Reuben Long Detention Center. That Judge Nettles gave written notice denying Defendant's post-trial motions on December 22, 2020 via electronic delivery and attached a copy of the Order of Denial (unsigned). That Counsel received comments from Defendant Dawkins and submitted this written correspondence to the court on January 4, 2021 for consideration.

Immediately upon the receipt of the written notice via electronic delivery of the denial of Defendant's post-trial motions on December 22, 2020, Defendant, by and through his undersigned counsel, properly mailed on December 23, 2020, and filed a Notice of Intent to Appeal (within 10 days) and properly served a copy of the Notice of Intent unto the lower court and the State's Prosecuting Attorneys.

That Defense Counsel received a notice of dismissal of the Appeal on January 11, 2021; however, counsel alleges this dismissal was in error. That pursuant to South Carolina Rules of Appeal Rule 203(2) Appeals from the Court of General Sessions states "when a timely post-trial motion is made under Rule 29(a), SCRCrimP, the time to appeal shall be stayed and shall begin to run from receipt of written notice of entry of an order granting or denying such motion; and further the notice of appeal must be served within ten (10) days of receiving actual notice of the ruling or

order". That Defense Counsel filed a Motion to Reinstate the Appeal on January 12, 2021. That, to Defendant's knowledge, it has not been ruled upon by the Appellate Court; however, it has been requested to be reinstated by Senior Assistant Deputy Attorney General of South Carolina on January 28, 2021.

That, Defense Counsel was never served a copy of the signed or filed Order Denying Post-trial motions. That Defense Counsel filed a Motion to Reconsider the Order Denying of Post-Trial Motions in Horry County General Sessions on January 25, 2021, requesting the court reconsider its order denying Defendant's post trial motions based on the above facts and events, and requesting that Defendant Dawkins seeks an opportunity to be heard prior to a Court ruling on his post-trial motions. That a WebEx hearing is scheduled on February 9, 2021 to hear Defendant's Motion to Reconsider the; however, the State prosecutors have objected to the hearing moving forward based on jurisdictional issues. Defense Counsel conferenced with Judge Nettles, the Attorney General Melony Brown, and State Prosecutor and it was agreed that Defense Counsel would seek an Order from the Appellate Court to remand for the purposes of conducting a hearing on post-trial motions.

To avoid a jurisdictional challenge, and to have the post-trial motions/arguments fully addressed, the Attorney General respectfully submitted to the Appellate Court, by letter on January 28, 2021 the following: that a remand would be appropriate to allow additional proceedings in circuit court regarding the post-trial motion. Alternatively, the motion to reinstate could be granted and the November 13, 2020 notice dismissed without prejudice, again allowing the post-trial motion to be resolved without a jurisdictional challenge or question. Upon completion of the post-trial proceedings, a new notice could be served and filed. (See Rule 203(b)(2), SCACR and Rule 29(a), SCRCrimP). The notice of appeal from December 23, 2020 may be dismissed as premature.

WHEREFORE, Defendant Dawkins has a pending motion to reinstate his appeal in the South Carolina Appeals Court and also has a pending motion to reconsider the denial of post-trial motions in the Horry County General Sessions court and hereby seeks an order from the Appellate Court to Rule on whether this court has jurisdiction over this case at this stage or if the lower court can move forward with Defendant's Motion to Reconsider the Denial. Therefore, Defendant respectfully requests an order for: a remand to allow additional proceedings in circuit court regarding the post-trial motion (motion to reconsider); or the motion to reinstate could be granted and the November 13, 2020 notice dismissed without prejudice, again allowing the post-trial motion (motion to reconsider) to be resolved without a jurisdictional challenge or question; upon completion of the post-trial proceedings, a new notice could be served and filed. (See Rule 203(b)(2), SCACR and Rule 29(a), SCRCrimP). The notice of appeal from December 23, 2020 may be dismissed as premature – allowing Defendant opportunity to file a Notice of Appeal once the Motion to Reconsider has been ruled upon.



Thomas C. Brittain, Esq.

SC Bar # 893

Fed Bar # 04920

THE BRITTAIN LAW FIRM

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Trial Attorney for Javaline Tyree Dawkins

Dated: February 3, 2021

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The Honorable Michael G. Nettles

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State of South Carolina.....Respondent,

v.

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PROOF OF SERVICE

I, MIRANDA E. BYRNSIDE do hereby certify that I am an employee of THE BRITAIN LAW FIRM, P.A., attorneys for the Appellant Javaline Tyree Dawkins Benton in the above-entitled action, and that I have this 3rd day of February 2021 caused to be served upon the following parties the **Motion to Rule on Jurisdiction** by EMAIL AND BY FIRST CLASS MAIL, addressed as follows:

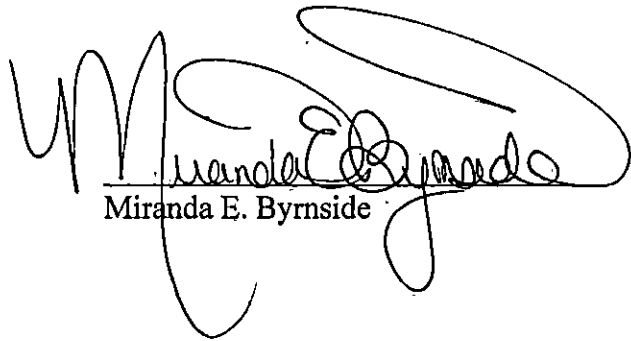
Nancy Livesay, Violent Crimes Prosecutor
Solicitor for Horry County
P.O. Box 1236
Conway, SC 29528
Attorney for Respondent

Chris Helms, Assistant Solicitor
Solicitor for Horry County
P.O. Box 1236
Conway, SC 29528
Attorney for the Respondent

The Honorable Michael G. Nettles
Florence City-County Complex
181 North Irby Street, Suite 3610
Florence, SC 29501
Presiding Judge

Melody J. Brown
Senior Assistant Deputy Attorney General
State of South Carolina
PO Box 11549
Columbia, SC 29211
Attorney General

Horry County General Sessions
ATTN: Clerk of Court
PO Box 677
Conway SC 29528-0677



Miranda E. Byrnside

SWORN AND SUBSCRIBED before me
this 3rd day of February 2021

Diane Parker
NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: 6-11-24

THE BRITTAIN LAW FIRM, P.A.
ATTORNEYS AT LAW
4614 OLEANDER DRIVE
MYRTLE BEACH, SOUTH CAROLINA 29577

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SC Court of Appeals

THOMAS C. BRITTAIN
MARY MADISON BRITTAIN LANGWAY
A. PRESTON BRITTAIN
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February 3, 2021

Via Fed Ex Overnight

The Honorable Jenny Abbott Kitchings
Clerk of Court - South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

Re: State of South Carolina v. Javaline Tyree Dawkins
INDICTMENT NOS: 2019GS2600254, 2019GS2600255
2019GS2600256

Dear Ms. Kitchings:

Enclosed herewith for filing please find the original Motion to Rule on Jurisdiction for filing, in the above-referenced matters, together with the Proof of Service. Please file the original and return the clocked copy to our office using the enclosed pre-paid envelope provided.

By copy of this letter I am serving the South Carolina State Prosecutors of the Horry County Solicitor's Office, Senior Assistant Deputy Attorney General, Honorable Judge Michael Nettles, as well as the lower court in this matter.

These documents are also being submitted to you electronically. Thank you.

Sincerely,

THE BRITTAIN LAW FIRM, P.A.



Thomas C. Brittain

cc: Horry County Clerk of Court
Honorable Judge Michael Nettles
Senior Assistant Deputy Attorney General Melody J. Brown
Nancy Livesay
Chris Helms

Miranda Byrnside

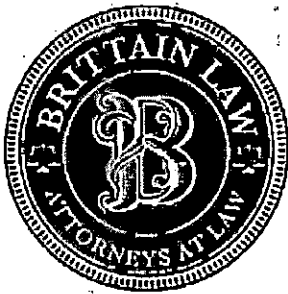
From: Miranda Byrnside
Sent: Wednesday, February 3, 2021 12:26 PM
To: Nettles, Michael G.; Melody Brown; Livesay, Nancy R; Helms, Chris
Cc: Tommy Brittain; Joseph Brown; abennett@scag.gov; Nettles, Michael G. Law Clerk (Charles Smith)
Subject: State of South Carolina v. Javaline Tyree Dawkins
Attachments: Dawkins App Mt to Rule on Jurisdiction - Proof of Service.pdf

Dear Honorable Judge Nettles, Attorney General Brown, Solicitor Livesay, and Solicitor Helms:

RE: State of South Carolina v. Javaline Tyree Dawkins INDICTMENT NOS: 2019GS2600254, 2019GS2600255, 2019GS2600256
RE: Appellate Case No. 2020-001714

Attached herewith and served upon you, please find Defendant Dawkins' Motion to Rule on Jurisdiction which is being sent via electronic mail & overnight mail to Clerk of Court for SC Court of Appeals for filing today, along with a Proof of Service, regarding the above.

Thank you for your immediate attention.



Miranda E. Byrnside | Paralegal to A. Preston Brittain, Esq.
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