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SC Court of Appeals

STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM ORANGEBURG COUNTY

Court of General Sessions
The Honorable Edgar W. Dickson, Circuit Court Judge

Unpublished Opinion No. 2020-UP-268 (S.C. Ct. App. filed September 23, 2020)
Appellate Case No. 2021-000056

THE STATE,

Respondent,

v.

WILLIE YOUNG,

Petitioner.

RETURN TO PETITION FOR WRIT OF CERTIORARI

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STATEMENT OF ISSUE ON CERTIORARI

I.

Whether the circuit court correctly denied Young's 29(b) motion for a new trial when his motion was not timely and he did not produce any newly discovered evidence.

STATEMENT OF THE CASE

In June 2002, Petitioner Willie Young was convicted of armed robbery in the Orangeburg County Court of General Sessions and sentenced to 30 years' incarceration. Young appealed his conviction and an appeal was perfected in the form of an Anders¹ brief. The Court of Appeals reviewed the record pursuant to Anders and dismissed the appeal. State v. Young, No. 2003-UP-564 (Ct. App. September 29, 2003). Young subsequently filed four collateral attacks on his conviction, all of which failed.

On July 26, 2016, Young filed a pro se motion for a new trial pursuant to Rule 29(b), SCRCrimP. A hearing was held at the Orangeburg County Courthouse on October 26, 2016, before the Honorable Edgar W. Dickson. Judge Dickson denied the motion. Young appealed and was represented by Christopher R. Geel, Esquire on appeal. The Court of Appeals affirmed Judge Dickson's ruling in an unpublished opinion. State v. Young, Unpublished Opinion No. 2020-UP-268 (S.C.Ct.App. filed September 23, 2020). Young subsequently filed this pro se Petition for Writ of Certiorari.

At the Court of Appeals, Young raised two issues: 1) that the circuit court abused its discretion by declining to appoint counsel to represent him on his 29(b) motion; 2) that the circuit court erred by denying his motion for a new trial pursuant to Rule 29(b) because the 2002 trial court lacked jurisdiction due to a deficient indictment. Young seeks certiorari on two grounds: 1) "Did the court of Appeals err in its holding that the county Solicitor had General Session Jurisdiction to return a 'True-Billed' indictment when its procedure violated state procedure and the Constitutional rights of the petitioner?" [sic]; and 2) "Does State and

¹ Anders v. State of Cal., 386 U.S. 738 (1967).

Constitutional provisions allow County Solicitors to commit fraud on the court to convene Grand Jury's to return bills of indictment without General Sessions jurisdiction?" [sic].

ARGUMENT

I. **The circuit court correctly denied Young's 29(b) motion for a new trial because his motion was not timely and he did not produce any newly discovered evidence.**

The circuit court correctly denied Young's motion for a new trial pursuant to Rule 29(b), SCRCrimP because the motion was not timely and Young did not produce any newly discovered evidence. Young's argument that the circuit court lacked jurisdiction to try him in 2002 is meritless because defects in an indictment do not deprive the circuit court of jurisdiction. Certiorari should be denied.

A. Standard of review.

The granting of a motion for a new trial based on after-discovered evidence is not favored and, absent error of law or abuse of discretion, an appellate court will not disturb the trial judge's denial of the motion. State v. Needs, 333 S.C. 134, 158, 508 S.E.2d 857, 869 (1998).

B. Issue preservation.

Young styles his petition as raising two issues, both relating to an alleged defect to the indictment under which he was tried in 2002. His second issue alleges the solicitor committed "fraud on the court" by improperly convening a grand jury. Because both of the issues allege Young was tried under an improper indictment, thereby depriving the circuit court of jurisdiction, the State will treat Young's petition as raising one issue. To the extent his argument alleging "fraud on the court" raises a distinct issue, it is not properly before this court because he did not raise it to the Court of Appeals. Kleckley v. Northwestern National Casualty Company,

338 S.C. 131, 138, 526 S.E.2d 218, 221 (2000) (quoting Rule 226(d)(2), SCACR as follows: “Only those questions raised in the Court of Appeals *and* in the petition for rehearing shall be included in the petition for writ of certiorari as a question presented to the Supreme Court.”). Because Young does not seek review of the Court of Appeals' affirmance of the circuit court's ruling declining to appoint counsel during the Rule 29(b) hearing, that issue is abandoned. State v. Bray, 342 S.C. 23, 535 S.E.2d 636, 639 n.2 (2000) (“A reviewing court should not consider an issue that is not presented on appeal.”); State v. Culbreath, 377 S.C. 326, 332, 659 S.E.2d 268, 271 (Ct. App. 2008) (“In order for an issue to be properly presented for appeal, the appellant’s brief must set forth the issue in the statement of issues on appeal.”)

C. Discussion.

Though styled as a motion for a new trial based on after-discovered evidence, Young’s Rule 29(b) motion did not allege any newly-discovered facts, much less facts material to guilt or innocence. Instead, it was a legal challenge to the indictment under which he was tried. Furthermore, the motion was untimely because the alleged defects in the indictment could have been discovered when the case went to trial in 2002. The lower court correctly characterized the motion as yet another application for post-conviction relief masquerading as a Rule 29(b) motion for a new trial. In any case, Young’s claims are meritless because defects in an indictment do not deprive a court of subject matter jurisdiction. The Court of Appeals correctly found the issue to be meritless. Certiorari should be denied.

Rule 29(b) of the South Carolina Rules of Criminal Procedure states provides:

A motion for a new trial based on after-discovered evidence must be made within one (1) year after the date of actual discovery of the evidence by the defendant or after the date when the evidence could have been ascertained by the exercise of reasonable diligence.

In South Carolina, to obtain a new trial based on after discovered evidence, the party must show that the evidence: (1) would probably change the result if a new trial is had; (2) has been discovered since trial; (3) could not have been discovered before trial by the exercise of due diligence; (4) is material to the issue of guilt or innocence; and (5) is not merely cumulative or impeaching. Jamison v. State, 410 S.C. 456, 467, 765 S.E.2d 123, 128 (2017); State v. Needs, 333 S.C. 134, 157-58, 508 S.E.2d 857, 869 (1998). Young fails to make the requisite showing.

First, the motion is untimely. The alleged defect in the indictment could have been discovered at or before trial by simply looking at the charging document. Not only is the motion untimely under Rule 29(b), S.C. Code Ann. § 17-19-90 provides: “Every objection to any indictment for any defect apparent on the face thereof shall be taken by demurrer or on motion to quash such indictment before the jury shall be sworn and not afterwards.” See also State v. Gentry, 363 S.C. 93, 101, 610 S.E.2d 494, 499 (2005) (citing S.C. Code §17-19-90) (holding “if an indictment is challenged as insufficient or defective, the defendant must raise that issue before the jury is sworn and not afterwards”). The purpose of the statute is “to prevent motions to arrest judgment on grounds based upon defects in indictment apparent on the face thereof.” State v. Lark, 64 S.C. 350, 42 S.E. 175, 176 (1902). This is precisely the type of challenge Young now mounts— one apparent on the face of the indictment. Young was required to raise this issue at trial, and may not do so now.

Even if timely, Young's claim is meritless. His 29(b) motion alleged the indictment under which he was convicted was “null and void” because it was stamped with a true bill on January 28, 2002. Young claims the Orangeburg County Court of General Sessions lacked jurisdiction on this date, citing S.C. Code §14-5-620, the statute that lays out the minimum terms of court that must be held yearly in each county. R. 9-16. At the motion hearing, Young further

claimed the indictment was invalid because the true bill date did not match the term of court listed in the caption of the indictment. R. 42.

Young does not allege any new facts related to his guilt or innocence, as contemplated by Rule 29(b). Instead, he makes a purely legal challenge on grounds that were apparent on the face of the indictment and available a trial. As such, his motion is not based on after-discovered evidence at all, and is not within the scope of Rule 29(b).

Regardless, his argument that the circuit court lacked jurisdiction to try him in 2002 is meritless. Subject matter jurisdiction is the power to hear and determine cases of the general class to which the proceedings in question belong. Dove v. Gold Kist, Inc., 314 S.C. 235, 237-38, 442 S.E.2d 598, 600 (1994). In State v. Gentry, our supreme court abandoned the view that, in criminal matters, the circuit court acquires subject matter jurisdiction to hear a particular case by way of a valid indictment by either a county or state grand jury. State v. Gentry, 363 S.C.93, 101, 610 S.E.2d 494, 499 n.6 (2005) (“We note that a presentment of an indictment or a waiver of presentment is not needed to confer subject matter jurisdiction on the circuit court. However, an indictment is needed to give *notice* to the defendant of the charge(s) against him.”). The subject matter jurisdiction of the circuit court and the sufficiency of an indictment are two distinct concepts. Id. A defendant has a constitutional right to demand that a grand jury which is properly established and constituted under the law consider the criminal allegations against him. Evans v. State, 363 S.C. 495, 509, 611 S.E.2d 510, 518 (2005). However, such a challenge does not implicate the subject matter jurisdiction of the circuit court. Id.

Here, Young does not dispute the existence of an indictment which put him on notice of what charge he was called upon to answer, apprised him of the elements of the offense, allowed him to decide whether to plead guilty or stand trial, and enabled the circuit court to know what

judgment to pronounce. The indictment demonstrates that Young's charge was presented to and true-billed by the Orangeburg County grand jury on January 28, 2002. His challenge before the lower court and in this appeal goes to the statutory procedures employed to empanel the grand jury that indicted him. Because this challenge does not implicate subject matter jurisdiction, it is not a ground for relief. See State v. Lark, 64 S.C. 350, 42 S.E. 175, 176 (1902) (“[T]he caption of an indictment is no part of the finding of the grand jury[.]”).

The judicial power is vested under Article V of the South Carolina Constitution in the unified judicial system. It provides: “The judicial power shall be vested in a unified judicial system, which shall include a Supreme Court, a Circuit Court, and such other courts of uniform jurisdiction as may be provided for by general law.” S.C. Const. art. V, § 1. With regard to setting terms of court, this power remains with the Chief Justice of the Supreme Court, who is the administrative head of the unified judicial system. S.C. Const. art. V, § 4. The provision states in pertinent part:

[E]ach county shall be entitled to four weeks of court each year and such terms therefor shall be provided by the General Assembly. Provided, further, that the Chief Justice shall set a term of at least one week in any court of original jurisdiction in any county within sixty days after receipt by him of a resolution of the county bar requesting it. The Supreme Court shall make rules governing the administration of all the courts of the State.

Id.

In his written motion, Young cited S.C. Code Ann. § 14-5-620, which states the following:

(3) Orangeburg County. - The court of general sessions for the county of Orangeburg shall be held at Orangeburg the second Monday in January, the first Monday in May and the second Monday in September. The term shall be for two weeks for the January and September sessions. The term shall be for three weeks for the May session. The court of common pleas for the county of Orangeburg shall be held at Orangeburg on the second Monday in March for three weeks, the first Monday in June for three weeks, and a three-week term commencing the first

Monday in October, continuing for two weeks and then recommencing on the fourth Monday and continuing for an additional week.

S.C. Code Ann. § 14-5-620 (2017). Young appears to contend that because he was not indicted and tried in the second week of January, his indictment and subsequent conviction are null and void. However, the above statute merely provides for a *minimum* amount of terms of court that are to be scheduled in each county, which is the responsibility of the General Assembly. The statute does not limit the ability of the Chief Justice of the Supreme Court to schedule additional terms of court pursuant to its constitutional power delineated in Article V, Section 4. Although section 14-5-620 does not provide for Orangeburg County general sessions terms of court at the time of Young's 2002 trial, South Carolina Court Administration, pursuant to authority given by the Chief Justice, appears to have specifically scheduled general sessions terms of court during those weeks, and it acted within its constitutional authority in doing so. Even though Young offered no proof that Court Administration did not schedule court for the week his indictment was true billed or when his trial held, the circuit court took it upon itself to look up the 2002 terms of court and discovered Orangeburg County did in fact have General Sessions jurisdiction at those times. R. 47.

Young failed to identify any newly-discovered evidence. His claim that the circuit court lacked jurisdiction to try him in 2002 is both untimely and meritless. His motion was properly denied by the circuit court, and the circuit court's ruling was properly affirmed by the Court of Appeals. Certiorari should be denied.

CONCLUSION

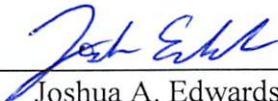
For all the foregoing reasons, it is respectfully submitted that the petition for writ of certiorari should be denied.

Respectfully submitted,

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PROOF OF SERVICE

I, Anne Mueller, certify that I have served the within Return to Petition for Writ of Certiorari on Petitioner by depositing one copy of the same in the United States mail, postage prepaid, addressed to Mr. Willie Young, III, 285487, Kershaw Correctional Institution, 4848 Goldmine Highway, Kershaw, SC 29067.

I further certify that all parties required by Rule to be served have been served.
This 19th day of May, 2021.



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