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**Jun 02 2021**

**SC Court of Appeals**

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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Appeal from York County  
Honorable William A. McKinnon, Circuit Court Judge

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THE STATE OF SOUTH CAROLINA,

Respondent,

vs.

DUANE A. HARRISON,

Appellant.

Appellate Case No. 2021-000226

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**MOTION TO DISMISS APPEAL, IN ALTERNATIVE  
MOTION TO COMPEL APPELLANT TO ORDER  
TRANSCRIPT OF THE PROCEEDINGS**

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Respondent now moves for this Court to dismiss this appeal for lack of jurisdiction for the Court of General Sessions to hear Appellant's untimely motion to vacate his guilty plea conviction. In the alternative, Respondent would move to compel Respondent to order the transcript of the hearing on Appellant's motion to vacate his guilty plea conviction.

I.

Appellant Harrison pled no contest to trafficking cocaine in violation of S.C. Code 44-53-370 (e)(2)(b)(1) (trafficking 10-28 grams cocaine, first offense) before the Honorable Lee S. Alford on September 2, 2014. Six years later, on November 5, 2020, Appellant filed a "NOTICE OF MOTION AND MOTION TO VACATE DEFENDANT'S SENTENCE AND CONVICTION

FOR LACK OF SUBJECT MATTER JURISDICTION.” A hearing was held on the motion before the Honorable William A. McKinnon on February 16, 2021. The motion to vacate was denied by order dated February 18, 2021.

A circuit court judge generally lacks authority to consider a criminal matter once the term of court in which the judgment occurred expires. State v. Warren, 392 S.C. 235, 238, 708 S.E.2d 234, 235 (Ct. App. 2011) (finding post-trial motion to reconsider the sentence, filed three years after the sentence was not timely); accord State v. Hinson, 303 S.C. 92, 94, 399 S.E.2d 422, 422 (1990) (“It is a long-standing rule of law that a trial judge is without jurisdiction to consider a criminal matter once the term of court during which judgment was entered expires.”). The two exceptions to this rule is when a timely post-trial motion is filed or a motion for new trial based on after-discovered evidence is filed. State v. Campbell, 376 S.C. 212, 215, 656 S.E.2d 371, 373 (2008). Everything argued was known by the parties in 2014, so the motion is not based on after-discovered evidence. Further, the post-trial motion to set aside the guilty plea is also not timely. Rule 29(a), SCRCrimP (“Except for motions for new trials based on after-discovered evidence, post-trial motions shall be made within ten (10) days after receipt of written notice of entry of the order or judgment disposing of the appeal.”) see also Aice v. State, 305 S.C. 448, 451, 409 S.E.2d 392, 394 (1991) (“Finality must be realized at some point in order to achieve a semblance of effectiveness in dispensing justice”). “A judgement by a court without jurisdiction of both the parties and the subject matter is a nullity and must be so treated by the courts whenever and for whatever purpose it is presented and relied on.” Blanton v. Stathos, 351 S.C. 534, 570 S.E.2d 565 (Ct. App. 2002); Tant v. South Carolina Dep’t of Corr., 408 S.C. 334, 342-43, 759 S.E.2d 398, 402 (2014) (finding the circuit court judge no longer had any jurisdiction over the case

and was without jurisdiction to make any further pronouncement concerning the defendant's sentence). The hearing held in 2021 for a motion filed six or so years after the term of court ended is not timely, and therefore, the Court of General Sessions lacked jurisdiction to hear the six-years-to-late motion and the hearing should be a nullity. Campbell, 376 S.C. at 216, 656 S.E.2d at 373 (“When we used the “lack of jurisdiction’ language, we meant that the trial court simply no longer has the power to act in a particular manner because the term of court has ended.”). Therefore, this appeal should be dismissed.

## II.

Appellant claims the trial court lacked subject matter jurisdiction because he was indicted for trafficking in excess of four hundred grams of cocaine. “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.” State v. Means, 367 S.C. 374, 381, 626 S.E.2d 348, 352 (2006) (citation and internal quotation marks omitted). Appellant claims that although the sentencing sheet Appellant and his plea attorney signed indicates Appellant was pleading guilty to a lesser included offense, it is not a lesser included offense and therefore the plea court lacks subject matter jurisdiction. Lower weight levels of trafficking are lesser included offenses of greater weight levels found in an indictment. State v. Gosnell, 341 S.C. 627, 535 S.E.2d 453 (Ct. App. 2000). Further, an indictment is a notice document. Means, 367 S.C. at 382, 535 S.E.2d at 353. Indeed, “[a] defendant may waive a potential challenge to an indictment, just as he may waive any of his constitutional rights, by failing to raise the issue . . . .” Id. at 385, 535 S.E.2d at 355.

## III.

Therefore, Respondent would respectfully requests that this appeal should be dismissed.

IV.

Should this Court decline to dismiss this appeal, in the alternative Respondent would move for this Court to issue an order compelling Appellant to order the transcript of the hearing before Judge McKinnon from which Appellant is appealing. Pursuant to Rule 207(a)(1), SCACR, “Unless the parties otherwise agree in writing, appellant must order a transcript of the entire proceedings below.” Respondent would respectfully submit the request for transcription of the hearing on Appellant’s motion to vacate before Judge McKinnon is justifiable since it is relevant to the issue raised on appeal and is the very proceeding from which Appellant is appealing.

V.

WHEREFORE, Respondent respectfully requests that this appeal be dismissed. In the alternative, Respondent requests this Court to compel Appellant to order the transcript of the relevant proceeding. Respondent respectfully requests this Court to hold all timelines in abeyance pending its ruling regarding Respondent’s motions.

[Signature block follows on next page]

Respectfully submitted,

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Attorney General

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BY:   
\_\_\_\_\_  
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ATTORNEYS FOR RESPONDENT

June 2, 2021

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STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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Appeal From York County  
The Honorable William A. McKinnon, Circuit Court Judge

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THE STATE,

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v.

DUANE A. HARRISON,

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**PROOF OF SERVICE**

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I, Anne Mueller, certify that I have served the within State's Motion To Dismiss Appeal, In Alternative Motion To Compel Appellant To Order Transcript Of The Proceedings on counsel of record for the Appellant by electronic mail to the address listed for counsel in AIS, and by depositing one copy of the same in the United States mail, postage prepaid, addressed to Glenn Walters, Sr., Esquire, Glenn Walters & Associates, PA, P.O. Box 1346, Orangeburg, SC 29116-1346.

I further certify that all parties required by Rule to be served have been served.  
This 2<sup>nd</sup> day of June, 2021.

  
\_\_\_\_\_  
Anne A. Mueller  
Legal Assistant

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**From:** [Anne Mueller](mailto:Anne.Mueller@scag.gov)  
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**Subject:** State v. Duane A. Harrison, 2021-000226  
**Date:** Wednesday, June 2, 2021 3:05:00 PM  
**Attachments:** [Harrison Duane - Cover Letter for Motion To Dismiss, In Alternative Motion To Compel \(02597781xD2C78\).pdf](#)  
[Harrison Duane - Motion To Dismiss, In Alternative Motion To Compel Appellant To Order Transcript Of Proceedings \(02597784xD2C78\).pdf](#)

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Good afternoon, Mr. Harrison.

Attached to this email is a copy of our cover letter and the State's Motion To Dismiss Appeal, In Alternative Motion To Compel Appellant To Order Transcript Of The Proceedings. This motion is being filed electronically with the Court later today.

A paper copy of the Motion and our original cover letter are also being sent to you today through the U.S. Postal Service.

If you will, please confirm your receipt of this email and the attachments by return email.

I thank you in advance for your assistance and cooperation.

Sincerely,

Anne Mueller, Legal Assistant to David Spencer, Senior Assistant Attorney General



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