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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM ANDERSON COUNTY

Court of General Sessions

R. Lawton McIntosh, Circuit Court Judge

Case No.: 2012-GS-23-07504, 07507

Appellate Case No. 2018-000564

The State,..... Respondent

v.

George Cleveland III,.....Appellant

APPELLANT'S PETITION FOR REHEARING

George Cleveland III

400 Hunter Street

Seneca, S.C. 29678

(864) 784 7223

Pro se Appellant

South Carolina Department of Probation

Parole and Pardon Services

Mr. Matthew C. Buchanan, General Counsel

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APPELLANT'S PETITION FOR REHEARING:

Appellant George Cleveland III, *pro se*, respectfully submits this Petition for Rehearing of *State v. George Cleveland III, Op No. 21-UP-121 (S.C. Ct. App. Filed April 21, 2021* unpublished opinion which Affirmed the lower court's order sentencing Appellant Cleveland to 90-days in jail for restitution arrears pursuant to *Rule 221 (a) SCACR* because this court overlooked my argument that subject matter jurisdiction can be invoked at any time. *United States v. Cotton 535 U.S. 625, 630 (2002)*, and this Court disregarded my argument that *S.C. Const. art. I §19* barred the General Sessions Court from jailing me for restitution arrears. *State v. Phillips 416 S.C. 184, 187 (S.C. 2016)*; ("Any material fact or principle of law [that] has been overlooked or disregarded..." is cognizable for this court to Grant this Petition for Rehearing of this case.

PRINCIPLE OF LAW HAS BEEN OVERLOOKED

The principle of law has been overlooked in Appellant Cleveland's argument that the General Sessions court did not have subject matter jurisdiction to impose a 90-day jail sentence for restitution arrears because this court citation of several cases are not applicable to my case.

In my Final Brief, I explicitly argued that the General Sessions court below did not have subject matter jurisdiction to impose a 90-day jail sentence for restitution arrears because the vehicles connected to this case were reported stolen out of

Georgia, and recovered in South Carolina. Since the vehicles crossed state lines, subject matter jurisdiction belongs to the federal government, not the government of South Carolina under the 18 U.S.C.A. §2312 ("The Dyer Act")("whoever transports interstate... a motor vehicle the same to have been stolen, shall be fined under this title or imprisoned not more than 10 years, or both."), see appellant's Final Brief filed in this court at pp. 2-5. This court overlooked this principle of law above because this court did not explain or cite why United States v. Cotton 535 U.S. 625, 630 (2002) did not apply to my subject matter jurisdiction. In Cotton, the Supreme Court of the United States held that "[s]ubject matter jurisdiction... *involved a court's power to hear a case, can never be forfeited or waived*, [c]onsequently, defects in subject matter jurisdiction require correction regardless of wh[en]the error was raised..."

This court cited State v. Lee 350 S.C. 125, 132, 564 S.E. 2d 372, 376 (ct.app. 2002), and State v. Hamilton 333 S.C. 643,647, 511 S.E. 2d 94, 96 (ct. app. 1999) to support its' reasoning that the General Sessions court below "had subject matter jurisdiction to revoke ninety days of Cleveland's probation." I will explain each case in turn.

In Lee he violated conditions of his parole and probation and subsequently violated by the parole board, and the General Sessions court. Lee 350 S.C. 125, 132, 564 S.E. 2d 372, 376 (ct. app. 2002) Lee argued the General Sessions court did not have subject matter jurisdiction because that court could not place him on probation and on parole at the same time, Lewis, id., at 132. This court disagreed, and affirmed Lee's appeal.

In State v. Spare¹ 374 S.C. 264, 268, 647 S.E. 2d 706, 708(ct. app. 2007); Spare violated his probation for falling behind on restitution payments. His chief argument was that he made a bona fide effort to pay his restitution. The General Sessions court disagreed, and concluded he willfully failed to pay his restitution; however, this court disagreed with the General Sessions court, and concluded Spare did not willfully fail to pay his restitution, and remanded the case for a new probation revocation hearing, Spare, id., at 270-71.

None of the above cases provide any Logic to my probation 90-day revocation case. Specifically, Lewis, Spare, and Hamilton do not align with my argument because my arguments connected with subject matter jurisdiction invoking a federal case, and federal statute, it is not Lewis' argument of probation, and parole jurisdiction issues, or Spare's argument of his bona fide effort to pay restitution. General Sessions courts cannot invoke power that court do not have. Not Oconee, Greenville, or Anderson, or no South Carolina county. Not in 2012-13. R.pp. 36, 41-47 when I was sentenced to prison, and probation, not in 2018 when this case was filed, and not in 2021 when this Petition for Rehearing was filed because there is no statute of limitations on subject matter jurisdiction. If a lower court has no power to impose a prison sentence, a probation sentence, a probation revocation sentence, or any punishment that power does not yield to the lower courts based on time; therefore, this court overlooked the principle of law of subject matter jurisdiction

¹ See also State v. Hamilton 333 S.C. 642, 647, 511 S.E. 2d 94, 96 (ct. app. 1999). This case is similar to the Lewis & Spare.

cannot be waived or forfeited, and it can be raised at any time under United States v. Cotton 535 U.S. 625, 630 (2002).

PRINCIPLE OF LAW HAS BEEN DISREGARDED

The principle of law has been disregarded in Appellant Cleveland's argument that the General Sessions court did not have subject matter jurisdiction to impose a 90-day jail sentence for restitution arrears because this court several cases cited are not applicable to my case.

In my Final Brief, I explicitly argued that the General Sessions court below did not have subject matter jurisdiction to impose a 90-day jail sentence for restitution arrears because *S.C. Art. I §19* (See pp. 6-7 of Appellant's Final Brief) states: "No person shall be imprisoned for debt except in cases of fraud"... Under United States v. Cotton 535. This court disregarded the case law connected to the South Carolina Constitution. In particular, I cited Ex parte Hollman 79 S.C. 9, 60 S.E. 19, 14 (1908); which reasoned S.C. Art. I §19 does not allow for a restitution arrears to be jailed because "[r]estitution is a [d]ebt is that which is due from one person to another..." United States v. Cotton 535 U.S. 625, 630 (2002).

This court states that "our case law permits a circuit court to revoke payments of.. restitution, and cited Spare, 268, 647 S.E. 2d at 708, and Hamilton, 333 S.C. at 649, 511 S.E. 2d at 97. But neither of these cases mentions nothing about *S.C. Art. I §19* granting South Carolina Appellate Courts the power to publish case law that conflicts with the requirements of Art. I §19, conversely, provisions of the South Carolina Constitution are "mandatory". therefore, this court overlooked the

principle of law of subject matter jurisdiction cannot be waived or forfeited, and it can be raised at any time under United States v. Cotton 535 U.S. 625, 630 (2002).

CONCLUSION

Based on the foregoing, I respectfully request this court to Grant this Petition for Rehearing, and determine whether United States v. Cotton 535 U.S. 625, 630 (2002) can be waived, or forfeited, or have a statute of limitations on subject matter jurisdiction for interstate vehicle theft under the Dyer Act, and under S.C. Const. Art. I §19 with or without further Briefing, or documents respectively.

Respectfully Submitted,

/s/

George Cleveland III, *pro se*


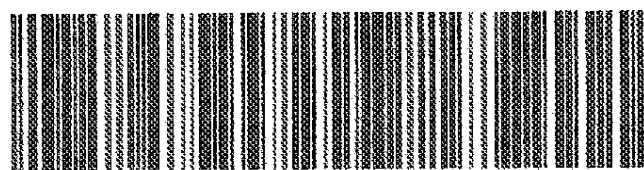
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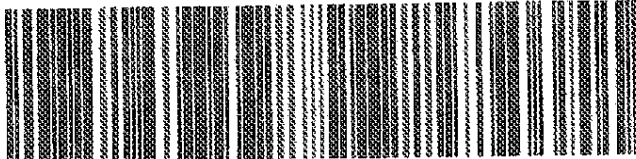
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 Message: Ms. Kitchings, attached to this fax is my Petition for Rehearing, and my proof of postage. The original documents have been mailed.

