

STATE OF SOUTH CAROLINA
In The Court Of Appeals

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SC Court of Appeals

Ernest Battle, #165247,)
Appellate,)
v.)
State of South Carolina,)
Respondent.

Appellate Case No. 2021-000603

EXPLANATION AS REQUIRED, PURSUANT TO
S.C APPELLATE COURT RULE-203(d)(1)(B)
(vi), SCACR.

The Appellate submits in support of his notice of appeal an Explanation thereof to SCACR, 203(d)(1)(B)(vi).

Respectfully submitted,

s/ Ernest Battle
Ernest Battle

PROCEDURAL HISTORY

Petitioner is an inmate in the S.C. Dept. of Corrections pursuant to commitment orders of the Charleston County Clerk of Court for the trafficking in cocaine §44-53-370(e)(2)(b) 28 to 100 grams.

Petitioner proceeded to trial and was subsequently convicted and sentenced to twenty-five years (25) years for trafficking in cocaine and ten (10) years concurrent for school zone. Honorable Thomas L. Hughston, Jr. Presiding Judge.

Petitioner filed a Petition for Writ of Habeas Corpus in the Charleston County Court of Common Pleas on July 26, 2019, raising the following issue:

Circuit court was deprived of subject matter jurisdiction to enhance petitioner's current offense to 3rd offense by utilizing prior simple possession of marijuana offenses where prior circuit court judge did not have jurisdiction to accept petitioner's plea to the marijuana offenses.

The petitioner's current petition for writ of habeas corpus was dismissed in the court of common pleas absent an evidentiary hearing stating that it lacked subject matter jurisdiction and that the issue could have been raised in a PCR application.

Petitioner has exhausted all state and federal remedies prior to filing his petition for writ of habeas corpus.

FACTS

The petitioner submitted in support of his petition for writ of habeas corpus true copies of indictments and commitment order from the Charleston County Clerk of Court from his 1979 sentence and conviction for the marijuana offenses along with true copies from his 2001 sentencing and conviction indicating that prior simple possession of marijuana offenses were being used to enhance the current drug trafficking offense to 3rd offense. Indict. No. 79-GS-10-1111, and 79-GS-10-1112.

Argument

The current circuit court was deprived of subject matter jurisdiction to enhance petitioner's drug trafficking sentence to 3rd offense utilizing prior simple possession of marijuana offenses whereas prior court lacked subject matter jurisdiction to accept petitioner's plea because magistrate court had Exclusive jurisdiction over all criminal offenses in which the punishment did not exceed a fine of \$200 or 30 days in jail. Therefore the evidence used to enhance petitioner's sentence was as a matter of law insufficient.

LAW ANALYSIS

Petitioner was indicted for the marijuana offenses under Title §44-53-370 (d)(3)., which provide:

.....That any person who violates this subsection with respect to twenty-eight grams or one ounce or less of marijuana or ten or less grams of hashish shall be subjected to imprisonment for a term not to exceed 30 days or a fine of not less than 100 nor more than \$200.

See S.C. Jur. Magistrates and Munciple Judges §9
Exclusive vs. Concurrent Jurisdiction.

The South Carolina Code provides that a magistrate's jurisdiction shall be "exclusive" and only the magistrate (and by implication, the munciple judge

have exclusive jurisdiction over all criminal cases in which the punishment does not exceed a fine of \$200 or imprisonment for 30 days. State v. Martin, 261 S.C. 550, (1973); See also State v. Padgett, 18 S.C. 317 (1992); State v. Castleman, 219 S.C. 136, 64 S.E.2d 250 (1951).

SUBJECT MATTER JURISDICTION

Subject matter jurisdiction is the power of the court to hear cases in which the proceeding belongs. The lack of subject matter jurisdiction over a criminal case can be raised at any time, including for a first time on appeal and can be raised sua sponte by the court. State v. Brown, 351, S.C 522, 570 S.E.2d 559 (2002); See also State v. Ervin, 333 S.C. 357, 510 S.E.2d 220 (Ct. App. 1998).

The acts of a court with respect to a matter as to which it has no jurisdiction are void. Id. at 346, 540 S.E.2d at 847; State v. Funderburk, 259 S.C 256, 191 S.E.2d 520 (1972); State v. Guthrie, 352 S.C. 103, 107, 572 S.E.2d 309, 311 (Ct. App. 2002).

CONCLUSION

Based on the following sufficient facts, argument and citation of legal authorities, there is an arguable basis for asserting that the determination by the lower court was improper.

Respectfully submitted,

S/ Ernest Battle
Ernest Battle, #165247