

RECEIVED

Jul 16 2021

SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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

THE STATE OF SOUTH CAROLINA,

Respondent,

vs.

DUANE A. HARRISON,

Appellant.

Appellate Case No. 2021-000226

**RESPONSE TO APPELLANT’S REPLY TO STATE’S
MOTION TO DISMISS APPEAL, IN ALTERNATIVE
MOTION TO COMPEL APPELLANT TO ORDER
TRANSCRIPT OF THE PROCEEDINGS**

The State makes the following response to Appellant’s return to the State’s motion to dismiss and alternative motion to compel Appellant to order the transcript of the hearing on Appellant’s motion to vacate his guilty plea conviction.

I.

In his reply to the State’s motions, Appellant argues that the transcript of the hearing on his motion before General Sessions is irrelevant and contends that it is an attempt by the State to slow down resolution of his appeal – ironic since Appellant filed his motion to vacate his guilty plea conviction six years after pleading guilty to the offense. Nonetheless, at the same time Appellant served his pleading objecting to the State’s motion in regards to the transcript, Appellant provided

a copy of the very transcript the State believed should be ordered. In that regard, it appears the State's alternative motion is moot.

II.

The State also is happy for the speedy resolution of Appellant's appeal which would be accomplished if this Court were to grant the State's motion to dismiss; and therefore, the State maintains the State's motion to dismiss the appeal should be granted. As mentioned above, Appellant filed its motion to vacate the guilty plea conviction six years after pleading guilty based on an argument Appellant classifies as an issue of subject matter jurisdiction. Appellant argues that his motion was not untimely because the judgment should be void.

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). Appellant attempts to classify his claim as an issue of subject matter jurisdiction. "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). A General Sessions court has the power to hear and determine drug trafficking cases – Appellant's issues do not implicate an issue of subject matter jurisdiction. Merely claiming the conviction was without subject matter jurisdiction or is void does not make it so.

Further, 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). Moreover, 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.

Appellant relies on Clair v. State, 324 S.C. 144, 478 S.E.2d 54 (1996) in his response to the State’s motion. That case was decided before State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005), and therefore the proposition that the amendment in that case raised an issue of subject matter jurisdiction is no longer valid. Further, the Supreme Court found in Clair that amendment of the weight range from trafficking more than 100 grams and less than 200 grams of cocaine to trafficking in excess of 200 grams of cocaine changed the nature of the offense because “an amendment **that increases the penalty** changes the nature of the offense and therefore deprives the court of subject matter jurisdiction.” Clair, 324 S.C. at 146-47, 478 S.E.2d at 55-56 (emphasis added). Reducing the charge, per agreement of the parties, lowered the penalty in the instant case, and therefore did not change the nature of the offense in the instant case.

WHEREFORE, Respondent respectfully requests that this appeal be dismissed.

[Signature block appears on the following page]

Respectfully submitted,

ALAN WILSON
Attorney General

DAVID SPENCER
Senior Assistant Attorney General
Bar # 68571

BY: 

DAVID SPENCER

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

July 16, 2021

RECEIVED

Jul 16 2021

SC Court of Appeals

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY
The Honorable William A. McKinnon, Circuit Court Judge

Appellate Case No. 2021-000226

THE STATE,

Respondent,

v.

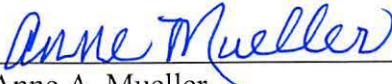
DUANE ARNESS HARRISON,

Appellant.

PROOF OF SERVICE

I, Anne Mueller, certify that I have served the within Response To Appellant's Reply To State's Motion To Dismiss Appeal, In Alternative Motion To Compel Appellant To Order Transcript Of The Proceedings on Glenn Walters, Sr., counsel of record for the Appellant by electronic mail to the address listed for counsel in AIS.

I further certify that all parties required by Rule to be served have been served.
This 16th day of July, 2021.



Anne A. Mueller
Legal Assistant

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

From: [Anne Mueller](#)
To: glennwalterspa@gmail.com
Cc: [Victim Services](#); [David Spencer](#); [William Blicht \(wblitch@scaag.gov\)](mailto:wblitch@scaag.gov); [Anne Mueller](#)
Subject: State v. Duane Arness Harrison, 2021-000226
Date: Friday, July 16, 2021 11:11:00 AM
Attachments: [Harrison Duane - 2021-000226 - Response To Appellant's Reply To State's Motion To Dismiss, Alternative Motion To Compel \(02646243xD2C78\).PDF](#)

Good morning, Mr. Walters.

Attached to this email is the State's Response To Appellant's Reply To State's Motion To Dismiss, In Alternative Motion To Compel Appellant To Order Transcript Of The Proceedings. This document will be filed with the Court electronically later today.

If you would be so kind, please confirm your receipt of this email and the attachment by return email. It would be much appreciated.

Sincerely,

Anne Mueller

Legal Assistant to Senior Assistant Attorney General David Spencer



Anne A. Mueller
Legal Assistant, Criminal Appeals Division
Office of the Attorney General
Criminal Appeals Division
State of South Carolina
(803) 734-3922