

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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APPEAL FROM ANDERSON COUNTY

S.C. SUPREME COURT

Court of General Sessions

R. Lawton McIntosh, Circuit Court Judge

Appellate Case No. 2018-000564

Unpublished Opinion No. 2021-UP-121 (S.C. Ct. App. Filed April 21, 2021)

The State of South Carolina.....Respondent

v.

George Cleveland III.....Petitioner

PETITION FOR WRIT OF CERTIORARI

George Cleveland III

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CERTIFICATE OF COUNSEL

Pro se Petitioner George Cleveland III certifies that he filed a Petition for Rehearing on June 08, 2021 (P.A. 98-103), and the South Carolina Court of Appeals denied the petition on April 21, 2021 (P.A. 104).

QUESTIONS PRESENTED

1. Whether the Court of Appeals erred by ruling the circuit court had jurisdiction to impose a 90-day jail sentence for restitution arrears for an interstate conviction is in conflict with *United States v. Cotton* 535 U.S. 625, 122 S.Ct. 1781 (2002)?
2. Whether the Court of Appeals erred by ruling that the circuit court had jurisdiction to impose 90-day jail sentence for restitution arrears notwithstanding fraud under the *South Carolina Const. Art. I § 19*?

INTRODUCTION

The Supreme Court of the United States ruled in *United States v. Cotton* that “subject-matter jurisdiction... involves a court’s power to hear a case, can never be forfeited or waived, consequently, defects in subject matter jurisdiction require correction regardless of whether the error was raised in [the General Sessions] court”, *id.*, at 630. *United States v. Cotton* 535 U.S. 625, 122 S.ct. 1781 (2002).

In *Cotton*, that court first addressed jurisdiction, and its’ connection to amendments in indictments 149 years ago. In *Ex parte Bain* 121 U.S. 1, (1871) 7 S.ct. 781, the Supreme Court of the United States ruled “that the amendment [that the trial court struck the words ‘the comptroller of the currency’]” in the indictment was “improper and that therefore ‘the jurisdiction of the offence [was] gone, and the court [had no right to] proceed any further in the progress of the case for want of an indictment”, *id.*, at 13. But *Cotton* cleared things up by reasoning “*Bain* ... is a product of an era in which th[e] court’s authority to review criminal convictions was greatly circumscribed “because there was no right to a defendant to directly appeal the conviction” because during the *Bain* era, the Supreme Court of the United States’ jurisdiction was limited to only “examine constitutional errors in a criminal trial only on a writ of habeas corpus, and only then if it deemed the error [jurisdictional] “. *Id.*, at 630. See also generally *United States v. Sanges* 144 U.S. 310, 319-322 (1892); *L Orfield, Criminal Appeals in America* 244-246 (1939). Post

Bain case-law “confirm that defects in an indictment do not deprive a court of its power to adjudicate a case.” *Cotton, id.*, at 630.

This court has also distinguished at the direction of *Cotton*, defective indictments and jurisdiction. In *State v. Gentry* 363 S.C. 93 (S.C. 2005) 610 S.E. 2d 494, Justice Moore writing for the majority reasoned the “confusion that has arisen in past jurisprudence between the sufficiency of the indictment and the subject matter jurisdiction of the trial court.” *Id.*, at 99.

This court concluded that Gentry’s “indictments failure to allege the element ‘absence from the scene of the crime’ [did not] deprive[] the trial court of subject matter jurisdiction to hear the accessory before the fact charges.” *Cotton, id.*, at 99, 103. Gentry further reasoned “a defendant may for the first time on appeal raise the issue of the trial court’s jurisdiction to try the class of case of which the defendant was convicted.” *Id.*, at 101-102.

In *Ex parte Hollman*, this court ruled *S.C. Const. Art. I § 19* does not allow a circuit court to sentence a defendant to jail for restitution arrears because “[r]estitution is a [d]ebt is that which is from one person to another...” *Ex parte Hollman* 79 S.C. 9, 60 S.E. 19, 14 (1908).

This Jurisdiction case arises from a 90-day jail sentence imposed on me by the Anderson County General Sessions for falling behind on court ordered restitution on February 23, 2018; premised on the overall conviction of possession of stolen vehicles that were reported stolen from Rabun County Georgia, and

recovered in South Carolina. Since the vehicles crossed state-lines from Georgia to South Carolina, the *Dyer Act*; 18 U.S.C.A. § 2312 barred the Anderson County General Sessions court from imposing the 90-day jail sentence. The General Sessions court admitted the court, nor the South Carolina Probation, Pardon, and Parole did not have jurisdiction. P.R. 51; lines 18-20. Despite the mountain of evidence, I provided to that court, the Judge did not even review the documents, but ruled the court did not have jurisdiction, but still sentenced me to 90-days in jail. P.R. 48; line 20.

Statement of the Case

On October 12, 2017, Petitioner Cleveland was served with a “Financial” Probation Citation from the Oconee County Probation Office in Walhalla, S.C. for being in arrears three-thousand-three-hundred dollars (\$3,300.00). P.A. 75-76.

On February 23, 2018, Circuit Court Judge R. Lawton McIntosh (hereinafter Judge McIntosh) heard arguments from Petitioner Cleveland that the Court lacked jurisdiction to hear the “financial” probation citation on the grounds that the possession of stolen vehicle conviction that connected to the citation was stolen from Georgia; crossed state lines into South Carolina triggering federal jurisdiction under the Dyer Act; 18 U.S.C.A. § 2313 (“Whoever receives, possesses, conceals, stores, barter, sells, or disposes of any motor vehicle... which has crossed a State or United States boundary after being stolen, knowing the same to have been stolen, shall be fined under this title or imprisoned not more than 10 years, or both.”); P.A. 50 lines 19-25; P.A. 51; lines 1-2, and the State did not object or provide a defense, see generally P.A. 51 lines 8-10. and that for the first time in Petitioner Cleveland’s March 19, 2018 filed *Rule 59 (e) SCRPC* Motion another jurisdictional argument was because jurisdiction can be invoked at any time and at any stage of the legal proceedings, introduced on the ground that S.C. Const. art I, § 19 barred Judge McIntosh from imposing the 90-day jail sentence, *id.* P.A. 11-19. “Subject Matter Jurisdiction ... involves a court’s power to hear a case, can never be forfeited or waived. Consequently, defects in subject matter jurisdiction require correction

regardless of whether the error was raised in [circuit] court”... *United States v. Cotton* 535 U.S. 625 (2002), *id.*, at 630, *see also State v. Gentry* 363 S.C. 93 (2005), *id.*, at 99-100 in this case at the Anderson County Court of General Sessions, and subsequently ordered Petitioner Cleveland to spend 90-days in the Anderson County detention center for “willfully violat[ing] the terms of his (Petitioner Cleveland’s) probation...” P.A. 51; lines 11-15. On March 22, 2018, Judge McIntosh denied the Rule 59 (e), *id.*, motion without ruling on the merits of the post-trial motion. P.A. 8.

On March 30, 2018, Petitioner Cleveland’s Notice of Appeal was filed in the South Carolina Court of Appeals. P.A. 20-23. On April 02, 2018, Petitioner Cleveland’s Motion to Stay the Probation pending appeal was filed. P.A. On April 05, 2019, Court denied the Motion to Stay Probation. P.A.1,3. This instant Petition challenges the Court of Appeals complete absence of LOGIC in its’ April 21, 2021 ORDER affirming the lower court’s judgment. P.A. 95-97.

Argument

A court’s jurisdiction is the prerequisite to hear, and decide any case before it. The court’s jurisdiction can never be waived, or ignored. There are limits on a court’s power so that a judge cannot simply arbitrarily punish litigants before him without just authority to do so.

This case is not a complex one, it's a case where the Court of Appeals did not apply LOGIC to its' decision. Perhaps since I'm not a member of the Bar, I'm not worthy of a decision to applies the applicable law to the facts from both parties. Nowhere in the Court of Appeals April 21, 2021 Order Affirming the lower court's decision did not reach a legal conclusion based on based on the arguments from both sides.

I. THE COURT OF APPEALS' RULING CONFLICTS WITH *COTTON*.

The Supreme Court of the United States ruled that "Subject Matter Jurisdiction ... involves a court's power to hear a case, can never be forfeited or waived. Consequently, defects in subject matter jurisdiction require correction regardless of whether the error was raised in [circuit] court"... United States v. Cotton 535 U.S. 625 (2002), *id* at 630, see also State v. Gentry 363 S.C. 93 (2005), *id* at 99-100.

Chief Justice Rehnquist cautioned courts to separate court's jurisdiction from defective indictments by reasoning the era of that court's jurisdiction had changed with expanded appellate court standard for review, notwithstanding a writ of habeas corpus. *IBID*. Justice Moore of this court wrote a great opinion analyzing the divorce of defective indictments from jurisdiction by ruling "indictments' failure to allege the element 'absence from the scene of the crime' [does not] deprive[] the trial court of subject matter jurisdiction" to hear a case. *State v. Gentry* 363 S.C. 93 (S.C. 2005) 610 S.E. 2d 494, *id.*, at 99, 103.

The creation of the Ford's Model T created a quagmire for local, and state law enforcement because they could not, and still to this day, arrest a suspect for allegedly possessing a stolen vehicle that had crossed state lines. The Bureau of Investigations (now known as the FBI) led to the growth of the FBI against interstate crimes under the National Vehicle Theft Act (the Dyer Act) enacted on October 29, 1919. See <https://www.fbi.gov/news/stories/how-100-year-old-car-theft-law-led-to-modern-fbi-103119>; accessed on September 15, 2021. Therefore, Petitioner respectfully submit the vehicles that are connected to this instant probation case were reported stolen from Georgia, and recovered in South Carolina, that Certiorari is warranted, and that the Court of Appeals ruling against me on my jurisdiction should be reversed.

II. COURT OF APPEALS RULING IS IN CONFLICT WITH S.C. CONSTITUTION ART. I § 19

Art. I § 19 of the S.C. Constitution prevents a person from imprisonment for owing a debt except in cases of fraud. Specifically, § 19, *id.*, states: "No person shall be imprisoned for debt except in cases of fraud." In *Ex parte Hollman* 79 S.C. 9, 60 S.E. 19, 14 (1908), this court ruled S.C. Art. I § 19 does not allow imprisonment for restitution arrears because "[r]estitution is a '[d]ebt is that which is due from one person to another...' *id.*, at 19.

In *State v. Spare* 374 S.C. 264, 268, 647 S.E. 2d. 706, 708 (Ct. App. 2007) the Court Appeals reversed, and remanded for a new hearing because the circuit court never determined if Spare willfully failed to pay his restitution, Spare never

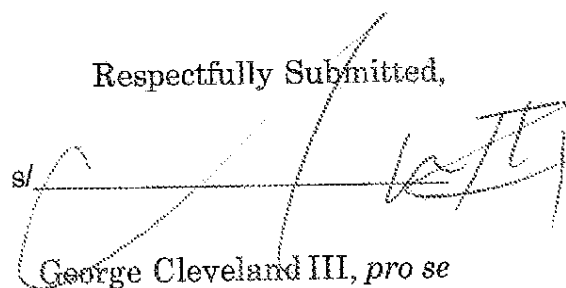
invoked *S.C. Const. Art. I § 19*, or a jurisdiction argument, *id.*, at 270-71.

Conversely, this court ruled in *State v. Lee* 350 S.C. 125, 132, 564 S.E. 2d 372, 376 (Ct. App. 2002), the lower court had jurisdiction to revoke, but Lee's argument centered around Lee being on probation, and parole at the same time; Lee did not invoke a jurisdictional argument pursuant to *S.C. Const. Art I § 19*. Consequently, Petitioner respectfully submit *Art. I § 19* of the *S.C. Const.* prohibits imprisonment for restitution arrears except for fraud, that Certiorari is warranted, and that the Court of Appeals ruling against me on my jurisdiction should be reversed.

CONCLUSION

Petitioner George Cleveland III respectfully ask this Honorable Court to grant my Writ of Certiorari, and ultimately reverse the ruling of the Court of Appeals, and remand this case for the reasons discussed above.

Respectfully Submitted,

s/ 
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Dated: September 15, 2021