

RECEIVED

OCT 04 2021

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

SC Court of Appeals

Appeal From Anderson County Court of Common Pleas
J. Cordeell Macdonald, Jr. Chief Administrative Judge
Tenth Judicial Circuit

Appellate Case NO. 2021-001023

Billy S. Tucker.....Appellant

v.

State of South Carolina.....Respondent

EXPLANATION PURSUANT TO RULE 203(d)(1)(B)(vi), SCACR

This Cause is before this Court pursuant to Rule 240, SCACR, for an explanation pursuant to Rule 203(d)(1)(B)(vi), SCACR, as to why Petitioner could not presented his case under post-conviction releif act. The Petitioner would like to show unto this Court the following.

The Petitioner filed a Pro-se Johnson Brief after March 13, 2012, and then former Appellate Defender Dayne C. Phillips filed a Petition for writ of Certiorari and motion to be relieved as

counsel pursuant to Johnson v. State, 2294 S.C. 310, 364 S.E.2d 201 (1988) arguing the PCR court erred in finding that trial counsel provided effective assistance of counsel because trial counsel failed to call a witness that was critical to Petitioner's defense when it was not objectively reasonable given the defense theory of the case. On February 24, 2014, this Court issued an order denying the motion to be relieved as counsel and directing the parties to address the following issue and any other questions of arguable merit. "In light of Petitioner's life sentence for murder, was trial counsel effective for failing to object to Petitioner's five-years sentence for possession of a weapon during the commission of the violent crime. Appellate counsel Phillips did not brief the court on the issue of lack of jurisdiction of the trial court in violation of 14-5-750 (1). In addition, Judge Maddox decided Petitioner's post conviction relief application on September 1, 2017 and then he is called to decided Petitioner's habeas corpus in April, 7, 2021. On July 22, 2021, J. Cordell Maddox, Jr. issued an order that denied and dismissed Petitioner's habeas petition. See Floyd v State, 400 S.E.2d 145 (S.C. 1991). Judge who presided at petitioner's trial may not preside over subsequent post conviction proceeding. And so the Judge who presided over Petitioner's PCR, should not preside over Petitioner's state habeas corpus. Trial courts

cannot sit in judgment of their own ruling and proceedings. State v. Bruce 772 S.E.2d 753 (quoting Floyd 400 at 146. A court of appeals cannot relinquish its responsibility to make this fundamental determination in reviewing an appeal from a criminal conviction.

At common law, the writ of habeas corpus was available after conviction only to attack the jurisdiction of the court that had imposed sentence. Simpson v. State 495 S.E.2d 429 (S.C. 1998). It is only when a judgment of conviction or sentence imposed is void and not merely voidable that relief may be had by habeas.

The Great writ is directed to the person detaining another, commanding him to produce the body of the prisoner at a designated time and place, and to there and thereafter do and receive what the court shall consider. It is renowned as a precious safeguard of personal liberty and there is no higher duty than to maintain it unimpaired. Bowen v. Johnson 306 U.S. 19, 59 S.Ct 442, 83 L.Ed 455, Darr v. Barford 339 U.S. 200, 70 S.Ct. 587. It has been said it was a measure born of necessity to afford a accused a remedy against injustice where no other avenue of judicial relief is, or ever was available. These remedies spring from common law. Ex-parte Yerger 6 Wall, (75 U.S.) 85, 95, 19 L.Ed 332.

1. Has the court jurisdiction, in a case like the present, to inquire into the cause of detention, alleged to be unlawful, and

to give relief, if detention be found to infact unlawful, by writ of habeas corpus under the judiciary Act of 1789.

Where is the post conviction relief act at common law. §§17-27-10 to 100 (law. Co-op. 1976 & West Supp. 1999. The writ of coram nobis initiated a post conviction challenge to the original judgment, resting upon error of fact. However, whereas habeas corpus directly attacks the convictions and sentence in the court that presently has jurisdiction over the inmate, coram nobis collaterally challenged facts and effects outside the case record before the court of original judgment. The United States Supreme Court warned that in the absence of meaningful state procedures for inmates federal claims, federal courts would hear applications for the federal writ of habeas corpus See Case v Nebraska 381 U.S. 336, 337 (1965)(encouraging states to provide a clear alternative method of post-conviction relief) It appears we have lost the common law effects in PCR action but we haven't lost the jurisdictional effects. Simpson Supra. Petitioner objects that a person is procedurally barred from petitioning the circuit court for writ of habeas corpus where the matter alleged is one which could have been raised in a PCR application, citing Keeler v Mauney 500 S.E.2d 123, 124 (Ct. App. 1998); See Simpson v State, 495 S.E.2d 429 (1998), because as the Petitioner pled before The jurisdiction of a court or of a particular judge over

subject matter of a proceeding depends upon the authority granted by the Constitution and laws of the State and is fundamental. Lack of jurisdiction of the subject matter cannot be waived and therefore such lack can and should be taken notice of by this court or ex mero note. Amercian Agr. Chemical Co. v. Thomas, 34 S.E.2d 592, McCullogh v. McCullogh, 130 S.E.2d 77, Gibbs v. Young, citing State v. Gorie, 163 S.E. 2d 334 (S.C. 1971).

The Petitioner object to Judge J. Cordell Maddox, Jr. ignoring the truth about lack of jurisdiction and being impartial in this matter and it shows the hurtle PCR can bring. The PCR defendant must wait two years before a hearing, in violation of its statute, and the most he or she can get is a new trial. The State habeas brings the Defendant to court and test the legality of the Petitioner's detention. Gibbs 495 S.E.2d at 427. Since, the jurisdiction can't be waived at anytime, why is it important to show it could have been raised at any particuler time?

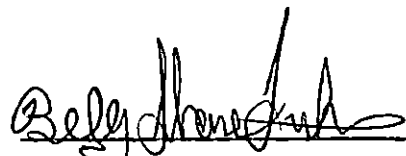
The extraordinary reasons behind this writ of habeas corpus is that Petitioner has been incarcerated for sixteen years and sentence by Anderson County Court during a time when it lack jurisdiction to try a case, and the State knows this to be true.

CONCLUSION

The Petitioner prays this Court grant habeas corpus relief.

Date

September 30 2021


Billy S. Tucker

RECEIVED

OCT 04 2021

SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Anderson County Court of Common Pleas

J. Cordell Maddox, Jr. Chief Administrative
Judge, 10th Judicial Circuit

Appellate Case No. 2021-001023

Billy S. Tucker.....Appellant

v.

State of South Carolina.....Respondent

PROOF OF SERVICE

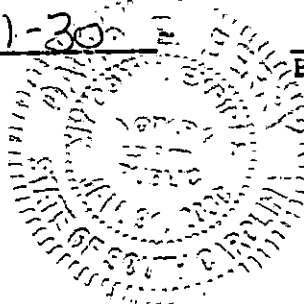
The undersigned hereby certify that he mail a written explanation pursuant to Rule 203(d)(1)(B)(vi), SCACR and proof of filing this notice of Appeal with the Clerk of the lower court to Jenny A. Kitchings, Clerk of S.C. Court of Appeals, Columbia, SC 29211 and the Office of the Attorney General, Lillian L. Meadows, Esquire, P.O. Box 11549 Columbia, SC 29211 this 30 day of September 2021 by depositing same in the U.S. mail.

Sworn To And Subscribed Before Me
This 30th day of September 2021

David E. Boney
Notary Public of South Carolina

My Commission Expires 1-31-2025

Billy S. Tucker
Billy S. Tucker



RECEIVED

OCT 04 2021

SC Court of Appeals

Office of the Attorney General
Lillian J. Meadows, Esquire
P.O. Box 11549
Columbia, SC 29211

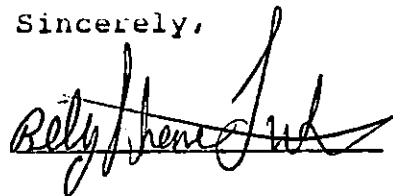
RE: Billy S. Tucker v State

Appellate Case No. 2021-001023

Dear Ms Meadows:

Enclosed please find explanation pursuant to Rule 203(d)(1)(B)(vi), SCACR and affidavit showing the lower court has been served notice of appeal.

Sincerely,

A handwritten signature in dark ink, appearing to read "Billy S. Tucker", written over a horizontal line.

RECEIVED

OCT 04 2021

SC Court of Appeals

South Carolina Court of Appeals
Jenny A. Kitchings, Clerk
P.O. Box 11629
Columbia, SC 29211

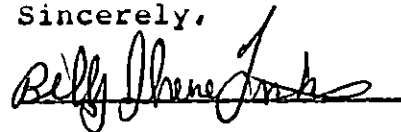
RE: Billy S. Tucker v State

Appellate case No. 2021-001023

Dear Ms Kitchings

Enclosed please find explanation pursuant to Rule 203(d)(1)(B)(vi) and affidavit showing the lower court has been served notice of appeal.

Sincerely,

A handwritten signature in cursive script, appearing to read "Billy S. Tucker", written over a horizontal line.