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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of General Sessions

L. Casey Manning, Circuit Court Judge

On Certiorari to the Court of Appeals of South Carolina

THE STATE, Respondent,

V.

MAX JULIAN KNOTEN Petitioner.

BRIEF OF PETITIONER

MAX J. KNOTEN #253916
386 Redemption Way
McCormick, SC 29899

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Questions Presented

1. Does an Act passed by the General assembly require the Great Seal of the state of South Carolina to be affixed in order to have the force of law
2. Does an Act not sealed with the Great Seal of State violate the Constitutional provisions set forth in South Carolina's Constitution.
3. Should South Carolina be made to follow, uphold, and adhere to the laws established in and by the States very own constitution.

STATEMENT OF THE CASE

1. Procedural history

Applicant is presently confined in the South Carolina Department of Corrections (SCDC). In December 1997, the Richland County Grand Jury indicted Applicant for two counts of murder (1997-GS-40-27596; -27620), two counts of kidnapping (1997-GS-40-27621; -27623), and first-degree criminal sexual misconduct (1997-GS-40-27624). Jeffrey Bloom, Douglas Stricker, Lesley Coggiola, and Nathan Roberson, Esquires, represented Applicant. On October 19, 1998, Applicant proceeded to a jury trial before the Honorable Joseph J. Watson. The jury found Applicant guilty as indicted. On October 30, 1998, Judge Watson sentenced Applicant to consecutive life sentences for the murder offenses, and a consecutive sentence

of thirty years for first-degree Criminal sexual conduct.

Applicant filed a timely notice of appeal. Appellate Defender Robert M. Dudek performed the appeal. The South Carolina Supreme Court reversed Applicant's conviction for one of the murder charges (1997-GS-40-27596) and affirmed the remaining convictions and sentences.

State v. Knoten, 347 S.C. 296, 555 S.E.2d 391 (2001).

The Court denied Applicant's petition for rehearing on December 12, 2001. The remittitur was issued on December 12, 2001.

First PCR Application (2003-CP-40-0885)

The Applicant subsequently filed an application for PCR on February 18, 2003, in which he raised the following grounds for relief:

1. Ineffective Assistance of Counsel
 - a. "At trial counsel failed to object to inadmissible evidence at trial. In which a reasonable judge would have construed to applicant's favor,"

b. "Trial counsel had character witnesses testify at the sentencing phase instead of at trial in which the witness made pertinent statements."

Respondent filed its return and motion to dismiss on January 29, 2004, arguing that Applicant's application was untimely. On March 17, 2004, Applicant filed his motion to dismiss and reply. An evidentiary hearing into the matter was convened on May 24, 2004, at the Richland County Courthouse. Applicant was present at the hearing and was represented by Melissa Kimbrough, Esquire. Applicant only met with Melissa Kimbrough one time, a five-ten minute session. On June 14, 2004, the Honorable Alison Renee Lee, issued the order of dismissal denying Applicant's application for post-conviction relief.

On June 18, 2004, Applicant filed a notice of appeal. Appellate Defender Aileen P. Claire filed a petition for writ of certiorari in the Supreme Court of South

Carolina on behalf of Applicant. By written order dated April 19, 2006, The Supreme Court of South Carolina denied the petition. The Remittitur was issued on May 5, 2006.

II. CURRENT APPLICATION

In Applicant's current application for post-conviction relief, the lower court's determination was improper in the summary dismissal of petitioner's PCR application, which alleges:

1. Richland County Court of General Sessions did not have proper nor legal subject matter jurisdiction to indict, try, convict or impose a sentence.
2. Ineffective Assistance of Counsel.
3. Prosecutorial misconduct and fraud upon the court.
4. Court exceeded the maximum sentence allowed
5. Issues 1-14 listed in application dealing with exculpatory evidence and witness credibility.

PCR Court relies on *State v. Gentry* to establish subject matter jurisdiction. Circuit courts obviously have subject matter jurisdiction to try criminal matters. While this is true, petitioner's argument is not whether courts have

Subject matter jurisdiction to try criminal matters but rather if the courts have subject matter jurisdiction to try matters that are not by definition "crimes". The court goes on to quote precedents that clarify the sufficiency of indictments which is not the issue at hand here. The petitioner seeks to challenge the sufficiency of the law itself where said offenses have not been properly made laws. The PCR court skirts the issue by attempting to focus on the indictments based on the assumption that the underlying criminal offense referenced in the indictments are valid South Carolina laws.

The PCR court further held an indictment passes legal muster when it charges the crime substantially in the language of the statute prohibiting the crime. This is precisely the issue petitioner is arguing. There is no statute prohibiting the crime. The statutes referred to in indictments were never enacted. The PCR court additionally found that petitioner failed to establish a prima facie showing of Newly Discovered Evidence...

because... the Claims raised are not material to the issue of innocence or guilt and would not have changed the result of a new trial. This reasoning is not founded on the Principles of logic. Whether or not an act has been outlawed is obviously material to the issue of innocence or guilt. One cannot be guilty of committing a crime if no law has been passed defining what Acts constitute said crime.

The Court further held that petitioner did not meet his burden of showing he is entitled to relief under newly discovered evidence. The court relied on *Hayden v. State*, specifically the five prongs of newly discovered Evidence.

Petitioner argues these same five prongs were met:

1. Absent the erroneous assumption of the existence of a valid Statute outlawing certain acts and defining them as crimes, if a new trial was held the result would be different because the elements of the crime would be different and the penalties for committing said offenses would also be different.
2. This evidence was discovered since the trial (as shown in argument).
3. This issue could not have been discovered through due diligence.
4. These issues are material not only to the issue of guilt or innocence due to the elements defining the nature of the crime, but also to petitioner's claim of actual Innocence.

5. These issues are not merely cumulative or impeaching.

Petitioner has shown that he is indeed entitled to relief. Furthermore, under *Pruitt v. State*, 310 S.C. 254, these issues should be remanded to PCR court for a ruling on every issue presented.

Arguments

The Court erred in denying Applicant's second PCR as successive. Applicant is challenging the validity of the Acts and statutes of South Carolina's substantive laws as well as South Carolina's procedural laws and constitutional violations.

The court of General Sessions in Richland in the years 1996-1998, the two years that personally effected the Petitioner, was operating under unconstitutional laws enacted by the South Carolina Legislature that violated South Carolina Constitution, Article 3, section 18.

The letters from Deputy Director Steven D. Tuttle of the South Carolina Archive and History Department and the letter from Steven Draffin confirms the Acts which do not have the Great Seal of the state of South Carolina affixed to the original documents, effectively rendering the court of General Sessions of Richland County to be without proper and legal subject matter jurisdiction involving Petitioner.

Issues of Subject Matter jurisdiction can be raised anytime. State v. Ray, Rice 1, 24 S.C. L. 1, 1838 WL 1714 (S.C. App.)

Pursuant to S.C. code of laws § 17-27-20, A person who may institute proceeding; Exclusiveness of remedy. §(a) Any person who has been convicted of, or sentenced for, a crime and claims; (2) That the court was without jurisdiction to impose sentence [structure]; and Lennon 363 S.C. 434, 611 S.E.2d. 495, also § 17-27-20(a)(1)-(6)

Because of Newly Discovered Evidence, lack of Subject Matter jurisdiction, fraud upon the court, and ineffective assistance of counsel, petitioner was denied due process and a constitutionally guaranteed fundamentally fair trial in violation of the fifth, sixth, eighth, and fourteenth amendments of the U.S. Constitution, Procedural and substantive state law and S.C. Constitution Article 3, Section 18, as well as any and all applicable statutory case law.

The Court of General sessions of Richland County did not have proper nor legal subject matter jurisdiction to indict, try, convict, or sentence petitioner for crimes of murder (2 counts), kidnapping (2 counts), and first-degree criminal sexual conduct, nor impose a sentence of life without parole.

The original Legislative Bill H. 4323 of 1994 (Ratification number 585 of 1994) and Act number 7 of 1995 has been lost, if ever existed, and only a duplicate copy is in the S.C. Archives and History Department without

Signatures or Great seal of State as is required by the S.C. constitution, Article 3, section 18, which render them and any amending acts that follow unconstitutional.

Where rights secured by the constitution are involved, there can be no rulemaking of legislation which would abrogate them. *Miranda v. Arizona*, 384 U.S. 436, 468, 86 S. Ct. 1602, 1624, 16 L. Ed. 2d. 694 (1966).

Furthermore, the 1993 Act no. 184, 1996 Act no. 317, and the 1999 Act. no. 56, and many more unmentioned Acts are also unconstitutional in that there is no great seal of the State of S.C. affixed to the original documents in the S.C. Archive and History Department as is required by S.C. constitution Article 3, section 18, effectively rendering the subsequent Act that sought to amend to those unconstitutional Act, rendering them and all amending acts that follow unconstitutional as well.

"The Great seal of the state must be attached to an Act before it can become effective." 1974-75 op. Atty General, 4013 pg. 85.

[3] Subject matter jurisdiction is a courts statutory or constitutional power to adjudicate case.

[4] Defects in subject matter jurisdiction can never be forfeited or waived and require correction, regardless of whether error was raised in district court.

[5] Before Appellate court can correct error not raised at trial, there must be (1) Error, (2) that is plain; and (3) that affect substantial rights; If all three of these

Conditions are met, appellate court may then exercise its discretion to notice forfeited error, but only if (4) Error seriously affects fairness, integrity or public reputation of judicial proceedings. (United States v. Cotton, 535 U.S. 625, 122 S. Ct. 1781 (2002), Rule 52(B)'s plain error test. Federal Rules of Criminal Procedure.

Also, the 16-3-10 statute code for murder does not have an Act for murder passed by the S.C. legislature, much less have a seal affixed to such an Act as is required by the 1790 S.C. constitution, Article I, Section 16, thereby making the indictments, trial, conviction, and sentence unconstitutional.

The constitution is the voice of the people speaking in their sovereign capacity, and it must be heeded; when the constitution speaks with reference to a particular matter, it must be given effect as paramount law of land. People v. Parks, 58 Cal. 624.

The congress cannot revoke the sovereign power of the people. Perry v. United States, 294 U.S. 330, 353 (1935)

South Carolina Code of laws 1976

§ 14-1-50 Common Law of England continues in Effect. *Corrections.*

All and every part, of the common law of England, where it is not altered by the or inconsistent with the constitution or laws of this state is hereby continued in full force and effect in the same manner as before the adoption of this section.

Section 16-3-10, Statute code of laws for murder.

Section 16-3-20, statute code of laws for the punishment of murder.

Although, most would classify murder (16-3-10) as Common Law, petitioner asserts when S.C.'s legislature split and amended murder (16-3-10) and the punishment for murder was placed in (16-3-20) and further amended in the 1993 Act no. 184 and reclassified as a felony offense and further amended in the 1995 Act and again amended in the 1996 Anti-terrorism Death Penalty Act, murder became anything but common.

Local laws or ordinances enacted by a city must be consistent with the State constitution. *Bell v. Vaughn*, 155 Fla. 551 21 So. 2d. 31. *Evan v. Bory*, 262 N.Y. 61, 186 N.E. 203, -89 ALR 387.

Petitioner argues the unconstitutional Acts in question. Classified and categorized all felonies (§16-1-10), defined violent crimes (§16-1-60), and the imposition of sentencing structures §16-1-20, §16-1-30, 61-13-810, even the filing procedures for Post-conviction Relief section 40 §17-27-45.

United States v. Pugliese, 805 F. 2d 1117 (ca 7 1986) requires info on sentence to be reliable and accurate.

Townsend v. Burke, 333 us. 736, 68 S.Ct. 1252, 92 L. Ed. 1496 (1948) Recognizes due process requires that a convicted person not be sentenced on material untrue assumptions or misinformation.

Petitioner filed a motion to appoint Counsel, which was denied.

Also, the victim's father was employed by the Richland County Sheriff's Office, which was eager for a conviction. Petitioner's case was biased from the start.

There were also two green pants used against Petitioner at trial. One of which belongs to someone else, easily identifiable by the personal engraved name tag on the inside at the waistband, which never came out at trial. This newly discovered evidence cannot be obtained by Petitioner due to confinement and indigent status.

CONCLUSIONS

If it is at all possible that someone may be wrongfully convicted and there is a chance to fight that wrong, why wouldn't you. Petitioner believes with an investigator and attorney, an evidentiary hearing is greatly needed.

The constitution of the constitution must be given effect even if in doing so a statute is held to be inoperative. *State v. Ex Rel, West Butler*, 70 Fla. 102, 69 So. 771.

Max Julian Kroten # 253916 10-3-21

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