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Oct 12 2021

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenville County
Honorable Letitia H. Verdin, Circuit Court Judge
Appellate Case No. 2020-001421

The State,

Respondent,

vs.

Robert Max Watkins,

Appellant.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

The circuit court correctly denied Appellant's motion for a new trial because the motion was untimely and he did not produce any newly-discovered evidence. Appellant's underlying claims are meritless because he was convicted under a valid true-billed indictment by a court of competent jurisdiction.

STATEMENT OF THE CASE

Appellant was indicted at the February 2002 term of the Greenville County Grand Jury for armed robbery (R. 27-28) and possession of a weapon during commission of a violent crime (R. 27-28). The State brought the case to trial in October 2002. Appellant was convicted, but had his conviction reversed and his case remanded for a new trial on appeal of his PCR action. Watkins v. State, 2008-MO-001 (S.C. Sup. Ct. filed January 14, 2008).

Appellant was retried in September 2008. He was again convicted as charged and the Honorable Larry R. Patterson sentenced him to consecutive terms of twenty-five years for armed robbery and five years for possession of a weapon. On appeal, this Court reversed his conviction and remanded for a new trial. State v. Watkins, Op. No. 2011-UP-091 (S.C. Ct. App. filed March 8, 2011). After a Petition by the State, the South Carolina Supreme Court reversed the decision of the Court of Appeals and affirmed his convictions and sentences. State v. Watkins, 406 S.C. 360, 752 S.E.2d 261 (2013).

On June 10, 2013, Appellant filed a Petition for Writ of Habeas Corpus in the United States District Court for the District of South Carolina. On June 26, 2013, the court dismissed the petition without prejudice because state court proceedings were ongoing.

In January 2014, Appellant subsequently filed an application for Post-Conviction Relief raising numerous trial and appellate issues, as well as several constitutional issues. After a hearing on April 22, 2015, the circuit court issued an Order of Dismissal on October 2, 2015, denying post-conviction relief. On October 5, 2017, this Court denied Appellant's Petition for Writ of Certiorari after consideration of the entire appendix pursuant to Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988). A petition for rehearing was also denied.

While the appeal from the denial of his PCR application was pending, Appellant filed a motion for a new trial on October 7, 2015. The motion was captioned: “Motion for a New Trial Pursuant to § 17-23-110, *Brady v. Maryland*, 373 U.S. 83 (1963) and SCRCrimP Rule 29(b), After or Newly Discovered Evidence.” The motion was denied and dismissed on April 26, 2016. This Court affirmed the denial on March 7, 2018. *State v. Watkins*, Op. No. 2018-UP-103 (S.C. Ct. App. filed March 7, 2018).

While the appeal on his motion for a new trial was pending, Appellant filed a Motion to Vacate Sentence on April 27, 2017. This was denied by Order on May 23, 2017. After confusion on appeal and a remand to the circuit court for clarification, on November 16, 2017, the Honorable Letitia H. Verdin issued an Order clarifying that her May 23, 2017 Order denied his motion to vacate sentence. The appeal from this Order was dismissed as untimely by this Court on June 12, 2020.

On December 20, 2018, Appellant filed his second Petition for Writ of Habeas Corpus in the District Court. On September 30, 2019, United States Magistrate Judge Paige J. Gossett filed a report and recommendation, identifying the claims raised and recommending Respondent’s motion for summary judgment be granted. On November 18, 2019, Senior United States District Judge Cameron McGowan Currie issued an order adopting the report, granting Respondent’s motion for summary judgment, and dismissing the petition.

On February 12, 2020, Appellant filed a second application for post-conviction relief. He originally asserted a violation of *Brady v. Maryland*, 373 U.S. 83 (1963). On September 23, 2020, Appellant amended his application to allege other claims related to the recall of the remittitur in his direct appeal from the 2008 conviction. This PCR is still pending with the circuit court.

On September 29, 2020, Appellant filed a new motion entitled "Pro-se litigant Robert M Watkins Independent Motion to Vacated September 24, 2008 Conviction and Sentence on grounds that the indictment is void and the court lacked personal and subject matter jurisdiction to convict and sentence pro-se litigant under an void indictment, and Due process and equal Protection Violation of SC Const. article 1 section 3, U.S.C.A. 5th 14th," making various allegations regarding the indictment against him, the timing of the grand jury consideration, subject matter jurisdiction, and other claims. The Motion was denied by the Honorable Letitia H. Verdin in an Order Denying Defendant's Motion on October 5, 2020. Watkins now appeals this ruling.

STANDARD OF REVIEW

The granting of a motion for a new trial based on after-discovered evidence is not favored and, absent error of law or abuse of discretion, an appellate court will not disturb the trial judge's denial of the motion. State v. Needs, 333 S.C. 134, 158, 508 S.E.2d 857, 869 (1998).

ARGUMENT

The circuit court correctly denied Appellant's motion for a new trial because the motion was untimely and he did not produce any newly-discovered evidence. Appellant's underlying claims are meritless because he was convicted under a valid indictment by a court of competent jurisdiction.

Appellant contends the circuit court erroneously refused to vacate his 2008 conviction and sentence for armed robbery. He claims he was convicted under an invalid indictment because the indictment did not give sufficient notice of the offense and was issued by an illegally constituted grand jury. He further contends the trial court's jury instructions created a "variance" in the indictment, effectively amending the indictment. He also alleges the trial court was without subject matter jurisdiction. Appellant's arguments related to the indictment are barred because they are not timely. Even if properly before the Court, Watkins' arguments are meritless. He was convicted under a valid indictment by a court of competent jurisdiction. This Court should affirm.

Appellant's motion alleged various defects in the indictment under which he was tried. The motion is not timely. It does not allege any newly-discovered facts, much less facts material to guilt or innocence. See Rule 29(b), SCRCrimP ("A motion for a new trial based on after-discovered evidence must be made within one (1) year after the date of actual discovery of the evidence by the defendant or after the date when the evidence could have been ascertained by the exercise of reasonable diligence."). It is not a proper 29(b) motion, and is not styled as such. Instead, it is a legal challenge to the sufficiency of the indictment under which he was tried.

The motion is untimely because the alleged defects in the indictment could have been discovered when this case went to trial in 2008. S.C. Code Ann. § 17-19-90 provides: "Every objection to any indictment for any defect apparent on the face thereof shall be taken by demurrer or on motion to quash such indictment before the jury shall be sworn and not afterwards." See

also State v. Gentry, 363 S.C. 93, 101, 610 S.E.2d 494, 499 (2005) (citing S.C. Code §17-19-90) (holding “if an indictment is challenged as insufficient or defective, the defendant must raise that issue before the jury is sworn and not afterwards”). The purpose of the statute is “to prevent motions to arrest judgment on grounds based upon defects in indictment apparent on the face thereof.” State v. Lark, 64 S.C. 350, 42 S.E. 175, 176 (1902). Appellant was required to raise these issues at trial, and may not do so now.

Even if properly before the court, his claims are meritless. The true-billed indictment's description of the offense with which he was charged was framed in the language of the applicable statute, which was cited therein. (R. 27-28). It alleged the time and date of the offense and that it occurred within Greenville County. It was sufficient to give Appellant notice of the crime with which he was charged. See State v. Gentry, 363 S.C. 93, 102, 610 S.E.2d 494, 500 (2005) (“The indictment is a notice document. . . . the circuit court should judge the sufficiency of the indictment by determining whether (1) the offense is stated with sufficient certainty and particularity to enable the court to know what judgment to pronounce, and the defendant to know what he is called upon to answer and whether he may plead an acquittal or conviction thereon; and (2) whether it apprises the defendant of the elements of the offense that is intended to be charged.”). The trial court's jury instructions had no bearing on the validity of the indictment.

Appellant's jurisdictional claims are likewise meritless. Subject matter jurisdiction is the power to hear and determine cases of the general class to which the proceedings in question belong. Dove v. Gold Kist, Inc., 314 S.C. 235, 237-38, 442 S.E.2d 598, 600 (1994). In State v. Gentry, our supreme court abandoned the view that, in criminal matters, the circuit court acquires subject matter jurisdiction to hear a particular case by way of a valid indictment by either a county or state grand jury. State v. Gentry, 363 S.C.93, 101, 610 S.E.2d 494, 499 n.6 (2005) (“We note that a

presentment of an indictment or a waiver of presentment is not needed to confer subject matter jurisdiction on the circuit court. However, an indictment is needed to give *notice* to the defendant of the charge(s) against him.”) (emphasis in original). The subject matter jurisdiction of the circuit court and the sufficiency of an indictment are two distinct concepts. Id. A defendant has a constitutional right to demand that a grand jury which is properly established and constituted under the law consider the criminal allegations against him. Evans v. State, 363 S.C. 495, 509, 611 S.E.2d 510, 518 (2005). However, such a challenge does not implicate the subject matter jurisdiction of the circuit court. Id.

The circuit court clearly had jurisdiction over Appellant's trial for armed robbery. S.C. Const. art. V, § 11 ("The Circuit Court shall be a general trial court with original jurisdiction in civil and criminal cases, except those cases in which exclusive jurisdiction shall be given to inferior courts, and shall have such appellate jurisdiction as provided by law."). Appellant's claim is meritless. This Court should affirm.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the order of the lower court be affirmed.

Respectfully submitted,

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CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the April 15, 2014, order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

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