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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

On Petition for Writ of Certiorari to the Court of Appeals

The Honorable J. Cordell Maddox, Jr., Circuit Court Judge

Appellate Case No. 2021-001038

GAVIN V. JONES,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

RETURN TO PETITION FOR WRIT OF CERTIORARI

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Did the Court of Appeals err by not ruling that the Solicitor office have a ministerial duty to follow S.C. laws when obtaining a lawful Indictment?

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Did the Court of Appeals correctly find that the murder indictment gave Petitioner adequate notice of the charge against him, and has that finding become the law of the case?

Did the Court of Appeals correctly hold that the circuit court did not abuse its discretion in denying Petitioner's petition for a writ of mandamus when Petitioner failed to prove that the elements required for the issuance of the writ had been met?

Does the doctrine of res judicata preclude Petitioner from challenging the lawfulness of the murder indictment due to the fact that Petitioner previously raised this identical issue and similar issues in litigation with Respondent?

STATEMENT OF THE CASE

Gavin V. Jones ("Petitioner") is serving a life sentence without the possibility of parole for murder. The Anderson County grand jury indicted Petitioner for murder during its January of 1999 term. Petitioner was tried by a jury on July 12-15, 1999, and found guilty as indicted. The Honorable H. Dean Hall sentenced Petitioner to life. Petitioner's direct appeal lawyer moved to be relieved as counsel and filed a brief pursuant to Anders v. California, 386 U.S. 738 (1967). Petitioner filed a pro se Anders brief. The South Carolina Court of Appeals dismissed the appeal. State v. Jones, Op. No. 2001-UP-55 (Ct. App. filed July 11, 2001). The Court of Appeals later dismissed Petitioner's petition for rehearing. This Court then denied Petitioner's pro se petition for a writ of certiorari.

On March 14, 2012, Petitioner filed a petition for a writ of mandamus in the circuit court, arguing that he was entitled to a writ compelling the State to release him from imprisonment on the basis that the indictment was not valid as it was true-billed outside a term of the court of general sessions.[1] The State ("Respondent") moved to dismiss the petition pursuant to Rule 12(b), SCRCP, arguing that, among other things, Respondent was not a proper party to the petition, Petitioner failed to state a claim upon which relief could be granted, Petitioner failed to meet the requirements for the issuance of the writ, and the petition was barred by the doctrine of laches. A hearing on the petition and motion was convened on February 20, 2014, before the Honorable J. Cordell Maddox, Jr. Judge Maddox granted Petitioner's motion to relieve his counsel, and then denied the petition in a motion issued on February 6, 2018. Judge Maddox also denied Petitioner's motion to alter or

[1] As will be noted later in this return, Petitioner has unsuccessfully mounted collateral attacks on his conviction before.

amend the judgment, made pursuant to Rule 59(e), SCRCP.

Petitioner appealed Judge Maddox's orders. Petitioner raised four questions before the Court of Appeals: (1) that Judge Maddox erred by not finding that the Tenth Circuit Solicitor has a ministerial duty to obtain indictments in accordance with the procedure outlined in Section 14-9-210 of the South Carolina Code of Laws; (2) that Judge Maddox erred by not finding that the Tenth Circuit Solicitor has a ministerial duty to follow South Carolina's laws when obtaining an indictment; (3) that Judge Maddox erred by finding that an illegally obtained indictment can give notice to and allow the exercise of subject matter jurisdiction over a defendant's person and case; and (4) that Judge Hall did not have subject matter jurisdiction over Petitioner's case because the murder indictment was obtained in violation of Section 16-9-10. The Court of Appeals found: (1) that Judge Maddox correctly held that an indictment is merely a notice document; (2) that the record supports Judge Maddox's finding that Petitioner failed to show any reason that the indictment did not give him sufficient notice of the murder charge; (3) that the Anderson County grand jury that indicted Petitioner met pursuant to a facially valid order issued by the Chief Judge for Administrative Purposes in the Tenth Judicial Circuit; (4) and that Judge Maddox did not abuse his discretion in denying Petitioner's petition for a writ of mandamus. Petitioner filed a petition for rehearing, and the Court of Appeals denied it in an order issued on August 23, 2021.

Petitioner's petitioner for a writ of certiorari followed.

STANDARD OF REVIEW

"Whether to issue a writ of mandamus lies within the sound discretion of the trial court, and an appellate court will not overturn that decision unless the trial court abuses its discretion. An abuse of discretion arises where the trial court was controlled by an error of law or where its order is based on factual conclusions that are without evidentiary support." Richland Cnty. v. South Carolina Dep't of Revenue, 422 S.C. 292, 307, 811 S.E.2d 758, 766 (2018) (quotation omitted). "In reviewing a decision on a mandamus petition, an appellate court will not disturb the factual findings of the trial court when those findings are supported by any reasonable evidence." Charleston Cnty. Sch. Dist. v. Charleston Cnty. Election Comm'n, 336 S.C. 174, 179-80, 519 S.E.2d 567, 570 (1999) (citing De Pass v. Broad River Power Co., 173 S.C. 387, 176 S.E.2d 325 (1934)).

ARGUMENT

I. Petitioner has failed to prove that his murder indictment was invalid because his indictment was true-billed during a lawful meeting of the Anderson County grand jury.

The Court of Appeals found that the Anderson County grand jury "convened and indicted [Petitioner] pursuant to a facially valid order . . . ." Jones, at *2. The late South Carolina Supreme Court Chief Justice Ernest A. Finney, Jr., issued an order on December 1, 1998, authorizing the Chief Judges for Administrative Purposes in each judicial circuit to schedule terms of court in addition to those authorized by state statute "by subsequent orders depending upon the availability of judicial resources and caseload information." R. p. 11.[2] This Court issues similar orders periodically, as when this Court recently issued an order providing that it is the duty of Chief Judges for Administrative Purposes:

> To consult with the circuit solicitor as soon after the effective date of this order to determine the dates for the convening of the grand jury in the various counties within the judicial circuit for the ensuing six-month period. Where feasible, the grand jury shall be convened at times other than the opening day of the term of the court of general sessions in order to maximize the effective use of each term of the court of general sessions.

S.C. Sup. Ct. Order dated June 29, 2019. Judge Hall issued an order on December 10, 1998, requiring the Anderson County grand jury to convene in Anderson County on, among other dates, January 5, 1999, the date on which the grand jury true-billed Petitioner. R. pp. 7, 41.

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[2] In violation of Rule 242(e), SCACR, Petitioner's petition for a writ of certiorari was not accompanied by an appendix; instead, the petition was accompanied by a loose assortment of documents. It appears to the undersigned that this Clerk supplemented the petition with the missing filings from the Court of Appeals. Whenever an appendix is cited in this return, the citation is to the appendix filed in the Court of Appeals; otherwise, citations are to documents filed in the Court of Appeals that have not been included in any appendix filed with this Court.

Petitioner completely discounts the validity of this procedure, which was carried out in January of 1999 in accordance with the instruction of this Court and the circuit court, arguing that the requirements of South Carolina Code Section 14-9-210 overrides the aforementioned court orders. Petitioner's argument is misguided, though. Section 14-9-20 provides a method whereby the "county solicitor" is to prepare and submit to the grand jury certain bills of indictment "in . . . cases pending in the county court", whereby the grand jury and the judge presiding over the court of general sessions are required to take certain actions in response, and whereby those bills of indictment are to be tried by the "county court" as if they had been issued "by the grand jury while in attendance upon the county court." The statute provides a method whereby bills of indictment may be tried by county courts, which have been abolished in South Carolina. Austelle v. Austelle, 294 S.C. 19, 20-21, 362 S.E.2d 181, 182-83 (S.C. Ct. App. 1987) (explaining that the county courts were previously abolished and that "their jurisdiction devolved upon the unified court system.") (citation omitted). Petitioner was not indicted by a county court; rather, he was indicted by a grand jury convened by an order issued by the Anderson County Court of General Sessions, which itself was issued in conformance with Chief Justice Finney's order.

Furthermore, Petitioner has failed to establish that Section 14-9-210 provides the only means whereby he could have been lawfully indicted. The statute uses prescriptive language by providing that the "county solicitor", grand jury, and presiding judge of the court of general sessions shall each take a specified action, but the statute does not indicate that it provides the only means by which a defendant can be indicted. Petitioner's interpretation of the statute should be rejected because it "would lead to a plainly absurd result which could not possibly have been

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Furthermore, Petitioner has failed to establish that Section 14-9-210 provides the only means whereby he could have been lawfully indicted. The statute uses prescriptive language by providing that the "county solicitor", grand jury, and presiding judge of the court of general sessions shall each take a specified action, but the statute does not indicate that it provides the only means by which a defendant can be indicted. Petitioner's interpretation of the statute should be rejected because it "would lead to a plainly absurd result which could not possibly have been

intended by the legislature or which would defeat the plain legislative intent." State v. Sweat, 379 S.C. 367, 377, 665 S.E.2d 645, 650 (S.C. Ct. App. 2008).

Even if Petitioner's interpretation of Section 14-9-210 is correct, that slight irregularity in scheduling should not be a basis for the invalidation of an indictment that otherwise was lawfully issued. See State v. Powers, 59 S.C. 200, 37 S.E. 690, 692-92 (1901) (finding that the lower court was right to require the jury commissioners in Oconee County to draw eighteen people to serve as grand jurors for the year of 1900 when it would have been impossible for the County to follow the law in effect at the time because there was no lawful grand jury in existence then in the County); State v. Jeffcoat, 26 S.C. 114, 1 S.E. 440, 440-41 (18878) (agreeing with the lower court that the mere change in time of a court proceeding did not make the grand jury illegal).

II. The Court of Appeals correctly found that the murder indictment gave Petitioner adequate notice of the charge against him and that finding has become the law of the case.

The Court of Appeals found that Judge Maddox correctly held that "an indictment is merely a notice document" and that the record supports Judge Maddox's finding that Petitioner provided no reason that the indictment gave him insufficient notice. Jones, at *2. "[S]ubject matter jurisdiction of the circuit court and the sufficiency of the indictment are two distinct concepts and the blending of these concepts serves only to confuse the issue." State v. Gentry, 363 S.C. 93, 101, 610 S.E.2d 494, 499 (2005) (citations omitted). "Subject matter jurisdiction is the power to hear and determine cases of the general class to which the proceedings in question belong." State v. Harrison, 432 S.C. 448, 466, 854 S.E.2d 468, 478 (2021) (quoting Ex parte Harrell, 409 S.C. 60, 760 S.E.2d 808 (2014) (per curiam)). "South Carolina circuit courts are vested with original jurisdiction in . . . criminal cases, except those cases in which exclusive jurisdiction shall be given

to inferior courts. Thus, circuit courts obviously have subject matter jurisdiction to try criminal matters." Id. at 466, 854 S.E.2d at 478 (citations and quotations omitted).

"The indictment is a notice document." Gentry, at 103, 610 S.E.2d at 500 (citations omitted). "The primary purpose of an indictment is threefold: to put the defendant on notice of the elements of the offense; to allow him to decide whether to plead guilty or stand trial; and to enable the trial court to know what judgment to pronounce following a conviction." State v. Lewis, -- S.C. --, 863 S.E.2d 1, 8 (2021) (citing Evans v. State, 363 S.C. 495, 611 S.E.2d 510 (2005)). "[T]he threshold for an indictment to be valid is generally not high." Lewis, 863 S.E.2d at 9 (citation omitted).

Petitioner does not challenge the Court of Appeals' findings on the sufficiency of the indictment, and argues only that the indictment was not issued lawfully. Petition for Writ of Certiorari at 7. Petitioner is therefore bound by the Court of Appeals' findings as to the sufficiency of the indictment. See Biales v. Young, 315 S.C. 166, 168, 432 S.E.2d 482, 484 (1993) (citations omitted) (affirming the trial court's ruling on one issue because the trial court found that the issue was dispositive, the appellant did not appeal that finding, and appellant's failure to argue the issue constituted an abandonment of it and precluded this Court's consideration of it on appeal).

III. The Court of Appeals correctly held that Judge Maddox did not abuse his discretion in denying Petitioner's petition for a writ of mandamus because Petitioner failed to prove that the elements required for the issuance of the writ had been met.

"The writ of mandamus is the highest judicial writ known to the law." Knight v. Austin, 396 S.C. 518, 522, 722 S.E.2d 802, 804 (2012) (quotation omitted). "A writ of mandamus is designed to promote justice, subject to certain well-defined qualifications. Its principal function is to command and execute, and not to inquire and adjudicate." Richland Cnty., at 307-08, 811 S.E.2d at 766 (quotation omitted). "The primary purpose of a writ of mandamus is to enforce an

established right and to enforce a corresponding imperative duty created and or imposed by law." Knight, at 522, 722 S.E.2d at 804 (quotation and citation omitted). "To obtain a writ of mandamus requiring the performance of an act, the petitioner must show: (1) a duty of respondent to perform the act; (2) the ministerial nature of the act; (3) the petitioner's specific legal right for which discharge of the duty is necessary; and (4) a lack of any other legal remedy." Richland Cnty., at 307, 811 S.E.2d at 766 (quoting Wilson v. Preston, 378 S.C. 348, 662 S.E.2d 580 (2008)).

A public official's duties are classified generally as either ministerial or discretionary. Richland Cnty., at 308, 811 S.E.2d at 766 (citation omitted). "The character of an official's public duties is determined by the nature of the act performed. The duty is ministerial when it is absolute, certain, and imperative, involving merely the execution of a specific duty arising from fixed and designated facts. It is ministerial if it is defined by law with such precision as to leave nothing to the exercise of discretion. In contrast, a [discretionary] duty requires the exercise of reason in the adaptation of means to an end, and discretion in determining how or whether the act shall be done or the course pursued." Id. at 308, 811 S.E.2d at 766 (quotations omitted). The writ is issued "only when there is a specific right to be enforced, a positive duty to be performed, and no other available legal remedy." Miller v. State, 377 S.C. 99, 101, 659 S.E.2d 492, 493 (2008) (citations omitted). "When the legal right is doubtful a writ of mandamus cannot rightfully issue." Riverwoods, LLC v. Cnty. of Charleston, 349 S.C. 378, 388, 563 S.E.2d 651, 657 (2002) (quotation omitted). "If doubt or uncertainty exists in the facts of the case, so that it does not appear clear that such facts entitled [a petitioner] to relief by mandate, under any valid law, the writ of mandamus will not issue." Ex parte Littlefield, 343 S.C. 212, 223, 540 S.E.2d 81, 87 (2000) (quotation omitted).

Petitioner has not named in his petition for a writ of mandamus a public official who could be compelled to act even if the petition were to be granted; instead, petitioner named Respondent, which was not proper. See, e.g., Wilson v. Preston, 378 S.C. 348, 662 S.E.2d 580 (2008) (in which the Governor was named as a party because the petitioner for a writ of mandamus sought to compel the Governor to appoint him to a particular position in the government); see generally 52 AM. JUR. 2D *Mandamus* § 391 (2019) (summarizing that "[a] mandamus proceeding is properly directed against the officer, body, corporation, or person who has the duty to perform the act sought to be enforced"). Compounding that deficiency, Petitioner did not serve the Tenth Circuit Solicitor with his petition for a writ of mandamus, which he was required to do. See Miller v. State, 377 S.C. 99, 102, 659 S.E.2d 492, 493 (2008) (citation omitted) (prohibiting Miller from seeking a writ of mandamus as to a clerk of court because Miller did not name the clerk as a party to his petition or serve his petition on her). Petitioner explicitly is seeking a writ to compel the Solicitor to act in a specified way. Petition for Writ of Certiorari 5-6.

Petitioner has not identified any authority that requires the Solicitor to release Petitioner from prison. On the contrary, by continuing to imprison Petitioner in the Department of Corrections, Respondent is complying with the will of the Anderson County jury that convicted Petitioner and with Judge Hall's imposition of a life sentence. Petitioner's failure in this respect is likely due to the broad prosecutorial discretion that a circuit solicitor enjoys. See State v. Langford, 400 S.C. 421, 435, 735 S.E.2d 471, 479, n.6 (2012) (not casting doubt on the solicitor's "discretion in choosing how to proceed with a case, including whether to prosecute in the first place and whether he brings it to trial or offers a plea bargain").

IV. The doctrine of res judicata precludes Petitioner from challenging the lawfulness of the murder indictment because Petitioner previously raised this identical issue and similar issues in litigation with Respondent.

In Petitioner's pro se Anders brief, which he filed during his direct appeal, Petitioner argued, among other things, that he had not been adequately informed of the accusations against him before his trial because the evidence presented by the State at trial did not conform to the accusations laid out in the murder indictment. The Court of Appeals dismissed that direct appeal. State v. Jones, Op. No. 2001-UP-55 (Ct. App. filed July 11, 2001). Thereafter, this Court denied Petitioner's petition for a writ of certiorari.

In Petitioner's post-conviction relief application filed in June of 2002, Petitioner raised a claim that Judge Hall lacked the subject matter jurisdiction to try and sentence Petitioner because he was not indicted within ninety days of his arrest; Judge Maddox denied and dismissed that application. Jones v. State, No. 02-CP-04-1817 (Anderson, S.C., Ct. Common Pleas, February 9, 2005). Petitioner did not raise that issue again when he appealed Judge Maddox's order, and this Court denied Petitioner's petition for a writ of certiorari. Jones v. State, S.C. Sup. Ct. Order dated November 16, 2005.

Petitioner filed a motion for a new trial in the circuit court on November 5, 2008, arguing that he was entitled to a new trial because he had newly discovered evidence that the Anderson County Grand Jury indicted him outside a term of general sessions and that Judge Hall's order, which convened the grand jury on the date on which Petitioner's indictment was true-billed, was void. Judge Maddox denied Petitioner's motion. Jones v. State, No. 02-CP-04-1817 (Anderson, S.C. Ct. Common Pleas, October 7, 2009). This Court subsequently denied Petitioner's petition for a writ of certiorari. Jones v. State, S.C. Sup. Ct. Order dated May 13, 2011.

Res judicata prohibits subsequent actions by the same parties on the same issues. Bell v. Bennett, 307 S.C. 286, 414 S.E.2d 786 (Ct. App. 1992). A final judgment on the merits in a prior action bars subsequent consideration of those issues in a new action. Foran v. USAA Casualty Ins. Co., 311 S.C. 189, 427 S.E.2d 918 (Ct. App. 1993). Res judicata also bars any issues that could have been raised in the former action. Id.; see also Foxworth v. State, 275 S.C. 615, 274 S.E.2d 415 (1981) (approving of the post-conviction relief court's finding that claims raised or that could have been raised in a prior federal habeas corpus proceeding were barred by res judicata). "To establish res judicata, the defendant must prove the following three elements: (1) the identity of the parties; (2) identity of the subject matter; and (3) adjudication of the issue in the former suit." Carpenter v. Dep't of Corr., 431 S.C. 512, 525-26, 848 S.E.2d 346, 353 (Ct. App. 2020) (quoting Plum Creek Dev. Co. v. City of Conway, 334 S.C. 30, 512 S.E.2d 106 (1999)).

Petitioner argued in the pro se Anders brief that he filed in his direct appeal that he had not had sufficient notice of the charge against him. That shows that Petitioner was aware of the concept of sufficiency of an indictment at the time of his direct appeal and that Petitioner would have been aware of the concept before he filed his application for post-conviction relief. Petitioner argued in his application for post-conviction relief that Judge Hall lacked subject matter jurisdiction because he was not indicted within ninety days of his arrest. That shows that Petitioner was aware of the concept of subject matter jurisdiction and certain formality requirements for indictments at the time of his post-conviction relief case. Petitioner's motion for a new trial included the argument that he had newly discovered evidence that his conviction was invalid because the grand jury indicted him outside of a term of general sessions; the circuit court rejected that argument, as did this Court when Petitioner appealed the denial of the motion. Petitioner's arguments in his pro se

Anders brief and in his application for post-conviction relief were sufficiently related to his current arguments, so the doctrine of res judicata should preclude Petitioner from making the arguments now before this Court. Petitioner's argument in his motion for a new trial was essentially the same argument that he is making before this Court, which directly invokes the doctrine of res judicata.

CONCLUSION

Petitioner has failed to meet the requirements for the issuance of a writ of mandamus for both procedural and substantive reasons, undisputedly was given adequate notice of the charge against him by the murder indictment, has failed to show that the indictment was not properly issued, and has raised arguments that are precluded by the doctrine of res judicata. This Court should deny the petition for a writ of certiorari.

Respectfully submitted,

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