

November 29, 2021

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DEC 1 2021

S.C. SUPREME COURT

Curtis Harris #324605
F3A #4
Allendale Correctional Institution
P.O. Box 1151
Fairfax, SC 29827

Patricia A. Howard, Clerk
SC CLERK of The Supreme Court
P.O. BOX 11330
Columbia, SC 29211

RE: Harris V. State of South Carolina
Appellate Case No. 2021-001313

Dear Hon. Clerk:

PLEASE FIND ENCLOSED the following documents
labeled "Rule 243(c) SCABR". I have sent by U.S. a duplicate
copy of these same documents upon Respondent's counsel
of record. Sincerely, I am

Curtis Harris
Curtis Harris

Enclosures
cc: Yasmeen Klein, Atty Asst. Gen

THE STATE OF SOUTH CAROLINA
In the Supreme of Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
CASEY L. MANNING, CIRCUIT COURT JUDGE.

APPEAL CASE NO. 2021-001313

Curtis Harris #324605,
Petitioner.

V.

STATE OF SOUTH CAROLINA,
Respondent.

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S.C. SUPREME COURT

RULE 243(c) SCACR

Petitioner received a letter from South Carolina Supreme Court's Clerk on November 19, 2021 ordering him to file an explanation pursuant to Rule 243(c), SCACR within 20 days after receiving its letter.

EXPLANATION:

Petitioner believes subject matter jurisdiction can be raised at any time. Therefore, Judge Manning should not have dismissed application without an evidentiary hearing. The jurisdiction of a court over the subject matter of a proceeding is fundamental. *Anderson v. Anderson*, 299 S.C. 110, 115, 382 S.E. 2d 897, 900 (1989). "Lack of subject matter jurisdiction may not be waived, even by consent of the parties, and should be taken notice of by this court." *Id.* It is well-settled that issues related to subject matter jurisdiction may be raised at any time, including for the first time on appeal in this Court. *Carter v. State*, 329 S.C. 355, 495 S.E. 2d 773 (1998); *State v. Funderburk*, 259 S.C. 256, 191 S.E. 2d 520 (1972); Furthermore, "The acts of a court with respect to a matter as to which it has no jurisdiction are void." *Funderburk*, 259 S.C. at 261; 191 S.E. 2d at 522.

Petitioner submit that this specific claim of subject matter jurisdiction was not litigated in his previous post conviction application. Judge Manning failed to consider that a "sufficient reason" could have been established by the fact that petitioner's previous claim was not raised properly. *Aice v. State*, 305 S.C. 448, 450, 409 S.E. 2d 392, 394 (1991). Petitioner believes that Judge Manning failed to view the Penal statute in favor of the petitioner when the legislative language was clear. South Carolina Code Ann 20-7-6605 (2) reads in relevant part:

(1) "Child" means a person less than seventeen years of age. "Child" does not mean a person sixteen years of age or older who is charged with a CLASS A, B, C or D felony as defined in section 16-1-20 or a felony which provides for a maximum term of imprisonment of fifteen years or more. However, a person sixteen years of age who is charged with a CLASS A, B, C, or D felony as defined in section 16-1-20 or a felony which provides for a maximum term of imprisonment of fifteen years or more may be remanded to the family court for disposition of the charge at the discretion of the solicitor. An additional or accompanying charge associated with the charges contained in this item must be heard by the court with jurisdiction over the offenses contained in this item.

Summary dismissal of a PCR application without a hearing is appropriate only when,

(1) it is apparent on the face of the application that there is no need for a hearing to develop any facts, and (2) the applicant is not entitled to relief. S.C. Code Ann § 17-27-70(b), (c) (2014). "When considering the state's motion for summary dismissal, where no evidentiary hearing has been held, the PCR judge must assume facts presented by the applicant are true and view those facts in light most favorable to the applicant." *McLoy v. State*, 401 S.C. 363, 369, 737 S.E. 2d 623, 626 (2013). Similarly, when reviewing the propriety of a dismissal, this court must view facts in the same fashion. *Leamon v. State*, 363 S.C. 432, 434, 611 S.E. 2d 494, 495 (2005).

When an applicant alleges facts that would establish an exception to either the statute of limitations or the Prohibition against Successive PCR applications and these facts are not conclusively refuted by the record before the PCR court, a question of fact is raised which can only be resolved by a hearing. "McCoy, 401 S.C. at 369, 737 S.E. 2d at 626.

Here, Petitioner offered an affidavit confirming that he was still on Probation in the Family Court. Judge Manning ruled that transfer of Jurisdiction from family court to general sessions court is automatic. Petitioner submit that transfer of Jurisdiction to general sessions court from family court is in fact discretionary because of the word "may" used in SC Code 20-7-6605(1). When viewed in light of § 20-7-400 "Whenever the Court has acquired Jurisdiction of any child under seventeen years of age Jurisdiction Continues....."

Respondent has already conceded that family court had Jurisdiction of Petitioner for his crime committed when he was 14 years old. There is nothing in these cited statutes that says family court automatically loses its Jurisdiction after acquiring said Jurisdiction when a child committed a felony at the age of seventeen. The Statutory language is clear that the family court may find it necessary to retain Jurisdiction for the Correction or education of a child that has fallen under the the Jurisdiction since the age of 14 and such Jurisdiction shall remain the age of 22. S.C. Code Ann. § 20-7-400 (1976).

The Court's Primary function in interpreting a statute is to ascertain the intention of the legislature. State v. Blackmon, 304 S.C. 270, 273, 403 S.E. 2d 660, 662 (1991), When the terms of a statute are clear and unambiguous, the court must apply them according to their literal meaning. Id, Furthermore, "In Construing a statute, words must be given their Plain and Ordinary meaning without resort subtle or forced construction to limit or expand the Statute's operation." Id. A penal statute must be construed

Strictly against the state and in favor of the defendant. Williams v. State, 306 S.C. 39, 91, 410 S.E. 2d 563, 564 (1991).¹⁰ The rule that penal laws are to be construed strictly... is founded... on the plain principle that the power of punishment is vested in the legislative, not in the Judicial Department. It is the legislature, not the court, which is to define a crime, and ordain its punishment. ... " Id. (quoting United States v. Wiltberger, (18 U.S.) 5 Wheaton 76, 95-96, 5 L. Ed. 37, 42 (1820)).

CONCLUSION

Because of the fact that Judge Manning did not give any weight to time frame of raising a subject matter jurisdiction claim, it is a clear matter of law question as to whether or not the family court shall have exclusive original jurisdiction whenever the court has acquired the jurisdiction of any child until the twenty-second birthday? For these reasons, Petitioner's PCR should not be dismissed for being successive or untimely.

November 29, 2021

Curtis Harris

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Other Counsel (Respondent) of record;
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