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SC Court of Appeals

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LANCASTER COUNTY

Court of General Sessions
The Honorable Brian M. Gibbons, Circuit Court Judge

Appellate Case No. 2020-001556

THE STATE,

Respondent,

v.

RALPH DALE DIXON, JR.,

Appellant.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

I.

In Powell v. Keel, the Supreme Court held that the State could not require lifetime sex offender registration without opportunity for removal. Did the Circuit Court err by refusing to direct a verdict of not guilty of Failure to Register where Dixon has not been removed from the registry by judicial order and evidence supported a finding that Dixon failed to register?

II.

A defendant is entitled to a grand jury whose members have no personal bias against the parties of a law suit. Dixon has not alleged personal bias from any member of the grand jury. Rather, he alleges he was prejudiced by the indictment's caption alleging a "third offense" Failure to Register. Did the trial court err by refusing to quash the indictment, and was Dixon prejudiced when he was found guilty beyond a reasonable doubt by a petit jury who had no knowledge of his prior convictions?

STATEMENT OF THE CASE

A Lancaster County grand jury indicted Ralph Dixon for Failure to Register as a Sex Offender, Third Offense. He proceeded to jury trial on November 9, 2020, before the Honorable Brian M. Gibbons, Circuit Court Judge. He was convicted and sentenced to five years' incarceration. This direct appeal follows.

ARGUMENT

- I. **The circuit court correctly denied Dixon's motion for directed verdict because the Supreme Court's decision in Powell v. Keel did not invalidate the crime of Failure to Register as a Sex Offender. The Court's opinion that lifetime registration could not be mandated without the opportunity for removal has no bearing on Dixon's guilt of the underlying crime until Dixon is actually removed from the registry by judicial order.**

Dixon argues the trial court erred by refusing to direct a verdict of not guilty for Failure to Register because our Supreme Court declared lifetime sex offender registry unconstitutional unless the defendant has an opportunity for removal at some point. This argument fails because Failure to Register is a valid criminal offense despite the Supreme Court's decision that lifetime registration without judicial review is unconstitutional. Dixon's proper course is to file a motion for removal with the circuit court at the appropriate time, as the offender did in Powell v. Keel. This Court should affirm.

Standard of review.

"If there is any direct evidence or substantial circumstantial evidence reasonably tending to prove the guilt of the accused, the [appellate] court must find the case was properly submitted to the jury." State v. Latimore, 390 S.C. 88, 95, 700 S.E.2d 456, 460 (Ct. App. 2010).

Discussion.

Dixon claims the circuit court should have directed a verdict of not guilty for failing to register, citing Powell v. Keel, 433 S.C. 457, 860 S.E.2d 344 (2021). However, Powell v. Keel did nothing to invalidate the crime of Failure to Register. Rather, it held that lifetime registry was unconstitutional "absent any opportunity for judicial review to assess the risk of re-offending." Powell v. Keel, 433 S.C. 457, 860 S.E.2d 344, 352 (2021). It stands only for the proposition that Dixon has the right to petition the court for removal from the registry.

Dixon does not claim the State failed to meet any of the elements of Failure to Register, of which there was certainly evidence to sustain a conviction. (R.p.53–63). His argument conflates the validity of his conviction with the constitutionality of the collateral consequences associated with that conviction. Dixon may still avail himself of the benefits of Powell v. Keel by filing a motion with the circuit court for removal from the registry. However, he cannot simply decide for himself that he is no longer required to register. His future registration requirements and opportunity for removal from the registry have nothing to do with whether he failed to register as required by law. This Court should affirm.

II. The circuit court correctly refused to quash the indictment alleging a "third offense" Failure to Register because there was probable cause that Dixon failed to register and grand jury deliberations are not subject to the rules of evidence. Dixon cannot show prejudice because he was found guilty beyond a reasonable doubt by a petit jury, conclusively establishing there was probable cause to arrest him for Failure to Register.

Dixon alleges the trial court erred by refusing to quash the indictment for Failure to Register as a Sex Offender. He claims he was prejudiced by the fact that the indictment alleged he committed a third-offense Failure to Register. His claim fails because grand juries are constitutionally different from petit juries. Grand juries are an accusatory body; they are not limited, as are petit juries, by the rules of evidence in the information to which they may be exposed. Their role is merely to decide whether probable cause exists to indict, not whether the accused is guilty. The fact that the grand jury was aware Dixon had previously been convicted of failing to register did not cause Dixon's trial to become fundamentally unfair. Furthermore, Dixon cannot show prejudice because he was found guilty beyond a reasonable doubt by a petit jury that was unaware of his prior convictions, conclusively affirming that probable cause existed to charge him. This Court should affirm.

Standard of review.

The decision whether to quash an indictment is reviewed under an "abuse of discretion" standard. State v. Shands, 424 S.C. 106, 121, 817 S.E.2d 524, 532 (Ct. App. 2018).

Discussion.

Dixon alleges the grand jury was exposed to improper "propensity" evidence in the form of the indictment's caption alleging a "third offense" Failure to Register as a Sex Offender. Dixon's argument confuses the roles of grand juries and petit juries. Grand juries are an accusatory body; they do not decide guilt or innocence. United States v. Myers, 510 F. Supp. 323, 326 (E.D.N.Y. 1980) (explaining "the role of the grand jury historically has differed from that of a petit jury and the same freedom from outside influences is not required"). Grand jury proceedings are not governed by the rules of evidence. State v. Williams, 263 S.C. 290, 295, 210 S.E.2d 298, 301 (1974) (finding no error in indictment based on solely on hearsay testimony); Costello v. United States, 350 U.S. 359, 362 (1956) (explaining origins of grand jury procedure and noting "[g]rand jurors were selected from the body of the people and their work was not hampered by rigid procedural or evidential rules. In fact, grand jurors could act on their own knowledge and were free to make their presentments or indictments on such information as they deemed satisfactory"). A grand juror's extrajudicial knowledge will not invalidate an otherwise valid indictment. Sara Beale et al., Grand Jury Law and Practice, § 3:21 Bias or exposure to prejudicial publicity (2d ed.) (explaining that "disqualifying grand jurors with extrajudicial knowledge of the case or the parties is not necessary for the grand jury to perform its traditional function. . . . in carrying out both its investigatory and indicting functions, the grand jury typically operated without regard to the technical rules of evidence").

Dixon cites State v. Richardson, 149 S.C. 121, 146 S.E.2d 676 (1928), for the proposition that a defendant is entitled to an "unbiased" grand jury. This case, and each case cited therein, refers to grand jurors with personal connections with the parties to a lawsuit. Richardson involved a prosecution against two bank officials for breach of trust. Three members of the board of jury commissioners "were depositors, both personally and officially, of said Beaufort Bank, and lost money by reason of its failure." State v. Richardson, 149 S.C. 121, 146 S.E. 676, 676 (1928). Because these commissioners had a personal interest in the litigation, the grand jury was improperly drawn. By contrast, there is no allegation that any of the grand jurors who issued Dixon's indictment had any personal connection with him or the State. Richardson does not support Dixon's argument.

Dixon's assertion that the grand jury viewed Dixon's prior convictions as "propensity" evidence is totally speculative. Besides, it is highly dubious that a person can be predisposed to fail to register as a sex offender. Dixon has not identified any pertinent "character trait" that could predispose a person to fail to register for a government database.

Even if the indictment was improperly obtained, Dixon suffered no prejudice because probable cause existed to charge him with Failure to Register. This is evidenced by the fact that a petit jury (which was unaware of Dixon's prior convictions) found him guilty beyond a reasonable doubt. Because a jury of twelve unanimously found Dixon guilty beyond a reasonable doubt, there can be no question there was probable cause to indict. Dixon suffered no prejudice. Sallie v. State, 276 Ga. 506, 514, 578 S.E.2d 444, 453 (2003) ("Even if there was some error in the grand jury proceedings, the trial jury's verdict of guilt beyond a reasonable doubt demonstrates that there was probable cause to charge the defendant. Therefore, any possible error was harmless."); United States v. Brien, 617 F.2d 299, 313 (1st Cir. 1980)

(explaining "the taint of a grand jury will be purged by the deliberations of an untainted petit jury"). This Court should affirm.

CONCLUSION

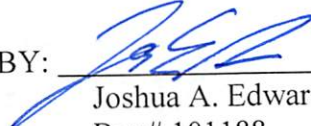
For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

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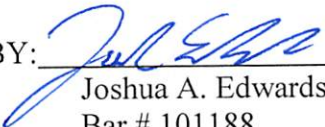
CERTIFICATE OF COUNSEL

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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