THE STATE OF SOUTH CAROLINA

IN THE COURT of Appeals

APPEAL FROM YORK COUNTY

COURT OF GENERAL SESSIONS

William A. McKinnon, Chief Judge

1998-GS-46-2847;2849;2851

Appellate Case No: 2021-001280

STATE OF SOUTH CAROLINA, Respondent,

v.

ANTONIO GORDON, Appellant.

Appellant's Initial Brief Under Rule 208(a),(1) SCACR

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Whether the trial court committed error ***of law and abused it discretion when the trial court did not make findings of fact and conclusion of law in it's order summarily dismissing Appellant's claims raised in his motion to vacate conviction and sentence without a hearing that of***:

(1) The Children Code of Laws Act was unconstitutionally vague under the due process clauses of South Carolina Constitution Article one section 3 and the 14th amendment to the United States Constitution as applied to Appellant because the term "who is Charged" or the term "[Charged]" as outlined in section 20-7-6605(1) of the Children Code of Laws Act does not set forth the proper standard for adjudication as applied to him being ***"sixteen years of age found violating a criminal law and taken into family court custody/jurisdiction based on probable cause" under sections 20-7-7205(a);20-7-6605(1),(2);20-7-400(a),(1),(d). Appellant asserted his conviction under it was not merely erroneous, but illegal and void under Ex Parte Siebold 100 U.S. 371-77 (1879) holding.?***

STATEMENT OF THE CASE

The records, in this case, reflect that on July 23, 1998, the Appellant was sixteen years of age when he was **found violating a criminal law and taken into "Family Court"** custody/jurisdiction based on probable cause. See ROA Volume one Pages 80 Line 16-pg 83 Lone 16- pg 88 Line 24-pg 89 Line 10 (Pre Trial Transcript Detective John Thickens Testimony); ROA Volume One Pg 208 Line 19-24 (Pre Trial Transcript Captain Charles Cabiness Testimony); ROA Volume One Pg 138 Line 11 Pg 139 Line 1 (Pre Trial Transcript, Trial Court denying motion to suppress finding there was probable cause to make a warrantless arrest). See Fn1 The record in this case demonstrate law enforcement did notify the Appellant's parents of him being taking into custody according to the Children Code of Laws Act. See ROA Volume One Pg 144 Line 16- Pg 146 (Pre Trial Transcript, Trial Court finding Appellant parents were notified under S.C. Code Ann 20-7-7205(A) (Supp.1998) Titled "Taking a Child into Custody" statute and denied counsel motion to suppress the Appellant confession).

Fn1 Approximately** 6 to 8 **hours after the Defendant was taken into custody he appeared before a city recorder and signed an arrest warrant for murder. Appendix Volume One Pg 89 Line 13- Pg 90 Line 12. On July 27 , 1998, the Appellant were served arrest warrants for 2 counts of attempted armed robbery, possession of a weapon during the commission of a violent crime, possession of a pistol by a person under twenty one, criminal conspiracy,. The Appellant was appointed Dan Agostino Esq to represent him in General Sessions court.

On October 19,1998, the York County Grand Jury did during a time ***"Family Court"*** retained jurisdiction, True Billed indictments for murder, 2 counts of attempted armed robbery, 3 counts of possession of a weapon during the commission of a violent crime, possession of a pistol by a person under twenty one , criminal conspiracy and carjacking. See Appendix Volume One Pg 225-247 (Indictments).

On July 16,1999, after a Jackson v. Denno hearing the Defendant pled guilty to the true billed indictments in General Sessions Court ***"without Family Court first providing a hearing, notice, counsel and a statement of reason in an order transferring it's first attached jurisdiction"***. On July 19, 1999, the Honorable John C. Hayes, III, sentenced the Appellant to 30 years for murder, 5 years for each possession of a weapon during the commission of a violent crime, 5 years for possession of a pistol by a person under, twenty-one. 5 years for criminal conspiracy, 10 years for each attempted armed robbery with one of the 10 years ran consecutive to the 30-year murder charge and the carjacking was dismissed. See ROA Volume One Pg 225-247 (Warrants, Indictments, and sentencing sheets).

Appellant filed his first post-conviction relief application under section 17-27-20(1). ***(2000-cp-46-1414)***. In the application Gordon asserted as a ground for relief (a) ***"Ineffective assistance of counsel pursuant to family court matters"***. ROA Volume one pages 248-254.

The Appellant filed a second post-conviction relief application under section 17-27-20(2). ***(2001-cp-46-1866)***. In the application,, Gordon asserted as a ground for relief "***{S}ubject matter jurisdiction"*** (b) "***Family Court never relinquished its first acquired jurisdiction".*** See ROA volume one pages 254-261

Under Rule 15(b) of the SCRCP and section, 17-27-90 Gordon amended his jurisdiction claim and asserted other constitutional challenges to the children's code of laws See ROA Volume one page 262-274.

Appellant was court-appointed Tara D. Shurling, Esq to represent him in the matter as required by Rule 71.1(d) SCRCP.

The State made a Return to the applications as required by section 17-27-70(a) but did not address Gordon's jurisdiction claim. See ROA Volume one pages 275(A)-275(d).

An order changing venue was issued transferring Gordon's case to Richland County in which both of Gordon's applications were consolidated and will be referred to as ***PCR (1414). ROA Volume one pages 276(A)-276-277.***

An evidentiary hearing was convened on July 29, 2003, before the Honorable Earnest Kinard Jr. PCR counsel Shurling, Esq informed the PCR court: ***"Your Honor, my client also alleges that his indictment is faulty in that he was indicted by the Court of General Sessions and tried as an adult without trial counsel having---and this is actually more of a sixth amendment argument, although my client couched it in terms of subject matter jurisdiction".*** See ROA Volume one pages 285 line 15-287 line 16 ***(PCR Transcript).*** Counsel proceeded to inform the Court that Gordon asked her to argue his jurisdiction claim and other constitutional claims and ineffective assistance of counsel claims relating to him being tried as an adult without the family court first relinquishing its jurisdiction in an order with a statement of reason. See ROA Volume one pages 286 line 15-page 287 line 10.

Without no legal argument presented during the PCR hearing on Appellant jurisdiction claim by neither party and at the conclusion of the hearing the court instructed the Respondent to prepare a proposed order. ***(TAKE NOTICE OF PCR TRANSCRIPT IN ITS ENTIRETY) ROA Volume one Pg 278-342.*** As instructed by the court the State prepared the order making specific findings of fact and conclusion of law as required by section 17-27-80. However, At claim 5 of the order the State amended their Return and answered Gordon jurisdiction claim out of time according to Rule 8(c) and 12(b) and 15(b) SCRCP and section 17-27-70(a) when the Respondent injected the language in the order that ***"Pursuant to S.C. Code Ann 20-7-6605, 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 a maximum term of imprisonment of fifteen years or more maybe remanded to the family court for disposition of the charge at the discretion of the solicitor. The Applicant was sixteen years old when he committed the crimes for which he was indicted and the crimes committed were Class A, B, C, or D felonies. Therefore, the General Sessions Court had jurisdiction".*** See ROA Volume one pages 355 line 2-8 (PCR Order issued August 18th, 2003).

The PCR court signed the order as making specific finding of fact and conclusion of law as required by section 17-27-80 without Gordon first being giving **adequate notice in advance and the opportunity to respond** under section 17-27-70(b) and Rule 12 of the SCRP prior to judgment being issued on the State claim that "***Pursuant to S.C. Code Ann 20-7-6605, a***

person sixteen years of age or older is charged with a Class A.B, C, or D felony as defined in section 16-1-20 or a felony which provides a maximum term of imprisonment of fifteen ***years or more maybe remanded to the family court for disposition of the charge at the discretion of the solicitor. The Applicant was sixteen years old when he committed the crimes for which he was indicted and the crimes committed were Class A, B, C, or D felonies. Therefore, the General Sessions Court had jurisdiction".***

The record reflects Gordon asked PCR counsel to file a Rule 59(e) motion and a Rule 60(b), SCRCP motion. See ROA volume one pages 366 line 16-page 367 line 2 (***Letter from PCR counsel Tara Shurling, Esq to Ms.Richardson***). Counsel stated in her opinion there was no need for such motions and filed a Notice of Appeal in the case.

The Appellant filed a pro se Motion for reconsideration of facts in attempt to protect his procedural right to one full fair bite at the apple. The Court found that all claims raised in the application were rule on by the court and because Gordon received the order way after the initial appeal in this case, he filed a belated appeal in South Carolina Supreme Court in which the Court vacated the PCR court order denying the pro se motion as well denied Gordon request to file a belated appeal and post-conviction relief application. See ROA Volume one page 365.(Order issued from this Court) not dated).

The Appellant filed three (3) more applications and reasserted the same jurisdiction claim and the State asked each court to deny the application as being time-barred and successive under the uniform post-conviction relief act and each court ruled as such.

In Appellant's last PCR application 2008-cp-46-4951, the State filed a motion with the court to restrict Gordon from filing any future post-conviction relief applications that raised or could have raised claims in previous applications. However, in the State motion, it is alleged Gordon has had more than his fair bite at the apple and showed the court that in every PCR application Gordon asserted his jurisdiction claim. See ROA Volume two pages 17,21-page 25 (***Motion to Restrict Gordon from future filing filed by the state.)*** The Court issued an order restricting Gordon from filing any future PCR applications that raised claims that was raised in previous applications or could have been raised in previous applications and that ineffective assistance of PCR counsel is not a reason to have a second PCR application. See ROA Volume two page 59 **(Order Restricting future filings).**

The Appellant eventually filed a Declaratory Judgment in the South Carolina Supreme Court original jurisdiction asking the court to find the Uniform Post- Conviction Relief Act was unconstitutional because it did not provide a judicial remedy to remedy the ineffective assistance of pcr counsel. The court denied the petition and held that the Court and the lower courts have said no as to his ineffective assistance of pcr counsel claim that PCR counsel inadequately raised his jurisdiction claim as ineffective assistance of counsel. See ROA Volume two pages 74-75 (***Order from this Court issued on June 20,2019) Rehearing Order issued on November 19,2019.*** Appellant have filed other motions in attempt to receive his ***"procedural right to one full fair bite at the apple"***.

On September 9, 2021, Appellant filed a ***Motion To Vacate Conviction and sentence based on Lack of a Subject Matter Jurisdiction.*** See ROA Volume two pgs 77-88. In the Motion Appellant asserted General Sessions court was without jurisdiction to accept his

guilty plea and sentence him as an adult offender to a term of year's of imprisonment because

(A) when the Grand Jury True Bill his indictments, the court of General Sessions did not have jurisdiction.

(B) When he was found violating a criminal law and taken into custody ***based on probable cause family court acquired the first jurisdiction*** under S.C. Code Ann 20-7-7205(a) (Supp.1998) Title "Taking a Child into custody"; 20-7-6605(1),(2) (Supp. 1998) Title "Definition"; 20-7-400(a),(1),(d) (Supp.1998) Title "Exclusive Original Jurisdiction of Family Court"

Appellant asserted that before the York County Grand Jury could true bill his indictments Appellant was :

(1) Entitled to a hearing, counsel and a statement of reason with an order transferring jurisdiction to general sessions under sections 20-7-400(a),(1),(d), supra and S.C. Code Ann 20-7-7605(6) (Supp.1998) Title "Transfer of Jurisdiction"; ***Kent v. United States***, the 86 Sct 1045 (1966).

Appellant also asserted that:

(2) The Children Code of Laws Act was unconstitutionally vague under the due process clauses of South Carolina Constitution Article one section 3 and the 14th amendment to the United States Constitution as applied to him because the term "who is Charged" or the term "[Charged]" as outlined in section 20-7-6605(1) of the Children Code of Laws Act does not set forth the proper standard for adjudication as applied to him being ***"sixteen years of age found violating a criminal law and taken into family court custody/jurisdiction based on probable cause" under sections 20-7-7205(a);20-7-6605(1),(2);20-7-400(a),(1),(d). Appellant asserted his conviction under it was not merely erroneous, but illegal and void under Ex Parte Siebold 100 U.S. 371-77 (1879) holding.***

(3) Appellant asserted that even though he faced mandatory bind over under section 20-7-6605(1) of the Children code of laws Act, there should have first been a Petition filed under section 20-7-7605(6) alleging Appellant was found violating a criminal law and taken into family court custody/jurisdiction based on probable cause and that he is charged with a Class A, B, C, or D felony under section 20-7-6605(1).

For the first time the Appellant asserted that he had been denied his fundamental constitutional rights to due process of law under South Carolina Constitution Article one section 3 and the 14th Amendment to the United States Constitution when the PCR court and the State "did not" provide him with adequate notice in advance and the opportunity to be heard before the signing of the order on the State claim that "***Pursuant to S.C. Code Ann 20-7-6605,a person sixteen years of age or older 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 maybe remanded to the Family Court for disposition of the charge at the discretion of the solicitor. The Applicant was sixteen years old when he committed the crimes for which he was indicted and the crimes committed were Class A, B, C, or D felonies. Therefore, the General Sessions Court had jurisdiction".***

Appellant asked the Court to exercise it's authority and vacate and or reopen the PCR Judgment in PCR (1414) to properly litigate his subject matter jurisdiction claims as those similarly situated. ROA Volume two pages 4-8.

The trial court issued an order on October 13,2021 and filed on October 18,2021. In the order the Honorable McKinnon reconsidered and addressed Appellant's jurisdictional issues when the court held:

" The Court received this Handwritten motion request the court reconsider jurisdictional issues which have already been litigated in which the Court has issued orders denying relief. .....As previously ordered by the Court, the General Sessions court had jurisdiction over the Petitioner's guilty plea on July 16,1999. The Petitioner pled guilty to murder, three counts of possession of a weapon during the commission of a violent crime, two counts of attempted armed robbery, possession of a firearm by a person under twenty one and criminal conspiracy. Pursuant to the law at the time of his plea," 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 "is not a juvenile and may be remanded" to the family court for disposition of the charge at the discretion of the solicitor". See S.C. Code Ann 20-7-6605 (Now section 63-19-20). The Petitioner was sixteen years old and charged with a Class A, B, C, or D felony as defined in section 16-1-20. Consequently, the General Sessions court had jurisdiction, and the sentence and conviction shall not be vacated". The Court summarily dismissed the Appellant's Motion to Vacate Conviction and Sentence without a hearing. See ROA Volume Two Pg 89-90

This Appeal now follows.

Arguments

The trial court committed error of law and abused its discretion when the trial court made findings of fact and conclusion of law that General Sessions court properly had jurisdiction under section 20-7-6605 of the Children code of Laws Act without making findings of fact and conclusion of law and applying statutory construction and giving legislative intent to all sections related to the same general law ,sections 20-7-7205(a);20-7-6605(1),(2);20-7-400(a),(1),(d);20-7-7605(1),(6), as applied to Appellant being "sixteen years of age found violating a criminal law and taken into family court custody/jurisdiction based on probable cause" in its Order of dismissal without a hearing

In criminal cases, this Court reviews only errors of law. State v. Anderson, 415 S.C. 441, 446, 783 SE.2d 51,54 (2016). This, the trial court's factual findings are binding on the Court unless unsupported by the evidence, clearly erroneous, or controlled by an error of law. State v. Winkler, 388 SC 574,582, 698 SE.2d 596, 600 (2010). On appeal, the reviewing court does not reevaluate the facts based on its own view of the preponderance of the evidence but simply determines whether the trial judge's ruling is supported by any evidence. State v. Parker, 391 SC 606, 611-12, 707 SE2d 799,801 (2011). Absent evidence to the contrary, this Court presumes the regularity of criminal proceedings. thers v. State, 319 SC 59,62, 459 SE2d 838,839 (1995).

In this case ,the trial court made findings of fact and conclusion of law that General Sessions Court properly had jurisdiction to accept Gordon plea and sentence him as an adult offender because Appellant was sixteen years of age and ***"Charged"*** with a Class A, B, C or D felony as defined in section 16-1-20 at the time of his guilty plea in July of 1999 under section 20-7-66005 . Appellant asserts this findings of fact and conclusion of law is controlled by an error or law and abuse of discretion because the trial court did not follow statutory construction and give legislative intent to all sections of the children code of laws Act that relates to the same general statutory law. Our Supreme Court has held "It is well established that in interpreting a statute, the court's primary function is to ascertain the intention of the legislature. First South Saving Bank, Inc v. Gold Coast Assoc,, 301 S.C. 158, 390 S.E.2d 486 (ct. App.1990). When terms of the statute are not clear and unambiguous, the court must apply them according to their literal meaning. I'd Furthermore, in construing a statute, words must be given their plain and ordinary meaning without resort to subtle or force construction to limit or expand the statute's operation. Bryant v. City of Charleston, 259 S.C. 408, 368 S.E.2d 899 (1988). When a statute is penal in nature, it must be construed strictly against the State and in favor of the Defendant. State v. Cutler, 274 S.C. 376, 264 S.E.2d 420 (1980). In construing statutory languages, the statutes must be read as a whole and sections which are apart of the same general statutory law must be construed together".

In this case the Appellant asked the trial court to find his indictments and guilty plea judgment was a nullity and void ab initio because he was sixteen years of age when he was found violating a criminal law and taken into family court custody/jurisdiction based on probable cause under sections 20-7-

7205(a);20-7-6605(1),(2);20-7-409(a),(1),(d) of the children code of laws act. Section 20-7-7205(a) provides in relevant part:

> When a Child found violating a criminal law or ordinance and taken
>
> Into custody, the taking into custody is not an arrest. The Jurisdiction
>
> Of the Court attaches from the time of the taking into custody.

Pursuant to the definition statute under the Children code of laws Act section 20-7-6605(2) define the Court as "Family Court" and under that same section in subsection (1) defined a [C]hild as a person less than seventeen years of age. Child does not mean a person sixteen years of age or older who is [C]harged with a Class A, B, C or D felony or a felony which provides for a maximum term of imprisonment of fifteen years or more. Our Supreme Court has held "all statutes are presumed constitutional and will, if possible, be construed as render them valid". Weaver v. Recreation District, 431 S.C. 357, 848 S.E.2d 760 (S.C.2020).

In other states that address arguments similar to Appellant held the Juvenile Act applied when the child was not charged with certain felonies when taking of the child into custody without an arrest warrant. See People v. Plummer, 714 N.E.2d 63 (1999) the Appellate Court of Illinois, First District, Sixth Division held when The State contends that section 5-6(2) does not apply to the defendant, because he was in custody as a murder suspect and was, therefore, not a "delinquent minor" who benefits from the protection of the Act. Section 5-5(1)(a) of the Act, to which section 5-6(2) refers, provides that "[a] law enforcement officer may, without a warrant, take into temporary custody a minor * * * whom the officer with reasonable cause believes to be a delinquent minor." 705 ILCS 405/5-5(1)(a)(West 1992). Section 5-3(1) of the Act defines "[d]elinquent minor" as "any minor who prior to his 17th birthday has violated * * * any * * * state law." 705 ILCS 405/5-3(1)(West 1992). The State correctly notes that section 5-4(6)(a) states that "[t]he definition of delinquent minor under Section 5-3 of this Act shall not apply to any minor who at the time of an offense was at least 15 years of age and who is charged with first degree murder * * *. These charges and all other charges arising out of the same incident shall be prosecuted under the Criminal Code of 1961." 705 ILCS 405/5-4(6)(a)(West 1992).

The State cites three cases as authority for the proposition that the Juvenile Court Act does not apply to juveniles whose homicide cases are heard in the circuit court because they were 15 years old or older when charged with homicide. *People v. Daniel*, 238 Ill.App.3d 19, 33, 179 Ill.Dec. 262, 606 N.E.2d 94 (1992) (Juvenile Court Act of 1987 does not apply to 16-year-old defendant charged with murder as he is subject to the jurisdiction of the circuit court); *People v. Sevier*, 230 Ill.App.3d 1071, 1084, 174 Ill.Dec. 336, 598 N.E.2d 968 (1992) (same holding); *People v. Green*, 179 Ill.App.3d 1, 13, 128 Ill.Dec. 902, 535 N.E.2d 413 (1988) (same holding). In reaching these results, the courts in *Daniel, Sevier* and *Green* all relied on *People v. Visnack*, 135 Ill.App.3d 113, 89 Ill.Dec. 901, 481 N.E.2d 744 (1985). However, the defendant in *Visnack* was already 17 years old at the time he committed murder. Accordingly, he was not subject to the terms of the Juvenile Court Act due to his age. See Ill.Rev.Stat.1979, ch. 37, par. 702-7. *70 When the court in *Visnack* held that the Juvenile Court Act did not apply to the 17-year-old defendant, the holding was correct, but not for the stated reason that the

Juvenile Court Act does not apply to juveniles who are subsequently charged with murder. A close reading of *Sevier* reveals that the defendant in that case was also 17 at the time of the crime.

The holdings in *Daniel, Sevier* and *Green* are based on unfounded applications of the holding in *Visnack* to juveniles under 17 who are subsequently charged with murder.

This misapplication of the holding in *Visnack* was first noted in People v. Pico, 287 Ill.App.3d 607, 222 Ill.Dec. 908, 678 N.E.2d 780 (1997). In *Pico,* the court focused on the language of section 5-4(6)(a) which exempted from the protections of the Juvenile Court Act "who is charged with first degree murder.>" (Emphasis in original). 287 Ill.App.3d at 611-12, 222 Ill.Dec. 908, 678 N.E.2d 780, quoting 705 ILCS 405/5-4(6)(a)(West 1994). The court held that "the plain language of section 5-4(6)(a) indicates that its exemption is triggered only when the minor has been charged. Until that point, the minor retains the protection of the Juvenile Court Act. This is the only logical interpretation of section 5-4(6)(a), for until such time as the minor is charged, the State cannot know whether he will be tried pursuant to the Criminal Code as an adult or as a delinquent minor under the Juvenile Court Act." *People v. Pico,* 287 Ill.App.3d at 612, 222 Ill.Dec. 908, 678 N.E.2d 780.

We agree with the analysis and holding of *Pico* and adopt it, and reject the holdings in *Daniel, Sevier* and *Green.* Accordingly, we hold that, under section 5-4(6)(a), a minor being held in custody pursuant to section 5-5 does not lose the protection of the Juvenile Court Act until such time as he is charged with one of the offenses enumerated in section 5-4(6)(a). In this case, defendant was not charged with murder at the time he was being questioned. Therefore, he was only a possible delinquent minor at the time he was questioned and section 5-6(6)(a) of the Act applied.

Then in Gerrick v. State, 451 N.E.2d 327 (1983) the Indiana Supreme Court dealt with a case where Appellant claims the juvenile court's waiver order cannot be upheld due to the alleged failure of the State to comply with the requirements of I.C. § 31-6-4-5(c), (d), (e), and (f). We have already identified this statute as the source of the requirement that a hearing be held promptly after a juvenile is taken into custody to determine whether to continue his detention until a determination that the child is or is not delinquent can be made. Appellant's claim is that because of noncompliance with the statute the juvenile court never acquired jurisdiction over him, and consequently there was no jurisdiction to be waived into the adult criminal court. *See Summers v. State,* (1967) 248 Ind. 551, 230 N.E.2d 320.

We find that I.C. § 31-6-4-5 is not a jurisdictional statute, therefore failure to comply with any or even all parts of it does not cause the juvenile court to lose jurisdiction over the child. The Statute only relates to the ability of the juvenile court to continue the detention of the child previously taken into custody under I.C. § 31-6-4-4.

Reading the juvenile statute in its entirety, it is clear the juvenile court's jurisdiction over a child attaches as soon as the child has been taken into custody by a law enforcement

officer who is acting with probable cause to believe the child has committed *332 an act that would be a felony if committed by an adult. In this case that occurred shortly after 9:00 A.M. on the morning of March 12, 1980, when Trooper Westmeyer and Sheriff Lovins arrested appellant. At a subsequent proceeding held under I.C. § 31-6-4-5 the only issue to be determined is whether to continue in the child's detention. The juvenile court's jurisdiction over him, however, has by that time already attached and cannot be lost by failure to conduct the detention hearing properly.

However, our Supreme Court **in State v. Graham, 340 S.C. 352, 532 SE2d 262 (SC. 2000) addressed an argument where Graham alleged the general sessions court was without jurisdiction the court held** ""The version of S.C. Code Ann. § 20-7-430 in effect when appellant committed the offenses provided:

Section 20-7-430 was repealed effective July 1, 1996. 1996 S.C. Act No. 257 § 1. Section 20-7-430 was recodified as § 20-7-7605 (Supp. 1999).

If, during the pendency of a criminal or quasi-criminal charge against a *child* in a circuit court of this State, it is ascertained that the *child* was under the age of seventeen years at the time of committing the alleged offense, it is the duty of the circuit court immediately to transfer the case, together with all the papers, documents and testimony connected with it; to the family court of competent jurisdiction; except in those cases where the Constitution gives to the circuit court exclusive jurisdiction or in those cases where jurisdiction has properly been transferred to the circuit court by the family court under the provisions of this section. . . .

Also effective in January 1995, the definition of "child" was set forth in S.C. Code Ann. § 20-7-390 which provided:

Section 20-7-390 was repealed effective July 1, 1996 by 1996 Act 383 § 2. Section 20-7-390 was recodified as § 20-7-6605 (Supp. 1999). Section 20 7-6605 currently provides:

When used in this article and unless otherwise defined or the specific context indicates otherwise:

(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 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.

When used in this article, unless the context otherwise requires, "child" means a person less than seventeen years of age, where the child is dealt with as a juvenile delinquent. *"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.

Class A, B, C, and D felonies include, among other offenses, armed robbery. Murder has a maximum sentence greater than fifteen years.

The family court is a statutory court created by the legislature and, therefore, is of limited jurisdiction. Its jurisdiction is limited to that expressly or by necessary implication conferred by statute. The jurisdictional authority of the court is set forth in the Children's Code. *South Carolina Dept. of Mental Health v. State*, 301 S.C. 75, 390 S.E.2d 185 (1990).

When appellant pled guilty in 1996, S.C. Code Ann. § 20-7-400 (A) provided that: "Except as otherwise provided herein, the[family] court shall have *exclusive* original jurisdiction and shall be the sole court for initiating action: (1) Concerning any *child* living or found within the geographical limits of its jurisdiction . . . (d) Who is alleged to have violated or attempted to violate any state or local law or municipal ordinance, regardless of where the violation occurred . . . (emphasis added).

The definition of "child" in § 20-7-390, however, excludes those persons sixteen years of age who are charged with Class A, B, C, or D felonies or felonies punishable by a maximum term of imprisonment of 15 years or more. Accordingly, these sixteen year olds (who ordinarily are considered juveniles or children under the above statutes) can be charged in circuit court without first bringing the charges in family court and obtaining transfers. This is strictly limited to sixteen year olds who are charged with committing the specified offenses. Charges against juveniles under 16 and charges against sixteen year olds which are not one of the specified felonies must begin in family court and may be transferred under some circumstances. *See, e.g., State v. Corey,* Op. No. 25077 (S.C. Sup. Ct. filed March 6, 2000) (murder charge involving 12-year old defendant can be transferred from family court to circuit court). Accordingly, the circuit court had jurisdiction to accept appellant's plea as appellant was 16 when the offenses were committed and murder and armed robbery are within the above specified felonies.

Appellant asserts his case is directly distinguished than Graham. The court in Graham did not consider sections 20-7-7205(a) and 20-7-6605(2). The term probable cause was not mentioned in Graham's case. Here in this case Appellant argument is that because he was taken into Family Court custody/ jurisdiction based on probable cause family court acquired the first jurisdiction because he was not charged with a Class A, B, C, of D felony as defined in section 20-7-6605(1) definition statute of the Children Code of Laws Act as held by the trial court in its order. It is argued by Gordon that even though he faced mandatory bind-over under the definition statute section 20-7-6605(1) of the Children Code of Laws Act, he was entitled to a hearing, counsel and a statement of reason and the solicitor should have first filed a petition and the family court judge should have issued an order transferring jurisdiction under section 20-7-7605(6) which provides in relevant part: **Within thirty days after the filing of a petition in the family court alleging the child has committed the offense of murder or criminal sexual conduct, the person executing the petition may request in writing that the case be transferred to the court of general sessions to proceed against the child as a criminal rather than as a child coming within the purview of this article. The judge of the family court is authorized to determine this request.** *Kent v. the United States, 86 Sct 1045 (1966) (Before Juvenile be tried as an*

*adult he is entitled to Notice, hearing, counsel and a Statement of Reason);*In the Interest of Shaw, 274 SC 534, 274 SE.2d 522 (1980) "[I]t is the responsibility of the family court to include in its waiver of jurisdiction order a sufficient statement of the reasons for, and considerations leading to, that decision. Conclusory statements, or a mere recitation of statutory requirements, without further explanation will not suffice. The order should be sufficient to demonstrate that the statutory requirement of full investigation has been met and that the question has received full and careful consideration by the family court. The salient facts upon which the order is based are to be set forth in the order". Cited in *State v. Avery, 509 SE2d 476 (1998).*

In State v. Pitman he asked our Supreme Court to overrule Corey D and the Court held In *Corey D.,* this Court held that § 20-7-7605(6) permitted the family court to waive jurisdiction over a murder charge against a twelve-year-old to the court of general sessions. *Id.* Applying the rules of statutory construction in conjunction with prior case law, the Court found *"section 20-7-7605(6) authorizes transfer on the basis of the offense (murder) without regard to age,* while other subsections of XX-X-XXXX authorize transfer on the basis of age and the classification of the offense." *Id.* at 113, 529 S.E.2d at 23 (emphasis added) (internal citations omitted).

Appellant argues that subsection (6)'s reference to "the child" as opposed to "a child" indicates the legislature's intention to confine the definition of "child" to the preceding subsection and not the definition of "child" as provided in the definition section of the Children's Code. *See* S.C. Code Ann. § 20-7-6605(1). Assuming the Legislature intended any meaning to be attributed to the use of the article "the," we believe it would refer to the language in the beginning of the statute—"jurisdiction over a case involving *a* child must be transferred or retained as follows"—and not subsection (5) as Appellant suggests. *See* S.C.Code Ann. § 20-7-7605. The use of "child" in the beginning of the statute clearly refers to *562 the definition contained in § 20-7-6605 of the Children's Code, which defines "child" as a person less than seventeen years of age.

Appellant asserts he fit within the ambit of Corey D holding when following statutory construction of law and fundamental principle of law on October 19, 1998, when the York County Grand Jury convened upon their oath and true billed the indictments in this case, " family court still retained jurisdiction" and the later subsequent event of the Grand Jury could not operate to take away or oust family court first attached jurisdiction without family court first providing appellant with a hearing, notice, counsel, and statement of reason Kent v. United States, 86 S.ct 1045 (1966) and a order transferring jurisdiction to General Sessions pursuant to sections 20-7-400(A),(1),(d);20-7-7605(1),(6) Titled "Transfer of Jurisdiction ";20-7-6605(1),(2) of the children Code of Laws Act.The Appellant asserts that reading the Children code of laws Act as a whole and each section given legislature intent, the trial court was without the authority to exercise it's subject matter jurisdiction to accept his guilty plea and sentence him as an adult offender to a term of years of imprisonment because when the Grand Jury True Billed Appellant's indictments, the Court of General Sessions did not have jurisdiction . This is a State v. Funderburk, 259 S.C. 256, 191 S.E.2d 520 (1972); State v. McClure, 277 S.C. 432, 289 S.E.2d 158 (S.C. 1982) violation where our Supreme Court held " No indictments may be true billed by grand jury

when circuit court lacks jurisdiction, since grand jury's jurisdiction is coextensive with criminal jurisdiction of court in which is impaneled and for which it is to make inquiry".

In this case the Appellant's conviction and sentences should be vacated as a matter of law. It's clear Gordon was not charged with a Class A, B, C or D felony when he was taken into custody, the children code of laws Act applied to Gordon and the failure of family court to relinquish its first attached jurisdiction to General Sessions in a order with a statement of reason deprived the trial court of jurisdiction.. Therefore, the trial court erred when it summarily dismissed Appellants Motion to Vacate Conviction and sentence without considering all statutory law relating to the same general law, therefore, genuine issues of material fact existed as to whether Family Court acquired the first jurisdiction where the Appellant was found violating a criminal law and taken into custody based on probable cause in this case under sections 20-7-7205(a);20-7-6605(1),(2);20-7-400(a),(1),(d) and was not charged with a Class A, B, C, or felony as held by the trial court held in this case. . This court should vacate the conviction and sentence and or remand to the lower court for an evidentiary hearing under *McCoy v. State*, 737 SE.2d 623 (2013) where our Supreme Court remanded for an evidentiary hearing where a genuine issue of material fact exist.

***The trial court committed* error *of law and abused it discretion when the trial court did not make findings of fact and conclusion of law in it's order summarily dismissing Appellant's claims raised in his motion to vacate conviction and sentence without a hearing that of*:**

(1) The Children Code of Laws Act was unconstitutionally vague under the due process clauses of South Carolina Constitution Article one section 3 and the 14th amendment to the United States Constitution as applied to him because the term "who is Charged" or the term "[Charged]" as outlined in section 20-7-6605(1) of the Children Code of Laws Act does not set forth the proper standard for adjudication as applied to him being ***"sixteen years of age found violating a criminal law and taken into family court custody/jurisdiction based on probably cause" under sections 20-7-7205(a);20-7-6605(1),(2);20-7-400(a),(1),(d). Appellant asserted his conviction under it was not merely erroneous, but illegal and void under Ex Parte Siebold 100 U.S. 371-77 (1879) holding.***

The trial court made findings of fact and conclusion of law that because the Appellant was 16 years old and ***"[C]harged" with a Class A, B, C or D felony as defined in section 16-1-20 at the time of his guilty plea, general sessions court properly had jurisdiction.*** The trial court order does not make findings of fact and conclusion of law whether Appellant's conviction and sentence should be vacated because the Children Code of Laws Act is unconstitutionally vague under the due process clauses of South Carolina Constitution Article one section 3 and the 14th amendment to the United States Constitution as applied to him because the term "***who is Charged***" or the term "[***Charged***]" as outlined in section 20-7-6605(1) of the Children Code of Laws Act does not set forth the proper standard for adjudication as applied to him being ***"sixteen years of age found violating a criminal law and taken into family court custody/jurisdiction based on probable cause" under sections 20-7-7205(a);20-7-6605(1),(2);20-7-400(a),(1),(d) pending family court jurisdiction until approx 90 days later at a subsequent grand jury proceedings October 19,1998 charged with a Class A,B,C or D felony. Appellant asserted his conviction under it was not merely erroneous, but illegal and void under Ex Parte Siebold 100 U.S. 371-77 (1879) holding*** **and should be vacated as a matter of law.** Appellant asserts a ruling on this claim is very important in light of his legal argument set forth. This Court should vacate the conviction and sentence and or remand to the lower court to make findings if fact and conclusion of law under *Fishburne v. State, 832 SE2d 584 (2019) (Finding PCR court did not make specific findings of fact and conclusion of law on all*

claims raised). Therefore, the lower court erred when it summarily dismissed the Appellant's motion to vacate conviction and sentence without a hearing.

Conclusion of law

It is respectfully asked that this Honorable Court reverse the trial court decision and Vacate Appellant's conviction and sentence and or remand to the lower court for a hearing or whatever relief this Court deems necessary and proper.

Respectfully Submitted

Antonio Gordon#259798

December 31, 2021

THE STATE OF SOUTH CAROLINA

IN THE COURT of Appeals

APPEAL FROM YORK COUNTY

COURT OF GENERAL SESSIONS

William A. McKinnon, Chief Judge

1998-GS-46-2847;2849;2851

STATE OF SOUTH CAROLINA, Respondent,

v.

ANTONIO GORDON, Appellant.

Certificate of Service

The undersigned hereby certifies that one copy of Appellant's Initial Brief in the above entitled case has been served upon opposing counsel, Walter William Thompson, Sr, Deputy Solicitor 1675-1A York Hwy, York SC 29745, and Alan Wilson P.O. Box 11549. Columbia, S.C. 29211, by mailing in an envelope properly addressed with postage prepaid on this 28th day of ~~October 2021.~~ 31 December 2021

York County General Sessions Clerk of Court

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~~York County General Sessions Clerk of Court~~

~~1675 York Hwy # 1G, York, SC 29745~~

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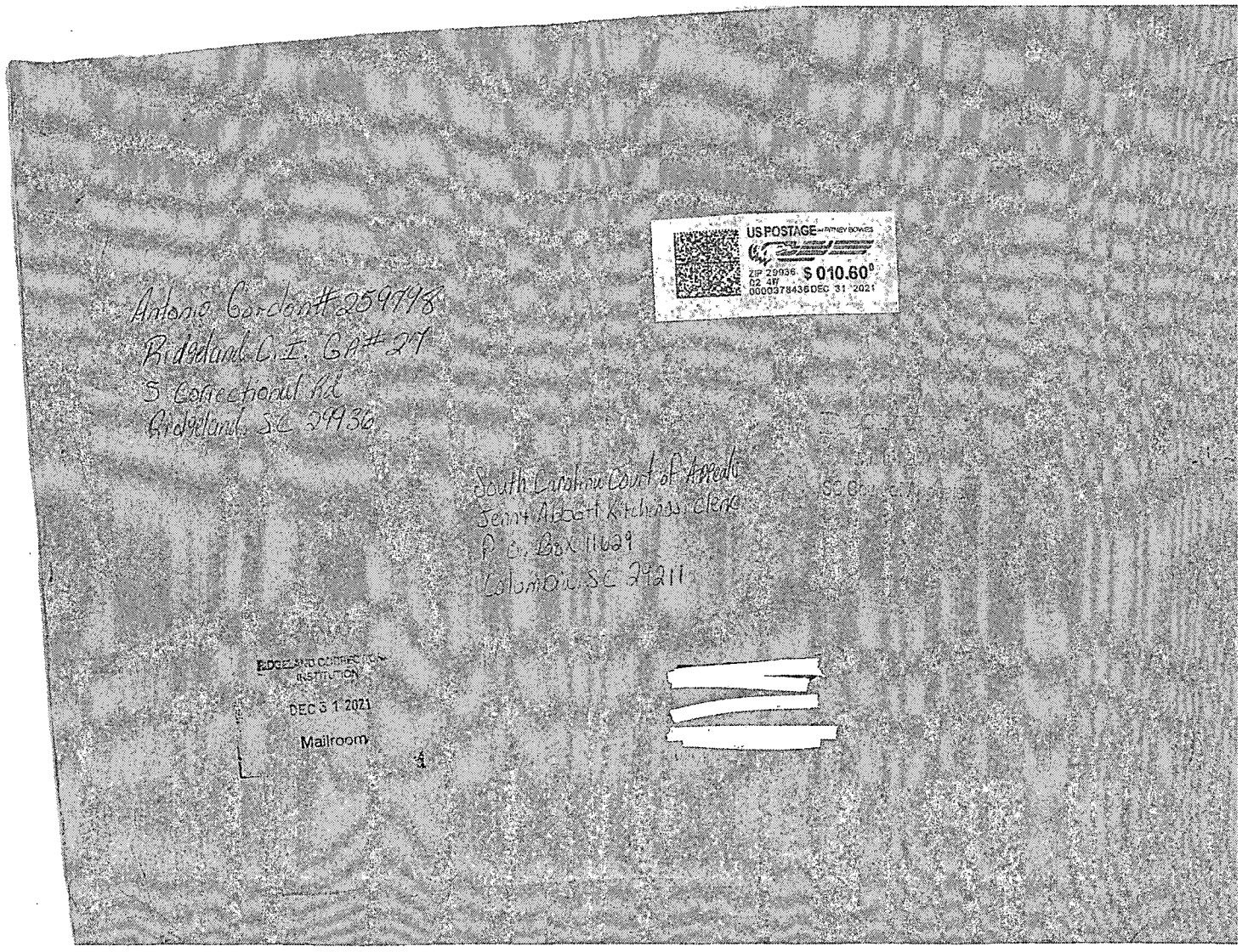
Kershaw, SC 29067

The Record on Appeal was also served on all parties This same day December 31, 2021

RE: State v. Gordon
Appellate Case NO: 2021-001280

Please find enclosed Appellant's Initial Brief and Record on Appeal. Also enclosed a motion to Relax the Rule on number of copies to file. Thanks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