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May 25 2022

SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from York County
Honorable William A. McKinnon, Circuit Court Judge
Appellate Case Tracking No. 2021-001280

The State,

Respondent,

vs.

Antonio Gordon,

Appellant.

INITIAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

- I. The circuit court did not err in denying Appellant's Motion to Vacate Conviction and Sentence because the allegation does not implicate subject matter jurisdiction so it was not timely raised and, even if properly raised, subject matter jurisdiction to accept Appellant's various pleas was proper in the Court of General Sessions.

STATEMENT OF THE CASE

This case has a very long and tortured procedural history.¹ On October 15, 1998, the York County Grand Jury indicted Appellant for murder, three counts of possession of a firearm 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. On July 16, 1999, after a Jackson v. Denno hearing, Appellant pled guilty as charged. The plea was a negotiated plea in which the State agreed to dismiss a carjacking charge and asked for a total sentence of forty years in prison. On July 19, 1999, the Honorable John C. Hayes, III, sentenced Appellant to thirty years imprisonment for murder. He sentenced Appellant to five years, concurrent, for each count of possession of a weapon during commission of a violent crime; five years, concurrent, for criminal conspiracy; five years, concurrent, for possession of a weapon by a person under twenty-one; ten years, concurrent, on one count of attempted armed robbery; and ten years, consecutive to the thirty-year sentence, on the final count of attempted armed robbery.

Appellant filed a direct appeal from his plea, which was dismissed pursuant to Anders v. California. Subsequently, he has made, at a minimum, the following filings: First State PCR Application; First State PCR Appeal; Second State PCR Application; First Federal Habeas Corpus Application; First State Habeas Corpus Application; Third State PCR Application; “State Habeas Corpus Action in the Supreme Court’s Original Jurisdiction”; “Belated Notice of Appeal” from First State PCR Application; Second Federal Habeas Corpus Application; Rule 29(b), SCCrimP Motion for a New Trial; an Appeal from Rule 29(b), SCCrimP Motion for a New Trial; and a Second State Habeas Corpus Application.

¹ The following is not a complete recitation of every application, motion, petition or other filing made by Appellant but is intended to give the Court a brief overview of the procedural background.

On or around September 9, 2021, Appellant served a Notice and Motion to Vacate Conviction and Sentence Based on “Lack of Subject Matter Jurisdiction” on the Solicitor and filed a copy with the circuit court. The court indicated it received a copy of the Motion on September 28, 2021. The circuit court issued an Order Denying Motion to Vacate Conviction and Sentence, which was signed on October 13, 2021, and filed October 18, 2021. Appellant received the Order on October 26, 2021, and served his Notice of Appeal October 27, 2021.

STATEMENT OF FACTS

At his plea hearing, the solicitor presented the facts underlying the murder and other charges faced by Appellant. On July 23, 1998, the defendant, along with other co-defendants, discussed robbing the victim and another individual and stealing the vehicle they were in. Appellant exited the vehicle he and his co-defendants were riding in and took a pistol belonging to a co-defendant with him. He approached the vehicle's window where the victim was sitting. He put his hand on the car door trying to open it while pointing the gun at the victim. Appellant's palm print was obtained from the door exactly where witnesses indicated it would be located. Ultimately, Appellant shot the victim, took the gun back to the car, and ran off. (Plea Transcript pp. 187-188; R.____). Appellant was sixteen when he committed the crimes. (2003 PCR Transcript p.19; R.____).

ARGUMENT

- I. **The circuit court did not err in denying Appellant's Motion to Vacate Conviction and Sentence because the allegation does not implicate subject matter jurisdiction, so it was not timely raised, and even if properly raised subject matter jurisdiction to accept Appellant's various pleas was proper in the Court of General Sessions.**

Appellant contends the circuit court erred in denying his motion to vacate his conviction, arguing the Court of General Sessions did not have subject matter jurisdiction to accept his plea because he should have been treated as a juvenile and adjudicated in family court. Initially, whether the Court of General Sessions or Family Court is the appropriate court for consideration of Appellant's charges does not implicate subject matter jurisdiction. Because the issue does not implicate subject matter jurisdiction, it cannot be raised at any time and is not properly before this Court. Further, even if the claim involves subject matter jurisdiction, the Court of General Sessions has subject matter jurisdiction to hear a plea for murder. Finally, the Court of General Sessions properly heard Appellant's plea because he was sixteen at the time of the murder and, pursuant to section 20-7-6605(1) of the South Carolina Code (Supp. 1998), he was not a child for purposes of the Family Court having the ability to adjudicate his charges.

Initially, this Court has recently articulated: "Few principles of South Carolina criminal law are as ingrained as the notion that a knowing, voluntary, and intelligent guilty plea 'constitutes a waiver of nonjurisdictional defects and claims of violations of constitutional rights.'" State v. Sims, 423 S.C. 397, 400, 814 S.E.2d 632, 633 (Ct. App. 2018) (quoting State v. Rice, 401 S.C. 330, 331–32, 737 S.E.2d 485, 485 (2013)). This has long been the rule in South Carolina and has been upheld numerous times in both appellate courts. See State v. Munsch, 287 S.C. 313, 314, 338 S.E.2d 329, 330 (1985) ("Guilty pleas act as a waiver of all non-jurisdictional defects and

defenses.”); Whetsell v. State, 276 S.C. 295, 297, 277 S.E.2d 891, 892 (1981) (“The general rule is that guilty pleas, freely and voluntarily entered, act as a waiver of all non-jurisdictional defects and defenses, including the claims of a violation of a constitutional right prior to the plea.”); Vogel v. City of Myrtle Beach, 291 S.C. 229, 231, 353 S.E.2d 137, 138 (1987) (“[A guilty plea] conclusively disposes of all prior issues including independent claims of deprivations of constitutional rights.”); State v. Thomason, 341 S.C. 524, 526, 534 S.E.2d 708, 710 (Ct. App. 2000) (“A guilty plea generally acts as a waiver of all non-jurisdictional defects and defenses.”). As a result, all claims by Appellant other than a claim related to the subject matter jurisdiction of the Court of General Sessions were waived by his knowing and voluntary guilty plea.

Appellant’s claim that he should have been in Family Court instead of the Court of General Sessions does not implicate subject matter jurisdiction. Subject matter jurisdiction, as defined by our South Carolina Supreme Court, is “the power of a court to hear and determine cases of the general class to which the proceedings in question belong.” State v. Gentry, 363 S.C. 93, 100, 610 S.E.2d 494, 498 (2005). Appellant is not challenging the Court of General Sessions’ power to hear a guilty plea for murder. He is solely challenging his appearance in the Court of General Sessions as opposed to Family Court because he asserts he was a “child” entitled to a hearing in Family Court and subject to the exclusive jurisdiction of the Family Court.

The question of a waiver from Family Court to the Court of General Sessions does not implicate subject matter jurisdiction. As our Supreme Court stated: “an erroneous order transferring a juvenile to general sessions court would be a judicial error—not a jurisdictional error.” State v. Rice, 401 S.C. 330, 333, 737 S.E.2d 485, 486 (2013). The Court in Rice relied on a case from the Iowa Supreme Court in which that court found: “A juvenile court might enter an erroneous order waiving jurisdiction. Such an order, however, does not undermine the district

court's subject matter jurisdiction to conduct the criminal proceedings, accept a plea of guilty, and sentence the defendant-juvenile. In short, the error is judicial, not jurisdictional.” State v. Yodprasit, 564 N.W.2d 383, 386 (Iowa 1997). As a result, Appellant’s claim that he failed to get a proper waiver hearing from Family Court to the Court of General Sessions does not implicate a jurisdictional question and cannot be raised at any time. See e.g., State v. McBride, 416 S.C. 379, 386, 786 S.E.2d 435, 438 (Ct. App. 2016) (finding argument that the circuit court lacked subject matter jurisdiction to hear the case because he was sixteen at the time of the alleged crime and the case was not properly transferred to the court of general sessions did not implicate subject matter jurisdiction and could not be raised at any time). Like all other issues, including constitutional issues, any argument about a judicial error by the Family Court or the Court of General Sessions was waived by his knowing and voluntary guilty plea.

Even if his claim somehow implicates subject matter jurisdiction, the Court of General Sessions clearly has subject matter jurisdiction to hear a plea for murder, attempted armed robbery, conspiracy, and the weapons charges. See 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.”); see also, State v. Odom, 382 S.C. 144, 150, 676 S.E.2d 124, 127 (2009) (“There is no dispute that the circuit court qualifies as a court of general criminal jurisdiction under the South Carolina Constitution.”); State v. Smalls, 364 S.C. 343, 346, 613 S.E.2d 754, 756 (2005) (“The court of general sessions has subject matter jurisdiction to try criminal cases.”); Gentry, 363 S.C. at 101, 610 S.E.2d at 499 (“Circuit courts obviously have subject matter jurisdiction to try criminal matters.”). As a result, Appellant’s plea was properly heard and accepted in the Court of General Sessions.

Finally, Appellant's claim he should have been in Family Court is without merit based on the language of the statute defining a "child" for purpose of Family Court jurisdiction. The statute in effect at the time of Appellant's plea specifically provided:

"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.

S.C. Code Ann. § 20-7-6605(1) (Supp. 1998) (emphasis added). As the circuit court held in denying his Motion to Vacate Sentence and Conviction, Appellant was sixteen at the time he was charged with murder and various other crimes. His crimes constituted Class A, B, C, or D felonies or provided for a maximum term of imprisonment of fifteen years or more. See e.g., S.C. Code Ann. § 16-3-20 (Supp. 1998) (providing for punishment for murder by death, by imprisonment for life, or by a mandatory minimum term of imprisonment for thirty years). As a result, his plea was properly heard in the Court of General Sessions because the Solicitor did not exercise his statutory discretion to remand the case to Family Court.

Accordingly, the circuit court properly denied Appellant's Motion to Vacate Sentence and Conviction because his plea was properly heard in the Court of General Sessions and his guilty plea waived any non-jurisdictional defect.

CONCLUSION

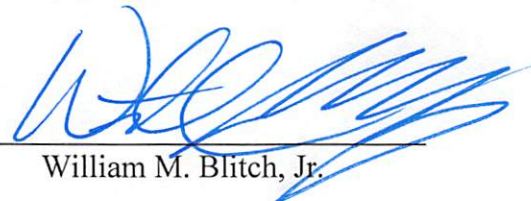
For all the foregoing reasons, it is respectfully submitted that the Order Denying Motion to Vacate Conviction and Sentence of the lower court be affirmed.

Respectfully submitted,

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KEVIN S. BRACKETT
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ATTORNEYS FOR RESPONDENT

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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from York County
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Antonio Gordon,

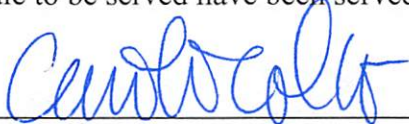
Appellant.

PROOF OF SERVICE

I, Caroline Collins, certify that I have served the within Initial Brief of Respondent and Designation of Matter on Appellant by having two copies delivered to:

Antonio Gordon, *pro se* Appellant
#259798, GA-0039-A
Ridgeland Correctional Institution
Post Office Box 2039
Ridgeland, South Carolina 29936

I further certify that all parties required by Rule to be served have been served.
This 25th day of May, 2022.



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SC Court of Appeals

ALAN WILSON
ATTORNEY GENERAL

May 25, 2022

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RE: State v. Antonio Gordon
Appellate Case No. 2021-001280

Dear Mr. Gordon:

I am enclosing two (2) copies of the Initial Brief of Respondent and Designation of Matter in the above-referenced case.

Sincerely,

William M. Blich, Jr.
Senior Assistant Deputy Attorney General
S.C. Bar No. 15608

Enclosures

cc: Honorable Jenny A. Kitchings (Via electronic filing)
Victim Advocacy Division