

The State of South Carolina

In the Court of Appeals

The State, Respondent

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JUN 02 2022

SC Court of Appeals

v

Terron Dizzley, Gwendolyn B. Frasier, LaQuesha Felder, Appellants

Appellate Case No. 2022-000671

MOTION TO REINSTATE

Petitioners, Terron Dizzley, Gwendolyn B. Frasier and LaQuesha Felder move before this Honorable Court, requesting that their appeal in the above matter is reinstated pursuant to SCACR Rules 260 and 203 pursuant this Court's order that Petitioners' notice of appeal was untimely on the grounds that:

SUBJECT MATTER JURISDICTION MAY BE RAISED AT ANY TIME, EVEN FOR FIRST TIME ON

APPEAL

- (1) The order that Petitioners are appealing is from the judgment of Petitioners' Motion for Emergency Petition for Immediate Release Pursuant to Double Jeopardy, False Imprisonment, Lack of Trial Court Jurisdiction to Impose Sentence.

Petitioners have provided the courts, pursuant to this case, with evidence supported with facts, state, federal, and United States Supreme Court laws which proves that he is falsely imprisoned, deprived of his liberty for eight years and counting pursuant to an unlawful conviction and sentence in which The Georgetown County Court of General Sessions had no legal nor jurisdictional authority to make. Petitioner, Terron Dizzley's unlawful deprivation of

his liberty began in 2008 when he was kidnapped, unlawfully seized by The Georgetown County Sheriff Department pursuant to an invalid, constitutionally deficient arrest warrant which did not establish any probable cause. It was also found, through post-investigations, that his arrest warrant was obtained, by making false declarations to the magistrate by Investigator Melvin Garrett, of The Georgetown County Sheriff's Department. Petitioners contend that following Terron Dizzley's unlawful arrest, he was unlawfully prosecuted twice, once in 2012 and again 2014, without presentment nor indictment by a grand jury, which resulted in an unlawful conviction, which also violated the Fifth Amendment Double Clause.

According to clearly established United States Supreme Court law in *Exparte Wilson*, 114 U.S. 417, (1885), It was held that, "Holding Petitioner to answer for such infamous crime, and sentencing him to such imprisonment without indictment or presentment by a grand jury, exceeded its jurisdiction, and he is, therefore, entitled to be discharged."

The United States Supreme Court has also established, in *Exparte Lange*, 85 U.S. 163 (1873) that "A second judgment of the same verdict is, under such circumstances, void for want of power, and it affords no authority to hold the party a prisoner, and he must be discharged."

Petitioners, Gwendolyn B. Frasier, Petitioner's mother, and Petitioner, LaQuesha Felder, Petitioner's wife, have also provided facts supported by clearly established federal law that The State of South Carolina's unlawful deprivation of Petitioner, Terron Dizzley's liberty, without any legal nor jurisdictional authority, also deprived them of their First and Fourteenth Amendment Rights to Familial Association with Petitioner, Terron Dizzley, as well the Familial Rights of his children.

Therefore, according to clearly established United States Supreme law and South Carolina Supreme Court law, as long as Petitioner remains kidnapped, falsely imprisoned pursuant to an unlawful conviction and sentence of which The Georgetown Court of General Sessions had no legal nor jurisdictional authority to make, the jurisdiction of The South Carolina Court of Appeals, and The General Sessions Court of Georgetown County is never lost, and The South Carolina Court of Appeals and The Georgetown County Court of General Sessions must correct the wrong that they have done.

Petitioners contend that it is clearly established by South Carolina's own Supreme Court laws that: See: State v Guthrie, 352, S.C. 103 (2002), "The lack of subject matter jurisdiction over a criminal case can be raised at any time, can be raised for the first time on appeal, and can be raised Sua Sponte by the Court. Lack of subject matter jurisdiction over a criminal case may not be waived, even by consent of all parties, and should be taken notice of by appellate court. The acts of court with respect to a matter as to which it had not jurisdiction are void." State v Funderburk, 259 S.C. 256 (1972), 'We think it elementary, with no need for citation of authority, that the acts of court with respect to a matter as to which it had no jurisdiction are void. The jurisdiction of a grand jury is co-extensive with the criminal jurisdiction of the court of which it is impaneled and for which it is to make inquiry. The court being without jurisdiction, the indictment in this case was nullity. It is elementary that lack of jurisdiction of the cause or subject matter can be raised at any time, including for first on appeal in the Court. State v Kastleman, 219, S.C. 136 (1951). According, it is immaterial that the defendant failed to appeal from the earlier of Judge Baker or the intermediate ruling of Judge Weatherford, even if it be

assumed that he had a right to do.” See also: State v Crosby, 108 S.C. 315, (2019); State v Jentry, 363 S.C. 93 (2005).

TIMELINESS OF NOTICE OF APPEAL FILED

2. Petitioners contend that although subject matter jurisdiction can be raised at any time, even for first time on appeal, therefore, the rules pursuant to time for filing an appeal does not apply to this case. However, to preserve the record, Petitioners still address The South Carolina Court of Appeals order indicating that their notice of appeal was untimely. The record shows that on *April 25, 2022*, Petitioners filed An Emergency Motion to Alter and Amend pursuant to The Honorable Judge Benjamin H. Culbertson’s ruling, which was not based on findings of facts and conclusions of law pursuant to the merits of their case.

Petitioners contend that their motion to alter and amend was filed and Petitioners Felder and Frasier were the only parties that received notice of Judge Culbertson’s order denying Petitioner’s Motion for Immediate Release of Terron Dizzley. Petitioners also address to the trial court that The Clerk of Court of Georgetown County, Alma Y. White, has been depriving Petitioner, Terron Dizzley of access to the courts for eight years and counting, refusing to docket and file any of Petitioner’s motions appealing his unlawful convictions, therefore, violating Petitioner’s First and Fourteenth Amendment Rights to access the court.

After **21** days of not hearing anything from their Emergency Motion to Alter and Amend, Petitioners took this to believe that they were, again, being deprived from accessing the courts, which is exactly what occurred. Therefore, on **May 16, 2022**, Petitioners filed A Notice of Appeal to The South Carolina Court of Appeals. However, on **May 18, 2022**, The Honorable Judge Culbertson issued an order **only** to Petitioners Frasier and Felder stating that because

Petitioners filed a notice of appeal that he now lacked jurisdiction to rule on Petitioners' Emergency Motion to Alter and Amend, which is contrary to clearly established South Carolina Supreme Court laws. See: Hudson v Hudson, 290 S.C. 215 (1986), "Service and filing of notice of appeal before filing of timely post-trial motions by any party does not deprive lower court of jurisdiction to consider motions." It is clear, from the record, that Judge Culbertson was not going to respond to Petitioners' Emergency Motion to Alter and Amend, however, once Petitioners filed the notice of appeal, Judge Culbertson intentionally used the fact that Petitioners filed the notice of appeal as an opportunity to, again, abuse his discretion, by misapplying the law, stating that he lacks jurisdiction to rule on Petitioners' case as a reason not to rule on the merits of Petitioners' case. It is clear, from the record, that although Petitioners provided the Courts with proof and evidence supported by clearly established United States Supreme Court laws that Petitioner, Terron Dizzley, is falsely imprisoned, without any legal nor jurisdictional authority, the Court's theory is that, if they refuse to adjudicate Petitioners' case, that they could continue to illegally keep falsely imprisoned/kidnapped, therefore depriving Petitioner, Terron Dizzley, of his liberty, and continue to deprive Petitioners, Gwendolyn B. Frasier, LaQuesha and his family of their First and Fourteenth Amendment Right to Familial Association with him.

Petitioners contend that it is clearly established by The South Carolina Supreme Court that a motion to alter and amend judgment tolls the time for filing notice of appeal. See: Otten v. Otten, 287 S.C. 166 (1985), "Husband moved to remand case noticed for appeal to trial court for consideration of his pending motion to alter and amend judgment and to correct clerical mistakes in judgment, asserting that he filed appeal solely because he was uncertain as to the

effect such motions would have upon time for appeal. When motion, under 59 (e) to alter and amend judgment is made, time for appeal from judgement begins to run from the time of order granting or denying motion to alter or amend.” See also: Gallagher v Evert, 353 S.C. 59 (2002); Elam v South Carolina Dept. of Transp., 361 S.C. 9 (2004).

Therefore, according to The South Carolina Court of Petitioners ‘ Notice of Appeal was not untimely filed, because the time to file notice of appeal tolled when Petitioners file their motion to alter and amend judgment.

NOTICE FOR FILING APPEAL UNDER RULE 203, SCACR

3. Petitioner, Terron Dizzley, contends that he has never received notice of any rulings nor judgments pursuant to this case from The Georgetown County Clerk of Court nor from The Honorable Judge Culbertson. Petitioner, Terron Dizzley and Petitioner, Gwendolyn B. Frasier, contend that each time Petitioner Frasier received notice of entry of the judge’s ruling pursuant to their case, she informed Petitioner, Terron Dizzley, her son, of the contents of the judge’s orders via telephone.

Therefore, according to South Carolina Appellate Court Rule 203, Petitioner, Terron Dizzley’s, time for filing an appeal did not begin to run until he received a full order, in writing, from the Courts. Because Petitioner, Terron Dizzley, has never received any notices from the Courts, he cannot be time barred from filing a notice of appeal. See: South Carolina Dept. of Mental Health v Glass, 269 S.C. 91 (1977), “The respondent asks the dismissal of the appeal on the grounds that the notice of appeal was not given in due time. It appears that the judgment appealed from was file in vacation and that no notice, in writing, was given to the appellate of its entry. It is contended, however, that the appellate had actual knowledge of the judgment,

having seen, and read it in the office of the clerk. This was not grounds sufficient to put the statute laws for appealing in currency in the case of a judgment entered in vacation. The object of the notice is to apprise the appellate that the respondent intends to insist on an appeal within the time fixed by law and unless such notice is given to appellate is unrestricted as it regards to the time in which an appeal can be taken. See also: Coker v Cummings, 381 S.C. 46 (2008); Wells Fargo Bank , N.A. v Fallon Properties South Carolina, LLC, 422 S.C. 211 (2018).

4. Petitioners contend that The South Carolina Court of Appeals must not abuse the law which was created for the Equal Protection of Laws for citizens from deprivations of life, liberty or property as a tool to deprive Petitioner, Terron Dizzley, of his liberty by erroneously using jurisdictional rules as a reason not to rule on Petitioners' case in order to keep Petitioner kidnapped and falsely imprisoned which is exactly what the Constitution forbids. See: Exparte Lange, 85 U.S. 163 (1873), "Where probable ground is shown that the party is in custody under or by color of authority of the United States, and is imprisoned without just cause, and, therefore, has a right to be delivered, the writ of habeas corpus then becomes a writ of right which may not be denied, as it ought to be granted to every man who is unlawfully committed or detained in prison or otherwise restrained of his liberty." See: Bell v. Hood, 327 U. S. 678 (1946), "Action against FBI officers for damages for illegal arrest, false imprisonment, and unlawful searches and seizures of property belonging to plaintiffs. A judgment dismissing the complaint for lack of jurisdiction was affirmed by the Circuit Court of Appeals, and plaintiff brings certiorari. Reversed. It is estimated practice for the Supreme Court to sustain the jurisdiction of federal courts to issue injunctions to protect rights safeguarded by the Constitution and to restrain individual state officers from doing what the Fourteenth Amendment forbids the state to do. Where federally protected rights have been invaded, courts will be alert to adjust their remedies so as to grant the

necessary relief, and federal courts may use “any” available remedy to make good the wrong done.”. Sanders v U.S., 371 U.S. 1(1963), “A prisoner who claims that his sentence was imposed in violation the Constitution or laws of the United States, may seek relief from the sentencing by filing a motion in the sentencing court stating the facts of his claim. Conventional notions of finality of litigation have not place where life or liberty is at stake, and infringement of Constitutional Rights are alleged.” Faye v Noia, 372 U.S. 39 (1963) “Conventional notions of finality in criminal litigation cannot be permitted to defect manifest federal policy that federal constitutional rights of personal liberty are not be denied without fullest opportunity for plenary federal judicial review. State courts, equally with federal court are charged with duty of protecting an accused in enjoyment of his constitutional rights. U. S. Ohio Power Co., 353 U.S. 98, (1957), “The interest in finality of litigation “must yield” where interest of justice would make unfair, strict application of Supreme Court’s rules.”

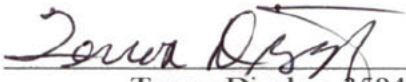
Therefore, it clearly established by The Supreme Court of the United States that the Court’s rules, including jurisdictional rules, were not made to be strictly applied nor abused to deprive a person of their life, liberty and property and the finality in criminal litigations under such circumstances must yield, the courts must make good the wrong done. See: Exparte Virginia, 100 U.S. 339 (1879), “Whoever by virtue of public position under a state government deprives another of property, life, or liberty without due process of law or denies or takes away the equal protection of law violates the Fourteenth Amendment of the Constitution, U.S.C.A., his act being that of the State. One purpose of The Thirteenth and Fourteenth Amendments to the federal constitution, was to raise the colored race from the conditions of inferiority and servitude into perfect equality of civil rights with all other persons within the jurisdiction of states.

For the foregoing reasons stated subject matter jurisdiction may be raised at any time, even for first time on appeal and finality of litigation in criminal cases must yield where life and liberty are at stake. Therefore, Petitioners respectfully request that their appeal is reinstated. See also: Notice of Appeal filed pursuant to judgment of The Honorable Judge Benjamin H. Culbertson's ruling on Petitioners Motion to Alter and Amend.

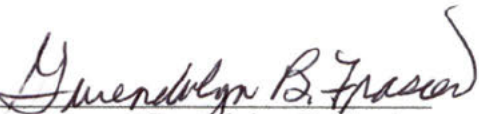
Date: May 31, 2022


Respectfully submitted,

South Carolina Court of Appeals
P.O. Box 11629
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S. 
Terron Dizzley, 339480
4460 Broad River Road
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Gwendolyn B. Frasier
7996 Pennyroyal Road
Georgetown, SC 29440

S. 
LaQuesha Felder
1440 Baxley Street
Orangeburg, South Carolina 29115

The South Carolina Court of Appeals

The State, Respondent,

v.

Terron Gerhard Dizzley, Appellant

Appellate Case No. 2022-000671

ORDER

This appeal arises out of an order of the circuit court dated April 12, 2022. Appellant received written notice of the order on April 19, 2022. The proof of service provided with the notice of appeal shows service on May 11, 2022. Because the notice of appeal was not timely served, the appeal is dismissed. *See State v. Devore*, 416 S.C. 115, 119, 784 S.E.2d 690, 692 (Ct. App. 2016) (noting timely service of the notice of appeal is a jurisdictional requirement); Rule 203(b)(2), SCACR ("After a plea or trial resulting in conviction or a proceeding resulting in revocation of probation, a notice of appeal shall be served on all respondents within ten (10) days after the sentence is imposed. In all other cases, a notice of appeal shall be served on all respondents within ten (10) days after receipt of written notice of entry of the order or judgment."). The remittitur will be sent as provided by Rule 221(b) of the South Carolina Appellate Court Rules.


FOR THE COURT C.J.

Columbia, South Carolina

cc:

Terron G. Dizzley, 00359480

Gwendolyn B. Frasier

Charles David Barr, Esquire
Alan McCrory Wilson, Esquire
Melody Jane Brown, Esquire

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May 24 2022

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SC Court of Appeals

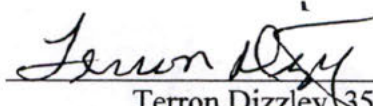
Terron Dizzley, Gwendolyn B. Frasier, LaQuesha Felder, Appellants

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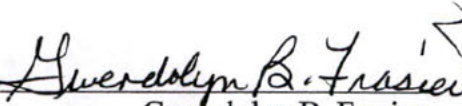
Certificate of Service

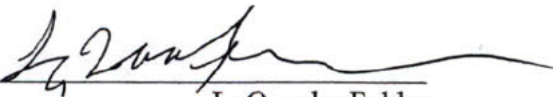
I, Terron Dizzley, Gwendolyn B. Frasier, LaQuesha Felder, certify that on this 31 day of May, 2022, have served an Emergency Motion to Reinstate to the Courts by placing in the U. S. Mail, Postage Pre-paid, sent to the addresses below:

South Carolina Court of Appeals
P.O. Box 11629
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S. 
Terron Dizzley, 359480
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Notice

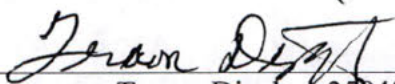
Dear Clerk:

Enclosed, please find one original and three copies of an Emergency Motion to Reinstate, Stamp Filed. Please send copy to all Petitioners.

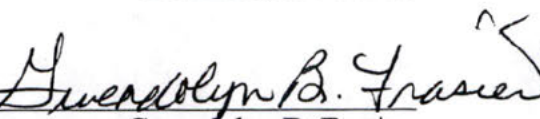
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