

IN THE SUPREME COURT OF MISSOURI
EN BANC

STATE ex rel. DWIGHT LAUGHLIN,)
)
 Petitioner,)
)
 vs.) No. SC90542
)
 MICHAEL BOWERSOX,)
)
 Respondent.)

Original Proceeding in Habeas Corpus

REPLY BRIEF OF PETITIONER
DWIGHT LAUGHLIN

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ARGUMENT

Laughlin is entitled to an order discharging him from the sentence imposed in Case No. CR493-118FX, because the trial court lacked jurisdiction, in that the alleged crimes occurred at the United States Post Office in Neosho, Missouri, a federal enclave over which federal courts have exclusive jurisdiction under Article I, section 8, clause 17 of the United States Constitution and Sections 12.010 and 12.020, RSMo.

A. The Trial Court Acted Without Jurisdiction Because the Federal Courts Have Exclusive Jurisdiction Over the United States Post Office in Neosho, Missouri

In Section 12.020, RSMo., the State of Missouri unambiguously ceded exclusive jurisdiction to the United States over federal lands acquired under Section 12.010 and located in Missouri, save for the State of Missouri retaining the right to serve civil and criminal process on those lands:

The jurisdiction of the state of Missouri in and over all land acquired as provided in section 12.010 is granted and ceded to the United States so long as the United States owns the land; except that there is reserved to the state of Missouri, unimpaired, full authority to serve and execute all process, civil and criminal, issued under the authority of the state within the lands or the buildings.

The State “concedes that the post office is under the exclusive jurisdiction of the federal government.” Resp’s Br. pg. 10 n.1. If, as the State concedes, the post office is under the exclusive jurisdiction of the federal government, then Missouri courts necessarily lack jurisdiction over criminal offenses committed therein as a matter of law. Under Section

12.020, the jurisdiction of the federal government is exclusive, not concurrent with jurisdiction in the State of Missouri.

The State contends that the trial court had jurisdiction under Section 541.191.1(1) and 541.191.1(3) because Laughlin demonstrated intent to commit the crime in Missouri, the results of Laughlin's crime occurred in Missouri, and because Laughlin's conduct constituted an attempt to commit a burglary. The State engages in sheer speculation unsupported by the record concerning Laughlin's intent outside of the post office (Resp's Br. pg. 11) and concerning the impact of the alleged crimes on the residents of Neosho (Resp's Br. pg. 13). Then, the State suggests that Laughlin's alleged acts of wearing dark clothing and carrying tools at night amounts to an "attempt" under section 541.191.1(3), a position the State concedes that Missouri courts have not considered or adopted. Resp's Br. pg. 15-17.

Even if this Court were inclined to decide that wearing dark clothing and carrying tools at night is sufficient to constitute an "attempt" under Missouri's criminal statutes, a frightening change in Missouri's criminal laws, there is no need to reach, and it would be improper to reach, that holding here because Section 12.020, ceding exclusive jurisdiction to the federal courts, trumps Section 541.191.1 as well as 541.020 (general jurisdiction of Missouri circuit courts over felony offenses). "A specific statute prevails over a general one." *State ex rel. Fort Zumwalt Sch. Dist. v. Dickherber*, 576 S.W.2d 532, 536 (Mo.banc 1979). "Statutes must be read in pari materia and, if possible, given effect to each clause and provision. Where one statute deals with a subject in general terms and another deals with the same subject in a more minute way, the two should be

harmonized if possible, but to the extent of any repugnancy between them the definite prevails over the general.” *Id.* at 536-37. *See also State ex rel. Casey’s Gen. Stores, Inc. v. City of West Plains*, 9 S.W.3d 712 (Mo.App. 2000) (same, citing *Fort Zumwalt*). In order to give full effect to Section 12.020’s cession of exclusive jurisdiction to the United States over lands acquired under Section 12.010, the Court should conclude that Section 12.020 prevails over Sections 541.191.1 and 541.020. A contrary holding renders the cession of exclusive jurisdiction in Section 12.020 meaningless. If, as the State concedes, the federal government has exclusive jurisdiction over the post office, then the federal government (i.e. federal courts) necessarily has exclusive jurisdiction over crimes committed therein. Indeed, the State acknowledges that burglary of a post office is a federal crime under 18 U.S.C. § 2115. Resp’s Br. pg. 14. This is not a situation, and the State does not claim otherwise, where a crime may have gone uncharged and unpunished had the Missouri trial court properly found that it lacked jurisdiction.

The State’s policy concern about state law enforcement officers and courts lacking jurisdiction to act should a crime involve acts in bordering states is unfounded. Resp’s Br. pg. 19-20. Under Section 541.191.1, Missouri courts have concurrent jurisdiction with other jurisdictions, except where, as here, there is a specific statute (Sec. 12.020) ceding exclusive jurisdiction to the federal courts. A finding by this Court that the trial court lacked jurisdiction to try and convict Laughlin will in no way change the law concerning the jurisdiction of Missouri courts when part of the crime occurs across the state line. In that case, Missouri courts do have jurisdiction and will continue to have jurisdiction, regardless of the outcome of this case. *See Cummins v. State*, 912 S.W.2d

523, 524 (Mo.App. 1995) (Missouri court had jurisdiction under Sec. 541.191.1(1) over drug defendant even if delivery occurred in Kansas). *See also State v. Drinkard*, 750 S.W.2d 630, 632 (Mo.App. 1988) ([W]e hold that this State has jurisdiction to prosecute a charge of conspiracy if the substantive criminal object of the conspiracy was committed in this State, although the conspiratory agreement was made in another state and one of the conspirators was not in this State when the object of the conspiracy was accomplished.”) (citing Sec. 541.191.1(2)).

Further, the State’s policy concern about police officers being unable to make an arrest until a burglary is actually committed is also unfounded. Resp’s Br. pg. 20. There is no contention that Neosho officers suspected Laughlin was about to commit a crime and arrested him outside of the post office. Instead, the record is that the post office alarm was tripped, a post office window was found ajar, and Laughlin was located and arrested inside the building. *State v. Laughlin*, 900 S.W.2d 662, 664 (Mo.App. 1995). A finding that the trial court lacked jurisdiction would have no bearing on the way the arrest was conducted in this case or in future cases involving state law enforcement response where a crime has been committed on federal lands. *See Farley v. United States*, 381 F.2d 357, 358 (5th Cir. 1967) (“[T]he federal statute, 18 U.S.C. § 2115, does not so preempt the field as to prevent a valid arrest by state officers for burglary....”)

There is no dispute that the land and building at issue here are under the exclusive jurisdiction of the federal government. Resp’s Br. pg. 10 n.1. Thus, the State of Missouri necessarily ceded its jurisdiction under Section 12.020 and retained no jurisdiction under Section 541.191.1 or any other general criminal statute. The jurisdiction of the federal

courts was evident from the face of the Third Amended Information, which plainly sets out that the both the building and safe were “owned by the United States Postal Service.” Pet’s Br. Appendix A6. Thus, the conviction against Laughlin was tainted with jurisdictional defect and should be remedied by way of habeas relief.

B. Grant of Habeas Relief is Proper to Remedy Jurisdictional Defects

The State claims that Laughlin’s claim is a successive claim barred by Rule 91, citing *State ex rel. Simmons v. White*, 866 S.W.2d 443, 446 (Mo. 1993). *Simmons* involved the issue of what claims may be remedied by way of habeas relief where the petitioner commits a procedural default and fails to raise a claim by way of appeal or motion for post-conviction relief. *Id.* at 445-46. Where a procedural default is committed, very limited issues may be raised by habeas review, and among those issues are jurisdictional issues. *Id.* at 446.

Here, Laughlin raised his claim of jurisdictional defect by Rule 29.15 motion, which motion was wrongly denied by the trial court. Under the State’s argument, Laughlin is without a remedy due to the trial court’s error in denying the Rule 29.15 motion even though Laughlin could have obtained habeas relief had he committed procedural default and then raised his claim of jurisdictional defect by way of habeas petition. That is an absurd result, which would reward trial court error and encourage delay in bringing of meritorious claims, and cannot have been what the Court intended in *Simmons*. Instead, the reasoning of *Simmons* is that a jurisdictional defect is a fundamental defect infecting the entire proceeding and thus may be raised at any time, regardless of whether raised by appeal or post-conviction motion and, in this case,

regardless of whether the trial court wrongly denied the Rule 29.15 motion challenging jurisdiction.

The State's suggestion that Laughlin's claim is barred because he "chose" not to pursue his jurisdictional claim on appeal is also unavailing. Resp's Br. pg. 9. Again, jurisdiction is separate from procedural default. A defense of lack of jurisdiction may not be waived and may be raised at any time. *State ex rel. Green v. Moore*, 131 S.W.3d 803, 805 n.6 (Mo.banc 2004). Laughlin's appointed counsel failed to raise lack of jurisdiction on appeal, constituting ineffective assistance of counsel, and thus separately entitling Laughlin to habeas relief under the "cause and prejudice" exception for grant of habeas relief. *See State ex rel. Meier v. Stubblefield*, 97 S.W.3d 476 (Mo.banc 2003). The State does not address this part of Laughlin's argument and offers no explanation for why Laughlin "chose" not to raise a valid jurisdictional challenge on appeal. In fact, there is no reason. Laughlin stood only to benefit, and had nothing to lose, from raising lack of jurisdiction on appeal. *See State ex rel. Koster v. Jackson*, 301 S.W.3d 586, 591 (Mo.App. 2010) (granting habeas relief, contrasting *Simmons*, and finding no evidence that petitioner deliberately bypassed post-conviction remedies and finding that habeas proceeding was petitioner's only avenue for relief). *See also* 18 U.S.C. § 2115 (maximum 5 year prison sentence for burglary of post office).

Laughlin seeks to remedy a jurisdictional defect by way of writ of habeas corpus. Contrary to the State's argument that this is a successive claim for which habeas relief is barred, this case is exactly the type of case where habeas relief is appropriate. Laughlin did not neglect to raise this claim; he raised the claim and it was improperly denied.

Certainly if habeas relief is available to raise jurisdictional defects where a petitioner neglects to raise the claim altogether by appeal or by post-conviction motion, habeas relief should be available here, where Laughlin did raise the claim by post-conviction motion and the trial court and lower court of appeals erred in denying the motion. Absent habeas relief, Laughlin has no means by which to challenge the erroneous lower court ruling that the trial court lacked jurisdiction. Laughlin has properly raised his claim by petition for writ of habeas corpus. This Court should enter a writ discharging Laughlin from the sentence imposed by the Circuit Court of Newton County because that court lacked jurisdiction to try, convict, and sentence Laughlin.

CONCLUSION

For the reasons stated herein, and in his underlying petition for writ of habeas corpus, Dwight Laughlin, petitioner, prays that the Court discharge him from the sentence imposed in Case No. CR493-118FX; and for such other and further relief as the Court deems just.

Respectfully submitted,

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**CERTIFICATE OF COMPLIANCE WITH
RULE 84.06 AND CERTIFICATE OF SERVICE**

Pursuant to Rule 84.06(c), counsel for Petitioner certifies that this brief includes the information required by Rule 55.03 and complies with the limitations contained in Rule 84.06(b). There are 2,097 words in this brief. Counsel for Petitioner relied on the word count of her word processing system in making this certification.

Pursuant to Rule 84.06(g), counsel for Petitioner certifies that the disk filed herewith has been scanned for viruses and is virus-free.

Further, counsel for Petitioner states that Petitioner's Reply Brief in the within cause was by her caused to be served, either by hand delivery, by ordinary mail, postage prepaid, or by overnight shipping service, in the following stated number of copies, addressed to the following named persons at the addresses shown, all on this ____ day of April, 2010:

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Subscribed and sworn to before me this ____ day of April, 2010.

Notary Public

My commission expires: