

## Jurisdictional Failings

"Absent required colloquy by magistrate judge, language printed on consent form was not sufficient to inform defendant of his rights under statute allowing defendant charged with misdemeanor to waive trial before district judge and to elect trial before magistrate judge, where the relevant portion of the consent form was three sentences long, and only one of the sentences addressed defendant's right to an Article III judge." U.S.C.A. Const. Art. 3, sec. 1 etseq; 18 U.S.C.A. sec 3401(b); FRCrP 58(b)(2), (b)(3)(A), 18 U.S.C.A. U.S. v. Gochis 196 F.R.D. 519 (2000)

"Court may always raise question of subject matter jurisdiction on appeal and in courts below." U.S. v. Prestenbach, 230 F.3d 780 (2000)

"Courts can always consider questions as to subject matter jurisdiction whenever raised and even sua sponte." U.S. v. White, 139 F.3d 998 cert den 119 S.Ct 343, 525 U.S. 393, 142 L.Ed.2d 283 (1998)

"Jurisdiction over a defendant requires both personal and subject matter jurisdiction." Boles v. State, 717 So.2d 877 (1998)

"Courts acquire authority to adjudicate matter if they have both subject matter and in personam jurisdiction." McKinney's CPL v. sec. 1.20 subd. 9. -- People v. Marzban, 660 N.Y.S.2d 808, 172 Misc.2d 987 (1997)

"Subject matter jurisdiction is determined from pleadings." Hall v. State, 933 S.W.2d 363, 326 Ark. 318, 326 Ark. 823 rehearing denied (1996)

"In its most fundamental or strict sense, 'jurisdiction' means an entire absence of power to hear or determine the case, an absence of authority over the subject matter or the parties, but the term may also refer to the situation where a court that has jurisdiction over the subject matter has no power to act except in a particular manner, or to give certain kinds of relief, or to act without the occurrence of certain procedural prerequisites; action 'in excess of jurisdiction' by a court that has jurisdiction in a fundamental sense is not void, but only voidable." People v. Burnett, 83 Cal.Rptr.2d 629, 71 Cal.App 151 (1999)

"Judgment made when the court lacks subject matter jurisdiction is void." Clark v. State, 727 N.E.2d 18, transfer denied 741 N.E.2d 1247 (2000)

"In a criminal action, the trial court must not only have jurisdiction over the offense charged, but over the question which the judgment presumes to decide." State v. Kraushaar, 957 P.2d 1106, 264 Kan. 667 "Information is the only vehicle by which a court obtains and has limits placed on its jurisdiction." -Id (1998)

"Court lacked jurisdiction over defendant charged with possession of loaded firearm such as would enable it to entertain defendant's motion to dismiss indictment on ground that diplomatic immunity created legal impediment to his conviction, where defendant failed to appear in court to be arraigned on accusatory instrument." -Id

"In legal prosecution, all legal requisites must be complied with to confer jurisdiction on the court in criminal matters, as district attorney cannot confer jurisdiction by will alone." People v. Page, 667 N.Y.S.2d 689, 177 Misc.2d 448 (1998)

Where the court is without jurisdiction, it has no authority to do anything other than to dismiss the case." Fontenot v. State, 932 S.W.2d 185 "Judicial action without jurisdiction is void."-Id (1996)

"Jurisdiction means the power of a court to hear and determine a cause, which power is conferred by a constitution or a statute, or both." Penn v. Com. 528 S.E.2d 179, 32 Va.App. 422 (2000)

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"A court cannot acquire jurisdiction to try a person for an act made criminal only by an unconstitutional law, and thus, an offense created by an unconstitutional statute, is no longer a crime and a conviction under such statute cannot be a legal cause for imprisonment." *State v. Benzel*, 583 N.W.2d 434, 220 Wis.2d 588 (1998)

"Jurisdiction is determined solely from face of information or indictment." *State v. Lainez*, 771 So.2d 617, and *Snyder v. State* 715 So.2d 367, review denied 727 So.2d 911 (2000)

"As a prerequisite for presiding over a case, a court must have jurisdiction over the subject matter of an offense and of the person of the defendant; that is, two jurisdictional requirements must be satisfied before a court has authority to hear and determine a particular cause of action." *Malone v. Com.*, 30 S.W.3d 180 (2000)

"Lack of subject matter jurisdiction is a non-waivable defect which may be raised at any stage of the proceedings." *State v. LaPier*, 961 P.2d 1274, 289 Mont. 392, 1998 MT 174 (1998)

"Ruling made in absence of subject matter jurisdiction is a nullity." *State v. Dvorak*, 574 N.W.2d 492, 254 Neb. 87 (1998)

"If the trial court is without subject matter jurisdiction of defendants case, conviction and sentence would be void ab initio." *State v. Swiger*, 708 N.E.2d 1033, 125 Ohio.App.3d 456, dismissed, appeal not allowed, 694 N.E.2d 75, 82 Ohio St.3d 1411 (1998)

"Before a court may exercise judicial power to hear and determine a criminal prosecution, that court must possess three types of jurisdiction: jurisdiction over the defendant, jurisdiction over the alleged crime, and territorial jurisdiction." Const. Art. 1 sec. 9, *State v. Legg*, 9 S.W.3d 111 (1999)

"Without jurisdiction, criminal proceedings are a nullity." *State v. Inglin*, 592 N.W.2d 666, 274 Wis.2d 764 (1999)

"Criminal subject matter jurisdiction is the power of the court to inquire into charged crime, to apply applicable law, and to declare punishment." W.S.A. Const. Art. 7, sec. 8; W.S.A. 753.03, *State v. West*, 571 N.W.2d 196, 214 Wis.2d 468, review denied 579 N.W.2d 44, 216 Wis.2d 612 (1997)

"Municipal courts do not have jurisdiction to render final judgments on felony charges." *Muhammad v. State*, 998 S.W.2d 763, 67 Ark.App. 262 (1999)

"Circuit courts have exclusive original jurisdiction over all misdemeanors which arise out of the same circumstances as a felony also charged." *State v. Coble*, 704 So.2d 197 (1998)

"Circuit court has no jurisdiction to try misdemeanors in the absence of a felony." *Short v. State* 767 So.2d 575 (2000)

"State Constitution establishes exclusive jurisdiction over felony cases in the superior court." *State v. Sterling*, 535 S.E.2d 329, 244 Ga.App. 328 (2000)

"There was no merit to defendant's contention that district court lacked subject matter jurisdiction over him because his crime did not take place on federally owned land and the 10th Amendment reserved drug prosecutions such as his to the states." U.S.C.A. Const. Amend. 10, Comprehensive Drug Abuse Prevention and Control Act of 1970, sec. 401(a), 406, 21 U.S.C.A. secs 841(a), 846. *U.S. v. Deering* 179 F.3d 592, cert. den. 120 S.Ct 361, 528 U.S. 945, 145 L.Ed.2d 283 (1999)

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"Whether or not the government takes out the interstate commerce element of an offense has no effect on the district court's subject matter jurisdiction. U.S. v. Degan, 229 F.3d 553, 2000 Fed.App 367P. (2000)

"Federal criminal jurisdiction is limited to cases involving activities specifically made criminal by either Federal Constitution or Congress." U.S. v. Corona, 934 F.Supp. 740, affirmed in part 108 F.3d 565 (1996)

"Under 'effects doctrine,' a sovereign only possesses jurisdiction to prosecute a crime when, inter alia, the effect within the territory is substantial." U.S. v. Woodward, 149 F.3d 46, cert. den. 119 S.Ct 1026, 525 U.S. 1138, 143 L.Ed.2d 37 (1998)

"Under the theory of 'territorial jurisdiction,' jurisdiction to subject the accused to criminal prosecution rests in the courts of the state in which the crime is committed." State v. Liggins, 557 N.W.2d 263, denial of post conviction relief confirmed 2000 WL 1827164 (1996) "Territorial jurisdiction is an essential element of a crime, and a state is required to prove it beyond a reasonable doubt." -Id

"Territorial jurisdiction" is question of state's power to prosecute and punish accused for crime and must be proven beyond reasonable doubt." People v. al-Ladkani, 647 N.Y.S.2d 666, 169 Misc.2d 720 (1996)

"Jurisprudence of personal jurisdiction in civil matters has no bearing on question whether a person may be brought to a State and tried there for crimes under that State's laws." In re Vasquez, 705 N.E.2d 606, 428 Mass. 842 (1999)

"Where the law provides method for acquiring jurisdiction over defendant in criminal action, as by indictment of grand jury, that method must be strictly pursued to acquire jurisdiction." People v. Page, 677 N.Y.S.2d 689, 177 Misc.2d 448 (1998)

"If defendant enters plea of not guilty and is in court on day of trial, the court has jurisdiction over his person." State v. Waters, 971 P.2d 538, 93 Wash.App 969 (1999)

"Subject matter jurisdiction may not be conferred on a federal court by stipulation, estoppel, or waiver." U.S. v. Burch, 169 F.3d 666. (1999)

"Power of courts to proceed, i.e., their jurisdiction over the subject matter, cannot be conferred by mere act of litigant, whether it amounts to consent, waiver, or estoppel, and hence the lack of such jurisdiction may be raised for the first time on appeal." People v. Lopez, 60 Cal.Rptr.2d 511, 52 Cal.App.4th 233 (1997)

"Jurisdiction can not be conferred to court by agreement of parties." Akins v. State, 691 So.2d 587 (1997)

"Lack of jurisdiction cannot be cured by consent or waived by entry of a guilty plea; doctrine of waiver cannot be effective when court lacks jurisdiction over the case itself." Harrell v. State, 721 So.2d 1185 rehearing denied , review dismissed 728 So.2d 205 (1998)

"Party cannot stipulate to jurisdiction when court lacks it." Sterling v. State, 682 So.2d 694 (1996)

"Where no cognizable crime is charged, the court lacks fundamental subject matter jurisdiction to render a judgment of conviction, i.e. it is powerless in such circumstances to inquire into the facts, to apply the law, and to declare the punishment for an offense." Robinson v. State, 728 A.2d 698, 353 Md. 683 (1999)

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"Parties cannot confer subject matter jurisdiction upon judicial tribunal by either acquiescence or consent; nor may subject matter jurisdiction be created by waiver, estoppel, consent, or conduct of parties." State v. Trevino, 556 N.W.2d 638, 251 Neb. 344 (1996)

"Appearance ticket is not accusatory instrument and its filing does not confer jurisdiction over defendant." People v. Gabbay, 670 N.Y.S.2d 962, 175 Misc.2d 421 appeal denied 678 N.Y.S.2d 26, 92 N.Y.2d 879, 700 N.E.2d 564 (1997)

"Service of an appearance ticket on an accused does not confer personal or subject matter jurisdiction upon a criminal court." People v. Giusti, 673 N.Y.S.2d 824, 176 Misc.2d 377 (1998)

"No valid conviction can occur if the charging instrument is void." State v. Wilson, 6 S.W.3d 504 (1998)

"Threshold issue of whether court has jurisdiction to resolve pending controversy is fundamental and cannot be ignored; accordingly, court may sua sponte address issue, as subject matter jurisdiction cannot be conferred by agreement of parties, but must be vested in court by constitution or statute." State v. Roberts, 940 S.W.2d 655, on remand 1997 WL334879. (1996)

"While superior court lacks authority to try a defendant for a felony charged by information with an offense not previously subjected to a preliminary hearing, violation of this limitation on the superior court's power would constitute action in excess of jurisdiction, waivable error, and not non-waivable subject matter jurisdiction." People v. Burnett, 83 Cal.Rptr.2d 629, 71 Cal.App.4th 151 (1999)

"Trial court acts without jurisdiction when it acts without inherent or common law authority, nor any authority by statute or rule." State v. Rodriguez, 725 A.2d 635, 125 Md.App 428, cert den 731 A.2d 971, 354 Md. 573 (1999)

"Criminal law magistrates have no power of their own and are unable to enforce any ruling." V.T.C.A., Government Code sec. 54.651 et seq., Davis v. State, 956 S.W.2d 555 (1997)

"A court's authority to exercise its subject matter jurisdiction over a case may be restricted by failure to comply with statutory requirements that are mandatory in nature and, thus, are prerequisite to court's lawful exercise of that jurisdiction." Moore v. Com., 527 S.E.2d 406, 259 Va. 431 (2000)

"Only Congress can make an act a crime, affix punishment to it, and declare court that shall have jurisdiction." U.S. v. Beckford, 966 F.Supp. 1415 (1997)