IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

STATE OF GEORGIA v. KENNETH CHESEBRO	Indictment No. 23SC188947

ORDER DISMISSING PLEA IN BAR

Almost 14 months ago, the Defendant pleaded guilty to Count 15 of the indictment pursuant to the First Offender Act. As negotiated, the State contemporaneously dismissed the other six counts remaining against him. The undersigned subsequently quashed Count 15 as violative of the Supremacy Clause of the United States Constitution to the extent it charges two co-Defendants. (Eastman Doc. 79, 9/12/24).[1] Now, Defendant Chesebro seeks to "invalidate" his plea, labeling it constitutionally void on similar grounds and its continued imposition a violation of Due Process. (Chesebro Doc. 142, 12/4/24). Procedurally defective in more ways than one, the motion is dismissed.

At the outset, the undersigned concludes that the Defendant's invoked remedy is entirely inapt. True, a plea in bar "challenge[s] the validity of the indictment." *Davis v. State*, 307 Ga. 784, 786 (2020). But the Defendant has already submitted a plea in response to this indictment — one of guilt. Defendant's sole citation in support of his contention that a plea in bar is a post-conviction remedy, rather than a form of pretrial challenge, does not suggest otherwise. *See Pierce v. State*, 294

[1] The Court notes that while the Defendant did raise a pre-trial challenge based on the Supremacy Clause and the Electoral Count Act before tendering his guilty plea — a theory the Court once again denied in response to the co-Defendants' pretrial motions — the Defendant did not raise the case warranting the quashal. *See In re Loney*, 134 U.S. 372 (1890). Review of Defendant Chesebro's other counts (now dismissed) have withstood further constitutional challenges.

Ga. 842, 843 (2014) (analyzing a plea in bar targeting two counts reactivated after a withdrawn guilty plea); *see also* Black's Law Dictionary (11th ed. 2019) (defining a "special plea in bar" as one "that, rather than addressing the merits and denying the facts alleged, sets up some extrinsic fact showing why a criminal defendant *cannot be tried* for the offense charged") (emphasis added); *Patterson v. State*, 347 Ga. App. 105, 108-09 (2018) ("where the time for filing a direct appeal from the criminal conviction or a motion for new trial has expired, a defendant attacking his underlying conviction is limited to the traditionally recognized proceedings of an extraordinary motion for new trial, a motion to withdraw his guilty plea, a motion in arrest of judgment, or a petition for habeas corpus").[2]

Nor can this be considered a valid motion in arrest of judgment. Such a motion challenges any non-amendable defect appearing on the face of the record and can take the form of a general demurrer or raise constitutional challenges. *See* O.C.G.A. § 17-9-61; *Regan v. State*, 317 Ga. 612, 613 (2023). But it provides no relief here for two reasons. First, the undersigned believes no "judgment has been rendered" (a prerequisite of O.C.G.A. § 17-9-61) against the Defendant. Under the First Offender Act, a defendant is sentenced "before an adjudication of guilt" and "without entering a judgment of guilt." O.C.G.A. § 42-8-60(a). "[T]he imposition of a first-offender sentence does not immediately constitute a conviction" and instead defers further proceedings while the charge remains pending for the duration of the sentence. *Howard v. State*,

[2] An extraordinary motion for new trial is also dead on arrival because the Defendant entered a guilty plea. *See Smith v. State*, 298 Ga. 487, 487 (2016) ("One who has entered a plea of guilty cannot move for a new trial, as there was no trial.") (citation omitted).

319 Ga. 114, 117 (2024). No final judgment occurs. *Id*. at 118.[3] Therefore there can be no motion in arrest of judgment here.

Setting that aside, a motion in arrest of judgment must be filed during the term when the judgment was entered. *See* O.C.G.A. § 17-9-61(b). If untimely filed, the trial court lacks jurisdiction and the motion must be dismissed. *See McDaniel v. State*, 311 Ga. 367, 373 (2021). The Defendant's convictions were entered October 23, 2023, during the September/October term of the Fulton County Superior Court that expired November 6, 2023. *See* O.C.G.A. § 15-6-3(3). The Defendant filed this motion over a year later, well after the expiration of the term in which he was convicted.[4] The motion, to the extent he had a right to pursue one at all, is therefore untimely.

Finally, a trial court may vacate a void sentence at any time. *Rooney v. State*, 287 Ga. 1, 2 (2010). However, a sentence is only void if it imposes a punishment the law does not allow. *Id.*; *see also Nazario v. State*, 293 Ga. 480, 488 (2013) ("a motion to vacate a conviction is not an appropriate remedy in a criminal case"). The Defendant does not claim that he received a sentence that fell outside the permissible statutory range. It therefore cannot be considered "void" allowing the trial court to retain jurisdiction.

These limitations may appear unreasonably inflexible, but they serve important ends:

> A trial court's authority to vacate or modify a judgment ends with the expiration of the term of court in which the judgment was entered. This is so because courts must give stability to their decisions by maintaining the finality of judgments. …[C]ourts

[3] O.C.G.A. § 42-8-64 provides further ammunition for this theory, granting a defendant the right to an immediate appeal of a first offender sentence "*as if* a judgment of conviction had been entered." (emphasis added).

[4] Similarly, while a defendant may withdraw his guilty plea after sentencing pursuant to Uniform Superior Court Rule 33.12(B), the trial court lacks jurisdiction after the term of court expires in which the guilty plea was entered. *See Pope v. State*, 319 Ga. 686, 686 (2024); *Deeds v. State*, 349 Ga. App. 348, 350 (2019) (applying rule to a First Offender sentence).

> cannot at their pleasure reopen questions which have been concluded by solemn adjudication. There must be some point at which stare decisis applies, and that point, with respect to a judgment upon the merits, unexcepted to, is the conclusion of the term at which it is rendered.

State v. Jones, 249 Ga. App. 199, 199 (2001) (quoting in part *Latham v. State*, 225 Ga. App. 147, 148 (1997).[5]

This Court lacks jurisdiction to grant the requested relief. The motion is dismissed.

SO ORDERED, this 13th day of December, 2024.

Judge Scott McAfee
Fulton Superior Court
Atlanta Judicial Circuit

[5] Although proclaimed in reference to a conviction resulting from a non-First Offender guilty plea, the sentiment expressed by the Court of Appeals in *Jones* applies with equal force here, with the added caveat that the trial court's ability to modify or reduce a criminal sentence — but not vacate it entirely — was subsequently extended to within one year of its imposition by statutory amendment. *See* O.C.G.A. § 17-10-1(f).