

INVALID PRIOR CONVICTION THAT WAS UNLAWFULLY GAINED BY INEFFECTIVE ASSISTANCE OF COUNSEL, INVOLUNTARY, UNINTELLIGENT, AND INVALID GUILTY PLEA, IN VIOLATION THE LAWS AND STATUTES THIS STATE, THUS, DENYING ME DUE PROCESS PROTECTED BY THE CONSTITUTION OF SOUTH CAROLINA AND THE UNITED STATES IN THE OF CASE NO. 1989 -GS-21- 927, THAT IS STILL CAUSING PREJUDICE AND PERSISTENT LINGERING EFFECTS AFFECTING MY SUBSTANTIAL RIGHTS...

RECEIVED
JUN 14 2022
S.C. SUPREME COURT

James Edgar Hutchinson
Appellant.
v.
State of South Carolina
County of Florence
Respondent.

Explanation as to why
dismissal of Post-Conviction
application was improper
pursuant to the Appellate
Court Rules 203 & 243(C).

United States Constitution Article III Section 2, Clause 1.
The Judicial power shall extend to all cases in law and equity arising under the Constitution, the laws of the U.S. and treaties made or under which shall be made under their authority to all cases affecting to wit: between citizens of the same state claiming lands or citizens thereof or subjects. Invalid prior convictions satisfies the case-controversy for article III.

Trial for all crimes, exception of cases of impeachment, shall be by jury, and such trial shall be held in State where said crimes shall have been committed. This provision is further amplified by the Sixth Amendment that provides: In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial by an impartial jury of the state and district wherein the crime shall have been committed. South Carolina Constitution Article 1, Section 11, no person shall be held to answer for any crime the jurisdiction over which is not within the magistrate court, unless upon a presentment or indictment of a Grand Jury of the County where the crime has been committed.

Historically the writ of Habeas Corpus provided a post-conviction remedy after time for appeal had passed, allowing an individual a hearing and a determination of any alleged violation of any alleged Constitutional violations, questioning whether the court lacked jurisdiction to enter a judgment. Constitutionally ineffective assistance of counsel constitutes a jurisdictional defect of a constitutional magnitude for lack of due process.

Collins v. State of SC, 80 Sct, 199 (1959) fundamental rule of criminal procedure is that one is answerable only in the jurisdiction where the crime was committed. And that right cannot be abrogated. Willis v. O'Brien 88 Sct, 461 (1967). Christy v. Pennsylvania 116 Sct, 1890 (2003) Ineffective Counsel will excuse a waiver under PCR act in state proceedings as long as appellant had a right to counsel that waived claims.

RESPECTFULLY SUBMITTED ON THIS 31st DAY OF May 2022 James E. Hutchinson
JAMES EDGAR HUTCHINSON #258003

INVALID PRIOR CONVICTION THAT WAS UNLAWFULLY GAINED BY INEFFECTIVE ASSISTANCE OF COUNSEL, INVOLUNTARY, UNINTELLIGENT, AND INVALID GUILTY PLEA, IN VIOLATION THE LAWS AND STATUTES THIS STATE, THUS, DENYING ME DUE PROCESS PROTECTED BY THE CONSTITUTION OF SOUTH CAROLINA AND THE UNITED STATES IN THE OF CASE NO. 1989-GS-21-927, THAT IS STILL CAUSING PREJUDICE AND PERSISTENT LINGERING EFFECTS AFFECTING MY SUBSTANTIAL RIGHTS...

Explanation as to why the proposed final order of dismissal is improper, and facts & proof in support that that counsel was ineffective, the guilty plea is involuntary, the conviction is invalid and that I should be entitled to a hearing to show that this prior conviction is still causing prejudice and to stop its normal function, and to prevent its use for any use in the future and that this is a concrete injury still live throughout the proceedings,

Prior convictions tainted with ineffective assistance of counsel should not be used for enhancement. U.S. v. Bryant, 136 S.Ct. 1954 (2016), Mounts v. Boles 83 S.Ct. 298 (1962) Smith v. U.S. 94 S.Ct. 846 (1973). Burglary first-degree is an unconstitutional & vague law that violates due process which fails to give people notice of what the law demands of them. Instead it leaves it in the hands of unaccountable prosecutors & incompetent lawyers to define crimes. Burglary first degree S.C. Code ann. 16-11-311(a)(2). there is an exception regarding prior convictions that the burden of proof shifts to the defendant to prove that his prior convictions are invalid for state's use. Petitioner Hutchinson should have been told of his right to challenge his prior convictions before sentencing, Counsel's ineffectiveness in my 1989-GS-21-927 case amounts to a jurisdictional defect of a constitutional magnitude by invasion of my rights to due process, United States v. Davis 139 S.Ct. 2319 (2019), Rutherford v. State, 972 Nw2d 225 (2021), State v. Attardo 211 S.E2d 869 (1975). The state is using fraudulent misrepresentation in want of jurisdiction by concealing the fact that this Diamond is Darlington County jurisdiction. Sanders v. Smith 648 S.E2d 204 (2020). I was tricked by unlawful devices of a void warrant & a void indictment and prevented from presenting a defense. Ray v. Ray 647 S.E2d 237 (2007). I would not have pleaded guilty but would have insisted on going to trial. Strader v. Garrison 61 F2d 61 (1999), a defendant in a PCR-hearing can raise any constitutional violations, Williams v. Ozmint 671 S.E2d 600 (2008).

RESPECTFULLY SUBMITTED ON THIS 21st DAY OF May, 2022
JAMES EDGAR HUTCHINSON #258003

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"Explanation"

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U.S. v. Engle 676 F.3d, 405 (2012) 4CA
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2021-CP-21-1711

Brief in Support of Affidavit
of Merits

"EXPLANATION"

#1
May it please the Court, Now comes the petitioner James Edgar Hutchinson in the case of 2021-CP-21-1711 post-conviction application to attack his invalid prior-conviction in the case no. 1989-GS-21-927 that is still causing prejudice and persistent lingering adverse effects.

The State Attorney Generals office contends that I am barred by the Statute of limitations and failing to state a claim. That there are no questions of law or fact. I object to those erroneous conclusions to show the court why the final order of dismissal by the Honorable D. Craig Brown and the conditional order of dismissal was improper in the hopes that this Honorable Court will grant me a hearing in order to have this invalid prior conviction vacated or set aside to stop its normal function and the prejudice it has been causing for years due to ineffective assistance of counsel, and by me being placed under a misapprehension of the law regarding my legal position by counsel, Law Enforcement, Government officials and landlord that has caused me to give up my valid defenses, thus prejudicing my case causing me to suffer anew.

As shown in my per-application, I stated that this conviction was obtained in violation of my South Carolina & United States Constitutions and the laws of this State. I also stated that this conviction is invalid and is still causing persistent lingering adverse effects, to wit: Used for enhancement purposes, deterring parole eligibility, work-release and other privileges within S.C.D.C. along with Ineffective assistance of counsel Involuntary Guilty plea and lack of Jurisdiction which are cognizable claims. This invalid prior conviction is a concrete injury and the results are still live, as I have a legally cognizable interest at stake of the result of the proceedings ending in my favor.

#2

" EXPLANATION "

In the Spring of 1986 my mother, her fiancé and myself moved to a residence that our landlord conveyed to us as Rt. 8 box 143 R. Bar M. Ranch Rd. Florence, S.C. but failed to tell us that the Florence address was for mailing purposes only. She failed to inform us that we really lived in Darlington County and that the true address is 344 R. Bar M. Ranch Rd. Darlington, S.C. So I have always been under the misapprehension that I lived in Florence County plus the fact that Florence County and Darlington County Public works have never placed a sign on said Dirt-Road to show that the County-line does cross the road about halfway through according to S.C. Code ann. 4-3-260 and S.C. Code 4-3-170 ..where a straight air-line runs from Muse's Bridge crossing said road, I-95, Frontage Rd. beside I-95, Pocket Rd. landing in Lashua Ferry, Back Swamp, then Herring Creek following its confluence to the Great Pee Dee River. The same thing happened regarding the address of the alleged burglary victim that had the mailing address only as Rt. 8, box-140 R. Bar, M. Ranch Rd. Florence, S.C., where the true address is 325 R. Bar, M. Ranch Rd. Darlington, S.C. that law Enforcement also omitted from the arrest warrant by reckless disregard of a county map and my rights in order to have a magistrate judge believe there was probable cause in want of jurisdiction causing him to overextend his Territorial Jurisdiction to issue a warrant for an offense that did not occur within that Florence County Magistrate's Court's Municipality. There was no probable cause and had law enforcement not omitted the fact that it was Darlington County the judge would not have signed it. The proper procedure would have been to inform the Darlington County official's since it was their Jurisdiction.

#3

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" "
EXPLANATION

All these years go by and I still believed that where I lived was Florence County, which is why I never thought I had standing to challenge this invalid conviction. This is why I never filed a PCR-application, neither did counsel inform me of any valid defenses or my right to appeal. Also everytime I have stepped in front of a Judge I have been told that the burden of proof is completely on the State and that I did not have to prove anything. It was in 2019 when I went to the law-library to start trying to fight my current conviction that I ran across the case named State v. Paine 504 SE2d, 335 (1998). Which states that: once the state proves the existence of a prior-conviction, the burden shifts to the defendant to show that his prior convictions are unconstitutionally obtained or otherwise invalid showing that he is thereby innocent of sentence enhancements. So this is what I have been trying to do. I am innocent of sentence enhancements on my current sentence by factual innocence of the underlying predicate priors the state is relying on for enhancement of my current sentence and as a result of ineffective assistance of counsel. But for the constitutional violations there is no evidence to show that any rational trier of fact or juror could conclude me guilty beyond a reasonable doubt, on the 1989 wrongful conviction. There was only circumstantial evidence by false misrepresentations. Counsel was ineffective and prejudiced my case. I also was told by my father on the phone in 2020 that the county line ran right across his friend Randy Newsome's front yard that also lived off of R. Bar M. Ranch Rd on the Darlington County side which has prompted me into learning law about the locality of the offense and the place of bringing prosecution laws that counsel failed investigate or inform me of causing my guilty plea to be involuntary.

#4

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" " EXPLANATION

This wrongful conviction is invalid and a concrete injury that is traceable to me and likely to be redressed by a favorable decision by the Judicial Authorities. To allow this conviction to stand results in continued legal consequence. An exception to mootness doctrine exists for petitioners who allege that they would suffer collateral legal consequences if their convictions were allowed to stand. Spencer v. Kemna 118 S.Ct. 978 (1998), citing Sibron v. New York 39 S.Ct. 1849 (1968). In recent decades we have been willing to presume that a wrongful conviction has continuing collateral consequences.

Although the possibility of collateral consequences may well be remote it is enough to give this case an adversary cast and make it justiciable. The parsimonious view of the function of Article III standard has since yielded to the acknowledgment that the constitution requires a means of defining the role assigned to the judiciary in a tripartite allocation of power. Benton v. Maryland 39 S.Ct. 2056 (1969). As an initial matter, the court notes that Wood has "standing" to maintain his claims here, as his present confinement is directly affected by the convictions that he is complaining of. Wood v. Sup. Caroline Unit, 355 F. Supp. 338 (1973). Where a criminal conviction may result in an enhanced sentence should the petitioner later be convicted of another crime, stake in relief permits the court to exercise its function long after they have been freed. Broughton v. N. C. D.O.C. 717 F.2d. 147 (1983).

State prisoner currently serving sentence on a recidivist conviction could attack by his petition for federal writ of habeas corpus the fully served state sentence which was the basis of the subsequent recidivist conviction. Carr v. Cox 312 F. Supp. 433 (4CA 1970). Jones v. Boles 257 F. Supp. 293 (1966). Jones undoubtedly has standing to complain although he is not now serving his two recidivist sentences, he may still attack their constitutional impropriety that they have the effect of deferring parole from his present confinement.

"Explanation"

Jackson v. State 489 SE2d. 915 (1997), applicant who alleged that he was suffering continuing effect from his conviction had standing to bring action for results of his prior conviction still exist. It was not necessary to determine whether PCR-applicant can state a claim based solely on his conviction with no allegations of any persistent effects or collateral consequences. He specifically stated that he was being prejudiced by persistent effects of his conviction. Based on that the Court held he was entitled to a hearing.

McDuffie v. State 277 SE2d. 595 (1981), Petitioner alleged that he was still suffering persistent adverse effects from his prior conviction affecting his current conviction to wit: enhance his sentence, reduce prison privileges, and reduce possibility of parole, the Court held: Although sentence has been fully served he was entitled to a hearing to determine whether or not he was prejudiced, citing, any man persist. Subsequent convictions may carry heavier penalties. as the power to remedy an invalid sentence still exist, we think the respondent is entitled to an opportunity to attempt to show that his conviction is invalid. also citing U.S. v. Gornie 288 F. supp. 329 (1964). The case is not considered moot merely because the sentence has been served. The Court has power to vacate, set aside an illegal conviction. see also United States v. Morgan 74 Sct. 247 (1954), Brown v. State 814 SE2d. 116 (2018). Defendant was not required to show any collateral consequences, even if he had completed serving his sentence. Post-convict. act contains no Incustody requirement. Tharpe v. Head. 533 SE2d. 368 (200). Adverse collateral consequences from an invalid conviction for purpose to obtain relief can be found through recidivist statute, parole ineligibility and even the stigma and burden of an invalid sentence. See also Carafas v. Havelle 88 Sct. 1556 (1968), See also Royer v. United States 324 F. supp. 3d. 719 (4CA 2018). Future sentence may be enhanced based on the challenged conviction, impeachment, social stigma, as well as a mandatory special assessment of additional punishment.

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#6

"Explanation"

The Trial courts grant of Post-Conviction relief was proper under McDuffie v. State 277 SE2d. 545 (1961), and Carafas v. LaVelle 86 Sct. 1556 (1964) see also Webb v. State 314 SE2d. 839 (1984).

Rule 407, S.C. Rules of Professional Conduct.
Rule 3.8 Special Responsibilities of a Prosecutor.

Effective August, 11th 2021.

(H) When a prosecutor knows clear and convincing evidence or information establishing that the defendant in the prosecutor's jurisdiction was convicted of an offense that he did not commit, the prosecutor shall make reasonable efforts to seek to remedy the conviction.

I have sent the Attorney General's office credible evidence tending to negate guilt of this offense and I stated in my PCR-application that I am still suffering adverse persistent effects flowing from the conviction, and they still want to deny my efforts violating laws of State, See Elkins v. U.S. 80 Sct. 1437 (1960), Nothing can destroy a government more quickly than its failure to observe its own law, or worse disregard of the charter of its own existence. The arrest warrant was based upon fraudulent misrepresentations without probable cause and want of jurisdiction, then an illegally obtained indictment. The warrant omitted Darlington County and the indictment was not true billed by a Grand Jury where the offense took place. Both devices were engineered and executed in order to fool the Court, myself, and is a matter of public interest that disrupts the normal proceedings in violation of my Constitutional rights. When a party has intentionally by design misrepresented a material fact producing a false impression in order to mislead others to entrap me and cheat me obtaining undue advantage of me resulting in positive fraud, now under undue concealment amounting to fraud failing to disclose facts while he is under a legal obligation to do so, I was decoyed and induced by deceitful contrivance, false representations and wrongful devices, Sifco American Express Co. 99 Conn. 95 (1923). You can't do a wrong and on that build a right.

#7

Ineffective Counsel & Involuntary Guilty Plea

The guilty plea was not knowingly, intelligent, or voluntary. I was not made aware of any valid defenses, and I was coerced into pleading guilty unknowingly giving up my personal jurisdiction, and my defenses to venue principles, based upon misinformation of a constitutional magnitude, and whether I was sentenced between sentencing range is irrelevant. Had I been properly informed, I would not have pled guilty but insisted on going to trial. Counsel's unprofessional errors, failure to make an independent investigation was ineffective assistance of counsel that prejudiced my case. There was no reasonable trial strategy for not challenging the burglary indictment and since counsel failed to learn that the offense was not in Florence County but in Darlington, could not have provided me with competent advice to plead guilty. I was denied effective assistance of counsel at all critical stages of the prosecution and he did not put the prosecution's case through an adversarial testing, making the whole trial process completely unreliable violating my right to effective assistance of counsel amounting to a jurisdictional defect.

It is beyond dispute that a guilty plea must be both knowing and intelligent and voluntary, Boykin v. Alabama 39 S.Ct. 179 (1969), State v. Hartzel 271 S.E.2d. 602 (1980) McCarthy v. United States 394 U.S. 459 (1969). The standard was and remains whether the plea represents a voluntary and intelligent choice among alternative courses of action open to the defendant.

Burgett v. Texas, involved a state recidivism proceeding for the proposition that a previous conviction is presumptively void if the waiver of a claimed constitutional right does not appear on the record.

Johnson v. Zerbst 58 S.Ct. 1019 (1938), Courts indulge every presumption against waiver of fundamental rights. A waiver is ordinarily an intentional relinquishment of a known right or privilege. Where a defendant is placed under a misapprehension of law regarding his legal position, failure to object at time that was futile is not a waiver. Ritchie v. Minnesota 86 S.Ct. 119 (1965)

#8.

"Explanation"

Counsel was ineffective for failure to challenge burglary indictment that charged improper venue.
 Counsel was ineffective for failure to inform me of valid venue defenses, where I would have proceeded to trial and been entitled to a direct acquittal.
 Counsel was ineffective for failure to do an independent investigation to discover that the locality of the offense was in a different county as alleged in the indictment.
 Counsel was ineffective for failure to challenge the irregularities in the Grand Jury proceedings.
 Counsel was ineffective by failure to challenge the veracity of the arrest warrant where law enforcement made false representations to induce a magistrate to sign it in want of jurisdiction and lack of probable cause.
 Counsel was ineffective in causing me to unknowingly give up my personal jurisdiction to appear for charges.
 Counsel was ineffective for failure to provide me with advice that I was entitled to an indictment from a Grand Jury where the offense took place.
 Counsel was ineffective for failure to file any motions to preserve for appellate review, thus prejudicing my case by disallowing the court to operate its discretion and to be preserved for appeal."

United State v. Carthorne 879 F.3d, 458 (4th Cir 2017). Counsel's ignorance on these points of law was fundamental to my case combined with his failure to perform basic research on those points of law is a quintessential example of unreasonable performance as would support ineffective assistance of counsel claim."

Counsel was ineffective for failure to inform me that I could withdraw my guilty plea as this was a just reason.
 Counsel was ineffective for failure to motion court for an arrest of Judgment."

Counsel was ineffective for failure to raise a Franks v. Delaware 98 S.Ct. 2684 (1978) claim.

Counsel was ineffective for failure to insure that my due process was protected before allowing the court to elicit incriminating admissions that was used to convict me. Hooker v. Boles 346 F.2d, 285 (1965)

#9

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Explanation

marzullo v. Maryland 561 Fzd 540 (4CA 1977) Waiver of rights in respect to effective assistance of counsel could not be presumed in absence of proof that petitioner knew of such rights. Counsel's errors in my case were so flagrant that the court could conclude that it resulted from neglect or ignorance rather than from informed professional deliberation. There was no reasonable trial strategy for not challenging burglary indictment. See Padgett v. State 484 SEzd, 101 (1977), Circumstantial evidence did not tend to prove guilt on burglary charges, State v. Odems 720 SEzd, 48 (2011), mere suspicion is insufficient to support guilty verdict regarding burglary. Counsel caused me to forfeit my personal jurisdiction claims where I was coerced into involuntary guilty plea. State v. Evans 415 SEzd, 816 (1992), Jurisdiction of the offense and of the person is indispensable to a valid conviction. Jurisdiction over the person in a criminal case lies in the State or County where the offense took place. It is obvious that General Sessions has jurisdiction over a certain class of cases. State v. Crocker 621 SEzd, 890 (2005), State Gentry 610 SEzd, 494 (2005), Defendant is entitled to a direct verdict when the state fails to produce evidence of the charged offense. Defendant is entitled to a direct verdict of a acquittal when the state fails to prove that the offense occurred in the County alleged in the indictment. State v. Crocker ~~SEzd~~ (2006), State v. Sims 814 SEzd, 632 (2018), Just because a court has jurisdiction over a class of cases a defendant is convicted of does not end appellate courts inquiry into whether a jurisdictional defect is sufficient to survive a guilty plea exists. By failing to inform me that I could withdraw my guilty plea amounts to an "Extraordinary circumstance" See Commonwealth v. Manning 398 A2d 212 (1979), Weather's v. State 459 SEzd, 858 (1995), Right to appeal based on guilty plea, was an "extraordinary circumstance". State v. Armstrong 211 SEzd, 849 (1975), Roten v. State 643 SEzd, 471 (2009), Counsel was ineffective and failed to perform an essential duty by not motioning the court for "arrest of judgment". See State v. Allen 709 NWzd, 361 (2006), State v. Finney 834 NWzd, 46 (2013), State v. Taylor 558 SEzd, 917 (2001),

#10

"Explanation"

Proper venue is a constitutional right. U.S. v. Bradley 540 Fed. supp. 690 (Md. 1982) Venue in a criminal case is limited to the place of the essential conduct, U.S. v. Bowers 224 F.3d, 302 (2000). U.S. v. Cabrales 118 S.Ct. 1772 (1998). U.S. v. Ebersole 411 F.3d 517 (4CA 2005). The prosecution has the burden of proving venue by a preponderance of evidence. When a defendant is charged with multiple crimes, venue must be proper on each count. U.S. v. Engle 676 F.3d, 405 (4CA 2012). Venue is not an essential element of crime but instead is similar in nature to a jurisdictional element. In each count of the indictment that was improperly laid the state would have failed to prove an essential part of its case. U.S. v. Walden 464 F.2d 1015 (4CA 1972). See, Blume; The place of trial in criminal cases; Constitutional vicinage and venue. 43 Mich. L. Rev. 59 (1944). Also 75 Colorado L. Rev. 863 (2010). Guilty pleas and the railroading of criminal defendants. State v. Nicholson 70 SE2d, 632 (1952). In prosecution for receiving stolen goods knowing them to be stolen, where receiving if any was in Richland County, the Court of General Sessions of Orangeburg County was without jurisdiction. State v. Gethers 236 SE2d, 419 (1977) where alleged victim stated she was kidnaped in Charleston County taken to Berkeley County, raped and returned to Charleston County, the indictment in Berkeley County was void. State v. Platt 151 SE2d, 206 (1930). Indictment charged that death occurred in county of assault held at fatal variance with proof that death occurred in another county. Evans v. State 611 SE2d, 510 (2005). Similarly, an indictment issued by a Grand Jury in an illegal manner would likely be deemed a nullity. State v. Small 613 SE2d, 754 (2005). Although an indictment does not confer subject matter jurisdiction, Due Process U.S. v. Bowers 224 F.3d, 302 (4CA 2000). District where criminal act is done determines the jurisdiction where case is to be tried. There was no valid indictment from included offense and no waiver of presentment pursuant to S.C. Code ann. 17-23-140. Nor a change of venue notice pursuant to S.C. Code ann. 17-21-80. State v. Martin 294 SE2d, 345 (1982), Phillips v. State 314 SE2d, 313 (1984).

#11

"Explanation"

Although Territorial Jurisdiction is not a component of subject matter jurisdiction, it is a fundamental issue that may be raised at any time by a party or court. State v. Dudley 581 S.E.2d 171 (2003). Pursuant to S.C. Code Ann. 14-25-45. Each municipal court shall have jurisdiction to try all cases arising under the ordinance of the municipality for which it is established. See... 102 A.R. 5th 325 (2002) Criminal Jurisdiction of Municipal or other local court. "One of the universal restrictions on a local court's subject matter jurisdiction requires that the offense occur within the territorial boundaries of its locality. See... Tolliver v. State 24 S.W. 286 (1893) Justice of Peace cannot order a warrant beyond the limits of its county. Hill v. Taylor 50 Mich. 549 (1883). A warrant issued by a justice of peace charging commission of a crime in another county is invalid on its face. An arrest is illegal wherever the process is void, as where the court issuing warrant has no jurisdiction. State v. Curtis 2 N.C. 471 (1799) State v. Doster 73 S.E. 111 (1911). Warrant held invalid insofar as where the court issuing it attempts to extend its jurisdiction beyond the county's territorial boundaries. A municipal court has no jurisdiction beyond the county's territorial boundaries. State v. Gerling 602 N.E.2d 734 (1991). Likewise a law enforcement officer generally has no jurisdiction outside of his territorial jurisdiction. See State v. Burgess S.E.2d ().

This is what happened in the current case... Law-Enforcement made false representations on the arrest warrant not caring whether it was true or not to induce a magistrate into signing a warrant for want of jurisdiction and lack of probable cause, acting with reckless disregard to my rights resulting in a Malicious Prosecution that ended in the States favor. The law-enforcement omitted the fact that the locality of the offense was in Darlington County. Had it been included, the judge would not have found probable cause. Counsel was ineffective for failure to preserve this claim and failure that he did not challenge the veracity of the arrest warrant, Franks v. Delaware 98 S.Ct. 2684 (1991).

#12

"Explanation"

As a matter of due process a defendant may not be sentenced on the basis of materially untrue assumptions or misinformation. The Court must assure itself that the information upon which it bases its sentence must be reliable and accurate. Williams v. People of New York 69 Sct. 1079 (1949). I had a right to not be convicted on a basis of invalid premises, untrue assumptions or misinformation of a Constitutional magnitude, State v. Robinson 669 SE2d 584 (2008). A prisoner can show that he has been denied due process by establishing that no rational trier of fact could have found him guilty beyond a reasonable doubt based on the evidence presented at trial. Jackson v. Virginia 99 Sct. 2781 (1979). Counsel was ineffective by failing to inform me that had I proceeded to trial I would have been entitled to a direct verdict of acquittal because the state would have failed to prove the offense was committed in the county alleged in the indictment. Counsel was ineffective for failure to object to the irregularities in the Grand Jury proceeding and inform me that I had a right to withdraw my guilty plea and demand an indictment and a trial in the county where offense took place. See... Watson v. State 338 SE2d 636 (1985). Supreme Court's held that counsel's failure to inform defendant of his right to request a jury be impaneled for the recommendation of mercy was ineffective assistance of counsel. Ely v. Haugh 172 Nw2d 144 (1969). Ineffective assistance of counsel amounts to a defect of a constitutional magnitude and can serve as a jurisdictional bar to a valid conviction and sentence depriving a person of his life or liberty. Johnson v. Zerbst 58 Sct. 1024 (1938). State v. Reedy 352 SE2d 158 (1988) Trial court is without jurisdiction to enter a valid judgement of conviction of a defendant in the absence of ineffective assistance of counsel. State v. Widmeyer v. Bokes 144 SE2d 322 (1965) Under the United States constitution the right to effective assistance of counsel is fundamental to a fair trial. State v. Thomas 203 SE2d 455 (1974). State v. Cain 359 SE2d 581 (1987). House den v. Heverette 241 SE2d 810 (1978)

Conclusion &

"Explanation"

Strickland v. Washington 104 Sct. 2052 (1984).

#13

Counsel was ineffective which resulted in an invasion of my constitutional rights that resulted in prejudice to my case by causing me to be unjustly convicted of a burglary which is still on my record causing persistent lingering effects. Had I went to trial I would have been entitled to a direct verdict of a acquittal. This is a concrete injury and traceable to my current conviction, deterring parole, work-release, and other prison privileges, and could be used for future impeachment purposes, or to enhance a future sentence.

Even I, being labeled as a thief, am entitled to complain that I have been unconstitutionally convicted as a burglar Jackson v. Virginia 99 Sct. 2781 (1979)

Hill v. Lockhart 106 Sct. 366 (1985) But for counsel's unprofessional errors and erroneous advice, I would not have pled guilty but insisted on a trial, State v. Smith 494 SE2d. 626 (1997), Counsel failed to put the States case through an adversarial test, I was denied effective assistance of counsel at all stages of the prosecution under a structural-error making the whole trial process completely unreliable U.S. v. Cronin 104 Sct. 2039 (1984), THIS plea was not an intelligent or knowing plea, State v. Hazzel 271 SE2d 602 (1980), McCarthy v. U.S. 89 Sct. 1166 (1969), It is undisputed that I would not plead guilty to the charges but for counsel's insufficient advice, Smith v. State 631 SE2d. 260 (2006), Custis v. U.S. 114 Sct. 1732 (1994) citing Strickland v. Washington 104 Sct. at 2063 (1984), That a person who happens to be present at trial alongside the accused... is not enough to satisfy the Sixth Amendment because the right to counsel is effective counsel whether violation is under Gideon 104 Sct. 792 (1963) or Strickland v. Washington 104 Sct. 2052 (1984) he has been denied that right... Hutchinson prays for Honorable Court grant a hearing.