

THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

APPEAL FROM PICKENS COUNTY
COURT OF COMMON PLEAS
PERRY H. GRAVELY, ADMINISTRATIVE JUDGE

case no. 2022-cp-39-00680

RECEIVED

JUL 13 2022

SC Court of Appeals

ROBERT EARL DILLARD,.....APPELLANT,

v.

THE STATE,.....RESPONDENT,

EXPLANATION OF APPEAL PURSUANT TO RULE 18.5

Pursuant to rule 18.5 filing fee S.C.A.C.R. Robert Earl Dillard 220045 files this Explanation of his order appeal of the denying filing of pleadings of his motion to filed to proceed in forma pauperis in pre-payment of cost without cost, of being indigent petitioner in this case. the honorable perry h. gravely, denying the motion THE Petitioner in the above case entitled respectfully petition this court honorable court to ALTER/AMEND HIS JUDGMENT THAT WAS SIGNED ON JUNE 7, 2022. and served on the petitioner on june 14, 2022.

THE petitioner would show this court that he filed a motion on june 9, 2022. THE CLERK of court office raising the following by way of a motion hearing to his claim of false imprisonment/ false arrest and false indictment and failed to instruct the jury

the reasonable doubt , request his pleading/motion to be construed liberally and held to less strivgent standard manner forward pleading s drafted by lawyers, that.

did not state with certointy the reason for the denying other that, THE petitioners, would show this court that the motion was denyin^g on june 7, 2022. before the motion was filed inthe clerk of court's office, see order attached.

MOTION TO ALTER/AMEND JUDGEMENT pursuant to RULE 59(e) was file on june 20, 2022. in perry c.i. mailroom, and was return back to me july 6, 2022. stating of the previous order.the court received this motion on june 28, 2022. and send back unfile by the clerk of court.

THE appellant, argued below that he is right in his motion to filed to proceed in forma pauperis,action(CASE NO.2022-cp-39-00680 ~~and~~ that pursuant to this court decision in LAKE V. STATE, 333 s.c.382, inmate petitioneng for writ of habeas corpus moved for order to proceed in forma pauperis THE CIRCUIT COURT ORANGEBURG COUNTY , CHARLES W. WHETSTONE , JR J, DENIE MOTION AND INMATE APPEALED .THE COURT OF APPEALS HELD THAT INMATE WAS ENTITLED TO PROCEED IN FORMA PAUPERIS. Reversed and remanded on appeal

HERE, the petitioner, did the same as in LAKE V. STATE.
motion to proceed in forma pauperis under rule 18.5
THIS motion and/or pleading that was filed was a motion
to adjudicate his claim s of whether he(PETITIONER) was
denied due process of law.

THE petitioner request his pleading / motion be construed
liberalby and held to less stringent standard fact formal
pleadings drafted by attorney.

Finally, as the pcr court has rendered a decision in conflict
with this court decision LAKE V. STATE, the aellant. pray
this honorable court reversed the pcr court decision, and remand
the case for an evidentiary hearing on the merits of his claims
to serve the interest of justice.

CONCLUSION

for the forgoing reason, this honorable court should alter/
amend its' prior judgment to reflect the forgoing and provide
an evidentiary hearing and or vacate petitioner conviction
and sentence on the pleadings / motion filed,

date 7/11 2022.



ROBERT EARL DILLARD#220045

STATE OF SOUTH CAROLINA)
COUNTY OF PICKENS)

IN THE COURT OF COMMON PLEAS

ROBERT EARL DILLARD)

C.A. No.:

2022 JUN -9 A 10:09

PETITIONER,)

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

2022-CP-39- 00680

v.)

STATE OF SOUTH CAROLINA)

ORDER DENYING FILING OF

PLEADINGS **RECEIVED**

RESPONDENT.)

JUL 13 2022

SC Court of Appeals

The Court has reviewed the Petitioner's Motion to proceed in forma pauperis, Petition for Relief and other documents filed by the Petitioner and the Court hereby Orders the following:

1) The Motion to Proceed in Forma Pauperis is denied because it has not been presented on the proper forms nor has the Petitioner set forth any supporting information as to the Petitioner's basis for waiving Court fees; and

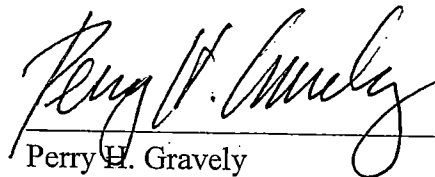
2) The Court finds that the Petition is set out as an appeal of his 1995 conviction and this Court is not the proper forum to address such issues and the pleadings cannot be accepted.

Therefore, the Petitioner's Motion is denied and it is Ordered that all documents be returned to the Petitioner unfiled.

It is so Ordered.

June 7, 2022

Pickens, South Carolina



Perry H. Gravely

Chief Administrative Judge-General Sessions

STATE OF SOUTH CAROLINA)

COUNTY OF Pickens)

Robert Earl Willard, 20045)

Plaintiff,)

v.)

Walt Wilkins Solicitor)

Defendant.)

IN THE Court of Common Pleas

CASE NO. _____

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney: _____ Bar No: _____ Address: _____ Phone: _____ Fax: _____ E-mail: _____ Other: _____	Defendant's Attorney: _____ Bar No: _____ Address: _____ Phone: _____ Fax: _____ E-mail: _____ Other: _____																
<input checked="" type="checkbox"/> MOTION HEARING REQUESTED (attach written and complete SECTIONS I and III) <input type="checkbox"/> FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) <input type="checkbox"/> PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)																	
SECTION I: Hearing Information																	
Nature of Motion: _____ Estimated Time Needed: _____ Court Reporter Needed: <input type="checkbox"/> YES / <input type="checkbox"/> NO																	
SECTION II: Motion/Order Type																	
<input type="checkbox"/> Written motion attached <input type="checkbox"/> Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order _____ Signature of Attorney for <input type="checkbox"/> Plaintiff / <input type="checkbox"/> Defendant Date submitted																	
SECTION III: Motion Fee																	
<input type="checkbox"/> PAID - AMOUNT: _____ <input type="checkbox"/> EXEMPT: (check reason) <table style="width:100%; border: none;"> <tr> <td><input type="checkbox"/> Rule to Show Cause in Child or Spousal Support</td> <td></td> </tr> <tr> <td><input type="checkbox"/> Domestic Abuse or Abuse and Neglect</td> <td></td> </tr> <tr> <td><input type="checkbox"/> Indigent Status</td> <td><input type="checkbox"/> State Agency v. Indigent Party</td> </tr> <tr> <td><input type="checkbox"/> Sexually Violent Predator Act</td> <td><input type="checkbox"/> Post-Conviction Relief</td> </tr> <tr> <td><input type="checkbox"/> Motion for Stay Bankruptcy</td> <td></td> </tr> <tr> <td><input type="checkbox"/> Motion for Publication</td> <td><input type="checkbox"/> Motion for Execution (Rule 69, SCRCP)</td> </tr> <tr> <td colspan="2"><input type="checkbox"/> Proposed order submitted at request of the court; or,</td> </tr> <tr> <td colspan="2">reduced to writing from motion made in open court per judge's instructions</td> </tr> </table> Name of Court Reporter: _____ <input type="checkbox"/> Other: _____		<input type="checkbox"/> Rule to Show Cause in Child or Spousal Support		<input type="checkbox"/> Domestic Abuse or Abuse and Neglect		<input type="checkbox"/> Indigent Status	<input type="checkbox"/> State Agency v. Indigent Party	<input type="checkbox"/> Sexually Violent Predator Act	<input type="checkbox"/> Post-Conviction Relief	<input type="checkbox"/> Motion for Stay Bankruptcy		<input type="checkbox"/> Motion for Publication	<input type="checkbox"/> Motion for Execution (Rule 69, SCRCP)	<input type="checkbox"/> Proposed order submitted at request of the court; or,		reduced to writing from motion made in open court per judge's instructions	
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reduced to writing from motion made in open court per judge's instructions																	
JUDGE'S SECTION <input type="checkbox"/> Motion Fee to be paid upon filing of the attached order. <input type="checkbox"/> Other: _____	JUDGE: _____ CODE: _____ Date: _____																
CLERKS VERIFICATION																	
Collected by: _____ Date Filed: _____ <input type="checkbox"/> MOTION FEE COLLECTED: _____ <input type="checkbox"/> CONTESTED - AMOUNT DUE: _____																	

RECEIVED
JUL 13 2022
SC Court of Appeals

STATE OF SOUTH CAROLINA

COUNTY OF PICKENS

Robert Earl Dillard,
S.C.D.C. 220045
petitioner,

v.

State of south carolina,

Respondent.

IN THE COURT OF COMMON PLEAS

C.B. NO.1994-GS-39-1490,1491

MOTION TO

) FALSE IMPRISONMENT ON THE ARREST
) AND FAILURE TO INSTRUCT JURY
) ON DEFINITION OF REASONABLE
) DOUBT, AND FALSE INDICTEDMENT
) BY THE SOLICITOR SEE EXHIBITS
) FACTS AND RECORDS.
) s.c. code Ann&17-27-80 52(a)

COME NOW, the petitioner, above-named, motion the court to grant his motion, failure of trial court to instruct jury on definition of reasonable doubt in action against police officer det, Randall chapman for false arrest constituted reversible error, particularly in light of instruction given suggesting that dispositive issue WAS Whether plaintiff was actually guilty.

Petitioner is confined in south carolina Department of Corrections pursuant to orders of commitment of the clerk of court for pickens County. petitioner was indicted by the pickens county Grand jury for two counts of murder(1994-GS-39-1490,-1491). He was represented by Richard H. Warder, Esquire.

After the the state called the case to trial, petitioner was found guilty. on March 2, 1995, the Honorable Frank P. McGowan, jr sentenced petitioner to two life sentences. consecutive.

A notice of appeal was filed and perfected at the south carolina Supreme court M. Anne pearce, Equire of the south carolina office of Appellate Defense perfected the appeal. THE Supreme court affirmed petitioner's convictions and sentences. state v. Dillard op.no. 97-mo-012(S.C. Sup. Ct. filed February 11 , 1997)

RULE 25, jury INSTRUCTIONS

This 25th day

of May 2022.

1.

Robert Earl Dillard

IN THOMPSON V. SMITH, 289 sc 334,345 s.e.2d 500
Arrestee brought action against police officer for false arrest
and imprisonment, The Comm on pleas court spartanburg county, EC
Burnett,iiiij. entered judgment for the arrestee, and the police
officer appeaed. THE COURT OF APPEALS Gardner j. held that(1)
failure to instruct jury on definition of probable cause Constitute
reversible error.(2) if jury should determine police did not act
reasonably promptly in releasing arrestee after becomes aware
of his innocence then arrestee would be entitled to damages for
false imprisonment from the time police were aware of his innocence

Reversed and Remanded.

~~False~~ imprisonment

Failure of trial court to instruct jury on definition of probable
cause in action against police officer for false arrest Constituted
reversible error .particularly in light of instruction given
suggesting that dispoisive issue was Whether plaintiff was actually
guilty.

Here, in the instanstant case (1) FALSE ARREST.

(2) FALSE IMPRISONMENT BY DET Randall chapman.

(3) false indictment by solicitor M. BARCROFT:

(4) failure to instruct jury on definition of reasonable doubt
constituted reversible error,

(5) solicitor m. Barcroft, knowing use of perjured testimony.

CONCLUSION

WHEREFORE, for the forgoing reason, the Honorable court should
hold an evidentiary hearing to reverse and vacate the
applicant's conviction and sentences.

date 5/25/ 2022.



Robert earl dillard#220045
perry correctional inst.
430 oaklawn road g4b/209
pelzer, s.c. 29669

2022-CP-39-00680

IN THE COURT OF COMMON PLEAS

STATE OF SOUTH CAROLINA)

COUNTY OF PICKENS)

ROBERT EARL DILLARD,)
S.C.R.C. 220045)
petitioner)

C.A. NO. 1994-GS-39-1490, 1491

v.)

state of south carolina,)
Respondent,)

MOTION TO FILED ~~TO~~ PROCEED IN
FORMA PAUPERIS IN PRE-PAYMENT
OF COST WITHOUT COST.

IN SUPPORT OF HIS MOTION, PETITIONER submits that in addressing his financial inability to pay the cost of his motion, u.s. supreme court has held that fundamenttal fairness entitles petitioners to anadeavate opporntonity to present their claims fairly within the adversary system aka v. oaklohma,470 u.s. 68 (1985).

IN CONJUNCTION THE SOUTH CAROLINA SUPREME COURT HAS HELD that anytime criminal procedu~~ges~~ discriminate against a petitioner by reason of their indigent status, such procedures violate the guarantee of equal protection, where the indigent petitioner is subjected to a process which is not required of a non-indigent petitioner, then the process becomes invidiously discrimmatory and violative of equal protection exparte lexington county,442S. E 2d 589.594(1994). 17-27-60 cody (1985). 18.5 filing Fee LAKE V STATE

IN RELIANCE UPON THE ABOVE COURT DECISIONS PETITIONER MOVES THIS HONORABLE COURT TO GRANT HIS MOTION, AND TO PROCEED IN FORMA PAUPERIS WITHOUT PRE-PAYMENT OF COST TO HIS ILLEGAL LIFE SENTENCE.

DATE 5/25/ 2022.

Robert Earl Dillard
Robert Earl Dillard # 220045

STATE OF SOUTH CAROLINA

COUNTY OF PICKENS

Robert Earl Dillard, SCDC NO.220045.
petitioner,

v.

WALT WILKINS, SOLICITOR,
Respondent.

IN THE COURT OF COMMON PLEAS

Csae no. _____

SUMMONS

RECEIVED

MAY 26 2022

PCI MAILROOM

TO: WALT WILKINS, 13th SOLICITOR.

YOU are hereby Summoned and required to serve upon petitioner Robert Earl Dillard, SCDC NO,220045, whose address is listed below, an answer to the motion to False Imprisonment on the Arrest and Failure to instruct jury on Definition of reasonable Doubt, and False Indictedment by the solicitor, see Exhibits Facts and records. s.c. code Ann&17-27-80 52(a). in Support thereof which is herewith served upon you, within thirty (30) days after service of this summons upon you, exclusive of the day of service If you fail to do so, Judgment by default will be taken against you for the relief demanded in the motion.

This 26th day

of may, 2022.

Robert Earl Dillard
Robert Earl Dillard#220045
perry correctional inst.
430 oaklawn road q4b/209
pelzer, s.c. 29669

COUNT

CLERK OF COURT
FOR PICKENS COUNTY
p.o. box215
pickens, s. c. 29671

re; to c.a. no. 1994-GS-39-1490 /1491.

Dear clerk,

Enclosed please find my oriainal motion for falsei imprisonment on the arrest and failure to instruct jury on definition of reasonable doubt and false indictedment by the solicitor see exhibits, facts, and records.

this is to be filed in your office by mail.

P.S. I am sending the solicitor. a copy of my summons that I LEFT OUT IN MY MOTION. and to you as well.

I THANK YOU VERY MUCH IN THIS MATTER.

RECEIVED

MAY 13 2022

PCI MAILROOM

RECEIVED

MAY 26 2022

PCI MAILROOM

DATE 5/26/ 2022.

Robert Earl Dillard

Robert earl dillard#220045
perry correctigal inst.
430 oaklawn road q4b/201b
pelzer, s.c. 29660

As a result, on May 25, 1999, applicant filed a second PCR (99-CP-39-0406) pursuant to Austin v. State, 409 S.E.2d 385 (1991). On August 28, 2000, an evidentiary hearing was held before the Honorable John W. Kittredge. Applicant was represented by John D. Jorge, Esq. By order dated August 29, 2000, Judge Kittredge granted applicant a belated appeal from the denial of his first PCR application (97-CP-39-0826).

On March 21, 2002, the SC Supreme Court entered an order granting the petition for writ of certiorari from Judge Kittredge's order, and upon review of Judge Patterson's order denied writ of certiorari. Dillard v. State of SC, order (SC S.Ct. March 21, 2002).

On August 6, 2002, applicant filed a third (technically his second) PCR (02-CP-39-1217). The applicant raised the following grounds:

- (1) After-discovered evidence of solicitor's knowing use of perjured testimony.
- (2) Denial of due process by trial judge's definition of "reasonable doubt".
- (3) Applicant's murder indictment(s) was not lawfully presented by a grand jury for trial of his case(s).

On July 28, 2003, a motion hearing was held before the Honorable John C. Few. The applicant was represented by Cheree Gillespie, Esq. On August 19, 2003, Judge Few issued an order denying the PCR application as untimely and successive. A timely appeal was filed on applicant's behalf.

On September 24, 2006, the Court of Appeals issued an order denying the Johnson petition; Dillard v. State, (SC App. September 27, 2006). A timely petition was filed on January 29, 2007, the Court of Appeals denied the rehearing. On April 24, 2007, petitioner filed a writ of certiorari to the SC Supreme Court. The Supreme Court denied the writ.

STANDARD OF REVIEW

In Aice v. State, 409 S.E.2d 392 (SC 1991), a case addressing an exception to procedurally barred claims, the SC Supreme Court held that "finality must be realized at some point in order to achieve a semblance of effectiveness in dispensing justice... at some point judicial review must stop, with only the very rarest of exception. When the (judicial) system has failed a defendant and where to continue his imprisonment without a review would amount to a miscarriage of justice." In addition, the Court has held that "a defendant's filing of four PCR actions, one of which was successful, was not repetitive, numerous, or totally frivolous, and thus defendant was not subject to strict restriction on future filings. Williams v. State, 583 S.E.2d 52 (SC 2003).

As shown above, the applicant has previously prevailed in a PCR action (99-CP-39-0406) pursuant to Williams, infra. He will now present the following arguments for entitlement to review under the miscarriage of justice standard under the holding in Aice, infra.

ARGUMENT

under McCouissin v. Perkins, 133 S.Ct 1924 (2013) actual innocence claim

I. THE APPLICANT SUFFERED A MISCARRIAGE OF JUSTICE WHEN HE WAS CONVICTED UPON A STANDARD OF GUILT BELOW THAT REQUIRED BY THE FOURTEENTH DUE PROCESS CLAUSE (Alternatively, applicant raised this ground under ineffective assistance of counsel).

The applicant submits that the record of his trial shows that after the jury found him guilty, he discovered that during its deliberation the jury had sent the judge a note requesting a layman's definition of "reasonable doubt". He further discovered that the judge had conferred with both applicant's counsel and the solicitor regarding the jury's request before writing on the jury's note that "he could not comply with the jury's request." Also, without publishing the jury's request in open court, the

judge sent the note back to the jury with a response that "he could not comply with their request." Tr.p. 681-82

In addressing such an error, the SC Supreme Court has recognized that a "reasonable doubt" charge could be erroneous if it could cause a jury to interpret the charge to allow a finding of guilt based on a degree of proof below that required by the Fourteenth Amendment, Due Process Clause. As a result, the SC Supreme Court has offered a definition which would be acceptable for use by the bench, as follows:

"a reasonable doubt is the kind of doubt that would cause a reasonable person to hesitate to act...."

State v. Manning, 409 S.E.2d 372 (1971). The Court has further guided that the courts are not restricted to the exact definition in Manning, but that the charge must legally equate to that offered in Manning. See, State v. Clute.

Nevertheless, to warrant reversal, a trial judge's refusal to give a requested jury instruction must be both erroneous and prejudicial. State v. Hughey, 529 S.E.2d 721 (SC 2000). Where a general instruction to jury is insufficient to enable jury to understand fully law of case, the refusal to give requested charge is reversible error. Brown v. Smalls, 481 S.E.2d 444 (SC App. 1977). Moreover, the U.S. Supreme Court has held that the Due Process Clause of the Fourteenth Amendment protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime for which he is charged. To this end, the "reasonable doubt" standard is indispensable (to a fair trial). In re Winship. 397 U.S. 358 (1970).

Here, as evidenced by the jury's "note" requesting a layman's definition of "reasonable doubt", it is logical to assume that the jury had, at this point, entertained a degree of doubt as to applicant's guilt and had focused critical attention on the definition of "reasonable doubt" to reach its verdict. Therefore, the layman's definition of reasonable doubt which the

judge should have conveyed to the jury would be given special consideration in reaching a verdict since it was in response to its own inquiry. Under this circumstance, the judge's failure to comply with the jury's request was an error of law that prejudiced applicant's fundamental right to a fair trial. See e.g., State v. Blassingame, 244 S.E.2d 528 (SC 1978); See also, Winship (holding that a conviction below the reasonable doubt standard would amount to a miscarriage of justice).

Finally, applicant contends that the failure of the judge, solicitor, and his counsel to provide a confused jury a layman's definition of "reasonable doubt" in his case should amount to a failure of the judicial system and a corresponding miscarriage of justice to entitle him to review of the merits of his claim. An applicant's right to a fair trial is basic requirement of the Due Process Clause, and includes a fair judge. Liljerberg v. Health Serv. Corp., 486 U.S. 847 (1988); a right to be prosecuted by a prosecutor whose duty is to see that justice is done. Berger v. U.S., 295 U.S. 78 (1936); and the right to effective assistance of trial counsel, Strickland v. Washington, 466 U.S. 668 (1984).

II. THE APPLICANT DISCOVERED AFTER HIS TRIAL AND FIRST PCR ACTION THAT THE SOLICITOR KNOWINGLY USED PERJURED TESTIMONY TO OBTAIN HIS CONVICTION (Alternatively, applicant raised this ground under ineffective assistance of counsel).

The SC Supreme Court has recognized prosecutorial misconduct as a ground for PCR action in the absence even of a claim of ineffective assistance of counsel. Gibson v. State, 514 S.E.2d 320, 323-27 (SC 1999) (Setting aside applicant's guilty plea, and granting a new trial because of prosecutor's Brady violation.) [fn.1]

With regard to his claim, the applicant submits that pursuant to his discovery and Brady Motion the solicitor disclosed the

[1] Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194 (1963)

detention records of its chief witness, James Simpson. However, the solicitor failed to disclose any records of Simpson's detention in the Greenville Detention Center (GDC) for the months of November 25, 1992 through April 30, 1993, which covered the time period Simpson testified that applicant admitted to him (Simpson) that he (applicant) had committed the murders while they were at the "Haynie Street Men's Club" in downtown Greenville. As the State's evidence against applicant was entirely circumstantial, Simpson's testimony regarding applicants murder confession to Simpson in "February 1993" at the Haynie Street Men's Club was the only evidence the State had that directly connects applicant to the murders.

Following his trial and before filing his first PCR action in 1997, applicant contacted the GDC requesting requesting Simpson's detention records but was not provided any of Simpson's records covering the time period between November 1992 through April 1993. Finally, on January 17, 2001, pursuant to the SC Freedom of Information Act (FOIA), the GDC Record Manager, Jinny Moryan, provided applicant the records of Simpson's detention. These records showed that Simpson was, in fact, detained in the GDC from 11-25-92 until 4-30-93. Thus, Simpson's GDC records showed that he obviously could not have been at the "Haynie Street Men's Club" in downtown Greenville in February 1993 when he was detained in the GDC the entire month of February 1993. The records clearly showed that Simpson testified falsely.

As the GDC records shows that Simpson testified, the inquiry should now focus on whether the solicitor knowingly introduced Simpson's false testimony to convict applicant. A review of the solicitor's closing argument did not only show that he knowingly introduced Simpson's perjured testimony, but also showed that the solicitor actually provided Simpson with key evidence from the murder scene to convince the jury of Simpson's credibility, in relevant part, as follows:

Solicitor: Mr. Warner (applicant's counsel) might argue that Simpson was the one who killed them. I don't

know, he might argue that, but I just simply ask you to remember "that Simpson was in jail at the time (of the murders)". Tr.p. 632.

Solicitor: What did he (Simpson) tell us? He told us some things in the statement that nobody else knew, that the general public did not know, that had not been released to the public, to the media.

Of particular note, the murders took place on December 17, 1992. The GDC records showed that Simpson was detained in the GDC from 11-25-92 until 4-30-93. Consequently, the solicitor's closing argument shows that he knew from his own records that Simpson had been detained in the GDC from 11-25-92 until 4-30-93, which also included the time of the murders as the solicitor argued. Therefore, as Simpson could not have been at the "Haynie Street Men's Club" in downtown Greenville to witness any confession by applicant, or get any details of the murder scene from applicant, it logically follows that he was provided the details of the murder scene from the solicitor's files. [fn.2]

To obtain relief on the basis of subornation and perjury, an applicant must demonstrate (1) that the witness made a false statement, (2) that the false statement was material to case, (3) that the false statement was knowingly and intentionally employed by the State. See Beasley v. Holland, 649 F.Supp. 561 (S.D.W.Va. 1985). Furthermore, a conviction must be set aside if there is a reasonable probability that false testimony (or evidence) could have affected the outcome of the trial. See e.g., United States v. Bagley, 105 S.Ct. 3375, 473 U.S. 667 (1985); Giglio v. United States, 405 U.S. 150, 92 S.Ct. 763 (1972); Miller v. Pate, 87 S.Ct. 785 (1967); Brady, supra.

[2] See print-out of 13th Circuit Solicitor Office practice of using false testimony by incarcerated witnesses to obtain conviction, attached herewith as Exhibit A-1A-2A3.

(3) see ALSO U.S. V. FREEMAN, 650 F3d 673, 680 (7th cir 2011)

III. THE SOLICITOR PROSECUTED AND CONVICTED APPLICANT UPON UNINDICTED MURDER OFFENSES.

The applicant contends that the solicitor did not obtain his murder indictment by way of a lawfully convened Pickens County Grand Jury to empower the general sessions (circuit) court to adjudicate his murder cases. In reviewing such a claim as alleged by applicant, the SC Supreme Court has held that it will presume the regularity and legality of the proceedings before the grand jury was complied with absent any evidence to the contrary. State v. James, 472 S.E.2d 38. To prove that the solicitor did not comply with the regular and legal proceedings before the grand jury for presentment of his murder indictment, the applicant will show that he received a "general sessions court calendar" from the SC Court Administration and its implication. Government records and official conduct should be accorded a presumption of legitimacy. U.S. Dept. of State v. Ray, 112 S.Ct. 541, 502 U.S. 164 (1991).

Accordingly, the applicant's indictment shows that the grand jury presented it during a November 17, 1994, term of Pickens County general sessions court. Conversely, the SC Court Administration's calendar shows there was no term of general sessions court held in Pickens County on November 17, 1994. See SC Court Administration calendar attached hereto as Exhibit BLSB-2. As a result, the applicant directs the Court's inquiry to whether the "absence of a term of general sessions court for attendance of a grand jury could deprive the court of its 'power' (jurisdiction) to adjudicate cases." To resolve this question, it will be necessary to interpret the U.S. Supreme Court's holding in United States v. Cotton, 122 S.Ct. 1781 (2002), which guided the SC Supreme Court's ruling in State v. Gentry, 610 S.E.2d 494 (2005). In both Cotton and Gentry, the Court's held that the term "Subject Matter Jurisdiction" means the "Court's statutory and constitutional power to adjudicate the case."

Likewise, in South Carolina, the general sessions court's power (jurisdiction) to adjudicate a criminal case is determined by statutory law as follows: (1) the grand jury... shall meet with general sessions court at each of its terms -- SC Code, Ann., § 14-9-170; (2) the solicitor shall prepare and, through the presiding judge of general sessions court, submit to grand jury, while in attendance upon general sessions court, bills of indictment (for grand jury presentment) -- SC Code, Ann., § 14-9-210. No indictment may be true billed by grand jury when circuit court (general sessions) lacks jurisdiction (or is not in term), since the grand jury's jurisdiction is co-extensive with the criminal jurisdiction of the general sessions court in which it is convened and for which it is to make inquiry (on bills indictment). State v. McClure, 289 S.E.2d 158 (1982); State v. Wheeler, 193 S.E.2d 515 (1972).

In addition, the SC Constitution mandates that "no person may be held to answer for any crime... unless on a presentment of indictment by a grand jury of the county where the crime has been committed." SC Const., Art. I, § 11; and "the grand jury of each county... shall consist of eighteen (18) members, twelve (12) of whom must agree on a matter (true bill) before a case can be presented for trial (of case) by general sessions court." SC Const., Art. V, § 22. The presentment of indictment for general sessions court's jurisdiction to try criminal cases is (according to Cotton and Gentry) determined by the above statutory and constitutional laws, and is fundamental. Anderson v. Anderson, 382 S.E.2d 897 (1989).

As a threshold matter, the SC Constitution gives the general sessions court jurisdiction to try all criminal cases. SC Const., Art. V, § 11. However, the jurisdictional claim raised by applicant is not a challenge to the Pickens County general sessions court's jurisdiction to try criminal cases. Instead, the applicant is contending that the solicitor failed to comply with statutory and constitutional laws, set forth above, which are jurisdictional in nature, specifying the manner and means for presentment of his murder indictment by lawfully convened grand

jury for trial of his case under general sessions court's criminal jurisdiction.

IN essence, the applicant is alleging that there was no legal obtained indictment charging him with murder because there was no term of general sessions court with a grand jury in attendance to present his indictment for trial of his case under general sessions court's criminal jurisdiction. THUS, the absence of a presentment of indictment ' of indictment was a ' defect in subject-matter jurisdiction' that deprived the court of its 'power to adjudicate' applicants' case. The absence of an indictment is a jurisdictional defect which deprives the court of its power to act. SMITH V. UNITED STATES, 360 u.s. 1, 10, 79 S Ct. 991 3 L.Ed.2d 1041 (1959).

Finally, both the U.S. and S.C. SUPREME COURTS have held that 'defects

in subject-matter jurisdiction require correction whenever raised.' COTTON, GENTRY, SUPra and the court's lack of subject-matter jurisdiction may be raised at any time, including FOR THE FIRST time on appeal, or collateral challenge. Hope V. STATE, 492 s.E.2d 76 (SC1997). see the U.S.SUPREME COURT has HELD that government RECORD"S and OFFICIAL conduct must be accorded a presumption of legitimacy, see department of U.S. V. RAY, 112 Ct, 541 (1991).

CONCLUSION

WHEREFORE, for the forgoing reason, the HONorable COURT should hold an evidentiary hearing to reverse and vacate applicant's conviction and sentences.

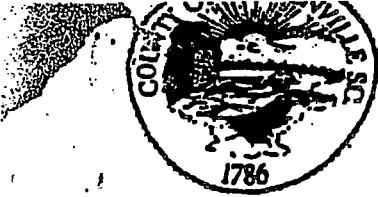
RECEIVED

MAY 13 2022

DATE 5/16 / 2022.

PCI MAILROOM

L. Robert E. Dillard
Robert E. Dillard#220045
perry correctional inst.
430 oaklawn road q4b-209
pelzer, sc 29669



County of Greenville

"...At Your Service"

712

DEPARTMENT OF COMMUNITY SERVICES
James M. Dorriety, Assistant County Administrator
Detention, Emergency Medical Services,
Forensics and Records Management Services
Office (864) 467-5082

January 17, 2001

Robert Earl Dillard #220045
Perry Correction Institute
430 Oaklawn Road Q-3-B-121
Pelzer, SC 29669

2013-CP-39-128

RE: FOIA Request (Received 12/27/00)

Dear Mr. Dillard:

We have received your letter requesting arrest and detention records under the South Carolina Freedom of Information Act (FOIA) on James Fletcher Simpson. Described below are the records you requested and I address each individual item separately.

1. Arrest and detention release records.

These records can be released under FOIA.

2. Date of a Bond Hearing by a Judge.

We do not maintain this information, as it is not part of the booking and arrest records. The Clerk of Courts office or the Judge's office may have the information.

The South Carolina Freedom of Information Act, Section 30-4-30 (b) states in part, "the public body may establish and collect fees...and it also states that documents may be furnished when appropriate without charge or a reduced charge." Greenville County Council chose to and approved a county ordinance (Number 3011) establishing fees for the research and copying of arrest, booking, medical, and other law enforcement records. Our fees will not be waived or reduced. The fee for each record is \$6.00. You are requesting for one booking/arrest record and the fee is \$6.00. I have enclosed a copy of the computer screen that reflects the booking date and the release date. Please forward a money order (\$6.00) made payable to Greenville County and we will mail you the record.

Please be advised we are providing you with notification of your request within the fifteen-day (workdays, excluding holidays) requirement period. Upon receipt of payment, the records will be mailed to you.

Sincerely,

Jinny Moran
Records Manager

2013 FEB - 5
CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

(B) 17

Matr 102853 SIMPSON, JAMES FLETCHER
Sex M Race B DOB 10/25/1956 Booked 11/25/1992 Cell
Addr [REDACTED] C GREENVILLE

NOT SENT INACTIVE
NxtSor
713

HgtIn 507 WgtIn 168
Cut 507 Out 168

Booked Date 11/25/1992 Time 05:45
Released Date 04/19/1993 Time 20:42
Estimated Date
Release Judge EPPES/BARTLETT
Release Off-> P AK C CPL J HUBI S
Released Where? O

Release Reason: REL.AGENCY: STRT REL.REC.DT:
REL.REC.TM: ADJ.REL.DT: OPID: D07
TIME SERVED/DISMISED/PROBATION

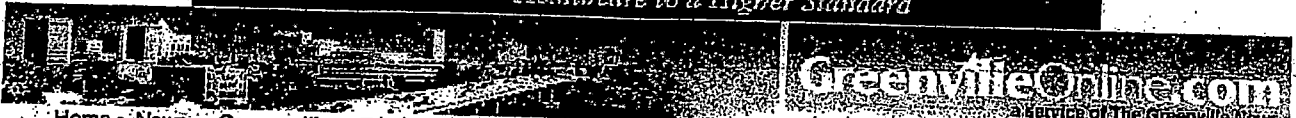
Canteen Bal 0.00 Cash Amt Pd 0.00 Check Amt Pd 0.00
96=RP 97=RC 98=RS

Command ==>
F1=Help F2=Short Help F3=Exit F5=Refresh F7=Backwards F9=Find F12=Popup

(nd)



GREENVILLE HOSPITAL SYSTEM
Healthcare to a Higher Standard



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- USC
- Furman
- Auto racing
- High schools
- Outdoors
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- Obituaries
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- Opinion
- Weddings
- City People
- Nation/World
- Technology
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Posted Tuesday, January 15, 2002 - 11:28 pm

[e-mail this story to a friend](#)

Solicitor drops two murder cases after witness lies on stand

By John Boyanoski
STAFF WRITER
jboyan@greenvillenews.com

After the prosecution's only witness to a 1998 murder was found to have lied on the witness stand, the 13th Circuit Solicitor's Office dropped the case against two men Tuesday accused of the crime.

The murder trial of Calvin Rico Rosemond, formerly of 300 Furman Hall Road, was charged in the death of James J. Chattman, 25, of 113 Norwood St., who died from a gunshot blast to the head on the morning of Nov. 12, 1998.

A witness said Monday that he saw Rosemond at the murder scene, but under cross-examination, defense attorney Symmes Culbertson showed evidence that the witness was in jail at the time.

"I had been down to talk to him and off-hand said he had been in jail," Culbertson said. "We looked into it and we brought that out."

On Tuesday, Rosemond's charges were dropped as were the charges against Asim Clement, who was arrested along with Rosemond in April 2000. Both cases were based on the witnesses' statements.

Solicitor Bob Ariail said the man was the sole eyewitness in the case, and gave a very detailed description of the shooting. After working through the night to verify the man's jail records, the prosecution asked for a direct verdict Tuesday morning which ended the case.

"We felt that his credibility, our credibility and the credibility of the case before the jury was damaged and the right thing to do was dismiss the charges," Ariail said. "If we had known this ahead of time, this would not have gotten this far."

Ariail said it is not common practice for his office to verify an eyewitnesses' whereabouts, unless contested. He said investigators did know the man had a criminal record, but initial research did not show he was in jail at the time.

Ariail couldn't say why the witness lied to authorities, but added his office is investigating bringing charges against him for lying on the witness stand.

John Boyanoski covers crime and courts. He can be reached at 298-4065.

000001

(B)



South Carolina Court Administration
South Carolina Supreme Court
Columbia, South Carolina

ROSALYN FRIERSON
DIRECTOR

MOTTE L. TALLEY
ASSISTANT DIRECTOR

1015 SUMTER STREET, SUITE 200
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1800
FAX: (803) 734-0269
E-MAIL: mtalley@scjd.state.sc.us

January 12, 2006

Mr. Robert Earl Dillard #220045
Perry Correctional Institution, Q-3-13-121
430 Oaklawn Rd.
Pelzer, SC 29669

Dear Mr. Dillard:

I have received your letter asking for the terms of court for the months of November and December 1994 for Greenville and Pickens Counties.

Please find enclosed the information you requested.

Sincerely,

Stephanie O'Neal

so
Enclosure

EXHIBIT

21

B_

TERMS OF CIRCUIT

NOVEMBER 1994

7

14

21

28

<p>10TH CIRCUIT</p> <p><i>10-3 CP-1,2 3-11-1 4.6 ✓</i></p>	<p>Anderson CP² ✓ Anderson CP ✓</p>	<p>Oconee GS^{1,2} ✓ <i>Anderson CPNS 17,18</i></p>	<p><i>Oconee CPNS 22</i></p>	<p>Anderson GS ✓</p>	
<p>11TH CIRCUIT</p> <p><i>11-3 CP-1 3-11-1 4 ✓</i></p>	<p>Lexington CP³ ✓ Lexington GS ✓</p>	<p>11th Cir. CPNJ¹ ✓ Lexington CP Edgefield GS ✓</p>		<p>Saluda CP¹ ✓ Lexington GS ✓</p>	
<p>12TH CIRCUIT</p> <p><i>12-3 CP-1,2 3-11-1 5.8 ✓</i></p>	<p>Florence GS^{3,8} ✓ Florence GS ✓</p>	<p>12th Cir. CPNJ¹ ✓ Marion CP</p>	<p><i>Florence CP 21</i> <i>Florence CPNS 21, 22, 23</i></p>	<p>Florence CP ✓ Marion GS¹ ✓</p>	
<p>13TH CIRCUIT</p> <p><i>13-3 CP-1 3-11-1 11.4 ✓</i></p>	<p>Greenville CP¹ ✓ Greenville GS ✓ Greenville GS ✓ Greenville GS <i>Pickens CPNS 3</i></p>	<p>13th Cir. CPNJ ✓ Pickens CP ✓ Greenville GS ✓ Greenville GS ✓ <i>Greenville CP ✓</i></p>		<p>13th Cir. CPNJ^{1,2} ✓ Greenville CP ✓ Pickens GS ✓ <i>13th Cir. CPNS 27, 28</i></p>	
<p>14TH CIRCUIT</p>	<p>...</p>	<p>...</p>	<p><i>...</i></p>	<p>Colleton CP ✓</p>	

EXHIBIT

(B)-2

TERMS OF CIRCUIT COURT

DECEMBER 1994

5

12

19

26

<p>10TH CIRCUIT</p>	<p>✓ Oconee CP 1 ✓ Anderson GS 2</p>	<p>✓ 10th Cir. CPNJ-PC 1 ✓ Anderson CP</p>	<p>Anderson CPNS (PC)</p>		
<p>11TH CIRCUIT</p>	<p>✓ Lexington CP ✓ Lexington GS 3.6</p>	<p>✓ Lexington CP ✓ Lexington GS</p>	<p>✓ Lexington CPNS 19, 20, 21</p>	<p>✓ Edgefield CPNS 28 .2</p>	
<p>12TH CIRCUIT</p>	<p>✓ Florence CP 1 ✓ Marion GS 1</p>	<p>✓ 12th Cir. CPNJ 1</p>			
<p>13TH CIRCUIT</p>	<p>✓ Greenville CPNS 5, 6, 7 ✓ Greenville GS ✓ Greenville GS ✓ Greenville GS Greenville GS ✓ 13th Cir. CPNS-PC 2</p>	<p>✓ 13th Cir. CPNJ ✓ Pickens CP 1 ✓ Greenville GS ✓ Greenville GS</p>	<p>✓ Greenville CPNS 19 ✓ Greenville AW 19, 20</p>		
<p>14TH CIRCUIT</p>	<p>✓ Beaufort GS 1.6</p>	<p>✓ Hampton CP 1</p>	<p>✓ ... 1.1 CPNS 12, 21</p>		

4.1

3.8

3

5.2

8.8

Clerk of Court
For Pickens County
P.O. Box 215
Pickens, S.C. 29671

6/28/22 - advised
Put to send it back
unfiled per my previous
~~let~~ Order.

RE: TO C.A. NO. 2022-CP-39-00680, motion to ALTER/Amend
Judgement. Pursuant to Rule 59(e).

Dear Clerk,

enclosed please find my original motion for Rule 59(e) to
be filed in your office by mail.

I, THANK you very much in this matter.

DATE 6-20-2022.

RECEIVED

JUN 20 2022

PCI MAILROOM

Robert Earl Dillard
Robert Earl Dillard # 200045
Denny Correctional Inst,
430 Oaklawn Road #13/209
Petzer, S.C. 29669

STATE OF SOUTH CAROLINA

COUNTY OF PICKENS

ROBERT EARL DILLARD#220045
petitioners.

v.

STATE OF SOUTH CAROLINA.
Respondent,

) IN THE COURT OF COMMON PLEAS

) # 2022 -cp-39-00680

) MOTION TO ALTER/ AMEND JUDGEMENT

) PURSUANT TO RULE 59 (E)

THE Petitioners IN THE ABOVE CASE ENTITLED CASE RESPECTFULLY
Petition this court HONORABLE COURT to Alter/Amend his judgment
that was signed on june 7, 2022. and served on the petitioner on
june 14, 2022.

THE Petitioner would show this court that he filed a motion
on june 9, 2022. THE Pickens county clerk of courts office raising
the following by way of a motion hear to his claim s of false
imprisonment / false arrest and false indictment and failed to
instruct the jury on reasonable doubt . request his pleading /motion
to be construed liberally and held to less strivgent standard name
forward pleadings drafted by lawyers,

did not state with certointy the reason for the dismissal other
that.

THE petitioners would show this court that the motion was
denidd on june 7, 2022. before the motion was filed in the clerk
of court's office, see ORDER attached.

RECEIVED

JUN 20 2022

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(1) The petitioners would also request that the order be altered / amended because the petitioner did submit a motion to proceed in forma pauperis after the clerk of court did not served a formed copy as requested. the petitioner typed out a form to the best of his knowledge,

THE petitioner did state in his motion that he was indigent and requested to proceed without payment of cost because he was indigent

(2) THIS Honorable court should alter/amend its' judgment because his petition /motion is not set out as an appeal as the court finding state. This court have jurisdiction to hear his motion

because this is the judicial circuit that he was tried and sentence in,

This motion and/or pleading that was filed was a motion to adjudicate his claims of whether he (PETITIONER) was denied due process of law

The petitioner request his pleading / motion be construed liberalby and held to less stringent standards fact

formal pleadings drafted by attorneys,

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JUN 20 2022

PCI MAILROOM

CONCLUSION

For the forgoing reasons, this honorable court should alter/
amend its' prior judgment to reflect the forgoing and
provide an eviedentary hearing and or vacate petitioner
conviction and sentence on the pleading s/ motion filed,

date 6-20 2022.



Robert Earl Dillard#220045
perry correctional inst.
430 oaklawn road q4b/209
pelzer, s.c. 29669

RECEIVED
JUN 20 2022
PCI MAILROOM

I, ROBERT EARL DILLARD# 220045 certify and verify under penalty of perjury that the foregoing is true and correct,

THE petitioner filed the following in the motion to the court.

- (1) cover letter, / motion and order information form/ cover sheet
- (2) summon,
- (3) motion,
- (4) proof of service,
- (5) motion to proceed in forma pauperis,
- (6) exhibits,

date 6-20 2022.

Robert Earl Dillard

Robert Earl Dillard#220045
perry correctional inst.
430 oaklawn road q4b/209
pelzer, s.c. 29669

RECEIVED

JUN 20 2022

PCI MAILROOM

