

THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

APPEAL FROM NEWBERRY COUNTY
Court of General Sessions

Frank R. Addy, Jr. Chief Circuit Court Judge

Appellate Case No. 2013-000196

The State Of South Carolina,.....Respondent.

VS.

James E. Wise, #250411,.....Appellant.

RECEIVED

MAY 28 2013

SC Court of Appeals

CERTIFICATE OF SERVICE

I do hereby Certify that I have served the below named and Addressed with a True and Correct Copy of 1'Designation of Matter to be included in Appeal;2.Final Brief of Appellant;3. Certificate of Service;4.Record on Appeal On This 22nd Day of May, 2013 By placing it in the United States Postal Mail

Postage Prepaid, and it's within the Rules 210(b);211(a)S.C.A.C.R.

5.) Motion for leave to file 15 copies / Indigent Inmate

1. Attorney General of South Carolina
Attn: Ms. Salley Elliott, Assist. A.G.
P.O. BOX 11549
Columbia, S.C. 29211

2. South Carolina Court of Appeals
Attn: Ms. Jenny Abbott Kitchings
P.O. BOX 11629
Columbia, S.C. 29211

Respectfully Submitted,

James E. Wise

James E. Wise, #250411
Appellant Pro Se

James E. Wise, #250411
Lieber Corr, Inst. E-B-49
P.O. BOX 205
Ridgeville, S.C. 29472

May, 22, 2013

The South Carolina Court of Appeals
Attn: Ms. Jenny Abbott Kitchings, Clerk
P.O. BOX 11629
Columbia, S.C. 29211

RECEIVED
MAY 28 2013
SC COURT OF APPEALS

RE: The State V. James E, Wise Appellate Case No. 2013-000196
Filing of Final Brief; Designation of Matter; Certificate of
Service; Record on Appeal Pursuant to Rules 210(b); 211(a) S.C.A.C.
within the (20) Twenty days

Dear Ms. Kitchings,

Please find hereto enclosed Original and 15 Copies of Final
Brief, to include Designation of Matter; Record on Appeal that was
Ordered to be filed within (20) Twenty Days. I thank you for all
your time and help with this matter.

Please see Motion For
Leave to file 15 copies
S.C.D.C. is refusing
to make the copies
So I be within the
Rules

Respectfully Submitted,

15/ James E. Wise

James E. Wise, #250411
Appellant ProSe

CC. File
Ms. Salley Elliott, Assist. A.G.



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

May 20, 2013

James E. Wise, 250411
Leiber Correctional Institution
P.O. Box 205
Ridgeville SC 29472

Re: The State v. James E. Wise
Appellate Case No. 2013-000196

Dear Counsel:

Please be advised our records indicate that the respondent has not served and filed an initial brief and designation of matter. Therefore, you should proceed to serve and file your final brief and file the record on appeal, as provided in Rules 210(b) and 211(a) of the South Carolina Appellate Court Rules, within twenty (20) days of the date of this letter.

Very truly yours,

A handwritten signature in black ink that reads "Jenny A. Kitchings". The signature is written in a cursive, flowing style.

CLERK

cc: Jerry W. Peace
Salley W. Elliott

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM NEWBERRY COUNTY
Court of General Sessions

Frank R. Addy, Jr. Chief Circuit Court Judge

Appellate Case No. ~~12~~2013-000196

The State of South Carolina,.....Respondent.

VS.

James E. Wise, #250411,.....Appellant.

NOTICE OF MOTION & MOTION
FOR LEAVE TO FILE 15 COPIES
OF RECORD ON APPEAL & FINAL
BRIEF

RECEIVED

MAY 28 2013

SC Court of Appeals

Appellant Respectfully moves this Court for Leave to File the 15 Copies of Final Brief & Record on Appeal. PLEASE TAKE NOTICE herein. South Carolina Department of Corrections is refusing to make the Copies that the Rules of Court ask for, therefore I'm respectfully asking the Court to Grant me Leave to Filing the 15 Copies and ask I not be held responsible for S.C.D.C. Policy restricting me of Copies.

Respectfully Submitted,

151 James E. Wise

James E. Wise, #250411
Appellant ProSe

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM NEWBERRY COUNTY
Court of General Sessions

Frank R. Addy, Jr., Chief Circuit Court Judge

Appellate Case No. 2013-000196

The State of South Carolina,Respondent.

VS.

James E. Wise, #250411,Appellant.

[FINAL] BRIEF OF APPELLANT

James E. Wise, #250411
Lieber Corr. Inst. E-B-49
P.O. BOX 205
Ridgeville, S.C. 29472
Appellant Pro Se

Other Counsel of Record:

Attorney General of South Carolina
Ms. Salley Elliott, Esquire
P.O. BOX 11549
Columbia, S.C. 29211-1549

TABLE OF CONTENTS

TABLE OF CONTENTS.....1.

TABLE OF AUTHORITIES.....2.

STATEMENT OF ISSUE ON APPEAL.....3.

STATEMENT OF THE CASE.....4

ARGUMENT.....5-6

CONCLUSION.....7.

TABLE OF AUTHORITIES

CASES:

Abate V. Abate, 660 S.E. 2d 515, 377 S.C. 548. (App. 2008) ... 6

Bettis V. Busbee, 283 S.C. 502, 323 S.E. 2d 536 (Ct. App. 1984) .. 6

Benton V. Md., 395 U.S. 784 (1969).....✓ 5

Brown V. Ohio, 432 U.S. 161 (1977).....✓ 5

Butler V. State, 397 S.E. 2d 87, 88 (1990).....✓ 6

Mattews V. State, 122 S. Ct. 1928, 535 U.S. 1062, 152 L.Ed.2d 834. 6

Riley V. South Carolina, 82 F. Supp. 2d 474, ; 225 F.3d 655.....6

State V. Brown, 23 S.E. 2d 301 (1942).....5

State V. Kimbrough, 46 S.E. 2d 273 (S.C. 1943).....✓ 6

State V. Lawson, 305 S.E. 2d 249 (S.C. 1983).....6

Yeager V. U.S., 129 S. Ct. 2360 (2009).....^p 5

CRIMINAL LAW Keys:

Criminal Law ~~Conn~~ 1.....6

Appeal and Error ~~Conn~~ 946.....6

U.S. Const. Article I, Section 12 S.C. Const.....5-6

U.S. Const. Amend. 55-6

STATEMENT OF ISSUE ON APPEAL

1.) Whether the Court erred by denying Appellant's Motion to arrest Judgment due to the sentence was in violation of Double Jeopardy, and the United States Constitution Article I, Section 12 of the South Carolina Constitution?

2.) Whether the Court erred by denying Appellant's Motion to arrest Judgment Due to the Court of General Sessions did not have Jurisdiction to impose Sentence in the begin with?

3.) Whether the Court erred by denying Appellant's Motion to arrest Judgment which was an Abuse of Discretion, a Denial of Due Process & Equal Protection which resulted in an Error of Law which Prejudiced Appellant because he is being held in Custody unlawful?

STATEMENT OF THE CASE

The Appellant was arrested in Newberry County, South Carolina on July 15, 1997 and Charged with, Burglary 1st Degree, Assault and Battery High and aggravated nature (ABHAN), and Escape. The Grand Jury indicted as Charged (97-GS-36-479), and the Appellant entered Plead Guilty in Magistrate's Court to the Lesser included offense of Assault & Battery (Simple) on the (ABHAN) Charge, and on the Burglary 1st Degree the Appellant plead Guilty to Malicious Injury To Real Property. The State then seeks a Re-indictment for 1st Degree Burglary (98-GS-36-402) of the Original indictment (97-GS-36-479). The Appellant herein went to Trial for 1st Degree Burglary on October 8, 1998 Pursuant to the above indictment, where a Jury found the Appellant Guilty as charged and he recieved a Life sentence without the possibility of parole. The Appellant's Trial Attorney filed a timely Motion to Quash the indictment, but failed to inform the Court that the Appellant had already Plead Guilty in Magistrate's Couert for Malicious injury to peal property, therefore it would Constitutionally Constitute a Double Jeopardy because now Appellant was tricked to believe that the Burglary 1st was taken care of by pleading to the lesser included charge in Magistrate Court. The Appellant filed a properly Notice of Motion and Motion to Arrest the Judgment in the Court of General Sessions on November 2, 2012, the Court filed an ORDER dismissing Motion to Arrest Judgment on January 7, 2012. The Appellant then filed a properly NOTICE OF APPEAL on January 25, 2013, along with a Motion for Counsel, Appellant recieved written Notice on January 17, 2013, so Notice of Appeal is proper. This Appeal Follows, after he recieved Notice that no Counsel for Appeal.

ARGUMENT

The Appellant argued in the Arrest of Judgment that he is being held in a Violation of United States Constitution under the 5th Amendment to Double Jeopardy Clause as well as the South Carolina Constitution Article I, Section 12, therefore the Court Abused it's discretion which amounted to an error of Law and a Violation of the Treaties of the United States as well as South Carolina and the Court should have Granted Arrest of Judgment in this instant matter, and ORDERED the release of Appellant.

The Appellant argued on Notice of Motion and Motion to Arrest of Judgment See: (Record on Appeal P.3-10), State V. Brown, 23 S.E. 2d 301 (1942).

The General Sessions Court had Jurisdiction to ARREST OF THE JUDGMENT ,but was without JURISDICTION to impose a sentence that the Appellant had already disposed of in Magistrate Court to take a Plead to two lesser included offenses, in exchange of the greater offenses being Nolle Prosed, therefore the arrest of the Judgment was proper and the denial is an abuse of discretion as well as the Sentence in a Violation of the United States Constitution under 5th Amendment to Double Jeopardy and the South Carolina Constitution Article I, Section 12, the denial amounted to an error of Law.

See: United States Constitution 5th Amendment

See: South Carolina Constitution Article I, Section 12

See: Brown V. Ohio, 432 U.S. 161 (1977)

See: Yeager V. U.S., 129 S.Ct. 2360 (2009).

See: Benton V. M.D., 395 U.S. 784 (1969).

See:Riley V. South Carolina,82 F. Supp. 2d 474;225 F.3d 655.

See:State V. Lawson,305 S.E. 2d 249 (S.C.1983).

See:State V. Kimbrough,46 S.E. 2d 273 (S.C. 1943).

When the Court reviews an Appeal as this one Abuse of Discretion comes into play and Appeal and error as well as Prejudice to the moving party which resulted in an error of Law as well as a Violation of the United States Constitution 5th Amendment & the South Carolina Constitution Article I,Section 12,therefore this Court does have Jurisdiction to Grant this Appeal and ORDER the release of the Appellant as a matter of Law because to hold him would Violate Clearly Established State and Federal Law.

See:Abate V. Abate,660 S.E. 2d 515,377 S.C. 548 (App. 2008).

See:Bettis V. Busbee,283 S.C. 502,323 S.E. 2d 536 (Ct. App.1984).

See:Criminal Law Ann 1

See:Appeal and Error Ann 946

The Appellant has shown reasons for the Grant of relief requested in the Conclusion of this Appeal and respectfully ask the Court to take serious consideration of the argument into dispute further more the Respondents have failed to argue anything therefore they have abandoned any such rights.,Futhermore its a miscarriage of Justice See:Butler V. State,397 S.E. 2d 87,88 (1990).; Matthews V. State,122 S. Ct. 1928,535 U.S. 1062,152 L.Ed 2d 834.

CONCLUSION

WHEREFORE, based on the foregoing this Court should Grant Appellants Motion To Arrest Judgment and ORDER the release of the Appellant or Remand the Case back to General Sessions Court for Oral Arguments, or Grant a Resentencing Hearing in this instant matter.

Respectfully Submitted,

151 James E. Wise, #250411

James E. Wise, #250411

Appellant Pro Se



THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM NEWBERRY COUNTY
Court of General Sessions

Frank R. Addy, Jr., Chief Circuit Court

Appellate Case No. 2013-000196

The State of South Carolina, Respondent.

V.

James E. Wise, #250411, Appellant.

DESIGNATION OF MATTER TO BE
INCLUDED IN THE RECORD ON APPEAL

Appellant proposes the following to be included in the Record
on Appeal:

1. Notice of Motion & Motion to Arrest Sentence/Judgment with
Attached Fortior Exhibit A - Disposition in Magistrates Court,
and Sentencing Sheet.
2. Order Dismissing Motion To Arrest Judgment
3. Notice of Motion/Appeal.

CERTIFICATE OF CERTIFICATION

I Certify that this Designation Contains no matter which is
irrelevant to this Appeal.

Respectfully Submitted,

1st James E. Wise, #250411
James E. Wise, #250411
Appellant Pro Se

THE STATE OF SOUTH CAROLINA
In The Court of appeals

APPEAL FROM NEWBERRY COUNTY
Court of General Sessions

Frank R. Addy, Jr. Chief Circuit Court Judge

Appellate Case No. 2013-000196

The State of South Carolina,Respondent.

VS.

James E. Wise, #250411,Appellant.

RECORD ON APPEAL

James E. Wise, #250411
Lieber Corr. Inst. E-B-49
P.O. BOX 205
Ridgeville, S.C. 29472
Appellant Pro Se

Other Counsel of Record:

Attorney General of South Carolina
Ms. Salley Elliott, Esquire
P.O. BOX 11549
Columbia, S.C. 29211-1549

INDEX

Order Dismissing Motion To Arrest Judgment..... 1,

Certificate of Service For Notice of Motion & Motion To Arrest
Judgment/Sentence.....2,

Notice of Motion & Motion to Arrest Judgment/Sentence.....3-10,

Notice of Appeal.....11,

STATE OF SOUTH CAROLINA)
)
COUNTY OF NEWBERRY)

COURT OF GENERAL SESSIONS
CASE NO. 98-GS-36-402

JAMES E. WISE, #250411,)
)
)

vs.)
)

STATE OF SOUTH CAROLINA)
)
)
)
)
)
)

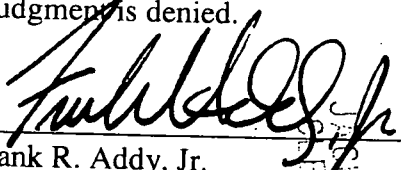
**ORDER DISMISSING MOTION TO
ARREST JUDGMENT**

THIS MATTER COMES BEFORE THE COURT on a motion to arrest judgment filed by James E. Wise dated November 1, 2012. This motion was forwarded to this judge for review due to a conflict which The Hon. Eugene Griffith, Jr. had in ruling upon the motion.

Having reviewed the motion and attachments, and after a review of the records of the clerk of court, the court finds that Mr. Wise's motion is without merit and should be summarily dismissed. Simply stated, double jeopardy did not prevent Mr. Wise's prosecution for Burglary 1st degree. Additionally, Mr. Wise has previously filed two (2) applications for post-conviction relief as well as a writ of mandamus. The issues addressed in his motion could have been raised in those proceedings.

WHEREFORE, Mr. Wise's motion to arrest judgment is denied.

IT IS SO ORDERED.



Frank R. Addy, Jr.
Chief Administrative Judge
Eighth Judicial Circuit

FILED
NEWBERRY COUNTY
2012 JAN -7 P 2:35
JAMES E. WISE
STATE OF SOUTH CAROLINA
CLERK OF COURT

December 31, 2012
Greenwood, South Carolina

STATE OF SOUTH CAROLINA)
)
 COUNTY OF NEWBERRY.)
)
 James E. Wise, #250411)
 Defendant, pro se)
)
 VS.)
)
 State of South Carolina,)
 Respondent,)
 _____)

IN THE COURT OF GENERAL SESSIONS
 EIGHTH JUDICIAL CIRCUIT
 C/A No. 98-GS-36-402

NOTICE OF MOTION &
 MOTION TO ARREST SENTENCE/
 JUDGMENT

FILED
 NEWBERRY COUNTY
 2012 NOV -9 A 10:48
 JAMIE S. BOWERS
 CLERK OF COURT

The Defendant James E. Wise, #250411 hereby files Notice Of Motion & Motion To Arrest Sentence/Judgment. Defendant invokes the Jurisdiction and power of General Sessions To Arrest the Sentence/Judgment in the above referenced Case/Indictments.

JURISDICTION

Arrest of Judgment. The staying of a judgment after its entry; esp., a court's refusal to render or enforce a judgment because of a defect apparent from the record. BLACK'S LAW DICTIONARY SEE: State v. Brown, 23 S.E. 2d 301 (1942), Ruling that Arrest of Judgment should have been GRANTED where Trial Court did not have Jurisdiction to impose sentence.

FACTS

The Defendant was arrested in Newberry County, South Carolina on July 15, 1997 and charged with, Burglary 1st Degree, Assault & Battery of a high and aggravated nature (ABHAN), and Escape.

The Grand Jury indicted as charged (97-GS-36-479), and the Defendant entered/Plead Guilty in Magistrate's Court to the Lesser included offense of Assault & Battery (Simple) on the

ADHAM charge, And on the Burglary 1st Degree the Defendant Plead Guilty to Malicious Injury To Real Property. The State seeks a Re-indictment for 1st Degree Burglary (98-GS-36-402) of the Original indictment (97-GS-36-479). The defendant herein went to Trial for 1st Degree Burglary on October 8, 1998 Pursuant to the above indictment, where a Jury found the defendant Guilty as charged and he recieved a Life Sentence without the possibility of Parole. The Defendants Trial Attorney filed a timely Motion to Quash the indictment, but failed to inform the court that the Defendant had already plead guilty in Magistrates Court for Malicious injury to real property, therefore it would Constitute Double Jeopardy and this Conviction CAN NOT STAND AS A MATTER OF LAW AND UNITED STATES CONSTITUTION AND ARTICLE I, SECTION 12 OF THE SOUTH CAROLINA CONSTITUTION, because it violates the DOUBLE JEOPARDY CLAUSE OF THE FIFTH AMENDMENT TO UNITED STATES CONSTITUTION.

DISCUSSION

The Defendant argues that this court has jurisdiction to Arrest Judgment in this case. See: State V. Brown, 23 S.E. 2d 301 (1942).

The Defendant argues that the second indictment (98-GS-36-402) And Trial Violated the Double Jeopardy Clause of the 5th Amendment of the United States Constitution And Article I, Section 12 of the South Carolina Constitution. See: State V. Lawson, (1983 case Our S.C. Supreme Court has stated: [" THE STATE AND FEDERAL CONSTITUTION GUARANTEES FREEDOM FROM DOUBLE JEOPARDY AND PROTECTION A CRIMINAL DEPENDANT FROM PUNISHMENT FOR BOTH AN OFFENSE AND

AND A LESSER INCLUDED OFFENSE WHEN THEY ARE ESTABLISHED BY THE SAME ACTS"]

Double Jeopardy; Multiple Punishment - Defendant was punished more than once for the same offense, Brown V. Ohio, 432 U.S. 161 (1977).

Multiple Punishment for the same act - Defendant was given UnConstitutional multiple sentences for a single criminal act... Benton V. Md., 395 U.S. 784 (1969).

Double Jeopardy Retrial on same elements from a Guilty Plea of a Bench Trial in Magistrates Court - Defendant was retried for an offense which includes as an essential element the same issue of critical fact that was decided in Magistrate Court already. Yeager V. U.S. 129 S. Ct. 2369 (2009).

Double Jeopardy, rather than being a single doctrine, is comprised of three (3) separate though related rules, prohibiting (1) Re-prosecution for the same offense following acquittal, (2) Re-prosecution for the same offense following conviction, and (3) Multiple punishment for the same offense, U.S.C.A. Const. Amend 5. See: Criminal Law 1, D.S.C. 2000

See: Riley V. South Carolina, 82 F. Supp. 2d 474, appeal from denial of habeas Corpus 225 F. 3d 655

See: State V. Gorden, 588 S.E. 2d 105, 356 S.C. 143, rehearing denied

See: In re Matthews, 350 S.E. 2d 311, 345 S.C. 638, certiorari denied

Matthews V. S.C. , 122 S. Ct. 1928, 535 U.S. 1062, 152 L. Ed. 2d 834

SEE: Attached Fortier Exhibit A -Disposition in Magistrates Court where Defendant had a Bench Trial resulting in a Guilty Plea.

6

CONCLUSION

WHEREFORE, the Defendant respectfully ask the Court to Arrest the Sentence/Judgment in this instant matter, as this case clearly constitutes a " Denial of fundamental fairness shocking to the universal sense of justice". Butler V. State, 397 S.E. 2d 87, 88(1990)

"There sits an inherent power in every court to see that a Defendants fundamental rights are protected" State V. Kimbrough, 46 S.E. 2d 273 (S.C. 1948). And that an ORDER issue and the Defendant be released from the South Carolina Department of Corrections as a matter of Law, and 5th Amendment to United States Constitution and Article I, Section 12 of the South Carolina Constitution.

Respectfully Submitted,

131 James E. Wise

James E. Wise, #2350411

Defendant Pro Se

ATTACHMENT

FORTIOR

EXHIBIT

A

Disposition in Magistrates Court where Defendant had
a Bench Trial / Plead Guilty

WEDNESDAY
ACTION...

NEWBERRY COUNTY MAGISTRATE COURT
UPDATE DISPOSITION
OFFICER.
CASE #...

09/09/98
B100
FILE DT. 07/24/97
ISSUE DT. 07/15/97
DELETED..N

NAME..... WISE, JAMES EDWARD

OFFENSE CD. 636 MALE INJURY TO PERSON AD0. 376.00 LOC..

SECTION... 16-11-520 BOND PD.. .00 RCPT. DT. 00/00/00

MALE INJURY TO REAL PROP.

CHECK #..

REASON: REA GUILTY BENEFIT

DISP DT.. 08/05/97 FINE AMT... .00

CONT DT.. 00/00/00 FEE & ASST. .00
.00 = TOT DUE

SENTENCE..... SENTENCED 30 DAYS SUSPENDED TIME SERVED

MENTS.....

CC (Y/N/P)..N

BW/#/OPT.Y

AR WARRANT.F491606

JUDICIAL JUDGE.. 724 CENTRAL TRAFF

COURT DT. 080597 09:00 AM JURY TRIAL.N

PAYMENT... .00

DUE DATE.. 00/00/00 ACCOUNT#...

DEFENDANT.... WISE, JAMES EDWARD

LIC#/ST....

LONG ST
PROSPERITY

TAG#/ST....
AUTO.....

SC 29127 0000

SOC/SEC....

RACE..... B
SEX..... M

VER.....

BIRTHDAY... 07/14/60

DRESS.....

HIST SENT..N

DISP SENT..N

0001

*** WARNING WARRANT *** SUSPENSION OF 376.00 ON 08/05/97

EXT Rep

DY = Enter

Caps Num

This is a true and certified copy of the disposition.

April Gilliam
April Gilliam - Notary Public

Commission Expires 1-21-2004

Todays Date 9-9-98

SENTENCE

STATE OF SOUTH CAROLINA
NEWBERRY COUNTY

Case # 97 GS-36 36-402

Ticket/Warrant # _____

Pled to/Convicted of _____

Burglary, 1st

Offense Code _____

MIN/MAX SENT.: _____

ATTEST:

(Clerk of Court/Deputy Clerk)

James Edward Wise
(Defendant)

Date Signed _____

The defendant James Edward Wise is committed to the State Department of Corrections/Newberry County Detention Center for a term of life ^{without parole} ~~months~~ years and/or pay a fine of \$ _____, provided upon the service of _____ months/years and/or payment of \$ _____, plus pay/waive costs and assessments as applicable the balance suspended with probation for _____ months/years.

Restitution

For Physical Injury \$ _____

Yes/No

Property Damage \$ _____

to be paid _____

to Clerk for _____

Other conditions: _____

Some copy o.

Newberry County, South Carolina

This is a true

Jackie S. Green
Clerk of Court

AUG 08 1998

Date 10/8, 1998

Frank Egger
Presiding Judge

**Pay to Victim's Compensation Fund if Subrogated.

Costs and Assessments \$ _____

James E. Wise, #250411
Lieber Corr. Inst. B-B-30
P.O. BOX 205
Ridgeville, S.C. 29472

November 1, 2012

Clerk of Court Newberry County
Attn: Ms. Jackie S. Bowers, Clerk
P.O. Drawer 10
Newberry, S.C. 29108-0010

Re: C/A No. 98-GS-36-402 / Filing Notice of motion & Motion to
Arrest Judgment/Sentence, certificate of service

Dear Ms. Bowers,

Please find here enclosed an Original courts copy for filing
with attachment fertier exhibit, and a copy to be clocked stamped
and returned in the envelope herein provided. By a copy of this I
have also sent the solicitor Mr. Jerry Peace, and the Chief Admin-
istrative Honorable Eugene C. Griffith, Jr. with a true and correc
copy. I thank you for all your time and help with this matter.

FILED
NEWBERRY COUNTY
2012 NOV -9 A 10:48
JACKIE S. BOWERS
CLERK OF COURT

Respectfully Submitted,

181 James E. Wise

James E. Wise, #250411

Defendant Pro se

CC: File

Mr. Jerry Peace, Solicitor

Chief Admint. Honorable Eugene C. Griffith, Jr.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FORM NEWBERRY COUNTY
Court of General Sessions

Frank R, Addy, Jr. Chief Circuit Court Judge

Case No. 98-GS-36-402

The State, Respondent.

v.

James E. Wise, #250411, Appellant.

NOTICE OF APPEAL

James E. Wise, #250411 Appeals his Conviction and Sentence in this Case, from the Order Dismissing Motion To Arrest Judgement. [This appeal is taken from the Order the Honorable Frank R. Addy, Jr. , dated December 31, 2012.]. Appellant recieved written notice of entry of the Order on January 17, 2013.

OTHER COUNSEL OF RECORD:

Solicitors Office For Newberry
ATTN: Mr. Jerry Peace
P.O. BOX 516
Greenwood, S.C. 29648

Respectfully Submitted,

James E. Wise

James E. Wise, 250411,