

The State of South Carolina
In The Court of Appeals

Appeal From Marion County
Court of Common Pleas

RECEIVED

FEB 13 2023

SC Court of Appeals

Hon.

Michael G. Nettles, Judge.

Jerry L. Franklin, Jr,

Pro Se. Appellant.

VS

State of South Carolina,

Respondent.

NOTICE OF APPEAL

Jerry L. Franklin, Jr. appeals the denial of his application for Post-Conviction Relief without an evidentiary hearing.

Other Counsel of Record:

D. Russ Barlow, III, Esquire
Assistant Attorney General
P.O. Box 11549
Columbia, S.C. 29211

Jerry L. Franklin, Jr.
Pro Se

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South Carolina Statutes: S.C. Code Ann.

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§ 44-43-400, Pg. 9

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South Carolina Attorney General's Opinions:

"Coroner's Jurisdiction and Responsibilities"

- 1) 1985 S.C. op. Atty. Gen. 351 (S.C.A.G.) 1985 S.C. op. Atty. Gen. No. 85-128, 1985 WL 166096, Pg. 11-15.
- 2) 1994 S.C. op. Atty. Gen. 17 (S.C.A.G.) 1994 S.C. op. Atty. Gen. No. 2, 1994 WL 50405, Pg. 21-24.
- 3) 1970 S.C. op. Atty. Gen. 241 (S.C.A.G.), 1970 S.C. op. Atty. Gen. No. 2972 1970 WL 12249, Pg. 16-17
- 4) 1974 WL 27489 (S.C.A.G.) October 21, 1974. IN RE: Charleston County Medical Examiner, Powers And Duties. Pg. 18-20.

Memorandum OF LAW

State v. Gentry, 363 S.C. 93, 101-02, 610 S.E.2d 494
499, (2005).

Whitner v. State, 328 S.C. 1, 492 S.E.2d 777 (1997),

McCoy v. State, 396 S.C. 254, 721, S.E.2d 413 (2011),

Williams v. State, 306 S.C. 89, 410 S.E.2d 563 (1991),

State v. Commander, 396 S.C. 254, 721 S.E.2d 413 (2011),

State v. Westmoreland, 421 S.C. 807 S.E.2d 701 (CT. App. 2017),

Moses v. Sumter County, 55 S.C. 502, 93 S.E. 581 (1899),

Giles v. Brown, 1 Mills Const. 230 (1817),

Rish v. Rish, 435 S.C. 681, 868 S.E.2d 719 (CT. App. 2021),

Ward v. Commonwealth, 216 Va. 177, 217 S.E.2d 810 (1975),

Baraka v. Com., 194 S.W. 2d, 313 Supreme Court Kentucky, (2006).

South Carolina Statutes:

S.C. Code Ann. § 17-7-20, § 17-7-30, § 17-7-70, § 17-5-530,
§ 17-5-560, § 17-7-520, § 17-7-310, § 44-43-400,
§ 44-43-960

South Carolina Attorney General's opinions:

"Corner's Jurisdiction And Responsibilities"

- ① 1985 S.C. op. Atty. Gen. 351 (S.C.A.G.) 1985 S.C. op. Atty. Gen.
No. 85-128, 1985 WL 166096,
- ② 1974 WL 27489 (S.C.A.G.) October 21, 1974. IN RE: Charleston
COUNTY medical Examiner, Powers And Duties,
- ③ 1970 S.C. op. Atty. Gen. 241 (S.C.A.G.), 1970 S.C. op. Atty. Gen.
No. 2972, 1970 WL 12249.
- ④ 1994 S.C. op. Atty. Gen. 19 ... (A)

Appellant Presents his notice of Appeal along with his Explanation Pursuant to Rule 229(C).

- A) Appellant asserts that the PCR Judge determination that the PCR application was successive and barred by the statute of limitations was improper.

(B)

Appellant Filed a Post-Conviction Relief application on May 12, 2021, alleging that he was being held in custody unlawfully on the following grounds:

- 1) Due Process Rights Violated Under the Fourteenth Amendment and S.C. Const. Article 1 Section 3.
 - (a) Appellant had a Parole Revocation hearing on April 22, 2021, and Appellant contends this hearing was unlawful and his due process rights were violated when he was denied appointed counsel to represent him at the hearing, without being given an explanation on the record.
- 2) Trial Court Lacked Subject Matter Jurisdiction to Accept his guilty plea to murder.
- 3) Ineffective Assistance of Counsel
 - a) Plea Counsel's Failure to File a motion of Discovery and/or

- a Brady motion.
- b) Failure to make a motion to have murder Indictment quashed.
- 4) Due Process Rights Violated under Fourteenth Amendment by the Grand Jury.
- a) INSUFFICIENT murder Indictment and LACK OF EVIDENCE and Probable CAUSE to Indict Appellant For Homicide/murder.

on October 28, 2021, Appellant received an unsigned Conditional order of dismissal, giving Appellant 20 days to Respond. Appellant made a Response on November 04, 2021. On December 29, 2021, Appellant was served a signed copy of the State's Conditional order of Dismissal according to Rule 4(d) of SCRCP, giving Appellant 20 days to Respond. Appellant on January 04, 2022 Filed An Amended Response to the State's Conditional order of Dismissal. which the State never responded to.

on February 22, 2022, Appellant received a Final order of Dismissal signed by the Hon. Michael G. Nettles. on February 22, 2022 Appellant Filed a Rule 59(e) motion to Alter or Amend Judgment.

On April 1, 2022 the State did a Return to Appellant Rule 59(e) motion.

On April 13, 2022 Appellant made a Response to Respondent's Return to his Rule 59(e) motion, contending that the Circuit Court lacked Subject Matter Jurisdiction to accept his guilty plea to a nonexistent offense.

On January 12, 2023 Appellant Filed a motion For An Evidentiary hearing on his Subject Matter Jurisdictional Issue, contending that the Circuit Court lacked Subject Matter Jurisdiction to accept his guilty plea to a nonexistent offense. The Respondent continues to ignore this issue. . . .

On January 23, 2023, Appellant received another Return From the Respondent, asking the Court to dismiss Appellant Rule 59(e) motion, but the Respondent still fail to acknowledge Appellant Subject Matter Jurisdictional Issue.

On February 08, 2023 Appellant received a signed order, denying his Rule 59(e) motion. This notice of Appeal follows.

Appellant Explanation Pursuant to Rule 227(c)

- A) Appellant asserts that the PCR Judge determination that the Appellant's PCR Application was successive and barred by the statute of limitations was improper.
- B) Appellant contends that issues related to subject matter jurisdiction may be raised at any time. See State v. Gentry, 363 S.C. 93, 101-02, 610 S.E.2d 494, 499, (2005). Lack of subject matter jurisdiction may not be waived, even by consent of the parties, and should be taken notice of by the Supreme Court.
- C) Appellant further contends that in his case, the manner of death was never determined to be a homicide. See Exhibit # 4 Death Certificate.
- D) Appellant further contends that subject matter jurisdiction is the power of a court to hear and determine cases of the general class to which the proceeding in question belong. State v. Gentry, supra.
- E) Appellant contends that his case did not belong

Explanation pursuant to Rule 227(c)

or WAS NOT legally in the Court of General Sessions because the incident WAS never determined to be a homicide. See Exhibit # 4 Death Certificate. See also S.C. Code Ann. § 17-7-20, § 17-5-530, § 17-7-150. The coroner shall proceed to summon a jury and hold a formal inquest as required by law. But IF there be, in his judgment, no apparent or probable blame against any living person as to the death, he shall issue a burial permit and all further inquiry or formal inquest shall be dispensed with.

Appellant further contends that under South Carolina law, a circuit court lacks subject matter jurisdiction to accept a guilty plea to a nonexistent offense. See Whitner v. State, 328 S.C. 1, 492 S.E.2d 777 (S.C. 1997).

Appellant contends the South Carolina Supreme Court has stated, where postconviction applicant alleges facts that would establish an exception to either the statute of limitations or the prohibition against successive applications and those facts is raised which can only be resolved by a hearing. Appellant contends that the per judge should have granted him a hearing on his subject matter jurisdictional claim, because

Explanation Pursuant to Rule 227 (c)

This issue could not be refuted by the record. See McCoy v. State, 396 S.C. 254, 721 S.E.2d 413 (2011).

Also issues related to subject matter jurisdiction may be raised at any time, see State v. Gentry, 363 S.C. S.E.2d 494, 499 (2005).

See also Attorney General's opinions concerning the responsibilities and jurisdiction of Coroners in South Carolina. Exhibits- A, B, C and D.

Argument

(1)

Appellant contends that the Circuit Court lacked subject matter jurisdiction to accept his guilty plea to murder:

- 1) Appellant further contends that this case was never determined to be a homicide. See Exhibit # 4 Death Certificate.
- 2) Appellant contends that issues related to subject matter jurisdiction may be raised at any time. See State v. Gentry, 363 S.C. 93, 101-02, 610 S.E.2d 494, 499 (2005). LACK OF subject matter jurisdiction may not be waived, even by consent of the parties, and should be taken notice of by the Supreme Court.
- 3) Appellant further contends that his case did not belong or was not legally in the Court of General Sessions because the incident was never determined to be a homicide. See Exhibit # 4 Death Certificate.
- 4) Appellant further contends that subject matter jurisdiction is the power of a court to hear and determine cases

of the general class to which the proceeding in question belongs. State v. Gearty, 363 S.C. 93, 101-02, 610 S.E.2d 494, 499 (2005).

5) Appellant further contends that his case was not legally in the Circuit Court because neither the County Coroner or medical Examiner ruled this incident a homicide.

6) Appellant contends under South Carolina law, a Circuit Court lacks subject matter jurisdiction to accept a guilty plea to a nonexistent offense. See Whitner v. State, 328 S.C. 1, 492 S.E.2d 777 (1997), see also Williams v. State, 306 S.C. 89, 410 S.E.2d 563 (1991).

7) Appellant contends that state law requires medical examiners to make an initial inquiry, forming the basis of a medical conclusion, as to the cause and manner of death in certain instances. See S.C. Code Ann. § 17-5-530, see also State v. Commander, 396 S.C. 254, 721 S.E.2d 413 (2011). See State v. Westmoreland, 421 S.C. 807 S.E.2d 701 (S.C. App. 2012), Moses v. Sumter County, 55 S.C. 502, 33 S.E. 581 (1899), Giles v. Brown, 1 Mills Const. 230 (1817), see also § 17-7-20,

§ 17-7-520, § 17-7-30, § 17-7-70, § 17-5-560,
§ 17-7-310, § 44-43-400, § 44-43-960.

Medical Examiners must make such determinations every time they indicate on a death certificate whether a death was natural, accidental, suicidal, homicidal, or undetermined. Such conclusions are an inherent part of the medical examiner's duties and have never been thought to invade the province of the jury. See BARAKA V. COMM. 194 S.W.3d 313 Supreme Court Kentucky, (2006).

9) Appellant further contends, "A judgment of a court without subject matter jurisdiction is void;" see Rish v. Rish, 435 S.C. 681, 868 S.E.2d 719 (Ct. App. 2021).

Appellant contends because there was genuine issues of material facts and questions of law, he should have been granted a full evidentiary hearing on his subject matter jurisdictional issue.

The Appellant forever prays,

STATE OF SOUTH CAROLINA
DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
CERTIFICATE OF DEATH

EXHIBIT # 4

TYPE OR PRINT IN PERMANENT INK FOR INSTRUCTIONS SEE HANDBOOK

DECEDENT IF DEATH OCCURRED IN INSTITUTION SEE HANDBOOK REGARDING COMPLETION OF RESIDENCE ITEMS.

PARENTS

DISPOSITION

CERTIFIER

CONDITIONS IF ANY WHICH GAVE RISE TO IMMEDIATE CAUSE STATING THE UNDERLYING CAUSE LAST

CAUSE OF DEATH

STATE BIRTH NUMBER		DECEDENT—NAME FIRST MIDDLE LAST		SEX	STATE FILE NUMBER
1. Elizabeth		Bunch		Female	DATE OF DEATH—(Mo., Day, Yr.) 3-12-85
RACE—(e.g., White, Black, American Indian, etc.) (Specify)	AGE—Last Birth- day—(Yrs.)	UNDER 1 YEAR MOS. DAYS	UNDER 1 DAY HOURS MINS.	DATE OF BIRTH—(Mo., Day, Yr.)	COUNTY OF DEATH
Black	5a. 17	5b.	5c.		7a. Marion
CITY, TOWN OR LOCATION OF DEATH			HOSPITAL OR OTHER INSTITUTION—(Name (If not in either, give street and number))		IF HOSP. OR INST. Indicate DOA, OP (Spec. Rm., Insptg.) (Specify)
7b. Marion			7c. Marion Memorial Hospital		7. Emer. Cm.
STATE OF BIRTH (If not in U.S., (Name country))	CITIZEN OF WHAT COUNTRY	MARRIED, NEVER MARRIED, WIDOWED, DIVORCED (Specify)		SURVIVING SPOUSE (If wife, give maiden name)	
8. S.C.	9. U.S.	10. Never Married		11. None	
SOCIAL SECURITY NUMBER		USUAL OCCUPATION (Give kind of work done during most of working life, even if retired)		KIND OF BUSINESS OR INDUSTRY	
1. _____		14a. Cashier		14b. Food	
RESIDENCE—STATE		COUNTY	CITY, TOWN OR LOCATION	STREET AND NUMBER	INSIDE CITY LIMITS (Specify Yes or No)
15a. S.C.		15b. Marion	15c. Gresham	15d. Rt 2 Box 4200	15e. No
FATHER—NAME FIRST MIDDLE LAST			MOTHER—MAIDEN NAME FIRST MIDDLE LAST		
16. Johnny Lee Bunch			17. Wilhelmina Dozier		
INFORMANT—NAME (Type or Print)			MAILING ADDRESS		
18a. Wilhelmina			18b. Rt 2, Box 4200 Gresham S.C.		
BURIAL, CREMATION, REMOVAL, Other (Specify)	CEMETERY OR CREMATORY—NAME		LOCATION	CITY OR TOWN	STATE
19a. Burial	19b. Old Neck		19c. Gresham S.C.		
FUNERAL DIRECTOR OR PERSON ACTING AS SUCH (Specify Title)		LIC. NO.	EMBALMER'S SIGNATURE		LIC. NO.
20a. Moses P. Smoot		20b. 1104	20c. Moses P. Smoot		20d. 1079
NAME OF FACILITY		LIC. NO.	ADDRESS OF FACILITY		
20e. Peoples Funeral Home		20f. 290	20g. P.O. Box Pamphlet, S.C.		
21a. To the best of my knowledge, death occurred at the time, date and place and due to the causes stated. (Signature and Title) <i>J. H. Coleman, M.D.</i>			22a. On the basis of examination and/or investigation, in my opinion death occurred at the time, date and place and due to the causes stated. (Signature and Title) <i>J. H. Coleman, M.D.</i>		
DATE SIGNED (Mo., Day, Yr.)			DATE SIGNED (Mo., Day, Yr.)		
21b. Dec 14, 1985			22b. Dec 14, 1985		
HOUR OF DEATH			HOUR OF DEATH		
21c. 11:20 AM			22c. 12:10 A.M.		
NAME OF ATTENDING PHYSICIAN IF OTHER THAN CERTIFIER (Type or Print)			22d. ON DEC 6, 1985		
21d. _____			22e. AT 12:10 A.M.		
NAME AND ADDRESS OF CERTIFIER (PHYSICIAN, MEDICAL EXAMINER OR CORONER) (Type or Print)			LIC. NO.		
23a. H.V. COLEMAN, M.D. MARION, S.C.			23b. 3444		
REGISTRAR			DATE RECEIVED BY REGISTRAR (Mo., Day, Yr.)		
24a. (Signature) <i>Joyce C Taylor</i>			24b. Dec 16, 1985		
25. IMMEDIATE CAUSE (ENTER ONLY ONE CAUSE PER LINE FOR (a), (b), AND (c).)					
(a) CAD - 12381945001 FAILURE					Interval between onset and death 1/2 HR
DUE TO, OR AS A CONSEQUENCE OF:					Interval between onset and death
(b) GSW RIGHT CHEST WITH CENTRAL HEMATOMA					2 HR
DUE TO, OR AS A CONSEQUENCE OF: GREAT VESSEL INJURY					Interval between onset and death
PART OTHER SIGNIFICANT CONDITIONS—Conditions contributing to death but not related to cause given in PART I (a)					
ACC., SUICIDE, HOM., UNDET., OR PENDING INVEST. (Specify)			DATE OF INJURY (Mo., Day, Yr.)	HOUR OF INJURY (M or A)	26. NO
28a. _____			28b. _____	28c. _____	27. YES
INJURY AT WORK (Specify Yes or No)			PLACE OF INJURY—At home, farm, shop, factory, office building, etc. (Specify)	LOCATION	STREET OR R.F.D. NO. CITY OR TOWN STATE
28e. _____			28f. _____	28g. _____	28d. _____

FILED

2022 APR 18 AM 10:14

MARION COUNTY SC
CHRISTY L. GRAY
CLERK OF COURT

MEDICAL-STATISTICAL
USE ONLY

Exhibit A

Found under 1985 S.C. op. Atty Gen, 351 (S.C.A.G.) 1985 S.C. op. Atty. Gen
§ 17-7-510. NO. 85-128, 1985 WK 166096

Office of the Attorney General

State of South Carolina

Opinion NO. 85-128

October 30, 1985

The Honorable Beverly Queen

Deputy Deputy Coroner / Cherokee County

Cherokee County Courthouse

Gaffney, S.C. 29340

Dear Coroner Queen:

In a letter to this office you questioned the period of
~~time a death falls under the jurisdiction of a coroner.~~ In
our telephone conversation you indicated that you were
referencing a situation such as where ^{there} is an
automobile accident and the death of an individual
involved results several weeks later while such individual
is under a physician's care.

~~Section 17-7-20 of the Code of South Carolina:~~

Whenever a body is found dead and an investigation
or inquest is deemed advisable the coroner or the magistrate
acting as coroner, as the case may be, shall go to the
body and examine the witnesses most likely to be

(10F5)

(Pg 11)

Exhibit A

able to explain the cause of death, take their testimony in writing and decide for himself whether there ought to be a trial or whether blame probably attaches to any living person for the death, and if so and if he shall receive the written request, if any, required by 9-17-7-50, he shall proceed to summon a jury and hold a formal inquest as required by law. ~~But if there be, in his judgment, no apparent or probable blame against living persons as to the death he shall issue a burial permit and all further inquiry or formal inquest shall be dispensed with.~~

A previous opinion of this office dated October 20, 1961, by former Attorney General Meled was concerned with the question of whether an inquest was necessary in circumstances where an individual was injured in an automobile accident but died two weeks later. According to the physician's report, the death of such individual was a result of injuries from the accident. The 1961 opinion particularly referenced that portion of the above-referenced statute which states that if in the coroner's judgment... there be... no apparent or probable blame against living persons as to the death he shall issue a burial permit and all further inquiry or formal inquest shall be dispensed with. Referencing such provision, the opinion stated that whether or not

an inquest was necessary was a matter within the discretion of the coroner. While the opinion indicated that the matter of whether or not an inquest is held in such circumstances was within the discretion of the coroner, ~~the opinion impliedly recognized that such a case still fell under the coroner's jurisdiction even though the death occurred days after an accident injuring the individual.~~

Such opinion is consistent with a regulation of the State Department of Health and Environmental Control. Regulation 61-19, section 18(d) (e) states that as to death registrations,

when death occurs more than ten (10) days after the decedent was last treated by a physician, or if the cause of death appears to be other than the illness or condition for which the deceased was being treated ~~or~~ ^{if} ~~an~~ inquiry is required by Title 17 of the Code of Laws of South Carolina, 1962 as amended [1976 Code, Title 17, as amended], the case shall be referred to the medical examiner or coroner for investigation to determine and certify the cause of death. (emphasis added)

when inquiry is required by Title 17 of the Code of Laws of South Carolina, 1962, as amended [1976 code, Title 17, as amended] the medical examiner or

Exhibit A

Coroner shall determine the CAUSE OF death and shall complete and sign the medical certification within forty-eight (48) hours after taking charge of the case.

Other statutes also expressly recognize the Authority of a Coroner in situations where an investigation or inquiry should be made as to manner and circumstances of a death. The Coroner's role in investigating deaths is emphasized by the provisions of Section 17-7-510 of the Code which states:

IF Any person shall bury or cause to be buried the dead body of a person supposed to have come to a violent death before notice to the coroner to examine the body and before inquiry is made into the manner and circumstances of the death, such person shall be liable to indictment therefor....

Also, section 40-19-280(A) of the Code states:

No person licensed as a funeral director or embalmer shall remove or embalm a dead human body when he has information indicating crime or violence of any sort in connection with the cause of death unless permission of the coroner or medical examiner or some other duly qualified person acting in this capacity has first been obtained.

Exhibit A

Referencing the above provisions and the previously issued opinion of this office noted above, it appears that the length of time between an incident and the death of an individual which results from such an incident is of no effect on the jurisdiction of a coroner as to any circumstances where typically the coroner would be involved as required by title 17 of the Code. If there are any questions, please advise.
Sincerely,

Charles H. Richardson
Assistant Attorney General

1985 S.C. Op. Atty. Gen. 357 (S.C.A.G.), 1985 S.C. Op. Atty. Gen. No. 85-128, 1985 WL 166896

certify - to authenticate or verify in writing, to attest as being true or as meeting certain criteria.

1970 S.C. op. Atty. Gen. 241 (S.C.A.G), 1970 S.C. op. Atty. Gen. No 2972,
1970 WL. 12249

OFFICE OF THE ATTORNEY GENERAL
STATE OF SOUTH CAROLINA
OPINION NO. 2972
September 3, 1970

Coroner of County in which dead body is lying
is the proper person to issue the Death Certificate
when death is caused by unlawful or suspicious means.

TO: Funeral Director Association, Inc.
Columbia, S.C.

QUESTION:

IF a person dies, as a result of injuries caused
by unlawful or suspicious means, in a County other
than where the injury was inflicted, who is the proper
person to make the death certificate?

State Board of Health, Vital Statistics Regulation
No. 9, Page 300, Vol. 17, South Carolina Code of Laws
(1962), provides, inter alia, that 'if death is caused
by unlawful or suspicious means, the registrar shall
then refer the case to the coroner for his investigation

and Certification.

Section 17-96, South Carolina Code of Laws (1962), provides that... every Coroner, within the County for which he has been elected or appointed, may take inquest of casual or violent deaths when the dead body is lying in his County:

Based upon the foregoing, it is the opinion of this office that the Coroner of the County in which the body is lying is the proper person to issue the Certificate of Death when the death results from unlawful or suspicious injuries.

F.D.P.

Assistant Attorney General

1970 S.C. op. Atty. Gen. 241 (S.C.A.G.), 1970 S.C. op. Atty. Gen. No. 2972. 1970 WL 12249

1974 WL 29489 (S.C.A.G.)

OFFICE OF THE ATTORNEY GENERAL
STATE OF SOUTH CAROLINA

October 21, 1974

To RE: Charleston County medical Examiner, Powers & Duties:

Honorable Kenneth Chue
Coroner
Charleston County
2 Court House Square
Charleston, South Carolina

Dear Mr. Chue:

you have inquired generally as to the powers and duties of the Charleston County medical Examiner with respect to his investigations of violent or unexplained deaths, particularly as those powers and duties might relate to your authority as Coroner of Charleston County. It is my understanding that your inquiry is directed specifically to the question of whether or not the medical Examiner is limited in his investigation to a determination of the cause of death by means of laboratory examination of dead bodies.

with respect to violent or unexplained deaths, Section 17-166, 1962 Code of Laws of South Carolina, as amended, reads:

The County medical examiner shall make immediate

inquiry into the cause and manner [emphasis added] of death and shall reduce his finding to writing -;

'manner of death' is defined in Section 17-161(2) as follows:

The term 'manner of death' shall refer to the means or fatal agency that caused a death.

Manner of death shall be classified in one of the five following categories: A. natural, B. Accident, C. Homicide, D. Suicide, E. undetermined.

Even if the medical Examiner can determine the cause of death by means of a laboratory post mortem examination, it is obviously impossible for him to determine the manner of death, as it is his statutory duty to do, by such means. For example, he could not make a factual finding of whether or not a gunshot wound causing death was the result of accident, homicide, or suicide, without some investigation extending outside the laboratory.

Here →

Whether or not the medical Examiner is qualified to make such investigations or whether or not you and police authorities might be better qualified in that area by training and experience, are questions that are not properly before this office - because the statute clearly empowers the medical Examiner to make such investigations.

The General Assembly apparently has not seen fit to carve out exclusive areas of jurisdiction in the investigation

of violent or unexplained deaths between County Coroners, Police agencies and, in the case of Charleston County, the Office of Medical Examiner. Even as between various Police agencies [County, City and State], there is no delineation of exclusive authority to investigate such matters.

In view of the foregoing, it is the opinion of this Office that the duties and powers of your Office and those of the Medical Examiner of Charleston County overlap to a great degree, and specifically, that the Medical Examiner is not limited to laboratory post mortem examinations to determine the cause of death. He may conduct reasonable investigation outside the laboratory to determine the manner of death.

yours very truly,

Joseph C. Coleman
Deputy Attorney General

1974 WL 27489 (S.C.A.C.)

1994 S.C. op. Atty. Gen. 19 (S.C.A.G.) 1994 S.C. op. Atty. Gen. No. 2, 1994 WL 50409.

Office of the Attorney General
 State of South Carolina
 Opinion No. 94-2
 January 5, 1994

The Honorable Sue R. Townsend
 S.C. Coroner's Association
 Training Coordinator
 Post Office Box 1469
 Aiken, South Carolina 29801

Dear Sue:

In a letter to this office, you requested clarification of S.C. Code Section 17-7-20 which states in part:

Whenever a body is found dead and an investigation or inquest is deemed advisable the Coroner... shall go to the body and examine the witnesses most likely to be able to explain the cause of death, take their testimony in writing and decide for himself whether there ought to be a trial or whether blame probably attaches to any living person for the death...

Pursuant to such provision, the Coroner may hold an inquest but, if in the Coroner's judgment there is 'no apparent or probable blame' against an individual as to the death, no inquest is held.

You questioned the proper interpretation of the quoted provision and particularly asked whether as Coroner you could take written

STATEMENTS independent OF LAW enforcement or MAY you utilize STATEMENTS obtained by LAW enforcement such as STATEMENTS gathered by LAW enforcement FROM witnesses to a Fatal incident.

In Moses v. Sumter County, 55 S.C. 502, 33 S.E. 581 (1899) the STATE Supreme Court Citing such provision STATED that its purpose was to ... dispense with Formal inquests... in all CASES in which the Coroner after a preliminary investigation by himself without a jury, should decide that no blame probably attaches to anyone for the death. It is made the duty OF the Coroner in all CASES to hold this preliminary investigation and he has no discretion to dispense with it. ...

55 S.C. at 503-504.

An opinion OF this OFFICE dated February 9, 1981 noted that STATE Statutes do not require a Coroner to hold an inquest in every situation. An opinion dated July 9, 1973 also concurred that it WAS within the discretion OF a Coroner in each CASE as to whether OR not an inquest is held in a particular situation. See also, S.C. Code Section 17-7-100 (when the Coroner upon the required preliminary examination shall determine that a Formal inquest shall be held...)

AS to you questioning regarding whether you should TAKE STATEMENTS independent OF those obtained by LAW enforcement OFFICERS or MAY you utilize STATEMENTS these OFFICERS HAVE gathered,

enclosed are copies of prior opinions of this office dated October 7, 1976 and April 26, 1984, which discuss the responsibilities of a Coroner and LAW enforcement officers in an investigation.

In particular, the opinion states that Coroners and LAW enforcement officers

... have full authority to investigate, but not to the exclusion of the other. Neither does either have authority to direct the other as to methods of investigation. Obviously, the ideal situation would be for there to be complete cooperation between the Coroner and the police, and of different jurisdictions... I can only say that a Coroner has the authority to gather evidence at the scene of a crime and preserve it for presentation at an inquest or trial. This does not mean, however, that he may withhold it from investigating police officers who have need of it for examination or testing relating to solution of the crime...

I am unaware of any changes in the LAW since these opinions were written which would speak specifically to your situation. Therefore, I can only reiterate that ideally there should be cooperation between LAW enforcement and Coroners in investigating a death. However, clearly, Section 17-7-20 does provide for a Coroner to go to the body and examine the witnesses... (and)... take their

testimony in writing.... Therefore, in the absence of
Cooperation with law enforcement, as Coroner, you would be
authorized to complete your own investigation separately.

IF there are any questions, please advise.

Sincerely,

Charles H. Richardson
Assistant Attorney General

Reviewed and Approved by:

Edwin E. Evans
Chief Deputy Attorney General
Robert D. Cook
Executive Assistant For Opinions

1994 S.C. op. Atty. Gen. 17 (S.C.A.G.) 1994 S.C. op. Atty. Gen. No. 2, 1994 WL 50409

The STATE OF South Carolina
IN THE COURT OF APPEALS

Appeal From Marion County

Hon. Michael G. Nettles

CASE NO. 2021-CP-33-0216

RECEIVED

FEB 13 2023
SC Court of Appeals

Jerry L. Franklin, Jr.

Pro se - Appellant.

VS.

STATE OF South Carolina

Respondent.

PROOF OF SERVICE

I CERTIFY that I HAVE served my notice of Appeal on the following by depositing a copy of it in the U.S. mail, postage prepaid on February 09, 2023 and addressed as follows:

D. Russ Barlow, II, Esquire
Assistant Attorney General
P.O. Box 11549
Columbia, S.C. 29211

Christy M. Gray - clerk of court, Marion ct.
P.O. Box 295
Marion, S.C. 29571.

St. Jerry L. Franklin, Jr. Pro se

A Court

S.C. COURT OF Appeals
P.O. Box 11629
Columbia, S.C. 29201

Dated February 09, 2023

Jerry L. Franklin Jr, #132862
FRA-186
McCormick Correctional Inst.
386 Redemption Way
McCormick, S.C. 29899

RECEIVED

FEB 13 2023
SC Court of Appeals

RE: Filing Notice OF Appeal - CASE No. 2021-CR-33-0216

Dear Hon. Clerk,

Enclosed please find Appellant's Notice of appeal and Explanation along with Proof of Service For Filing in your office.

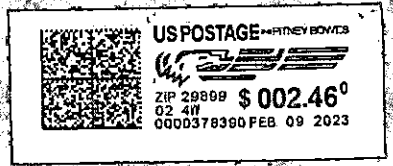
Appellant request, because of his lack of Resources, and skills, Appellate Counsel be Appointed to Perfect his appeal.

Sincerely,

Jerry L. Franklin Jr
Pro Se - Appellant

1/1

Jerry L. Franklin Jr #132362
FLA-186
McCormick Correctional Inst
386 Redemption way
McCormick, S.C. 29899



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FEB 13 2023
SC Court of Appeals

South Carolina Court of Appeals
P.O. Box 11629
Columbia, S.C. 29201

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