

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF KERSHAW)

Mr. Robert Cannon, #328347)
applicant)

CASE NO: 2022-CP-28-413

"VS")

Memorandum To Support
PCR Application

State Of South Carolina)
respondent)

Comes Now, Mr. Robert Cannon and I would show unto this Court of Common Pleas respectfully the following:

[PREAMBLE]

This is a memorandum to support Applicants PCR application. Applicant avers that the Kershaw County Court of General Sessions, lacked subject matter jurisdiction to entertain and adjudicate his criminal case. This is a cognizable claim for this court of Common Pleas to adjudicate on the merits pursuant to the S.C. Code Ann. § 17-27-20(A)(1)(2), and (3). The factual predicate, and argumentation to support it are fully and unequivocally developed in this memorandum for the courts consideration.

JANET C. HABTY
CLERK OF COURT
KERSHAW COUNTY, S.C.

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To support section 10 of my PCR application, I would state as follows:

[10-A]

The Kershaw County Court of General Sessions lacked subject matter jurisdiction to entertain and adjudicate applicants criminal case, thus violating his rights under the S.C. Constitution Article I § 3, and under the 14th Amendment to the U.S. Constitution.

To support section "11" of Applicants PCR application, I would state as follows:

[11-A-1]

THE KERSHAW COUNTY COURT OF GENERAL SESSIONS LACKED SUBJECT MATTER JURISDICTION TO ENTERTAIN AND ADJUDICATE APPLICANTS CRIMINAL CASE, BECAUSE THE GRAND JURY OF KERSHAW COUNTY TRUE BILLED APPLICANTS INDICTMENTS OUTSIDE OF IT'S JURISDICTIONAL LIMITS AS COMMANDED BY THE STATE LEGISLATURE.

* * * * *

Getting straight to the point, Applicant avers that the Grand Jury proceeding in this case is statutory null and void, thus making his indictments also null, void and without legal effect.

My legal thesis in this hypersensitive jurisdictional litigation is achored from Article 5 of the S.C. Code of Laws, which is styled, to wit:

" POWER AND JURISDICTION OF COURTS AND JUDGES "

Being so, the S.C. Code Ann. § 14-5-670(1) is listed under Article 5 as a [j]urisdictional [a]ffirmative [s]tatute.

Ita Lex Scripta Est.

"Kershaw County-The Court of general sessions for Kershaw County shall be held at Camden on the third Monday in February, the third Monday in May, and the fourth Monday in October"

S.C.Code Ann. § 14-5-670(1)

To pass statutory scrutiny, Applicants grand jury proceeding must be held within the [j]urisdictional [L]imits imposed by the State Legislature, however, the grand jury proceeding was not held in compliance with the law and this jurisdictional dispute follows.

Insofar, because this litigation is hypersensitive, I will break down my argument point for point for a just adjudication on the merits.

[POINT 1]

THE GRAND JURY CAN ONLY CONVENE WHEN THE COURT OF GENERAL SESSIONS
IS IN SESSION

* * * * *

So that nobody misses the point, the judicial power that was blessed to the Kershaw County Court of General Sessions, is [c]oextensive with the judicial power of the Kershaw County Grand Jury,

State "vs" McClure, 277 S.C. 432, 289 S.E.2d. 158 (S.C.1982);

State "vs" Funderburk, 259 S.C. 256, 191 S.E.2d. 520 (S.C.1972);

State "vs" Wheeler, 259 S.C. 571, 193 S.E.2d. 515 (S.C.1972);

Importantly, because the law is a profession of words both spoken and written, and words in there proper order are the raw materials of law, the word [c]oextensive is of paramount importance to this hypersensitive jurisdictional litigation which is defined as, to wit;

"Having the same limits, bounderies, or scope; To exist together at the same time, lasting through the same era."

Being so, we should be in agreement that the judicial power of the court of general sessions is [c]onjunct with the judicial power of the grand jury, and that power is [i]ndivisible.

To be absolutely sure, the phraseology on the indictment does state in relevant part;

"AT A COURT OF GENERAL SESSIONS CONVENED ON FEBRUARY 7TH 2007, THE GRAND JURORS OF KERSHAW COUNTY PRESENT UPON THERE OATH"

For the sake of clarity, there is [n]o Court of General Sessions on February 7th, 2007, which is the gist of this jurisdictional dispute.

[POINT 2]

SUBJECT MATTER JURISDICTION JURISPRUDENCE

* * * * *

The question of subject matter jurisdiction is a question of law, not of fact, Gantt "vs" Selph, 423 S.C. 333, 814 S.E.2d. 523 (2018).

The United States Supreme Court has [h]eld that subject matter jurisdiction

is a courts [S]tatutory or Constitutional [p]ower to hear a case,
United States "vs" Cotton, 535 U.S. 625, 122 S.Ct. 1781 (2002)
Steel Co. "vs" Citizens for a Better Env., 523 U.S. 83, 118 S.Ct. 1003 (1998)
Lightfoot "vs" Cendant, 137 S.Ct. 553 (2017); also see
Kosciusko "vs" Parham, 428 S.C. 481, 836 S.E.2d. 362 (2019);
First Citizens Bank & Trust "vs" Taylor, 431 S.C. 149, 847 S.E.2d. 249 (2020);
subject matter jurisdiction is [f]undamental,
Brown "vs" State, 343 S.C. 342, 540 S.E. 2d. 846 (2001)
State "vs" Guthrie, 352 S.C. 103, 572 S.E. 2d. 309 (2002)
State "vs" Dudley, 364 S.C. 578, 614 S.E.2d. 623 (2005).

Factual predicates pertaining to lack of subject matter jurisdiction can
be raised at anytime, in any proceeding,

State "vs" McBride, 416 S.C. 379, 786 S.E.2d. 435 (2016)
Edwards "vs" State, 372 S.C. 493, 642 S.E.2d. 738 (2007).

It can even be raised on the courts own motion sue sponte,

Jackson "vs" Jackson, 432 S.C. 415, 853 S.E. 2d. 344 (2020)
Town of Hilton Head "vs" Godwin, 370 S.C. 221, 634 S.E.2d. 59 (2006)
Steele Co. Supra.

Subject matter jurisdiction can never ever be forfeited or waived, not even
by consent of the parties, consequently defects in subject matter jurisdiction
require correction United States "vs" Cotton, Supra.

The doctrine of Res Judicata do [n]ot even apply to issues related to lack
of subject matter jurisdiction, Brown Supra, at [No.1].

It is axiomatic that an order entered or pronounced by a court without subject
matter jurisdiction is not void, but "utterly void" Jackson Supra,

Subject matter jurisdiction must be edged in stone in the court record,
State "vs" Crim, 341 S.C. 63, 533 S.E. 2d. 329 (2000).

Likewise, questions related to lack of subject matter jurisdiction should
be taken notice of by the court, Brown supra.

PLEASE TAKE NOTICE: Applicant challenges the [s]tatutory power of the Kershaw
County Grand Jury to convene and true bill his indictments therefore a valid
claim of subject matter jurisdiction is sub judice.

[POINT 2]

THE DICTION OF THE S.C. CODE ANN. § 14-5-670(1) IS CLEAR AND UNAMBIGUOUS

* * * * *

Unyielding, jurisdictional statutes require [s]trict adherence to the commands if the legislature related to the judicial power of the courts. In my view, the commands of the state legislature are [m]andatory, and not discretionary, moreover rigid, inflexible, and without exception, because from the words of the law there is no departure, (A Verbis Legis Non Est Recedendum).

Unshakable, it is obvious and unarguable that the Kershaw County Grand Jury impermissibly convened and true billed applicants indictments outside of the jurisdictional limitations circumscribed in Article 5 of the S.C. Code of Laws styled, "POWER OF THE COURTS AND JUDGES".

Significantly important, February 7th 2007 is on a [W]endsday in the [s]econd week of February, [n]ot in the third week as commanded by Legislative statutory law.

I must reiterate-"THE COURT OF GENERAL SESSIONS FOR KERSHAW COUNTY SHALL BE HELD AT CAMDEN ON THE THIRD MONDAY IN FEBRUARY, THE [T]HIRD [M]onday IN MAY, AND THE FOURTH MONDAY IN OCTOBER.

S.C. CODE ANN. § 14-5-670(1)

This is not a feckless, unimportant or insignificant matter, standing alone, the gravity of the statutory transgression has nullified the prerequisites statutorily required for the Grand Jury to be empowered with legislative judicial power to conduct judicial business.

Our state legislature has taken alot of time to outline the jurisdictional power of all the judicial circuits in this state, Compelling respect, the judicial limits are finite, incisive, moreover definitive.

Simply put, this court must openly acknowledge that the porported Grand Jury proceeding in this case was malum prohibitum, do to the diction of the statute being clear and unambiguous.

My legal frame work to this language is iron clad to wit;

It is a elementary cardinal rule of [s]tatutory construction that the primary purpose in interpreting statutes is to ascertain the intent of the Legislature
State "vs" Jones, 416 S.C. 283, 786 S.E. 2d. 132 (S.C.2016);
State "vs" Jones, 396 S.C. 424, 721 S.E.2d.786 (S.C.2012).

When a statutes terms are [c]lear, and [u]nambiguous on their facial validity there is no room for statutory construction and the courts must apply the statute according to its literal meaning,

State "vs" Sweat, 379 S.C. 367, 665 S.E.2d.645 (2008);

State "vs" Duncan, 392 S.C. 404, 709 S.E.2d. 662 (2011);

State "vs" Gordon, 414 S.C. 94, 777 S.E.2d. 376 (2015);

"ONE MUST ABIDE BY THE WORDS WHERE THERE IS NO AMBIGUITY" (Verbis Standum, Ubi Nulla Ambiguous). The court must give words their ordinary or natural meaning Artis "vs" District Of Columbia, 138 S.C.T. 594 (2018);

Leocal "vs" Ashcroft, 543 U.S. 1, 125 S.C.T. 377 (2004);

Moskal "vs" United States, 498 U.S.103, 111 S.C.T. 461 (1990).

The courts cannot resort to subtle or forced construction to limit or expand morover transmute the S.C.Code Ann. § 14-5-670(1) operation.

Sloan "vs" Hardee, 371 S.C. 495, 640 S.E.2d. 457 (2007);

Olds "vs" City Of Goose Creek, 424 S.C. 240, 818 S.E.2d.5 (2018).

Critically serious, "when a statutes language is plain, the sole purpose and function of the court is to enforce the statute according to its terms for judicial accountability, Sebelious "vs" Clear, 569 U.S. 369, 133 S.C.T.1886 (2013).

Under this legal foundation the operation of the S.C. Code Ann. § 14-5-670(1) nullifies the porported Grand Jury proceeding held on February 7th, 2007.

To be sure, the chiefest part of everything is the beginning, (Cujusque Rei Potissima Pars Est Principium), Compelling respect, it is the General Assembly who establishes the [j]urisdicton of the courts in a legislative pronouncement, Bayly "vs" State, 397 S.C. 290, 724 S.E.2d.182 (S.C.2012). The legislature has the [a]uthority to [l]imit the subject matter jurisdiction of a court that it has created,

O.A.Smith Corp. "vs" S.C.Dept. of Health, 428 S.C. 189, 833 S.E. 2d.451 (2019).

Moreover, the legislative department makes the laws, the executive department carries the laws into effect, and the judicial department interprets and declares the laws that the legislature forthwith,

S.C. Public Interest Foundation "vs" S.C. Trans. Infracture Bank, 403 S.C 640 S.E. 2d.521 (S.C.2013);

State "vs" Ex Rel Condon "vs" Hodges, 349 S.C. 232, 562 S.E.2d.623 (2002).

THE S.C. CODE ANN. § 14-9-210 REINFORCES THE S.C. CODE ANN. § 14-5-670(1).

* * * * *

Ita Lex Scripta Est, (The law is written),

"The county solicitor shall prepare and through the presiding judge of the court of General Sessions submit to the grand jury while [i]n [a]ttendance upon the court of General Sessions, bills of indictments in all cases pending in the county court in which the punishment may exceed a fine of one hundred dollars or imprisonment for thirty days, when such cases have not been previously acted on by the grand jury. The grand jury shall act thereon, and shall report its action to the presiding judge of the court of General Sessions and said judge shall direct the clerk of General Sessions to report the same to the presiding judge of the county at its next ensuing term".

S.C. Code ANN. § 14-9-210.

There can be no clearer expression of the command of the state legislature in this diction stated. The language specifically and unequivocally command that the solicitor submit the indictments to the grand jury while in [a]ttendance upon the court of General Sessions plain and simple.

This language reinforces the S.C. Code Ann. § 14-5-670(1), unyielding, this is a jurisdictional fact, that must take place, and it is statutorily [i]ndispensible.

The best mode of interpreting laws is to make laws agree with laws,
(*Optimus Interpretandi Modus Est Sic Legis Interpretare Ut Legis Legibus Accordant*).

If true, the S.C. Code Ann. § 14-9-210 insures that the solicitor submits the indictments to the county grand jury when the county court of general sessions is in session in accordance with the Legislative statutory law giving the grand jury judicial power, to wit, S.C. Code Ann. § 14-5-670(1).

Stare decisis in this matter makes one thing crystal clear, and that one thing is " A GRAND JURY IS NOT A SOLICITORS PLAY THING ",

State "vs" Moses, 390 S.C. 502, 702 S.E.2d.395 (2010) [at 405].

The solicitor is not at liberty to hold grand jury proceedings anytime as she or he pleases, this is not a [g]ame, the S.C. Code Ann. § 14-9-210, and the S.C. Code Ann. § 14-5-670(1) working in together has put the solicitor in a Statutory straight jacket and there is no escape.

Unflinching, the grand jury proceeding true billing indictments [m]ust take place during the judicial limits setforth by the legislature, or it is tantamount to no grand jury proceeding at all.

[POINT 4]

APPLICANTS INDICTMENTS ARE NULL, VOID, AND WITHOUT LEGAL EFFECT AS
A FACT OF STATUTORY LEGISLATIVE LAW

* * * * *

It is accurate to say that the Grand Jury of Kershaw County convening and true-billing Applicants indictments on February 7th, 2007 was extramural, presumptuous, moreover ultra vires.

Ex Rigore Juris (According to the strictness of law), Applicants charging instruments are [N]on [J]uridicus, [s]pecious, [p]reter [l]egal in there genesis, origin, and DNA, predicated on the indictments being born in a proceeding without legislative judicial power.

Significantly important, when the state legislature unequivocally [s]pecified that in the month of February the court of general sessions has judicial power in the [t]hird week, that does not mean the grand jury has judicial power in the [s]econd week, likewise, "the specification of one thing is the exclusion of the other, (Enumeratio Unius Est Exclusio Alteris).

The principle here is lucid, as a matter of law, what is more there is a [c]onclusive [p]resumption that the statutory transgressions here has rendered the indictments null, void, and without legal effect.

[POINT 5]

AN INDICTMENT FROM THE GRAND JURY MUST BE REAL

* * * * *

Jus Strictum, the law requires an indictment as a condition precedent to adhere to the S.C. Constitution Article I § 11.

It is the [n]otice [d]ocument of the court of General Sessions,
State "vs" Gentry, 363 S.C. 93,610 S.E.2d. 494 (2005).

An indictment is the official court document that gives Applicant notice of the charges that he must face at trial to the constitutional commands of the S.C. Constitution Article I §§ 3, and 14, and the 6th and 14th Amendments to the United States Constitution, to wit, to be informed of the nature and cause of the accusation against you.

Even more fundamentally, "to receive [n]otice is the [f]irst and [m]ost universally recognized requirement of [D]ue [P]rocess,

Smith "vs" O'Grady, 312 U.S. 329,61 S.C.T. 572 (1941);

Dusenbery "vs" United States, 534 U.S. 161,122 S.C.T.694 (2002);

State "vs" Binnarr, 400 S.C. 156,733 S.E.2d. 890 (2012);

State "vs" Dukas, 404 S.C. 553,745 S.E.2d.137 (2013);

Alot can be said about an indictment, its a notice document, it s a charging instrument, but reality is this, " you cant go to trial in the state of South Carolina without one"..

Strictly speaking, an indictment is the golden ticket from the County Grand Jury to appear in the judicial area of General Sessions, the indictment cannot be opprobrium, spurious, preter legal, or fictitious.

It must be [r]eal, [a]uthentic [v]alid, in a statutory and Constitutional sense to satisfy the appetite of the command of the S.C. Constitution Article I § 11.

The indictment cannot be [f]lawed in a [f]undamental way, the prerequisites to obtain a valid indictment must be done with an exactness and [p]urism that it can instantiate compliance to the jurisdictional commands of the S.C. Codes Ann. §§ 14-5-670(1), and 14-9-210.

The sword of the law bolsters a valid indictment, and slays an invalid indictment .

[POINT 5]

APPLICANTS INDICTMENTS FAIL ON THEIR FACIAL VALIDITY FOR VIOLATIONS
OF STATE AND FEDERAL LAW

* * * * *

In the state of South Carolina, it is unlawful for a person to willfully give false, misleading or incomplete information on a [d]ocument, report, or form required by the laws if this state.

S.C.CODE ANN. § 16-9-10(2)

If true, we should be in agreement that an indictment is a document required by the laws of this state to go to trial, which is a very serious matter. The solicitor willfully and knowingly gave false information to the court of General Sessions when the porported indictment was presented to the court stating-"AT A COURT OF GENERAL SESSIONS CONVENED ON FEBRUARY 7TH 2007" and no such court existed as a fact of law. This phraseology is absolutely false, and misleading and this is perjury by definition of the law, ipso jure.

What is more, the charging instruments in this case also blatantly violate the laws of the United States. The Supreme Law is this:

This constitution and the laws of the United States which shall be made in pursuance thereof, and all Treaties made, under the Authority of the United States, shall be the supreme Law of the land, and the judges in every State shall be bound thereby, any thing in the Constitution or Laws of any State to the Contrary notwithstanding.

U.S. CONSTITUTION ARTICLE VI § 2

With this fresh in mind, please take notice of Title 18 § 1515 U.S.C..

(a)(3)(A) states the term misleading conduct means;

(A)-knowingly making a false statement

(C)-with intent to mislead, knowingly submitting or inviting reliance on a writing or recording that is false, forged, altered, or otherwise lacking authenticity.

The indictments in this case are not authentic, and they were presented in a court of law in the United States. This was clearly a violation of Federal Law .

[POINT 6]

FRAUD HAS BEEN COMMITTED ON THE COURT

* * * * *

To prove fraud the following elements must be met; (1)-A representation of a fact;(2)-its falsity;(3)-its materiality;(4)-either knowledge of the falsity of the representation or reckless disregard of its truth or falsity; (5)the intent that the representation be acted on;(6)-the hears ignorance of the falsity of the representation;(7)-the hears reliance on the truth of the representation;(8)-the hears right to rely on the representation and (9)-the hears consequent and proximate injury,

Hollman "vs" Woolfson, 384 S.C. 571,683 S.E. 2d. 495 (2009).

Factually every element of fraud can be met in this case sub judice.

When the prosecutor presented the court with a fake notice document the infraction of fraud was complete based on fact I was sent to prison.

Right and fraud never dwell together (Jus Et Fraus Nunquam Cohabitant) Naturally, if the indictments in this case violate state and federal laws, then surely the notice documents in this case are utterly void and without legal effect.

THE KERSHAW COUNTY COURT OF GENERAL SESSIONS LACKED SUBJECT MATTER JURISDICTION TO ENTERTAIN AND ADJUDICATE APPLICANTS CRIMINAL TRIAL HELD ON MAY 13TH 2007.

* * * * *

Undebatable, the General Sessions Court of Kershaw County does [n]ot have unbridled judicial discretion to conduct, entertain, and adjudicate criminal trials as it pleases.

Henceforth, the jurisdiction of a court of the subject matter of an action depends upon the authority granted to it by the [C]onstitution and [L]aws of the state and is [f]undamental;

Howard "vs" S.C. Dept. of Corrections, 399 S.C. 618, 733 S.E.2d.211 (2012).

I must reiterate that the S.C. Code Ann. § 14-5-670(1) imposes jurisdictional [l]imits on the Court of General Sessions for Kershaw County and those limits are;

"THE COURT OF GENERAL SESSIONS FOR KERSHAW COUNTY SHALL BE HELD AT CAMDEN ON THE THIRD MONDAY IN FEBRUARY, THE [t]hird Monday in [M]ay, and the fourth Monday in October"

It is a unchangeable fact of court record that Applicants trial date was on May 13th, 2008. The Court of General Sessions for Kershaw County starts on the [t]hird Monday in [M]ay, which would have been on the 19th.

The court factually held Applicants trial six (6) days early outside of it's judicial limits.

To make basis of jurisdiction (Ad Fundandam Jurisdictionem) the General Sessions Court of Kershaw County had to be [o]bedient to the commands of the law, moreover obedience is the essence of the law (Obedientia Est Legis Essentia).

The disobedience by the trial court having a criminal trial without judicial power from the state legislature was fatal, catastroplit in a jurisdictional sense, and net effect is judicial termination.

Again, Subject matter jurisdiction is a courts [S]tatutory [p]ower to adjudicate, U.S. "vs" Cotton, Supra, if so, Applicant has a valid claim of lack of subject matter jurisdiction, based on fact and law that his criminal trial was malum prohibitum.

Reality is this, "WITHOUT JURISDICTION, THE COURT CANNOT PROCEED AT ALL IN ANY CAUSE, JURISDICTION IS POWER TO DECLARE THE LAW, AND WHEN IT CEASES TO EXIST, THE ONLY FUNCTION REMAINING TO THE COURT IS THAT OF ANNOUNCING

THE FACT, AND DISMISSING THE CAUSE" Steel Co. Supra at 94.

[T]his court is bound to uphold the laws of the U.S. Supreme Court, pursuant to ARTICLE VI § II of the U.S. Constitution, and if this court so finds that the court did in fact lacked judicial power, then that would mean that the trial, appeal, PCR, ect are all Void. The trial was just a meaningless charade.

It makes nonsense for the S.C. Code Ann. § 14-5-670(1), and § 14-9-210 to say what they say, and it gets interpreted any other way.

The legislature has disclosed it's intendment of law when it styled "Article 5 of the S.C. Code of Laws, POWER AND JURISDICTION OF COURTS AND JUDGES".

We must remember that the state Legislature do not do futile acts, Interest of Christopher H., 432 S.C. 600, 854 S.E. 2d. 853 (2021); Danene, Inc. "vs" City of Charleston, 352 S.C. 208, 574 S.E. 2d. 196 (2002); Brown "vs" James, 389 S.C. 41, 697 S.E. 2d. 604 (2010);

The judicial limitations imposes on the Kershaw County Court of General Sessions must be strictly enforced, there must be judicial accountability. Legislative affirmative statutes imposes a specification of termination of jurisdictional power to the Court of General Sessions for Kershaw County.

Pursuant to U.S. "vs" Cotton Supra. the Applicants subject matter jurisdiction claim is [s]pot on for a valid claim of lack of subject matter jurisdiction, because the court lacked statutory power.

I am speechless, The Grand Jury proceeding and the criminal trial itself was at war with legislative law. Neither proceeding is in accordance with the law. There is a serious presumption that Applicant is being held in custody in violation of the 8th and 14th Amendments to the U.S. Constitution. In my view, Applicants case is a Structural defect, and his conviction must be vacated eo instanti. This is indeed a exceedingly hard thing to do, but so the law is written, (Hoc Quidem Perquam Durum Est, Sed Ita Lex Scripta).

Is it not written that defects in subject matter jurisdiction require correction Cotton Supra. If so the judicial pronouncement finding me guilty is Coram Non Judice, and this judicial dispute is sub judice for a just adjudication.

DATE