

State of South Carolina
County of Spartanburg

Gerod Harris #255423
Applicant

vs.

In the Court of Common Pleas
for the Seventh Judicial Circuit

Case no. 2012-CP-42-4617

Appealing Court order of
Dismissal

State of South Carolina
Respondent

RECEIVED

Jul 19 2023

S.C. SUPREME COURT

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JUL 17 2023

SC Court of Appeals

July, 2023

This matter comes before this Court by way of applicant Gerod Harris is filing his appeal challenging the order of dismissal June 21, 2023.

On February 10, 2017 the South Carolina Supreme Court granted applicant's petition for a writ of Certiorari and dispensed with further briefing. On March 27, 2017, the Spartanburg county clerk of court appointed Susannah Ross Esq. to represent applicant.

Current action before this Court

In the original application applicant alleged he is being held in custody unlawfully for the following reason(s).

1. Ineffective assistance of counsel

A. Failure to investigate and adequately prepare for trial.

B. giving erroneous advice

C. denial of his Sixth amendment Constitutional right

D. Failure to advise applicant of his self-defense claim. (stand your ground law) 17-1-40 expungement

E. Advising to plea when he had a strong (stand your ground law) defense case.

F. failure to investigate and use in mitigation history of mental health issues.

G. failure to challenge the indictment

H. Failure to assure credit for time served

2. Lack of subject matter jurisdiction due to invalid indictment procedure.

On August 18, 2019, applicant, through counsel, served an amended application with the

following claims:

1. Ineffective assistance of trial counsel for:

A. failing to advise the applicant of his self-defense claims;

B. advising him to plea when he had a strong self-defense case;

C. failing to investigate and use in mitigation history of mental health issues;

D. failing to challenge the indictment; and

E. failure to assure credit for time served.

2. Lack of subject matter jurisdiction due to invalid indictment procedure.

At the PCR hearing, applicant proceeded forward on the allegation of ineffective assistance of counsel for failure to investigate flaws in the indictment.

Summary of testimony presented at evidentiary hearing

Applicant's testimony / 1 prong

Applicant testified that the grand jury met and indicted him during a week on May 5, 2011 that was not during a term of general session court, (PCR 7R.8) and was denied due-process and the equal protection clause. Applicant stated therefore his entire indictment was null and void. due to his indictment was on the first Monday of May 5, 2011. (PCR 7R.10) Applicant stated once (grand jury) took the oath and didn't tell the truth that they broke the oath of office.

Second prong / Strickland vs. Washington

Counsel failure to investigate and research which he would have learn that his client actual stood his ground law. Applicant argued that the state has failed to indict applicant for the charge of attempted murder..... As the evidence show that applicant has a right to protect himself from being assaulted PCR 7R.24.

Counsel's testimony

Counsel testified he began representing applicant on April 2011. (PCR 7R.17). Counsel recalled there was not an indictment until shortly before applicant was coming upon the trial docket. (PCR. 7R.17). Counsel stated that the state offered a plea sentence of twenty years and he negotiated that down to a fifteen year offer for applicant. (PCR 7R.17). Counsel stated he went over the charge of attempted murder and discovery with applicant during their first meeting, prior to a preliminary hearing. (PCR 7R.17). Counsel stated it was his belief applicant absolutely understood he would be charged with attempted murder. (PCR 7R.18). Counsel stated, "after the time for offers or just before that, they present cases to the grand jury, sometimes they do it sooner." (PCR 7R.18). Counsel continued, "Mr. Gray tended to wait four or five months, then indict a case. They all do it differently." (PCR. 7R.18).

Counsel stated that "Jo don't recall specifically reviewing the indictment, But we did go over discovery." (PCR ¶r. 20). Counsel stated he "absolutely does this" because he has "actually been getting ready for trial and realized they could not go forward because they had some mistakes in [indictment]." (PCR ¶r. 20). Counsel stated "There was some - from the original discovery, we got - Jo think Jo had a request through the solicitor and his secretary or whatever they're called, administrative assistants, that Jo was missing some discovery." (PCR ¶r. 21). In response to whether Rule 3 of the South Carolina Rules of Criminal Procedure has been amended or changed, Counsel stated, "in this circuit, we operate under a special rule that says that prelims have to be requested by the initial appearance, not the ten days, so several things have changed." (PCR ¶r. 22). Counsel outlined "they have a system [of] procedure that discovery, preliminary hearing request by rough ~~two~~ two months after arrest, and then its plea or trial (4) four months after, has to be announced, [and] there has to be an offer made in a timely manner." (PCR ¶r. 23). Counsel stated that he could not dispute that Rule 3 of the South Carolina Rules of Criminal Procedure states an indictment should be made within ninety days. (PCR ¶r. 24).

Findings of Fact and Conclusions of Law

Applicant alleges ineffective assistance of plea counsel and asserts that as a result of counsel's purported error, he is entitled to have his conviction vacated. *U.S. v. Botton* 893 F2d 894.

Applicant's claim of relief (vacate) his sentence as set forth in the evidentiary hearing pertain to ineffective assistance of counsel and an illicit (illegal) void indictment. The fifth, sixth and fourteenth amendments to the United States constitution guarantees Applicant, like all other citizens of this state, that "no person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury. To have the assistance of counsel for his/her defense. And for "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due-process of law; nor deny any person within its jurisdiction the equal protection of the laws. Applicant was violated and denied his due-process of law and equal protection of law, under the cases and statutes of law that have been brought forward to the courts before. Applicant rights as a citizen of this state has and have been violated. While recognizing the invalid indictment returned by an (illicit) illegal unconstituted grand jury, we are forced to seek the truth of any section of the constitution or any of the language there of, which may in any-way pertain to the jurisdiction under consideration to be examined. The provisions of the constitution shall be taken deem and construed to be mandatory and prohibitory ~~but~~ not merely directory. Applying the literal construction of this section manifests the knowledge that this grand jury must be legally constituted under the law. "South Carolina" has chosen to afford its citizens the protection of an indictment procedure, "the equal protection clause it must be satisfied and such a determination can be made only by looking to the laws of the state governs such procedure, U.S. exel curtis 463 F.2. 84 (1972), As a citizen of this state's indictment should be considered NULL and Invalidated. This is not a challenge to the court's grant of authority to hear and determine cases. The authority is rightfully granted by our constitution. Gentry v. State 636 SC 93, 616 SE 2d. 494 (2005) and will not be an issue here. However, the solicitor's office in spartanburg county failed to comply with statutory law jurisdictional in nature, specifying the manner and means for lawful return of a true-Bill indictment. "The jurisdiction of a court over the subject matter of a proceeding is determined by the constitution, the laws of this state and it's fundamental," State v. Heyward 564 SE 2d 379 (SC app. 2002) (citing Anderson v. Anderson 299 SC. 110 115 382 SE 2d 897, 900 (1989) (Emphasis added). subject matter jurisdiction may not be waived with consent of the parties, and may be raised at any time. Brown v. State 343 SC 342, 540 SE 2d 846 (2001).

No indictment may be True-Billed by Grand Jury when circuit court lacks jurisdiction, since grand jury's jurisdiction is Co-extensive with criminal jurisdiction of the court in which it is impaneled and for which it is to make inquiry... State v. McClure 277 SC 432, 289 SE 2d 158 (SC 1982) and State v. Funderburke 259 SC 256, 191 SE 2d 526 (1972); State v. Wheeler 259 SC 571, 193 SE 2d 515 (1972). In SC Code Ann. § 14-9-210 is jurisdictional in nature and it requires that all Criminal Indictments must be issued through a Grand Jury impaneled before the Court of General Sessions, and state's noncompliance with mandatory indictment procedures, and willful acts of perjury have rendered all judicial proceeding **INVALID** and it's indictment **NULL**. The statutory provisions at issue are contained in section 14-9-210 and provide in pertinent parts that: "The County Solicitor shall prepare and through the presiding judge of the general sessions must submit to the grand jury while in attendance upon the court of general sessions bill 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 court of general sessions to report the same to the presiding judge of the county at it's next Ensuring Term..."

The statutory term above are clear, unambiguous and require the County Solicitor to prepare and submit bills of indictment through the presiding judge of The Court of General sessions to a grand jury impaneled under the authority of the Court of general sessions. "This is with NO Exceptions." This is a cardinal rule of statutory construction that the primary purpose in interpreting statutes is to ascertain the intent of the legislature. Hodge v. Rainey 341 SC 79, 85 533 SE 2d 578, 581 (2000), State v. Martin 293 SC 46 358 SE 2d 679 (1987), when a statute's terms are clear and unambiguous on their face, there is no room for statutory construction and a court must apply the statute according to it's literal meaning. Carolina Power & Light Co. v. City of Bennettsville 314 SC 137, 139 442 SE 2d 177, 179 (1999). Words must be given there plain and ordinary meaning without resort to subtle or force construction to limits or expand the statutes operation. Bryant v. City of Charleston 295 SC 408, 368 SE 2d 899 (1998).

11/01/12 over time structures must be consistent strictly against the
: State and in favor of defendant. State v. Blackmon 304 SC 270,
403 SE 2d 660 (SC 1991).

According to sections 14-9-170 and 14-9-210 which both require strict compliance with its provisions, and mandated that the grand jury must be impaneled under the jurisdiction of the Court of General Sessions before lawful return of a True-Bill Indictment can take place.

The convening of the grand jury in relevant part, 14-9-170, states:
The grand jury as drawn in accordance with the law for service upon the court of general sessions in each of the counties shall constitute the grand jury for the county court and shall meet with the county court each of its terms.

The general assembly has also enacted S.C. Code Ann. § 14-5-710 for the schedule for the terms of court for Spartanburg county court, S.C. Code Ann. § 14-5-710. which Does Not offer provisions for a county to be open on the first week in the month of May. All indictments handed down in Spartanburg county on May 5, 2011 should be and is in fact Null and Void. Any special terms of court would be ordered under SC code Ann. § 14-5-910 and 14-5-920 both of which would come from the SC Supreme court ordered by Honorable Chief Justice Jean H. Toal.

Recognizing the jurisdictional requirement set forth in sections 14-5-710, 14-9-170, 14-9-210, mandating the only process allowed for impaneling a lawful grand jury. According to the above statutes, along with the documents provided by Spartanburg County's Clerk of Court there is no way the grand jury could have been impaneled and returned a legal and binding indictment if first the statutes were not followed. The indictment by a mode of procedure that it had no lawful authority to adopt. The legislation enacted limits the manner in which something can be done, the enactment also evinces the intent that it shall not be done another way. Since the court utilized an unlawful mode of procedure not allowed under sections 14-5-710, 14-9-170 and 14-9-210. The state lacked the jurisdiction to complete return of it True-Bill Indictment.

As established above, sections 14-5-710, 14-9-140, 14-9-210 are clearly a jurisdictional statute, and states forth mandatory procedures to be utilized by county for lawful return of a True-Bill Indictment. A substantial body of South Carolina Law holds that a failure to comply with statutory law jurisdictional in nature deprives the court. State v. Lee 564 SE2d 372 (SC App. 2002); State v. Brown 570 SE2d 599 (ct. App. 2002); State v. Felder 437 SE2d 43 (SC 1993); State v. Richburg 304 SC 162 403 SE2d 315 (1991); State v. Loftin 275 SE2d 575 (SC 1981); Gray v. State 276 SC 634, 291 SE 2d 226 (SC 1981); State v. Brunson 274 SC 220, 262 SE2d 44 (1980); State v. Castleman 64 SE2d 250 (1951).

The mandatory provisions of the above mentioned statute the county has no jurisdiction to issue return of the true-bill indictment except during a time when the court of general sessions is lawfully convened to oversee the grand jury process. Any acts of the court taken outside those statutory restrictions would by necessity be NULL and VOID. Our Supreme Court has already determined that NO Indictment may be True-Billed by a grand jury when the court lacks jurisdiction. The grand jury must be impaneled under the jurisdiction of the court of general sessions before lawful return of indictment can take place. State v. McClure, State v. Funderburk, and State v. Wheeler.

Therefore since No court of general sessions was to convene during the month of May 5, 2011 the date of the alleged True-Bill the grand jury proceedings would therefore by necessity be held INVALID and its ILLEGALLY issued indictment NULL and without binding legal effect.

COURT RULES, ORDER OR OTHER PROCESS

It should be noted that Sections 14-9-170 and 14-9-210 are not a local rule or statute but a general provision applicable to the courts in every county, and as shown mandates that the grand jury must be impaneled under the jurisdiction of the court of general sessions before lawful return of a true-bill indictment can take place. Thus these sections clearly are jurisdictional statutes and set forth the only process allowed for a lawful return of indictment.

No local rule of court, administrative order, policy or other procedure can take precedent over statutory law which is always controlling. SC Const. Arts 1, 4 and State v. Cottingham 77 SC 2d 597 (1953) (statute override rules of court if in conflict); State v. Duncan 264 SE 2d 421 (SC 1980) (circuit court rule promulgated by individual judicial circuit was unconstitutional and void). The issue of whether or not the local rule, order, policy or procedure was utilized for the process and return of the indictment on May 5, 2011 is relevant because by State law it would still have to be in agreement with provisions within section 14-5-710, 14-9-170, and 14-9-210 for it to be constitutional.

Constitutional Right being violated

Article V section IV of our constitution provides in

pertinent part: "The Supreme Court shall make rules governing the administration of all the courts of the state." SC Code Ann. § 14-5-310 Rules of Court: "The circuit court may make and establish all necessary rules for the orderly conducting of business in said court, provided such rules are not repugnant to the laws of the state or the rules prescribed by the justices of the Supreme Court and Circuit judges."

Under these requirements NO RULE can be made or established for process and return of indictment unless it comports with sections 14-9-170 and 14-9-210. Otherwise it would be unconstitutional and NULL being without binding legal effect. The Court of Common Pleas is vested with NO authority to take any action on matters pertaining to return of True-Bill criminal indictments. "The Court is made up of the Court of Common Pleas which hears Civil cases... and general sessions court which hears criminal cases, *Dove v. Goldkist Inc.*, 314 SC 235, 44 SE 2d 598, 600 (SC 1994), SC constitution Art. V. § 1. There is no grant of concurrent jurisdiction, and therefore NO True-Bill criminal indictment can be lawfully issued through grand jury proceedings held before a court of common pleas.

Lastly, a circuit court judge retains NO authority on his own standing to conduct and oversee grand jury proceedings outside the bounds of lawfully convened court of general sessions. Under our judicial system the presiding judge in the circuit court loses jurisdiction with the adjournment of the term... *State v. Best* 257 SC 361, 186 SE 2d 272 (1972) (citing *State v. Thompson* 122 SC 407, 115 SE 2d 326. Also, *State v. Rinheart* 430 SE 2d 536 (SC App. 1993).

Therefore, if raised by the State there would be no merits to the contention that a judge on his own standing retains authority to impanel a grand jury after the close of term of court. The SC Code Ann. § 14-5-710 clearly shows close of a term of court. The SC Code Ann. § 14-5-710 clearly shows that NO Term of general sessions court can be held in the Seventh Circuit on May 5, 2011 this is according to the legislative law set in this State. As established before, a judge no longer has jurisdiction with the adjournment of court thus NO Term of court NO Lawful judicial authority.

Accordingly, NO Court Rules Order or other practices of law invoked or cited by State or County to save its unlawful grand jury process, and resulting NULL and Void Indictments. Therefore, in this matter executing justice and righteousness should not be a problem.

SC Code Ann. § 17-25-10

Section § 17-25-10 provides that: "No person shall be punished for an offense unless duly and legally convicted thereof in court having complete jurisdiction of the cause and person, "If indictment was true-billed by a grand jury that was not impaneled by a legally constituted grand jury then there is no indictment." South Carolina holds that words of a statute must be given their plain and ordinary meaning without resort to subtle or forced construction... State v. Muldrow 348 SC 264 559 SE 2d 847 (2003). Any statutory prescriptions couched in language such as "shall and must" are mandatory in application and effect... South Carolina Police Officer Ret. Sys v. City of Spartanburg 301 SC 188, 191 391 SE 2d 239 241 (1190); Starnes v. South Carolina Department of Public Safety 342 SC 216 221 535 SE 2d 665, 667 (Ct. App. 2000).

CONCLUSION

The holding in Evans should not stand for the proposition that a conviction and sentence gained through judicial acts of perjury and criminal conspiracy can be declared lawful. Judicial integrity will have been lost if the State is not constrained by its own statutory criminal laws. Basic U.S. Constitutional Due Process Law dictates with authority that under no circumstances can a State commit a criminal act against its citizens in the name of judicial economy.

It has been said by plea counsel that the assistant solicitor "tended to wait four or five months then indict a case, they all do it differently." SCR criminal P. Rule 3 (c) states: within (90) ninety days after receipt of an arrest warrant from the clerk of court.

The statements made in this brief did clearly point out the acts committed by the state and clearly establish the essential elements of fraud on the court. In addressing any case involving fraud on the court the U.S. Supreme Court explained that to be granted relief under the provisions of Rule 60(b)(3) Fed. R. Civil Proc., this issue turns to the misconduct "HARMS" the integrity of the judicial system.

¶ Tampering with the administration of justice in the manner undisputedly shown here involves far more than injury to a single litigant. It is wrong against the institution set up to protect and safeguard the public institution in which fraud cannot complacently be tolerated consistently with good order of society. Surely, it cannot be that preservation of the integrity of the judicial process must always wait upon the diligence of litigants. The welfare demands that the agencies of public justice be not so important they must always be mute and helpless of deception and fraud: Hazel-Atlas Glass Co. v. Hartford Empire Co. 322 U.S. 238 246 64 S Ct. 997 1001, 88 L. ed 1250 (1944). Fraud on the court is misconduct by an officer of the court that is directed at the judicial machinery itself. Fraud on the court is very evident here. The evidence provided shows that the solicitor/assistant solicitor committed a "Sham Legal Process" which is a direct violation of law of South Carolina's constitutional and statutory laws of the jurisdictional nature.

The brief submitted at this time did in fact cement the illegal acts committed. All on the Spartanburg county Clerk of Court letterhead show that there was a clear and deliberate disregard of for the State Statutes. These statutes are §14-5-710, §14-9-170, §14-9-210 and §16-17-410. From the Attorney General's office to the Grand jury foreman, this secret has been kept. The fact that there was no General Sessions Court on May 5, 2011 and if there was no General Sessions Court there was no presiding judge. So the only true-bill indictment that could have been passed down on that day would be outside the Statutes. Applicant May 5, 2011 indictment was unlawfully obtained which violates applicant's Constitutional rights to be put on notice. This ongoing violation of applicant rights carried over to applicant plea of guilty when the assistant solicitor read the charge that were performed on the unlawfully obtained indictment. With all these willful violations of applicant's rights applicant conviction should be vacated and should be set free. There is no reason for applicant's conviction to be upheld.

It is only through the criminal acts of conspiracy that applicant case even came before a judge. Failure to protect applicant's Constitutional Rights, the very rights the judicial system was setup to protect.

July 9, 2023

~~Terod Harris #255423~~
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