

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM COURT OF GENERAL SESSIONS  
The Honorable Daniel Coble

Warrant No. C 746074  
[90-GS-40-5849]

**RECEIVED**  
JUN 06 2024  
SC Court of Appeals

The State,

Respondent,

v.

Bernard Bagley,

Appellant.

Appellate Case No. 2024-000666

MOTION FOR REHEARING  
Pursuant to Rule 221(a)(c), SCACR

Appellant comes now respectfully requests for a rehearing, perhaps, in accordance to Rule 219(b), SCACR, Rehearing En Banc, because this matter involves a question of exceptional importance.

This Court rendered its Order on May, 23, 2024, dismissing Appellant's appeal. Appellant received the written notice of the Order on May 29, 2024. As noted in the circuit Court's order dated March 14, 2024, the Appellant has exhausted all avenues of appellate relief.

Appellant avers that a legally sufficient reason exist under the 8th Amendment of the U.S. Constitution unusual punishment. (1) Sentences for the same crime in similar jurisdiction, whereas, §16-3-20, S.C. Code contains an exception related to offenders sentenced for murder that is applicable to this appeal; and (2) sentences for the same crime in other jurisdictions having applied the criteria for disparate sentences.

Although, Appellant's motion to modify or restructure his sentence is under the Omnibus Crime Reduction Sentencing Reform Act, §273, 2010, the Appellant did not claim he was filing a motion pursuant to §17-25-65, of S.C. Code, in which he emphasize the motion has nothing to do nor related to such statute.

Nevertheless, the Appellant invokes the Motion for Rehearing to the extent of a CORAM NOBIS in the attempt to restructure or modify his sentence. Unlike State v. Liles, 246 S.C. 59, 142 S.E.2d 433 (1965), Appellant's avers that errors of fact which is not apparent on the record and not attributable to Appellant's negligence and which is known by the court would have prevented rendition of the sentence but does not lie for newly discovered facts or or evidence arising or adjudicated on the trial or direct appeal.

In addition, the Court states that the principal function of "coram nobis is to afford the court opportunity to correct its own record with reference to a vital fact which was not known when judgment was rendered and which could have been presented by motion for new trial, appeal, or other statutory proceeding." Also, "the coram nobis lies for error of fact which is not apparent on the record and not attributable to Appellant's negligence and which if known by court would have prevented rendition of judgment."

Appellant asserts that this Court's Order mentioned "We affirmed the appellant's murder conviction and sentence on December 10, 1992, SEE State v. Bagley, Op. No. 92-UP-165 (S.C. Ct.App. filed December 10, 1992)." The Appellant asks the Court to invoke nunc pro tunc because the Court record is inadvertently omitted the burglary 1st degree being reversed and remanded for a new trial in the 1992 opinion, as well as facts that has emerged establishing Appellant's request to restructure or modify his sentence. For this reason, (1) jury charge instructing that malice may be inferred from the use of a deadly weapon where evidence is presented that would reduce, mitigate, excuse or justify the homicide, SEE: State v. Burdette, 427 S.C. 490, 832 S.E.2d 575 (2019), and State v. Belcher, 385 S.C. 597, 685 S.E.2d 802 (2009); (2) S.C. Code §16-3-20(A) (Supp. 1996), changed the section to read, in relevant part: "a person who is convicted of... murder must be punished..., or by a mandatory minimum term of imprisonment for thirty years. SEE: S.C. Code Ann. §16-3-20(A) (Supp.1995) (emphasis added) 1995 S.C. Acts No. 83, §10, and the Omnibus Crime Reduction and Sentencing Reform Act No. 273, §21 (2010), a fact of disparate sentence; and (3) the burglary 1st degree was reversed and remanded by this Court as it affirmed the murder conviction without the foregoing facts in 1 and 2, which are a reasonable probability the sentence would have been different, whereby, the burglary conviction and sentence has been dismissed, nolle prosequere, invalid, and expunged by judicial order, and the fact if this was known by the court in April 1991 would have prevented rendition of the sentences on the basis that they were fundamentally flawed.

The Black's Law Dictionary defines the coram nobis as a form of relief directed to a court for review of its own judgment and predicated on alleged errors of fact. Furthermore, some scholars view the coram nobis as a procedural vehicle to re-open criminal cases when new proof emerged establishing egregious government injustices, such as Appellant's having no other avenues of appellate relief.

This Court opened the door to State v. Bagley, Op. No. 92-UP-165 (S.C. Ct.App. 1992). As such, this Court have jurisdiction based on nunc pro tunc for its current Order inadvertently omitted the burglary 1st degree, and to correct error of fact that could not have been ascertained through ordinary diligence at the time of the trial and direct appeal, and that, in all probability, would have affected both trial and direct appeal outcome. SEE: Chambers et al. v State, 117 Fla.642, 158 So. 153 (1934), Writ of error is brought for alleged error of fact not appearing on record and lies to same court. SEE Warrant No. C 746074, Affidavit against Appellant, along with the foregoing herein. Appellant's mental state was of reckless indifference, another fact not known at the time of the trial and direct appeal. NOTE: Appellant is currently classified under mental health status PTSD that was not known in 1990 nor in 1991.

"Since the days when the law was given through Moses to the Israelites the oppression of the feeble who are weak and weary has been to this day an abomination in the sight of all civilized peoples, even that small circle of them that vaingloriously deny the power of God. It is regarded as wicked and shamefully vile, and the law recognizes it to be such by declaring that it vitiates judicial procedure where it is apparent; it taints the proceedings with a corruption and poison that defiles the court; deposits a person before the court of his constitutional guaranties of personal freedom and the equal protection of the laws. It makes of him a martyr to depravity, and the court an instrument of cruel oppression." Chambers v. State.

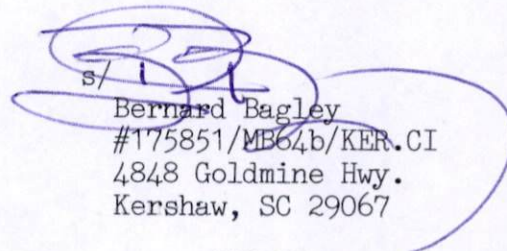
Appellant avers that the coram nobis is the only remedy available to him in a racialized injustice in past proceedings, and as stated, he has exhausted all remedies to revoke his sentence to restructure to a mandatory minimum of imprisonment for 30 years. NOTE: Matters overlooked and misapprehended by the Court.

CONCLUSION

For the foregoing extraordinary compelling reasons or circumstances, this Motion for Rehearing [En Banc] to reinstate his appeal should be granted.

I, Bernard Bagley, the Appellant states, declare, and verify under penalty of perjury that the matters herein are to be true and correct to best of my knowledge.

Respectfully submitted,

  
s/  
Bernard Bagley  
#175851/MB64b/KER.CI  
4848 Goldmine Hwy.  
Kershaw, SC 29067

pro se

May 31, 2024

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM COURT OF GENERAL SESSIONS  
Richland County

The Honorable Daniel Coble, Circuit Court Judge

Warrant No. C 746074  
[90-GS-40-5849]

Appellate Cse No. 2024-000666

The State,

Respondent,

v.

Bernard Bagley,


Appellant.

VERIFICATION

I, Bernard Bagley, being duly sworn, say that he is the Appellant herein, and have read the foregoing Motion for Rehearing and know the contents thereof; that the same is true of my knowledge, except as matters therein stated to be alleged on information and belief; and to those matters I believe to be true.

SWORN to and subscribed before me

this 3rd day of June 2024

  
Bernard Bagley  
#175851/MB64b/KER.CI  
4848 Goldmine Hwy.  
Kershaw, SC 29067

  
Notary Public for South Carolina

pro se

My commission expire: March 03, 2031



STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY COURT OF GENERAL SESSIONS  
The Honorable Daniel Coble, Circuit Court Judge

Warrant No. C 746074  
[90-GS-40-5849]

Appellate Case No. 2024-000666

PROOF OF SERVICE

I certify that I have served the Motion for Rehearing, Appendix, and Verification on the following parties by depositing a copy of the same in the U.S. Mail, postage prepaid, on June 3, 2024, addressed to the following:

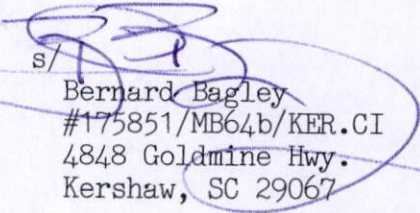
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Circuit Court Judge  
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s/

  
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June 3, 2024

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