

RECEIVED

AUG 09 2024

S.C. SUPREME COURT

*Exhibit A*

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

KEVIN SMITH #164920  
Plaintiff(s)

vs.  
STATE OF SOUTH CAROLINA  
ALAN WILSON - WARREN B. GIESE  
By MARKLEY DENNIS JR.  
Defendant(s)

Submitted By: KEVIN SMITH #164920  
Address: #610 HWY #4 WEST BENDSVILLE  
#29522

SC Bar #: \_\_\_\_\_  
Telephone #: \_\_\_\_\_  
Fax #: \_\_\_\_\_  
Other: \_\_\_\_\_  
E-mail: \_\_\_\_\_

CIVIL ACTION COVERSHEET

-CP - -

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing cases that are NOT E-Filed. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint. This form is NOT required to be filed in E-Filed Cases.

DOCKETING INFORMATION (Check all that apply)

\*If Action is Judgment/Settlement do not complete

- JURY TRIAL demanded in complaint.  NON-JURY TRIAL demanded in complaint.
- This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- This case is exempt from ADR. (Certificate Attached)

NATURE OF ACTION (Check One Box Below)

- |   |  |  |  |
|---|--|--|--|
| <p><b>Contracts</b></p> <input type="checkbox"/> Constructions (100)<br><input type="checkbox"/> Debt Collection (110)<br><input type="checkbox"/> General (130)<br><input type="checkbox"/> Breach of Contract (140)<br><input type="checkbox"/> Fraud/Bad Faith (150)<br><input type="checkbox"/> Failure to Deliver/Warranty (160)<br><input type="checkbox"/> Employment Discrim (170)<br><input type="checkbox"/> Employment (180)<br><input type="checkbox"/> Other (199) _____ | <p><b>Torts - Professional Malpractice</b></p> <input type="checkbox"/> Dental Malpractice (200)<br><input type="checkbox"/> Legal Malpractice (210)<br><input type="checkbox"/> Medical Malpractice (220)<br>Previous Notice of Intent Case #<br>20 <u>-NI-</u><br><input type="checkbox"/> Notice/ File Med Mal (230)<br><input type="checkbox"/> Other (299) _____  | <p><b>Torts - Personal Injury</b></p> <input type="checkbox"/> Conversion (310)<br><input type="checkbox"/> Motor Vehicle Accident (320)<br><input type="checkbox"/> Premises Liability (330)<br><input type="checkbox"/> Products Liability (340)<br><input type="checkbox"/> Personal Injury (350)<br><input type="checkbox"/> Wrongful Death (360)<br><input type="checkbox"/> Assault/Battery (370)<br><input type="checkbox"/> Slander/Label (380)<br><input type="checkbox"/> Other (399) _____  | <p><b>Real Property</b></p> <input type="checkbox"/> Claim & Delivery (400)<br><input type="checkbox"/> Condemnation (410)<br><input type="checkbox"/> Foreclosure (420)<br><input type="checkbox"/> Mechanic's Lien (430)<br><input type="checkbox"/> Partition (440)<br><input type="checkbox"/> Possession (450)<br><input type="checkbox"/> Building Code Violation (460)<br><input type="checkbox"/> Other (499) _____  |
| <p><b>Inmate Petitions</b></p> <input type="checkbox"/> PCR (500)<br><input checked="" type="checkbox"/> Mandamus (520)<br><input type="checkbox"/> Habeas Corpus (530)<br><input type="checkbox"/> Other (599) _____   | <p><b>Administrative Law/Relief</b></p> <input type="checkbox"/> Reinstate Drv. License (800)<br><input type="checkbox"/> Judicial Review (810)<br><input type="checkbox"/> Relief (820)<br><input type="checkbox"/> Permanent Injunction (830)<br><input type="checkbox"/> Forfeiture-Petition (840)<br><input type="checkbox"/> Forfeiture-Consent Order (850)<br><input type="checkbox"/> Other (899) _____ | <p><b>Judgments/Settlements</b></p> <input type="checkbox"/> Death Settlement (700)<br><input type="checkbox"/> Foreign Judgment (710)<br><input type="checkbox"/> Magistrate's Judgment (720)<br><input type="checkbox"/> Minor Settlement (730)<br><input type="checkbox"/> Transcript Judgment (740)<br><input type="checkbox"/> Lis Pendens (750)<br><input type="checkbox"/> Transfer of Structured Settlement Payment Rights Application (760)<br><input type="checkbox"/> Confession of Judgment (770)<br><input type="checkbox"/> Petition for Workers Compensation Settlement Approval (780)<br><input type="checkbox"/> Incapacitated Adult Settlement (790)<br><input type="checkbox"/> Other (799) _____ | <p><b>Appeals</b></p> <input type="checkbox"/> Arbitration (900)<br><input type="checkbox"/> Magistrate-Civil (910)<br><input type="checkbox"/> Magistrate-Criminal (920)<br><input type="checkbox"/> Municipal (930)<br><input type="checkbox"/> Probate Court (940)<br><input type="checkbox"/> SCDOT (950)<br><input type="checkbox"/> Worker's Comp (960)<br><input type="checkbox"/> Zoning Board (970)<br><input type="checkbox"/> Public Service Comm. (990)<br><input type="checkbox"/> Employment Security Comm (991)<br><input type="checkbox"/> Other (999) _____ |
| <p><b>Special/Complex /Other</b></p> <input type="checkbox"/> Environmental (600)<br><input type="checkbox"/> Automobile Arb. (610)<br><input type="checkbox"/> Medical (620)<br><input type="checkbox"/> Other (699) _____   | <input type="checkbox"/> Pharmaceuticals (630)<br><input type="checkbox"/> Unfair Trade Practices (640)<br><input type="checkbox"/> Out-of State Depositions (650)<br><input type="checkbox"/> Motion to Quash Subpoena in an Out-of-County Action (660)<br><input type="checkbox"/> Pre-Suit Discovery (670)  |  |  |

Submitting Party Signature: \_\_\_\_\_

*[Handwritten Signature]*

Date: 3/30/2024

2024 MAR - 8 AM 10: 3  
 FILED  
 RICHLAND COUNTY  
 DEANETTE MCBRIDE  
 C.C.P. CLERK & REC.

**Note:** Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

**Effective January 1, 2016, Alternative Dispute Resolution (ADR) is mandatory in all counties, pursuant to Supreme Court Order dated November 12, 2015.**

**SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.**

**Pursuant to the ADR Rules, you are required to take the following action(s):**

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210<sup>th</sup> day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs.
4. Cases are exempt from ADR under ADR Rule 3(b) upon the following grounds:
  - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
  - b. Requests for temporary relief;
  - c. Appeals;
  - d. Post Conviction relief matters;
  - e. Contempt of Court proceedings;
  - f. Forfeiture proceedings brought by governmental entities;
  - g. Mortgage foreclosures; and
  - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. Cases may also be exempt from ADR under ADR Rule 3(c) upon motion to and approval by the court.
6. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
7. Application of a party to be exempt from payment of neutral fees due to indigency should be filed with the Clerk of Court prior to the scheduling of the ADR conference.

**Please Note: You must comply with the Supreme Court Rules regarding ADR.  
Failure to do so may affect your case or may result in sanctions.**

*Exhibit B*

2024CP40015210

STATE OF SOUTH CAROLINA,

COUNTY OF: RICHLAND

IN THE COURT OF COMMON PLEAS

KEVIN SMITH #1644201 Plaintiff,

SUMMONS

vs.

FILE NO.

STATE OF SOUTH CAROLINA, ALAN WILSON,

WARREN B. GIESE, R. MARK LEY DENNEG JR. Defendant.

RICHLAND COUNTY FILED 2024 MAR - 8 AM 10:09 JEANETTE W. MERRITT C.C.P., G.S., & F.C.

TO THE DEFENDANT ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to this complaint upon the subscriber, at the address shown below, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the complaint, judgment by default will be rendered against you for the relief demanded in the complaint.

Bennettsville, South Carolina

Mr. Kevin Smith Plaintiff/Attorney for Plaintiff

Dated: 1. 30. 2024, AD

Address: #620 Hwy #9 WEST BENNETTSVILLE, SOUTH CAROLINA, #29512,

2024CP400 1520

STATE OF SOUTH CAROLINA

COUNTY OF: RICHLAND

KEVIN SMITH #164920;

PLAINTIFF

vs

STATE OF SOUTH CAROLINA,  
ALAN WILSON, WARREN B. GIESE,  
R. MARK LEY, DENNIS JR. DEFENDANT'S

IN THE COURT OF COMMON PLEAS  
OF THE FIFTH JUDICIAL CIRCUIT

CASE No. #

NOTICE OF MOTION - MOTION FOR  
WRIT OF MANDAMUS AND A DECLARATION  
THAT THE TRIAL COURT LACKED SUBJECT  
MATTER JURISDICTION TO CONVICT AND  
SENTENCE THE PLAINTIFF, BASED UPON  
VOID-NULL - UNFILED INDICTMENTS  
Nos 95-GS-40-3705 - 95-GS-40-3706 -  
95-GS-40-3707; 95-GS-40-3708 -  
95-GS-40-4282; 96-GS-40-11556

2024 MAR - 8 PM 10:08  
JEANETTE W. NICHOLS  
C.C.P. G.S. § 8-1-10  
RICHLAND COUNTY  
FILED

TO: DEFENDANTS, NOTICE IS HEREBY GIVEN THAT THE UNDERSIGNED PLAINTIFF  
DOES MOVE BEFORE THE RICHLAND COUNTY COURT OF COMMON PLEAS JUDGE OF  
THE FIFTH JUDICIAL CIRCUIT, SOUTH CAROLINA. FOR A WRIT OF MANDAMUS AND  
A DECLARATION THAT THE TRIAL COURT LACKED SUBJECT MATTER JURISDI-  
- ICTION TO TRY, CONVICT AND SENTENCE THE PLAINTIFF. BASED UPON VOID-NULL  
- UNFILED INDICTMENT (ABOVE-LISTED), AT SUCH PLACE AND TIME AS I  
SET BY THE COURT OF WHICH YOU THE DEFENDANTS WILL BE NOTIFIED, UNLESS,  
OTHERWISE SPECIFIED!

THE PLAINTIFF SUPPORTS THE MOTION WITH HIS SWORN AFFIDAVIT INCORPORATING  
CASE LAW, AUTHORITIES, AND EXHIBITS ATTACHED

RESPECTFULLY SUBMITTED

KEVIN SMITH #164920;  
\*610 HWY #9 WEST,  
BENNETTSVILLE, SC #29512,

DATE: 3/30/2024, AD

STATE OF SOUTH CAROLINA

County of: RICHLAND

KEVIN SMITH #164920;

PLAINTIFF;

vs

STATE OF SOUTH CAROLINA;  
ALAN WILSON, WARREN B GIESE,  
R. MARKLEY DENNIS JR,  
DEFENDANTS;

IN THE COURT OF COMMON PLEAS  
OF THE FIFTH JUDICIAL CIRCUIT

CASE No#

VERIFIED COMPLAINT &

AFFIDAVIT OF: KEVIN SMITH

IN SUPPORT OF HIS M

WRIT OF HABEAS CORPUS

LABORATORY JUDGMENTS

RICHLAND COUNTY  
FILED  
2024 MAR - 8 AM 10:39  
JANETTE W. McBRIDE  
CLERK, S.S., & F.C.

1

The plaintiff STATE UNDER PENALTY OF PERJURY THAT HE IS PROBABLY  
CONFINED IN THE SOUTH CAROLINA DEPT. OF CORRECTIONS PURSUANT TO ORDERS  
OF COMMITMENT FROM THE RICHLAND CO. CLERK OF COURT. PLAINTIFF  
WAS INDICTED AT THE JUNE, 1995 TERM OF THE RICHLAND CO. GRAND  
JURY FOR TWO (2) COUNTS ASSAULT & BATTERY WITH INTENT TO KILL,  
ONE (1) COUNT ASSAULT AND BATTERY OF HIGH AND AGGRAVATED NATURE;  
THREE (3) COUNTS OF HOSTAGE TAKING. PLAINTIFF WAS TRIED AND CONVI-  
CTED AS CHARGED BY A JURY ON JUNE 7, 1996, AND EXCEPT HE WAS CONVICTED  
OF THE LESSER OFFENSE ABHAN. THE HONORABLE R. MARKLEY DENNIS, SENTENCED  
PLAINTIFF TO FIFTEEN (15) YEARS IMPRISONMENT FOR EACH COUNT OF TAKING  
OF HOSTAGES; TWENTY (20) YEARS FOR ABWIK; AND NINE (9) YEARS EACH  
FOR ABHAN ALL TO BE SERVED CONSECUTIVELY. EIGHTY-THREE (83) YEARS TOTAL.

2

The Trial Court Lacked Subject Matter Jurisdiction To Convict and Sentence the plaintiff based upon STATES void, null, unfiled indictments no<sup>o</sup> (above listed on pp 1 of plntf's notice of Motion)

3.

S. Carolina Code of Laws § 14-9-210, provides in pertinent part that: "The County Solicitor shall prepare and through the presiding judge of the Court of General Sessions submit to the Grand Jury while in attendance upon the Court of General Sessions Bills of Indictment 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 actions 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 its next ensuing Term".

4.

The statutory terms 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  
✓ exceptions 000

The primary purpose in interpreting statutes is to ascertain the intent of the legislature. HODGES v. RAINEY, 538 S.E.2d 570-581 (2000); STATE v. JOHNSON, 349 S.C. 67, 552 S.E.2d 339 (Ct. App. 2001) when a statute's terms are clear and unambiguous on their face, there is no need for statutory construction and a court must apply the statute according to its literal meaning. CAROLINA POWER AND LIGHT Co. v. CITY OF BENNETTSVILLE, 498 S.E.2d 177, 179 (1994) and words must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation. STATE v. SWEATE, 386 S.C. 334, 688 S.E.2d 569 (2000); moreover, penal statutes must be construed strictly against the state and in favor of defendant's. STATE v. BLACKMAN, 403 S.E.2d 660 (SC 1991)

Accordingly, Section § 14-92-10 requires strict compliance with its provisions, and mandates that the grand jury must be impaneled under the jurisdiction of the Court of General Sessions before lawful return of a true billed indictment can take place.

6  
However, plaintiffs evidence will establish that the state unlawfully impaneled its grand jury outside the jurisdiction of the Court of General Sessions of Richland County, and then will fully printed and published false information in its indict-

ment in order to keep secret its violation of statutory law.

" Thus a Controversy has come before the Court  
open your mouth, Judge Righteously, and plead  
The Cause of the poor and needy!"

1.

In this case STATES Indictments No. 95-GS-40-3705 (Taking of Hostages),  
95-GS-40-3706 (A. B. WICK), 95-GS-40-3707 (A. V. HAN), 95-GS-40-3708 (Taking  
of Hostages), 95-GS-40-4202 (Taking of Hostages) True Bill of Indictment  
prints that it (they) was returned "at a Court of General Sessions  
convened on June 24, 1995," "the grand jurors of Richland County  
present upon their oath" Each Indictment is signed by Solicitor  
Warren B. Case, and grand jury Foreman with True Bill Stamp.  
(Absent Date of True-Billed), Furthermore the title page  
of States Indictment prints that it was published at a  
Court of General Sessions for Richland County term as con-  
vened on June 24, 1995. SEE: STATES Indictments Attached as Exhibit-A.

B.

However according to the Court of general Sessions order for  
The Richland County Grand Jury Docket (lect) 1995 Term, there  
was no term of Court for the Richland County (grand jury) Court  
of General Sessions on June 24, 1995. SEE: STATES order for Rich-  
land County Grand Jury Meet attached as Exhibit-B.

There fore, recognizing the jurisdictional requirements set forth in Section § 14-9-210, mandating the only process allowed for impaneling a lawful Grand Jury and after consideration of the facts and evidence presented, it becomes apparent that the Plaintiff was indicted outside the jurisdiction of the Court of General Sessions for Richland County and by a mode of procedure that State (Defendant) had no lawful authority to adopt.

10.

When a legislative enactment limits the manner in which something may be done, the enactment also evidences the intent that it shall not be done another way. Thus, since the Court utilized an unlawful mode of procedure not allowed under Section § 14-9-210, State lacked the requisite jurisdiction to complete return of its true-billed indictment.

11.

As established above, Section § 14-9-210 is clearly a jurisdictional statute and sets forth mandatory procedure to be utilized by State for lawful return of a true-billed indictment. A substantial body of South Carolina law holds that a failure to comply with statutory law jurisdictional in nature deprives the Court of subject matter jurisdiction. STATE V. LEE, 564 S.E.2d 373 (S.C. App 2002); STATE V. BROWN, 570 S.E.2d 559 (CT. APP. 2002); STATE V. FELDER, 437 S.E.2d 43 (S.C. 1993); STATE V. RICH BURG, 403 S.E.2d 315 (S.C. 1991);

STATE V. LOFTEN, 275 S.E.2d 575 (S.C. 1981), GRAY V. STATE, 281 S.E.2d 226 (S.C. 1981), STATE V. BRUNSON, 262 S.E.2d 474 (S.C. 1980), STATE V. CASTLEMAN, 64 S.E.2d 250 (1951); and Many More.

12.

There fore, since no Court of General Sessions for Richland County was convened on the date of June 14, 1995. States Indictments against the plaintiff were true-billed. The grand jury proceedings would therefore by necessity be held invalid, and its illegally issued indictments null, and a null indictment is of no legal effect, and therefore non-binding. Under Law, States null indictment is by its very nature insufficient to support a conviction or sentence; and protects against double jeopardy.

13.

IT IS AN AXIOMATIC RULE OF LAW THAT AN INDICTMENT DEEMED TO BE A NULLITY IS "SOMETHING THAT IS LEGALLY VOID" AND OF NO LEGAL EFFECT. (Citing BLACKS LAW DICTIONARY 8th Edition, 2004, nullity and void) SER: EG HARDISON V. GLENN HILL, 33 S.E.2d 922; 924 ("void, null; in fact, nugatory; having no legal force or binding effect; unable in law to support the purpose for which it was intended.")

14

RULE 3(c) S.C.R. CRIMP REQUIRES SOLICITORS TO FILE INDICTMENTS WITH THE CLERK OF COURT. YET A EVIDENT HERE THE RECORD IS DEVOID OF STATES INDICTMENTS NOS 95-GS-40-3705; 3706; 3707

3708; 9288; 96-GS-10-1156, EVER BEING FILED WITH THE  
Richland County Clerk of Court, thus, warranting a vacation  
of plaintiff's sentence conviction. SEE: STATE V. PRICE, 2023  
WL 8588535 ("granting" Extra-ordinary writ AND A Declaration Finding  
Judgment order void, BE CAUSE DOCUMENTS WERE NEVER FILED-  
STAMPED, NOR BORE ANY INDICATION OF BEING FILED WITH THE  
CLERK OF COURT.") SEE: Plaintiff's Exhibits attached

15

More over Rule 39 S.C.R. Crimp. Mandates: THESE RULES "shall  
apply to every Trial Court of Criminal Jurisdiction within  
this State (adopted effective September 1 1988) S.C.R. RULES of COURT  
31 Crimp c/p 956 2020 edition

16

The plaintiff's Evidence clearly shows the Trial Court Lacked  
subject Matter Jurisdiction to Convict, Sentence Plaintiff BASED  
upon STATES WILL (no grand jury convening no DATE OF TRUE BILLED-UNFILED)  
void Indictment SEE: KATZBURG V. KATZBURG, 410 S.C. 384; 767 S.E.2d 3  
CCrapp 2014 ("a judgment of a Court without subject matter Jurisd-  
iction is void and constitutes grounds for the Court to vacate  
The judgment.") also see: Dove v. Goldkrist Inc., 314 S.C. 235; 442  
S.E.2d 598 (S.C. 1994) ("Court Lacking subject matter Jurisdiction  
has no authority to act regardless of geographical location or con-  
sent of litigants.")

BECAUSE THE PLAINTIFF'S CONVICTION; SENTENCE IS NOT BASED ON A LAWFULLY AND SWORN TO INDICTMENT<sup>6</sup> AS EVIDENT HEVE BY THE STATE (DEFENDANTS) PLAINTIFFS IN CARCERATION IS ILLEGAL AND IS TANTAMOUNT TO AGGRAVATED KIDNAPPING, AND IS A BAR TO ALL PROSECUTION IN ACCORDANCE TO THE SOUTH CAROLINA CONSTITUTION, ARTICLE I SECTION 8 II; SOUTH CAROLINA CODE OF LAWS ANNOTATED § 17-25-10, SOUTH CAROLINA RULES OF CRIMINAL PROCEDURES, 3 (C). SEE: STATE V. MOORE, 255 S.E.2d 448, 449 (S.C. 1979) ("A JUDGMENT BY A COURT IN A CRIMINAL CASE "MUST" CONFORM STRICTLY TO THE STATUTE, AND "ANY" VARIATION FROM ITS PROVISIONS EITHER IN THE CHARACTER OR THE EXTENT OF PUNISHMENT RENDERS THE JUDGMENT VOID") AND THE UNITED STATES CONSTITUTION. ALSO SEE: HAMILTON V. MCLOTTELY, 772 F.2d 172; 183 (5th Cir. 1985) ("A SENTENCE NOT BASED ON A LAWFULLY SWORN TO INDICTMENT IS TANTAMOUNT TO AGGRAVATED KIDNAPPING, AND IS A BAR TO ALL PROSECUTION IN ACCORDANCE TO THE CONSTITUTION OF OUR UNITED STATES.")

18

MOREOVER THE TERM "SHALL" IN A STATUTE MEANS THAT THE ACTION IS MANDATORY. SEE: STRICKLAND V. RICHLAND COUNTY LEGISLATIVE DELEGATION, 440 S.C. 436, 892 S.E.2d (S.C. 2023)

19

BECAUSE PLAINTIFFS IN CARCERATION IS ILLEGAL, IT WOULD BE INEFFICIENT AND A WASTE OF JUDICIAL RESOURCES, REQUIRING PLAINTIFF TO SEEK POST CONVICTION RELIEF, OR PETITION THE COURT FOR A WRIT OF HABEAS CORPUS. SEE: STATE V. BLUNDER, 439 S.C. 346,

889 S.E.2d 234 (S.C.2003) (holding: when SUPREME Court encounters illegal sentences to which no objection was taken in the Trial Court IT IS INEFFICIENT AND A WASTE OF JUDICIAL RESOURCES TO DELAY THE INEVITABLE BY REQUIRING THE APPELLANT TO FILE A POST CONVICTION RELIEF ACTION OR PETITION FOR A WRIT OF HABEAS CORPUS.)

20.

AS EVIDENT THERE IS NO PUBLIC RECORD OF STATES INDICTMENTS IN THIS CASE EVER BEING FILE-STAMPED WITH THE RICHLAND CO. CLERK OF COURT, OR THE CONVENING OF ITS (STATES) GRAND JURY AT A COURT OF GENERAL SESSIONS FOR RICHLAND COUNTY ON JUNE 14, 1995 AND OR FEBRUARY 28, 1996, AD. SEE: PLAINTIFFS EXHIBITS A-B ATTACHED

THUS THE DEFENDANT'S DID COMMIT PERJURY AND SUBORDINATION OF PERJURY UNDER OATH IN STATES TRUE-BILLED INDICTMENTS 2200 95-GS-40-3205; 95-GS-40-3700; 95-GS-40-3707; 95-GS-40-3708; 95-GS-40-4282; 96-GS-40-22556, IN VIOLATION OF SOUTH CAROLINA CODE OF LAWS 16-9-20 (a)(2) PERJURY AND SUBORDINATION OF PERJURY:

"IT IS UNLAWFUL FOR A PERSON TO WILLFULLY GIVE FALSE MISLEADING OR INCOMPLETE INFORMATION ON A DOCUMENT, RECORD, REPORT OR FORM REQUIRED BY THE LAWS OF THIS STATE...

THUS THE STATE (DEFENDANTS) DID COMMIT PROSECUTORIAL MISCONDUCT!

21.

The Defendant Alan Wilson - Attorney General of South Carolina is the state's chief prosecutor, and as an elected official, is accountable to the people of the state. SEE: STATE V. HARRISON, 432 S.C. 448, 854 S.E.2d 468 (2021), South Carolina Const. Art. 5, § 84, S.C. CONST. ART. 687; perjury under South Carolina Law is directed not so much at the effects of the perjurious statement, but rather at its perpetration and the probable wrong done the administration of justice by false testimony

22.

The Defendant Warren B. Giese (Solicitor-prosecutor during plaintiff's trial) is an officer of the Court who represents all the people, including the accused. STATE V. RAYFIELD, 367 S.C. 106; 631 S.E.2d 244 (2006). It is the Solicitor's duty to see that justice is done. He must see that no conviction takes place except in strict conformity with the law, and that the accused is not deprived of any constitutional right or privilege. @ 109.

23.

The South Carolina Attorney General is imbued by the state constitution with substantial authority over the prosecution of criminal cases, and to that end, the Attorney General has the constitutional duty to supervise all criminal prosecutions and ensure all laws be faithfully executed as well as the statutory duty to direct the state's Solicitor. STATE V. HARRISON, 432 S.C. 448; 854 S.E.2d 468 (2021)

24.

Thus, the Attorney General Alan Wilson; then Solicitor Warren B. Giese, are not entitled to prosecutorial immunity, or immunity from suit, and are

Liable to plaintiff pursuant to § 15-78-70 (b) South Carolina Code of Law, because Defendants' conduct was not within the scope of their official duties, and constituted actual fraud, malice intent.

25.

As our Supreme Court cited in RIDDLE v. OZMINT, 369 S.C. 39, 47, 48, 632 S.E.2d 90 (2006): "A prosecutor's deliberate deception of a court by the presentation of known false evidence is incompatible with the rudimentary demands of justice." (citing GIG LEO v. U.S., 405 U.S. 150, 153, 92 S.Ct. 763, 21 L.Ed.2d 264 (1991)) SEE: Exhibits A-B attached

26.

Fraud upon the court is a narrow and invidious species of fraud that subverts the integrity of the court itself, or is a fraud perpetrated by officers of the court so that the judicial machinery cannot perform in the usual manner its impartial task of adjudging cases that are presented for adjudication. SEE: SANDERS v. SMITH, 431 S.C. 605, 618 S.E.2d 604 (2000).

Thus, fraud upon the court by the defendants is clearly evident here.

27.

Any forth coming motion to dismiss by defendants should be denied. SEE: M.B. KALLN CONST. CO. INC. v. THREE RIVERS BANK & TRUST CO. COMPANY, 354 S.C. 412, 582 S.E.2d 481 (2003) "at pre-trial stage; only a prima facie showing is required to support jurisdiction in order to survive a motion to dismiss". ALSO SEE: BERGSTROM v. PALMETTO

HEALTH ALLIANCE, 358 S.C. 388 (2000) ("A Motion to DISMISS for failure to state a cause of action should not be granted if facts alleged and inferences reasonably deducible therefrom entitle the plaintiff to relief under any theory.")

28.

THERE IS NO STATUTE OF LIMITATIONS when a party seeks to set aside a judgment due to fraud upon the court.  
SEE: CHEWNING V. FORD MOTOR CO, 354 S.C. 72, 599 S.E. 2d 605 (SC2003)

29.

and an act of perjury or concealment of a document coupled with an intentional scheme to defraud the court justifies the setting aside of a judgment due to extrinsic fraud. SEE: RAY V. RAY, 394 S.C. 99, 697 S.E. 2d 239 (SC2007), and a trial judge is not required to sit idly by and allow perjury to be committed without bringing it to the attention of proper authorities. SEE: STATE V. STANLEY, 365 S.C. 24, 615 S.E. 2d 455 (2005)

30.

Hence, a trial judge has a responsibility for safeguarding both the rights of the accused and the rights of the public in the administration of criminal justice. STATE V. STANLEY, 365 S.C. 24-25 (2005) HE IS PRESENT IN THE ATMOSPHERE OF THE TRIAL AND HE MUST IN THE ADMINISTRATION OF JUSTICE; UPHOLD THE DIGNITY OF THE COURTS; AND HE WOULD BE DERELICT IN HIS DUTY IF HE DID NOT TAKE SUCH STEPS AS HE CONCEIVES IT HIS DUTY TO SEE THAT JUSTICE IS ADMINISTERED IN ACCORDANCE WITH SOUND PRINCIPLES OF LAW. SEE: STATE V. M'KAY, 89 S.C. 234, 71 S.E. 858 (1912); STATE V. CAMPBELL, 150 S.C. 499, 140 S.E. 992 (1929)

31

There would be no harm to the defendants, by the courts granting of the plaintiffs motion.

32

The ends of justice shall be met by the courts granting of this motion

33

\*RELIEF\*

wherefore the plaintiff respectfully request the courts granting of the motion for a writ of Mandamus and a Declaration that the Trial Court Lacked subject matter Jurisdiction to try, convict and sentence the plaintiff based upon STATES void, null, unfiled indictment nos 95-GS-40-3705, 3706, 3707, 3708, 4202, and 96-GS-40-12556, and that the judgment order of the Trial Court be vacated, warranting the plaintiffs immediate release from the South Carolina Dept. of Corrections, to include expungement of plaintiffs conviction from the record. Respectively . . .

si *[Signature]*

SWORN TO AND SUBSCRIBED BEFORE ME THIS 30<sup>th</sup> DAY OF January 2024, AD

NOTARY PUBLIC FOR THE STATE OF SOUTH CAROLINA: *[Signature]*

MY COMMISSION EXPIRES: 2/17/24



DATE: 1: 30: 2024, AD

Plant. & Copy for filing

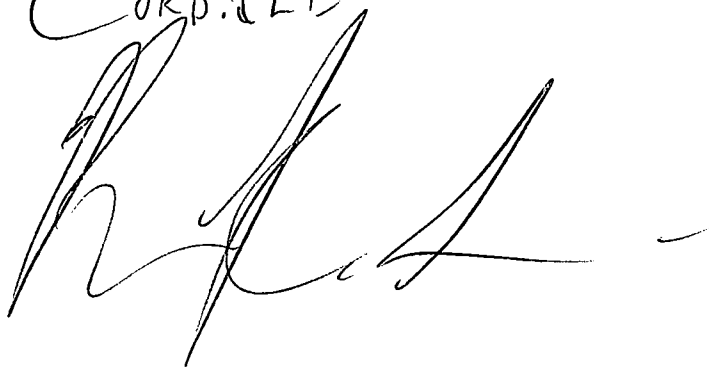
&

Return . . . . .

Thank You

I AM

CORP. & L.L.

A large, stylized handwritten signature in black ink, appearing to be 'R. A. L.' with a long horizontal stroke at the end.

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

KEVIN SMITH #164920.

PLAINTIFF.

THE STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT  
APPEAL FROM RICHLAND COUNTY  
COURT OF COMMON PLEAS  
JOCELYN NEWMAN CIRCUIT COURT JUDGE

CASE NO. # 2024-CP-900-1526

KEVIN SMITH #164920 ..... APPELLANT,  
✓

STATE OF SOUTH CAROLINA,  
ALAN WILSON - WARRE B. GIESE;  
R. MARKLEY DENNIS JR. .... RESPONDENT;  
B.S. 24. AD

HONORABLE PATRICIA A. HOWARD,  
CLERK OF COURT  
SOUTH CAROLINA SUPREME COURT  
P.O. BOX # 11330  
COLUMBIA, S.C. # 29211.

DEAR MS. HOWARD, PLEASE FIND ENCLOSED, APPELLANT'S ORIGINAL COPY OF  
THE NOTICE OF APPEAL - AFFIDAVIT & SUPPORTING MEMORANDUM FOR FILING  
WITH YOUR OFFICE, ALSO FIND ENCLOSED A COPY OF THE NOTARIZED  
CERTIFICATE OF PROOF OF SERVICE FOR COUNSEL OF RECORD (DEFENSE) &  
JEANETTE W. MC BRIDE VERIFYING SERVICE OF SAME UPON EACH  
RECIPIENT ON THE ABOVE DATE. TO INCLUDE APPELLANT'S COPY FOR FILING  
& RETURN. THANK YOU I AM Cordially  
M. [Signature]

THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

APPEAL FROM RICHLAND COUNTY  
COURT OF COMMON PLEAS

JOCELYN NEWMAN, CIRCUIT COURT JUDGE

CASE No. 2024-CP-400-1526

KEVIN SMITH #164920 ..... Appellant

✓

STATE OF SOUTH CAROLINA

ALAN WILSON - WARREN B. GIESE;

R. MARKLEY DENNIS JR ..... Respondent

NOTICE OF APPEAL

KEVIN SMITH Appeals THE FINAL ORDER OF DISMISSAL OF THE  
HONORABLE JOCELYN NEWMAN Dated July 3, 2024 - Filed July  
29, 2024. Appellant RECEIVED written notice of entry of this  
FINAL ORDER on July 29, 2024;  
AUGUST 5, 2024.

✓ Kevin Smith  
KEVIN SMITH #164920  
\*610 HWY #9 WEST,  
BENNETTSVILLE S.C.  
#29522  
PRO-SE APPELLANT

OTHER COUNSEL OF RECORD  
D. RUSSELL BARLOW, II  
Assistant Attorney General  
P.O. Box # 11549,  
Columbia, South Carolina, #29211

THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

APPEAL FROM RICHLAND COUNTY

COURT OF COMMON PLEAS

JOCelyn NEWMAN, CIRCUIT COURT JUDGE

CASE NO. # 2024-CP-400-1526

KEVIN SMITH # 116920 ..... APPELLANT

v.

STATE OF SOUTH CAROLINA

ALAN WILSON - WARREN B. GIESE

R. MARKLEY DENNIS JR. .... RESPONDENT

AFFIDAVIT  
&

SUPPORTING MEMORANDUM IN SUPPORT OF NOTICE TO APPEAL

DISMISSAL OF THIS CASE PURSUANT TO THE POST-CONVICTION PROCEDURES ACT S.C. CODE ANN. § 17-27-20 AND ALL APPLICABLE CODES ATTACHED TO THIS ACT, AS BARRED, SUCCESSIVE OR BEING UNTIMELY BY THE LOWER COURT WAS IMPROPER.

\*FACTS\*

1

ON JANUARY 30, 2024, THE PLAINTIFF (APPELLANT) SUBMITTED HIS NOTICE OF MOTION - AND MOTION FOR A WRIT OF MANDAMUS AND A DECLARATION THAT THE TRIAL COURT LACKED SUBJECT MATTER JURISDICTION TO CONVICT

AND SENTENCE THE PLAINTIFF BASED UPON VOID-NULL UNFILED  
INDICTMENT'S NO. 95-65-40-3705; 95-65-40-3706; 95-65-40-3707;  
95-65-40-3708; 95-65-40-4282; 96-65-40-2156; TO THE RICH-  
LAND COUNTY CLERK OF COURT FOR FILING [ALONG WITH CIVIL ACTION COVER  
SHEET AND SUMMONS; NAMING AS DEFENDANTS - STATE OF SOUTH CAR-  
OLINA; ALAN WILSON; WARREN B. GIESE AND R. MARKLEY DENNIS JR  
AND MOTION AND AFFIDAVIT TO PROCEED IN FORMA PAUPERIS] TO  
INCLUDE PLAINTIFF'S VERIFIED COMPLAINT AND SUPPORTING AFFIDAVIT  
WHICH WERE FILED CLOCK STAMPED ON MARCH. 8. 2024.

2.

ON MARCH. 12. 2024 THE PLAINTIFF'S MOTION AND AFFIDAVIT TO PRO-  
CEED IN FORMA PAUPERIS WAS GRANTED AND SIGNED BY JUDGE JOCE-  
LYN NEWMAN; AND WAS FILED WITH THE RICHLAND COUNTY CLERK OF  
COURT - CLOCK STAMPED ON MARCH. 12. 2024; TO WHICH PLAINTIFF'S  
MOTION FOR A WRIT OF MANDAMUS; AND DECLARATION WAS ASSIGNED  
CASE NO. #2024 CP-400-1526. SEE: PLAINTIFF'S [APPELLANT'S] EXHIBIT  
A-B-ATTACHED.

3

AT NO TIME DID THE PLAINTIFF (APPELLANT) COMMENCED-SUBMITTED  
OR FILED ANY APPLICATION FOR POST CONVICTION RELIEF (PCR) TO THE  
RICHLAND COUNTY CLERK OF COURT ON MARCH. 8. 2024; AND THE LOWER COURTS  
RECORDS ARE DEVOID OF SUCH FILINGS. SEE: COURTS RECORDS IN THESE PROCEEDINGS

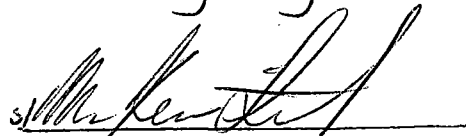
\* ARGUMENT - CASE LAW \*

4.

In a post conviction proceeding, the focus usually is upon alleged errors made by trial or plea counsel. The applicant attempts to show that his or her attorney erred in a manner that a reasonably proficient attorney would not, and that error prejudiced his case. SUTTON V. STATE, 361 S.C. 644 S.E.2d 779 (S.C. 2004), which is not the case here.

Thus, the lower court (Clerk of Court) improperly construed plaintiff's (Appellant's) motion for a writ of Mandamus and Declaratory Judgment Case no. 2024 CP-100-1526, as a post-conviction relief (P.C.R.) application, which this court should find is not applicable <sup>LAW</sup> in this case. See: MILLER V. STATE, 377 S.C. 49; 659 S.E.2d 472 (2008) (noting: "the clerk of court should not construe a petition for a writ of Habeas Corpus as a P.C.R. application.")

wherefore based upon the above to include supporting documentation (exhibits) there is an arguable basis for appellant's assertion that the determination by the lower court was improper warranting the courts granting of the writ of certiorari. Respectively



I SWEAR UNDER OATH BY THE LAWS OF THIS STATE THAT THE ABOVE STATEMENTS AND SUPPORTING CASE LAW & EXHIBITS ARE TRUE - ACCURATE - GENUINE & CORRECT!

SWORN BEFORE ME THIS 5th DAY OF August 2024 A.M.  
NOTARY PUBLIC FOR THE STATE OF SOUTH CAROLINA [Signature]  
MY COMMISSION EXPIRES: 2/28/34

THE STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT  
APPEAL FROM RICHLAND COUNTY  
COURT OF COMMON PLEAS  
JOCELYN NEWMAN CIRCUIT COURT JUDGE  
CASE NO# 2024-CP-400-1526

KEVIN SMITH #164920 ..... APPELLANT

✓

STATE OF SOUTH CAROLINA

ALAN WILSON-WARREN B. GIESE;  
R. MARKLEY DENNIS JR. ....

RESPONDENT

\* NOTARIZED CERTIFICATE OF PROOF OF SERVICE \*

I KEVIN SMITH #164920, HEREBY CERTIFY THAT I SERVED A ORIGINAL COPY OF THIS NOTICE OF APPEAL - AFFIDAVIT & SUPPORTING MEMORANDUM UPON THE RICHLAND COUNTY CLERK OF COURT JEANETTE W. MCBRIDE FOR FILING IN THE ABOVE CASE NO# ON THIS 5<sup>TH</sup> DAY OF AUGUST 2024, A.D. VIA <sup>US</sup> CERTIFIED MAIL ADDRESSED TO:

JEANETTE W. MCBRIDE, RICHLAND COUNTY CLERK OF COURT  
P.O. BOX #2766, COLUMBIA, S.C. #29202-#2766

  
PRO-SE APPELLANT

SWORN & SUBSCRIBED BEFORE ME THIS 5<sup>TH</sup> DAY OF AUGUST 2024 A.D.  
NOTARY PUBLIC FOR THE STATE OF SOUTH CAROLINA: Sandra Oullen  
MY COMMISSION EXPIRES: 2/28/34

THE STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT  
APPEAL FROM RICHLAND COUNTY  
COURT OF COMMON PLEAS  
JOCELYN NEWMAN CIRCUIT COURT JUDGE  
CASE NO. # 2024-CP-400-1526

KEVIN SMITH # 164920 ..... APPELLANT,  
v.

STATE OF SOUTH CAROLINA  
ALAN WILSON WARREN & GIESE,  
R. MARKLEY DENNIS JR ..... RESPONDENT

\* NOTARIZED CERTIFICATE OF PROOF OF SERVICE \*

I KEVIN SMITH # 164920, HEREBY CERTIFY THAT I SERVED A COPY OF  
THIS NOTICE OF APPEAL - AFFIDAVIT & SUPPORTING MEMORANDUM UPON  
COUNSEL OF RECORD FOR RESPONDENT IN THE ABOVE CASE NO. ON  
THIS 5<sup>TH</sup> DAY OF AUGUST OR 4<sup>AD</sup> V. I.A.T. "CERTIFIED" MAIL ADDRESSED

TO : D. RUSSELL BARLOW, II.  
ASSISTANT ATTORNEY GENERAL  
P.O. BOX # 21549,  
COLUMBIA, S.C. # 29211

  
PRO-SE - APPELLANT

SWORN & SUBSCRIBED BEFORE ME THIS 5<sup>TH</sup> DAY OF AUGUST 2024 AD

NOTARY PUBLIC FOR THE STATE OF SOUTH CAROLINA Saxcha Outler  
MY COMMISSION EXPIRES 2/28/34