

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

KEVIN SMITH #161920

PLAINTIFF

VS

STATE OF SOUTH CAROLINA,
ALAN WILSON - WARREN B. GIERSE,
R. MARK LEY DENNIS JR.

DEFENDANTS

IN THE COURT OF COMMON PLEAS
OF THE FIFTH JUDICIAL CIRCUIT

CASE NO# 2021-CP-1001526

PLAINTIFF KEVIN SMITH

TO THE CONDITIONAL ORDER OF

DISMISSAL

AND AFFIDAVIT OF KEVIN SMITH
IN CORROBORATING CASE AUTHORITIES

RICHLAND COUNTY
FILED
AUG - 2 AM 8:03
JANETTE W. MERRITT
CLERK, C.S. 5
RESPONDENT

DISMISSAL OF THIS CASE WOULD BE A TRAVESTY OF JUSTICE - ERROR OF LAW
BASED ON THE FOLLOWING:

1

On January 30, 2021 AD. The Plaintiff (KEVIN SMITH #161920) 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-well-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-40-1156, to the Richland County Clerk of Court for filing [along with civil action cover sheet and summons naming as Defendants STATE OF SOUTH CAROLINA, ALAN WILSON, WARREN B. GIERSE, and R. MARK LEY DENNIS JR., and Motion and a Affidavit to proceed in forma pauperis] to include his "verified" Complaint and supporting Affidavit which were filed - clock-stamped on March 8, 2021 AD.

Page 20 of 22

The Plaintiff (KEVIN SMITH) also supports his response to the conditional order of dismissal with Plaintiff's Motion to Strike Defendant's Motion to Dismiss (with supporting Affidavit), Plaintiff's Motion for an order of Declaration finding the Defendants guilty of Criminal Conspiracy (supporting Affidavit), and Plaintiff's Affidavit of Evidence in the above-captioned case no# 2021-CP-1002526; attached to this response.

on March 12, 2024. The plaintiff's Motion and Affidavit To proceed in Perma
pauperis was granted and signed by the Honorable Judge Jocelyn Newman.
 and was filed with the Highland County Clerk of Court Clerk-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
Exhibit A attached to this response

3.

AT NO TIME Did or Has the plaintiff (KEVIN SMITH) - Commenced - submitted
 or Filed Any application for post conviction Relief (P.C.R.) To The Highland
 County Clerk of Court on March 8, 2024, and the Court Clerk's Records are
 devoid of such filings. SEE: Courts Records in these proceedings

4.

Thus, the Defendants are trying to have this Case No. # 2024 CP-400-1526
 (Motion for a writ of Mandamus, and Declaration) Dismissed under false
 Pretense of post-conviction Relief, and or successive applications. And the
 Defendants have once again committed fraud upon the Court by defend
 - ants perjured testimony. In their attempt to undermine these proceedings.
SEE: plaintiff's Exhibit A. ALSO SEE: S. CAR. CODE OF LAWS SECTION § 16-7-10 (A) (2)

PERJURY AND SUBORNATION OF PERJURY:

"IT IS UNLAWFUL for a person to willfully
 GIVE FALSE, MISLEADING, or INCOMPLETE IN-
 -FORMATION on a DOCUMENT, - RECORD, - REPORT or
 FORM REQUIRED BY THE LAWS OF THIS STATE"

And an attorney has an ethical duty not to perpetrate a fraud upon the
 Court by knowingly presenting perjured testimony. IN THE MATTER OF GOODWIN,

279 S.C. 294, 305 S.E.2d 578 (1983). 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. STATE V. STANLEY; 365 S.C. 29, 615, S.E.2d 455 (2005)

5

IT APPEARS THE DEFENDANTS ARE TRYING TO DECEIVE THE COURT V.I.A. DEFENDANTS REWRITING OF THE PLAINTIFFS MOTION FOR A WRIT OF MANDAMUS AND DECLARATORY JUDGMENT CASE NO# 2024-CP-4001576, AS A POST CONVICTION RELIEF (P.C.R.) APPLICATION, WHICH THIS COURT SHOULD FIND IS NOT APPLICABLE IN THIS CASE. SEE: MILLER V. STATE, 377 S.C. 99, 659 S.E.2d 492 (2008) ("THE CLERK OF COURT SHOULD NOT CONSTRUCT A PETITION FOR A WRIT OF HABEAS CORPUS AS A PCR APPLICATION.")

HENCE, THE TRIAL JUDGE HAS A RESPONSIBILITY FOR SOBEGUARDING BOTH THE RIGHTS OF THE ACCUSED, AND THE RIGHTS OF THE PUBLIC IN THE ADMINISTRATION OF JUSTICE. STATE V. STANLEY, 365 S.C. 29, 25 (2005) HE IS PRESENT IN THE ATMOSPHERE OF THE TRIAL, AND NOT IN THE ADMINISTRATION OF JUSTICE; UPHOLD THE DIGNITY OF THE COURTS, AND 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. STATE V. MCKAY, 89 S.C. 234, 71 S.E. 858 (1911); STATE V. CAMPBELL 150 S.C. 449; 118 S.C. (1907)

24 May 2024
S
Clerk of Court
2/22/24

2. PLAINTIFF RESPECTFULLY REQUEST FULL PROSECUTION OF THESE DEFENDANTS FINDING THE DEFENDANTS IN VIOLATION OF SECTION: 916-9-10 (a) (2) S.C. CODE OF LAW AS A MATTER OF LAW TO INCLUDE DISBARMENT BY THIS COURT!

Wherefore Based upon Evidence and Cas Law submitted By
The plaintiff, The Conditional order of The Court Should not
Be Come final, and This Case should Be allowed To proceed To
Trial for The Requested Relief In The Motion for a writ of
Mandamus and Declaratory Judgment Case no: 20 24 CP-1001526³
Respectively...

RESPECTFULLY SUBMITTED
s/ Kevin Smith
KEVIN SMITH #164920
610 HWY #9 WEST
BENNETTSVILLE, S.C #29512

5. 24. 24. AD

I SWEAR UNDER PENALTY OF PERJURY THAT EACH STATEMENT IN
THIS RESPONSE TO THE CONDITIONAL ORDER OF DISMISSAL, AND EACH
EXHIBIT ATTACHED IS TRUE-ACCURAT-CORRECT-GENUINE AND AUTHENTIC!

SWORN AND SUBSCRIBED BEFORE ME THIS 24 DAY OF May 2024 AD

NOTARY PUBLIC FOR THE STATE OF SOUTH CAROLINA: Sandra O'Neil
MY COMMISSION EXPIRES: 2/28/34

³ BECAUSE OF DEFENDANT'S DECEIT - fraud upon the Court [Attempt to Construe plaintiff's
Motion for a writ of Mandamus and Declaratory Judgment as a PCR application], A Condit-
-ional order of Dismissal and Response from the plaintiff should not HAVE BEEN NECESSARY..