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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

APPEAL FROM RICHLAND COUNTY

COURT OF COMMON PLEAS

DANIEL COBLE CIRCUIT COURT JUDGE

LOWER COURT NO. #2019-CP-400-4200  
CASE NO. #2025-000168

KEVIN SMITH #164920, ..... APPELLANT;

vs.

STATE OF SOUTH CAROLINA, ..... RESPONDENT;

BRIEF

APPELLANT'S WRITTEN EXPLANATION'S PURSUANT  
TO RULE 243 (C) S.C.A.C.R.

ISSUE 1. THE LOWER COURTS DISMISSAL OF THIS CASE PURSUANT TO THE POST-CONVICTION PROCEDURES ACT S.C. CODE ANN. § 27-27-10 AND ALL APPLICABLE CODES ATTACHED TO THIS ACT AS BARRED, SUCCESSIVE OR BEING UNTIMELY WAS IMPROPER.

SUPPORTING FACTS - CASE LAW:

THE PETITIONER FILED HIS VERIFIED COMPLAINT [NOTICE OF MOTION - MOTION FOR A VACATION & EXPUNGEMENT OF SENTENCE PURSUANT TO RULE 60 Cb1 (3)(4)(5) S.C. CIV. PROCEDURES] ACCOMPANIED WITH SUMMONS WITH THE RICHLAND COUNTY CLERK OF COURT ON JULY 30, 2019, TO WHICH PETITIONER'S COMPLAINT WAS ASSIGNED CASE NO. 2019-CP-400-4208. THE PETITIONER ALSO FILED AN AFFIDAVIT & CERTIFICATE OF PROOF OF SERVICE OF HIS FILING OF THE SUMMONS & COMPLAINT WITH THE RICHLAND COUNTY CLERK OF COURT WHICH WAS FILED JULY 30, 2019. SEES PETITIONER'S EXHIBIT A ATTACHED [IDENTIFYING EACH DOCUMENTED SUBMITTED TO THE RICHLAND COUNTY CLERK OF COURT JEANETTE W. MCBRIDE FOR FILING ON THE RECORD JULY 30, 2019, TO INCLUDE CASE HISTORY SHEET, WHICH THE CLERK OF COURT CONSTRUED AS A HABEAS CORPUS PETITION.]

THUS, IT WAS A CLEAR ERROR OF LAW THAT THE PETITIONER'S COMPLAINT (RULE 60Cb) MOTION IS CONSTRUED AS A POST-CONV. MOTION RELIEF APPLICATION (P.C.R.). SEES MILLER V. STATE, 377 S.C. 65 S.E.2d 492 (2008). AT NO TIME DID THE PETITIONER SUBMIT A P.C.R. APPLICATION TO THE RICHLAND COUNTY CLERK OF COURT'S OFFICE FOR FILING ON JULY 30, 2019, AND THE COURT'S OWN RECORDS ARE DEVOID OF SUCH FILING BY THE PETITIONER IN THIS CASE. IN SOUTH CAROLINA, IT IS

well settled "that statements of fact appearing only in argument of counsel will not be considered." McMANUS v. BANK OF GREENWOOD, 272 S.C. 94, 171 S.E. 493, 495 (1933). SEE ALSO SHIN v. KREUL, 321 S.C. 94, 102, 427 S.E. 2d 695, 700 (Ct. App. 1993) ("A court cannot consider facts appearing only in argument of counsel."), GILMORE v. IVEY, 390 S.C. 53, 58, 348 S.E. 2d 180, 184 (Ct. App. 1986) ("judge 'properly disregarded' counsel's statements about content of depositions when depositions were not provided to the court.") Therefore, Respondents argument in its conditional order for its dismissal of the petitioners case under the uniform post conviction procedures act is flawed, & without precedence . . . baseless.

Hence, it is important to note that the p.c.r. court signed an order denying relief authored by the Respondent. Thus, any factual findings found in the order of dismissal are actually the result of the state court ceding its fact-finding authority to the state by adopting Respondent's proposed findings. For this reason, the fourth circuit court of appeals and the South Carolina Supreme Court have criticized the practice of near-wholesale adoption of one side's proposed order. SEE: CHICOPPEE MFG. CORP. v. KENDALL CO., 288 F.2d 719, 724-725 (4TH Cir. 1962), HALL v. CATOE, 601 S.E. 2d 335, 341 (SC 2004). The wholesale adoption of the Respondent's proposed order supports a finding that the lower court factual findings in these proceedings were unreasonable.

ISSUE 2. THE RESPONDENTS ARE IN DEFAULT, ENTITLING THE PETITIONER TO THE REQUESTED RELIEF IN THE COMPLAINT.

SUPPORTING FACTS - CASE LAW:

THE RESPONDENTS DID NOT MAKE ITS APPEARANCE IN THIS CASE NO. #2019-CV-400-4208 UNTIL APPROXIMATELY FIVE (5) YEARS AFTER SERVICE OF THE SUMMONS<sup>1</sup> & COMPLAINT UPON THE RESPONDENTS V.I.A. THE RICHLAND COUNTY SHERIFF'S DEPARTMENT, DEPUTY SHERIFF P. WILKES. SEE: PETITIONER'S EXHIBIT - A-1 [AFFIDAVIT OF SERVICE OF SUMMONS & COMPLAINT UPON ALAN WILSON AT GENERAL OFFICE ELLEN SMITH (REGISTERED CORPORATE AGENT) EFFECTED SERVICE 08/22/19, 10:02AM] ALSO SEE: SOUTH CAROLINA CODE OF LAWS 15-9-210 SERVICE OF PROCESS ON

DOMESTIC CORPORATIONS: (a)

"A DOMESTIC BUSINESS OR NON-PROFIT CORPORATION REGISTERED AGENT IS THE AGENT OF THE CORPORATION FOR SERVICE OF ANY PROCESS, NOTICE OR DEMAND REQUIRED OR PERMITTED BY LAW TO BE SERVED; AND THE SERVICE IS BINDING UPON THE CORPORATION; . . .

SUBSEQUENTLY THE PETITIONER EFFECTED SERVICE OF THE SUMMONS & COMPLAINT CASE NO. #2019-CV-400-4208 UPON THE RESPONDENTS PURSUANT TO SOUTH CAROLINA CODE OF LAWS 15-9-15. AFFIDAVIT AS PROOF OF SERVICE BY PUBLICATION. SEE: PETITIONER'S EXHIBIT - A-2 [P.C. 3.23.2020 MAIL ROOM NOTARIZED CERTIFICATE OF PROOF OF SERVICE & CERTIFIED MAIL RECEIPT AUGUST 08.2019] ATTACHED

1. SERVICE OF THE SUMMONS BRINGS CIVIL DEFENDANT WITHIN COURT'S JURISDICTION AND GIVES THE COURT THE POWER TO RENDER PERSONAL JUDGMENT AGAINST PERSON SERVED. SEE: LOUBEN V. MORAGNE, 327 S.C. 465; - 486 S.E.2d (S.C. APP. 1997)

The Entry of Default is a ministerial act which a Clerk is required to perform once entry is made to appear by the affidavit of the moving party. STARK TRUSS CO. V. SUPERIOR CONST. CORP. 360 S.C. 503; 509; 602 S.E.2d 99 (S.C. app. 2004), SEE: PETITIONER'S EXHIBIT A-3 [petitioner's affidavit of default filed April 6, 2020 at 10:10 am with the Richland County Clerk of Court Jeanette W. McBride.]

The Respondent's Answer to the summons & Complaint in this case [having established that case no. #2019-CP-400-4208 is not an p.c.a. application] was due on September 21, 2019 [within thirty (30) days after receipt of the summons & Complaint] reiterating the Respondent's did not make an appearance in this case until approximately five (5) years after service of the summons & Complaint pursuant to SC Code of Laws §15-9-210; §15-9-15 and offer no explanation for its failure to make an appearance in this case upon service of the summons & Complaint. SEE: CASSIDY V. MEARS, 266 S.C. 352, 223 S.E.2d 191 (S.C. 1976) (holding "inexplicable inaction of defendant's attorney to make an appearance in case was attributable to his client was insufficient ground for relief from default."); also SEE: FINANCIAL FEDERAL CREDIT INC. V. BROWN, 384 S.C. 555; 683 S.E.2d 486 (S.C. 2009) ("where service is accomplished in a manner consented to by the defendant, service of process is valid; and a court has jurisdiction over the defendant for purpose of entering judgment.").

BECAUSE THE petitioner effected service of the summons & Complaint case no. #2019-CP-400-4208 upon the Respondent's pursuant to South.

Carolina Code of Laws § 15-9-210, & § 15-9-15, and the Respondent's Failure to file a timely response, would negate the Rule 55(c) S.C.R. Civ. procedures Requirement. SEE: STATE V. COTTINGHAM, 224 S.C. 181, 77 S.E.2d 897 (S.C. 1953) ("no local rule of court, administrative order, policy or other procedure can take precedent over statutory law which is always controlling...")

Thus, the Lower Court should have found the Respondents in Default, entitling the petitioner to the requested relief in this case respectively...

### ISSUE 3. UNFILED INDICTMENTS - ARREST WARRANTS SENTENCE SHEETS - JURISDICTION

#### SUPPORTING FACTS - CASE LAW:

RULE 3(c) South Carolina Rules of Criminal Procedure: Requires Solicitors to file indictments with the Clerk of Court, yet as evident here the record is devoid of stated indictment nos 95-GS-40-3704 (ABWIK); 3705 (Taking of Hostages); 3706 (ABWIK); 3707 (ABHAN); 3709 (Taking of Hostages); 9282 (Taking of Hostages); 96-GS-40-11556 (ABHAN) ever being filed with the Richland County Clerk of Court. SEE: petitioners Exhibit - B - Attached. (to include no date of trial bill)

Moreover, Rule 37 South Carolina Rules of Criminal Procedure mandates: "These Rules shall apply to every Trial Court of Criminal jurisdiction within this state [adopted effective September 1, 1980] S. Carolina Rules of Court 37 Crimp @ pp 956 2010 Edition.

As Evident The Record is Devoid of STATES ARREST WARRANT NO<sup>D</sup> D-88-1410,  
- 1411 - 1412 - 1421 - 1422 - 1509, and STATES SENTENCE SHEETS for  
 The petitioner's Case NO<sup>D</sup> 3705 - 3706 - 3707 - 3708 - 4282 - 96-6040 -  
11556 ever Being Filed [Clock-Stamped] with the Richland County  
 Clerk of Court thus, warranting a vacation of the petitioner's sentence,  
 finding the judgment of the Criminal Trial Court void. SEE: STATE V.  
PRICE, 441 S.C. 423, 895 S.E.2d 633 (S.C. 2023) (South Carolina Supreme Court  
 "granting "extra-ordinary writ" and a Declaration finding judgment  
 order void; BECAUSE documents were never filed-stamped with  
 Clerk of Court") SEE: petitioner's Exhibits-B-1 and B-2 Attached

Thus, the petitioner's evidence clearly shows the Trial Court  
Lacked subject matter jurisdiction in the STATE prosecution of  
 The petitioner. As all orders of a Court without jurisdiction are null-  
 ities. AUGUSTA POWERS CO. V. SAVANNAH RIVER ELECTRIC CO., 152 S.C.  
 295, 149 S.E. 2d 4 (S.C. 1929), also SEE: KATZBURG V. KATZBURG; 410 S.C.  
 104, 764 S.E.2d 3 (Ct. App. 2014) ("a judgment of a Court without sub-  
 ject matter jurisdiction is void and constitutes grounds for the Court to  
 vacate the judgment."). And without jurisdiction, Court cannot  
 proceed at all in any cause, jurisdiction is power to declare law;  
 and when it ceases to exist, the only function remaining to Court  
 is that of announcing the fact and dismissing cause. STEEL CO.  
V. CITIZENS FOR A BETTER ENVIRONMENT, 583 U.S. 60 (2007) 118 S.Ct. 1003 (1998)

Thus, The Lower Courts Ruling without even addressing this matter  
 nor, reviewing petitioner's evidence, finding of fact was improper

#### ISSUE 4. RESPONDENTS SUBMISSION OF FALSE, MISLEADING, INCOMPLETE INFORMATION IN STATES ARREST WARRANTS

##### SUPPORTING FACTS - CASE LAW:

THE RESPONDENTS HAVE SUBMITTED FALSE, MISLEADING, INCOMPLETE INFORMATION IN STATES ARREST WARRANT NOS: D-88-1410 (TAKING OF HOSTAGES); D-88-1411 (TAKING OF HOSTAGES); D-88-1412 (TAKING OF HOSTAGES); D-88-1421 (ABWIK); D-88-1422 (ABHAN); D-88-1509 (ABWIK), WHICH ARE NOT CERTIFIED, HAVE NOT BEEN FILED [Clock-stamped] WITH THE COURT OF GENERAL SESSIONS RICHLAND COUNTY CLERKS OFFICE AND DOES NOT IDENTIFY THE PETITIONER, BUT IDENTIFY'S INMATE NO. #132987- DOB. 12/21/70 WHICH IS NOT THE PETITIONER. SEE: PETITIONER'S EXHIBIT-B-1 AGAINST THE PEACE AND DIGNITY OF THE STATE AND CONTRARY TO SOUTH CAROLINA CODE OF LAW § 16-9-10 (A) (2)

#### ISSUE 5. RESPONDENTS SUBMISSION OF FALSE, MISLEADING INCOMPLETE INFORMATION AND FORGERY IN STATES GRAND JURY ORDER.

##### SUPPORTING FACTS - CASE LAW:

THE RESPONDENT'S DID SUBMIT FALSE, MISLEADING INCOMPLETE INFORMATION IN STATES grand jury (ORDER MEET, 1995 TERM) FOR RICHLAND COUNTY WHICH BEARS NO CONVEYING OF THE GRAND JURY ON JUNE-14, 1995, AND CONTAINING FORGED SIGNATURE OF PRESIDING JUDGE: JOE A. WILSON. SEE: PETITIONER'S EXHIBIT-B-3. ATTACHED, AGAINST THE PEACE AND DIGNITY OF

THE STATE AND Contrary To South Carolina Code of Laws § 16-9-10(a)(2),  
§ 16-13-10

ISSUE 6. RESPONDENTS SUBMISSION OF FALSE, MISLEADING, INCOMPLETE  
INFORMATION IN STATES INDICTMENT - SENTENCE SHEET

SUPPORTING FACTS - CASE LAW

THE RESPONDENTS DID SUBMIT FALSE, MISLEADING, INCOMPLETE INFORMATION  
 IN STATES INDICTMENT NOS 95-GS-40-3704 [ABWIK]; 95-GS-40-3705  
[TAKING OF HOSTAGES]; 95-GS-40-3706 [ABWIK]; 95-GS-40-3707 [ABHAN];  
95-GS-40-3708 [TAKING OF HOSTAGES]; 95-GS-40-7282 [TAKING OF HOSTAGES];  
96-GS-40-12556 [ABWIK]; EACH INDICTMENT BEARS NO DATE OF TRUE-BILL  
 NO DATE OF FILING (CLOCK-STAMPED) WITH THE RICHLAND COUNTY CLERK  
 OF COURT, AND NO CONVENING OF GRAND JURY ON JUNE 14, 1995. SEE:  
PETITIONERS EXHIBIT B- AND B-3 - AGAINST THE PEACE AND DIGNITY OF  
 THE STATE AND Contrary To South Carolina Code of Laws § 16-9-10(a)(2),  
§ 16-9-30; AND UNITED STATES CODE TITLE 18; 18 USC § 1621; § 1622;  
§ 1623.

THE RESPONDENTS DID SUBMIT FALSE, MISLEADING, INCOMPLETE INFORMATION IN  
 PETITIONERS SENTENCE SHEETS CASE NOS 95-GS-40-3705-3706; 3707  
3708; 7282; 96-GS-40-12556. EACH SENTENCE SHEET BEARS NO FILE  
 DATE (CLOCK-STAMPED) WITH THE RICHLAND COUNTY CLERK OF COURT; NO D.O.B.  
 NO SOCIAL SECURITY NO OF THE PETITIONER. SEE: PETITIONERS EXHIBIT B-3  
 ALSO SEE: STATE V. PRICE, 441 S.C. 723; 895 S.E.2d 633 (S.C. 2023) ("Finding  
 judgment order void BECAUSE DOCUMENTS WERE NEVER FILED STAMPED WITH  
 THE CLERK OF COURT.")

As our Supreme Court Cited In REPPLE V. ORMENT, 369 S.C. 39; 19  
18, 632 S.E.2d 10 (2006)

" A prosecutors Deliberate Deception of a court  
and jurors By the presentation of Known False  
evidence is incompatible with the Rudimen-  
- tary Demands of justice.

( Citing GILGION V. U.S., 405 U.S. 150; 153; 92 S.Ct. 763, 21 LEd 2d 164 (1971)

The Attorney General (Respondents) of South Carolina is the  
States Chief prosecutor; and as an elected official, is account-  
- able to the people of the State. STATE V. HARRISON, 432 S.C.  
498; 854 S.E.2d 968 (2022), South Carolina Const. Art. 5, § 24 S.C. Const.  
Art 6 § 7; 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 ad-  
- ministration of justice by false testimony. Hence, 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 Respondent 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 States Solicitors. SEE: IN THE MATTER  
OF GOODWIN, 279 S.C. 99; 305 S.E.2d 578 (S.C. 1983) ("An Attorney  
has an ethical duty not to perpetrate a fraud upon the court  
by knowingly presenting perjured testimony.")

Hence, the lower Court in petitioner's Case, is not required  
to sit idly by and allow perjury to be committed by the  
Respondent without bringing it to the attention of proper  
authorities. SEE: STATE V. STANLEY, 365 S.C. 24, 615 S.E.2d 455 (2005)

ISSUE 7 SOUTH CAROLINA LAW - DUE PROCESS REQUIREMENTSUPPORTING FACTS - CASE LAW:

South Carolina Law holds that words of a statute must be given their plain and ordinary meaning without resort to subtle or forced construction. SEE: STATE V. SWERTE, 386 S.C. 334, 688 S.E.2d 569 (2010); and statutory prescriptions couched in language such as "shall" and "must" are mandatory in application and effect. SEE: SOUTH CAROLINA POLICE OFFICER'S RET. SYS. V. CITY OF SPARTANBURG, 391 S.E.2d 239; 291 (1970); STARVES V. SOUTH CAROLINA DEPT. OF PUBLIC SAFETY, 535 S.E.2d 655; 669 (Ct. App. 2000) ALSO SEE: STATE V. PRICE, 441 S.C. 423, 895 S.E.2d 633 (S.C. 2023) ("the term 'shall' in a statute means that the action is mandatory")

A plain reading of South Carolina Code of Law section § 17-25-10 requires that a criminal defendant cannot be punished for an offense until after the state has duly and legally convicted the individual. This did not happen in the petitioner's case. In the state's criminal case against the petitioner, the state violated nearly every component of the procedural due process and due process and statutory requirements that's owed to the petitioner. SEE: petitioner's exhibits attached. ALSO SEE: STATE V. PRICE, 441 S.C. 423, 895 S.E.2d 633 (S.C. 2023) ("all courts are bound to follow clear and unambiguous statutory law.")

our STATES SUPREME COURT IN STATE V. MOORE, 255 S.E.2d 440-449 (S.C. 1979)  
Held:

"A judgment By A Court IN A Criminal case  
"Must" Conform strictly To The Statute, And  
"any" Variation From ITS provisions Renders  
The judgment void."

ISSUE B. PETITIONER'S ENTITLEMENT TO RELIEF FROM JUDGMENT  
PURSUANT TO RULE 60(b)(3)(4) SOUTH CAROLINA RULES OF CIVIL  
PROCEDURES

SUPPORTING FACTS - CASE LAW:

Rule 60(b)(3) provides RELIEF FROM JUDGMENT BASED ON FRAUD, MISRE-  
PRESENTATION, OR OTHER MISCONDUCT OF AN ADVERSE PARTY ... S.C.R. CIV. P.  
THE MOVANT IN A RULE 60(b) S.C.R. CIV. P. MOTION HAS THE BURDEN OF  
PRESENTING EVIDENCE, I.E. A AFFIDAVITS, EXHIBITS, PROVING THE FACTS  
ESSENTIAL TO ENTITLE HIM TO RELIEF. BOWERS V. BOWERS, 304 S.C.  
65, 403 S.E.2d 127 (CT. APP. 1991). THE PETITIONER HAS MET THIS  
BURDEN. SEE: PETITIONER'S EXHIBITS ATTACHED

"RULE 60(b)(4) S.C.R. CIV. P. PROVIDES THE COURT MAY RELIEVE A  
PARTY ... FROM A FINAL JUDGMENT, ORDER OR PROCEEDING IF SUCH JUD-  
GMENT IS VOID." THE DEFINITION OF VOID UNDER THE RULE ENCOM-  
PASSES JUDGMENTS FROM COURTS, WHICH FAILED TO PROVIDE PROPER  
DUE PROCESS OR JUDGMENTS FROM COURTS, WHICH LACKED SUBJECT  
MATTER JURISDICTION OR PERSONAL JURISDICTION. SANDERS V. SMITH,  
431 S.C. 605, 848 S.E.2d 604 (S.C. 2020) SEE: PETITIONER'S EXHIBITS  
[VOID INDICTMENTS - WARRANTS - SENTENCE SHEETS NEVER FILED WITH THE COURT]

Thus, summary dismissal of petitioner's Rule 60(b)(3)(4)(5) S.C.R. Civ. Motion by the lower court was improper.

### ISSUE 9 FRAUD UPON THE COURT<sup>2</sup>

#### SUPPORTING FACTS. CASE LAW:

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. PERRY v. HEIRS AT LAW OF GADSEN, 357 S.C. 42, 590 S.E.2d 502 (S.C. App 2005) 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. RAY v. RAY, 374 S.C. 79, 649 S.E.2d 237 (S.C. 2009). The petitioner submitted evidence (exhibits) attached to the explanation brief, clearly shows the respondents have committed fraud upon the court during state prosecution of the petitioner and throughout the course of these civil proceedings.

Thus, summary dismissal of petitioner's fraud upon the court claim by the lower court was improper.

<sup>2</sup> SEE: CHEWNING v. FORD MOTOR CO. 354 S.C. 579, 581 S.E.2d 605 (S.C. 2003) ("THERE IS NO STATUTE OF LIMITATIONS WHEN A PARTY SEEKS TO SET ASIDE A JUDGMENT DUE TO FRAUD UPON THE COURT.")

ISSUE 10 LACHESSUPPORTING FACTS - CASE LAW:

BECAUSE THE PETITIONER CHALLENGES THE RESPONDENT'S VIOLATIONS OF STATUTORY LAW, SUMMARY DISMISSAL OF THIS CASE UNDER THE DOCTRINE OF LACHES IS NOT APPLICABLE. SEE: SLOAN V. DEPT. OF TRANSPORTATION, 365 S.C. 299 (2005) ("LACHES DID NOT PREVENT SUPREME COURT FROM REVIEWING ISSUE OF WHETHER D.O.T. VIOLATED STATUTORY BIDDING REQUIREMENTS.")

ISSUE 11 CRIMINAL CONSPIRACY<sup>3</sup>SUPPORTING FACTS - CASE LAW:

THE PETITIONER'S SUPPORTING AFFIDAVITS, DOCUMENTATION, EXHIBITS AND THE LOWER COURTS OWN RECORDS CLEARLY SHOWS CIRCUMSTANTIAL EVIDENCE AND THE CONDUCT OF THE PARTIES INVOLVED IN THIS CASE. IN THE RESPONDENT'S COMMISSION IN THE UNLAWFUL ACT TO SECURE ITS ILLEGAL CONVICTION AGAINST THE PETITIONER AND THE RESPONDENT'S ATTEMPTS TO COVER UP SUCH ILLEGAL ACTS THROUGHOUT THE COURSE OF THE PETITIONER'S LITIGATION OF THIS CASE.

HENCE, IN CRIMINAL CONSPIRACY IT IS NOT NECESSARY TO PROVE AN OVERT ACT, AS GIST OF THE CRIME IS UNLAWFUL COMBINATION, AND CRIME IS COMPLETE EVEN THOUGH NOTHING FURTHER IS DONE. STATE V. FERGUSON, 90 S.E.2d 355 (S.C. 1952), AND "FORMAL EXPRESS AGREEMENT IS NOT NECESSARY TO ESTABLISH A CONSPIRACY AND IT MAY BE SHOWN BY CIRCUMSTANTIAL EVIDENCE AND CONDUCT OF PARTIES. STATE V. OLIVER, 267 S.E.2d 529; 530 (S.C. 1980) WHERE

3. PETITIONER RAISED THIS ISSUE IN HIS RESPONSE TO THE MAY 17, 2024 CONDITIONAL ORDER OF DISMISSAL SIGNED BY JUDGE JOCKLYN NEWMAN FILED MAY 20, 2024, TO WHICH THE CLERK OF COURT FOR RICHLAND COUNTY JEANETTE W. MCBRIDE PURPOSELY FAILED TO FILE WITH THE COURT. SEE: PETITIONER'S EXHIBIT - C - (NOTARIZED CERTIFICATE OF PROOF OF SERVICE) ATTACHED.

pursuant to Common Design To Commit unlawful act participate in  
 some way in Commission of the unlawful act; the act of one is the  
 act of all; and all are presumed to be present and guilty. STATE V.  
Blackwell, 67 S.E.2d 684 (S.C. 1952)

Hence Based upon petitioner's irrefutable evidence presented  
 throughout the course of the litigations of these proceedings the  
 lower court was required to enter a judgment finding the res-  
 pondents guilty of Criminal Conspiracy in the states prosecution  
 of the petitioner, to include respondents perjured testimony  
 throughout the course of the litigations of this present case  
 No. # 2019-CP-400-4208 respectively...

## ISSUE 12. ILLEGAL CONVICTION - AGGRAVATED KIDNAPPING OF PETITIONER

By THE STATE - RESPONDENTS

### SUPPORTING FACTS - CASE LAW:

BECAUSE the petitioner's conviction; sentence is based upon the  
 respondents submission of states false, misleading, in complete  
 information in states arrest warrants, indictment, grand jury meet.  
 sentence sheets; deception, perjured testimony, extrinsic fraud upon  
the trial court as evident by the respondents, the petitioner's incarce-  
 ration is illegal and tantamount to aggravated kidnapping; and is a  
 bar to all prosecution in accordance to our South Carolina Constitution article  
 I section 11, South Carolina Code of Laws Ann § 17-25-10-§ 16-3-910  
South Carolina Rules of Criminal procedures 3(c); 39; and our UNITED STATES  
Constitution Amendments 5<sup>TH</sup>, 6<sup>TH</sup>, 8<sup>TH</sup>, 14<sup>TH</sup>. SEE: HAMILTON V. MCCOTTER, 112 F.2d  
 171; 183 (5<sup>TH</sup> Cir. 1905) (Holding: "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")

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 justice.

STATE V. STANLEY 365 S.C. 28; 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. MCKAY; 89 S.C. 234, 11 S.E. 858 (1911), STATE V. CAMPBELL; 150 S.C. 449; 148 S.E. 412 (1929)

THE RESPONDENT'S TAMPERING WITH THE ADMINISTRATION OF JUSTICE IN THE MANNER UNDISPUTEDLY SHOWN HERE INVOLVES FAR MORE THAN INJURY TO THE PETITIONER [KEVIN SMITH]. IT IS A WRONG AGAINST THE INSTITUTION SET UP TO PROTECT AND SAFEGUARD THE PUBLIC INSTITUTION IN WHICH FRAUD CANNOT COMPLACENTLY BE TOLERATED CONSISTENTLY WITH THE GOOD ORDER OF SOCIETY. SURELY IT CANNOT BE THAT THE PRESERVATION OF THE INTEGRITY OF THE JUDICIAL PROCESS MUST ALWAYS WAIT UPON THE DILIGENCE OF LITIGANTS, THE PUBLIC WELFARE DEMANDS THAT THE AGENCIES OF PUBLIC JUSTICE BE NOT SO IMPOTENT THAT THEY MUST ALWAYS BE MUTE AND HELPLESS VICTIMS OF DECEPTION AND FRAUD. HAZEL-ATLAS GLASS CO. V. HART - FORD EMPIRE CO.; 64 S.C. 991-1001 (1999). ACCORDINGLY FRAUD UPON THE COURT IS MISCONDUCT BY AN OFFICER OF THE COURT THAT IS DIRECTED AT THE JUDICIAL MACHINERY ITSELF.

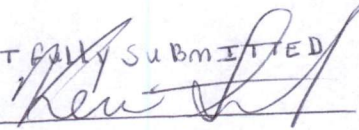
THUS, FRAUD UPON THE COURT BY THE RESPONDENT'S IS VERY EVIDENT HERE!

ISSUE 13. RELIEF FROM JUDGMENTSUPPORTING FACTS - CASE LAW

THE PETITIONER'S SENTENCE SHOULD BE VACATED & EXPUNGED FROM THE RECORD BASED UPON THE ABOVE SUPPORTING CASE LAW, STATUTORY REQUIREMENTS, SOUTH CAROLINA CONSTITUTION, UNITED STATE CONSTITUTION, AND DOCUMENTED EVIDENCE SUBMITTED BY PETITIONER. BY THIS COURT RESPECTIVELY . . . .

WHEREFORE BASED UPON SUFFICIENT FACTS, ARGUMENT AND CITATION TO LEGAL AUTHORITY, SUPPORTING DOCUMENTATION SUBMITTED BY PETITIONER-APPELLANT, THERE EXISTS AND IS AN ARGUABLE BASIS THAT THE DETERMINATION OF THE LOWER COURT [FINAL ORDER OF DISMISSAL] WAS IMPROPER WARRANTING THE COURT'S GRANTING OF THE APPEAL AND NO RESTRICTIONS IMPOSED AGAINST THE PETITIONER REGARDING FUTURE [MEANINGFUL] FILINGS WITH THE CIRCUIT COURTS RESPECTIVELY . . . .

RESPECTFULLY SUBMITTED

s/ 

KEVIN SMITH #164920

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# 29512.FEBRUARY 24<sup>TH</sup> 2025 A.M.

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