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SC Court of Appeals

STATE OF SOUTH CAROLINA) COURT OF GENERAL SESSIONS

COUNTY OF HORRY) FIFTEENTH JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA,) Indictment No.

Respondent,) 2022-GS-26-04117

VS)

RODNEY NESMITH,)

Defendant,)

FILED
HORRY COUNTY
2025 DEC -2 P
PENNEY BLANK
CLERK OF COURT
HORRY COUNTY SC

MOTION TO VACATE CONVICTION AND SENTENCE
FOR LACK OF SUBJECT-MATTER JURISDICTION

COMES NOW the Defendant, Rodney Nesmith, pro se, and respectfully moves this Honorable Court to vacate his conviction and 20 year sentence for Distribution of Cocaine, "Third Offense," following a jury trial conducted November 27-28, 2023 before The Honorable Judge Paul M. Burch, on indictment 2022-GS-26-04117.

This motion is brought pursuant to Rule 29(a), SCRCrIMP, Rule 1, and binding South Carolina law, because:

1. The state never provided written notice of any intent to seek a 2nd or 3rd offense enhancement;

2. The enhancement is therefore void under long-standing South Carolina precedent;

3. The state presented no proof of any prior qualifying convictions;

4. The indictment and CDR code (0185) does not match the statutory language for distribution of cocaine 3rd offense

5. The court imposed a 20 year sentence which exceeds the first-offense statutory maximum of 15 years, making it automatically illegal.

6. Under Rule of Lenity, the Defendant must be resentenced as a first-offender; and

7. The Defendant respectfully requests immediate resentencing to TIME SERVED

I. NO WRITTEN NOTICE OF ENHANCEMENT WAS EVER PROVIDED

South Carolina law requires mandatory written notice before the state may seek a second or third offense sentence under Title 44-53.

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The defendant did not receive:

- written notice in discovery
- written notice on the indictment
- Any written §44-53-420 notice
- Any notice on the sentencing sheet
- Any oral notice on the record before trial

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NORTH CAROLINA
2025 DEC -2 P 12:10
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HARRIS COUNTY, SC

A. Controlling Case Law

- State v. Boyd, 288 S.C. 206 (1986): "Written notice of intent to seek enhanced punishment is mandatory."
- State v. McKnight, 287 S.C. 167 (1985): Without notice, court is without authority to impose an enhanced sentence.
- State v. Johnson, 376 S.C. 8 (2008): Lack of notice is jurisdictional and the sentence must be vacated.
- State v. Linder, 276 S.C. 304 (1981): Recidivist sentence is void without written notice.

B. Application to Defendant

Because no written notice was provided, the court lacked jurisdiction to impose a "3rd offense" sentence of 20 years.

II. THE STATE FAILED TO PROVE ANY PRIOR CONVICTIONS

At trial, the state did not:

- Introduce certified copies of priors
- Prove identity
- Prove chronological order
- Show that any prior qualifies for enhancement
- Request a recidivist sentencing hearing

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State v. Bennett (August 2007)

In State v. Bennett (Ct. App. 2007), the court reversed an enhanced drug sentence because the state failed to introduce a certified prior conviction. The state must prove priors beyond a reasonable doubt.

No such proof was offered here.

III. THE CDR CODE AND CHARGING INSTRUMENT ARE DEFECTIVE

The indictment references § 44-53-370(b)(1), but the sentencing sheet shows CDR code 0185, which does not correspond to the statute for a 3rd offense distribution.

Under *State v. Gentry*, 363 S.C. 93 (2005), a defective indictment affecting notice or statutory identity deprives the court of subject-matter jurisdiction.

IV. THE 20-YEAR SENTENCE IS OUTSIDE THE STATUTORY MAXIMUM AND IS AUTOMATICALLY VOID

A 20-year sentence is authorized only for a 3rd offense.

But without written notice or proof of priors, the defendant could be sentenced only as a FIRST-OFFENSE defendant, which carries:

Maximum: 15 years

Therefore:

**The 20-year sentence exceeds the statutory maximum

→ and is void *Ab initio* (void from the beginning).**

South Carolina courts have consistently held that:

- A sentence outside the statutory range is illegal;

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- An illegal sentence is void, not merely voidable;
- A void sentence can be corrected any time under Rule 29(a)

Cases include Brown, Johnson, Lyles, and many others.

V. RULE OF LENITY REQUIRES FIRST-OFFENSE SENTENCE

Because enhancement was never noticed, ambiguity must be resolved:

in favor of the defendant,

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 HOBBS COUNTY SC

Under *State v. Sweat*, *State v. Gordon*, *State v. Hudson*, the defendant must be resentenced to the lowest possible statutory penalty - the first offense range.

VI. SENTENCING SHEET SHOWS A CONTRADICTION AND A JURISDICTIONAL DEFECT

The sentencing sheet (file-stamped October 27, 2023):

- Contains no enhancement notice
- Does not show certified priors

- Conflicts with oral sentence
- Lists "Distribution of cocaine, 3rd offense" though not proven

A conflicting sentencing order must be corrected. South Carolina courts require accurate sentencing sheets, and errors require correction by the trial judge.

VII. REQUEST FOR RELIEF - TIME SERVED SENTENCE

Because the enhancement is void, the sentence is illegal; and the court lacked jurisdiction, the Defendant respectfully requests:

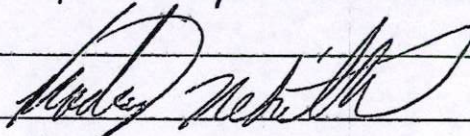
1. Vacate the 20-year sentence;
2. Strike the "3rd offense" enhancement;
3. Correct the CDR code and statute;
4. Resentence the Defendant as a FIRST-OFFENSE distribution of cocaine;
5. Impose a sentence of TIME SERVED based on:

- Age,
- No valid enhancement,
- Actual time already served in SCDG,
- Purpose of Rule 29 to correct illegal sentences, immediately,

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6. Grant such other relief as the court deems just and proper.

Respectfully submitted,

1s/ 

Rodney Nesmith

SCDC # 257104

Kirkland Correctional Institution

4344 Broad River Road

Columbia, SC 29210

November 25, 2025

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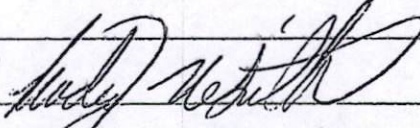
CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the attached "motion to vacate conviction and sentence for Lack of subject-matter Jurisdiction" was served upon the Respondent addressed below by via U.S. mail with appropriate postage on this 25th day of November, 2025

Addressee:

David Beamer, Assistant solicitor
Horry County Solicitor's Office
P.O. Box 1276
Conway, SC 29528

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