

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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Appeal from York County

John C. Hayes, III, Circuit Court Judge

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**Appellate Case No. 2013-002411**

Indictment Nos. 1998-GS-46-2847; 2849; 2850; 2851; 2852

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THE STATE,

Respondent,

v.

ANTONIO GORDON,

Appellant

**RECEIVED**  
DEC 13 2013  
**SC Court of Appeals**

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**Motion to Dismiss Appeal as Untimely and/or Clarify Status of "Initial Pro Se Brief of Appellant"**

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The Respondent makes a Motion to Dismiss the appeal from Antonio Gordon from a denial of a pro se petition for writ of habeas corpus filed on October 10, 2013 and allegedly received by the Appellant on October 16, 2013 according to the November 24, 2013 notice of appeal. Respondent submits the service of the any notice was untimely, assuming arguendo that

the Office of the Attorney General or Salley W. Elliott was proper service. [Upon information and belief, neither Senior Assistant Attorney General Elliott nor the Office of the Attorney General represented the Respondent in the lower court in this proceeding.].

**THE APPEAL MUST BE DISMISSED DUE TO LACK OF TIMELY SERVICE OF A NOTICE OF APPEAL AND PROOF OF SERVICE.**

According to SCACR Rule 203(b)(2) a notice of appeal from a matter in the Court of General Sessions must be served within 10 days after receipt of written notice of the entry of the order or judgment. [by October 26, 2013].<sup>1</sup> According to the pro se notice of appeal, Gordon received the October 10, 2013 Order on October 16, 2013, but failed to serve any potential respondent with a notice of appeal until November 24, 2013. His attempted service was untimely and the appeal must be dismissed. The failure to serve the notice of appeal timely within the period demanded by Rule 203 is jurisdictional and the appeal must be dismissed. Elam v. South Carolina Department of Transportation, 361 S.C. 9, 602 S.E.2d (2004).

I.

*Status of Initial Pro Se Brief of Appellant*

The Office of the Attorney General received a Pro Se Brief of Appellant dated November 5, 2013 on November 8, 2013. [copy attached]. Respondent notes that the pro se brief was served upon this Office without any designation of matter or on November 5, 2013 included or received as required by SCACR Rule 209.

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<sup>1</sup> Even if a 30 day period is applied under Rule 203 (b)(1), service of the notice of appeal was not timely because it was not served by November 16, 2013 and should still be dismissed. However, it has no applicability because it arose from the Court of General Sessions.

Respondent submits that the Initial Brief of Appellant is deficient under the Rules of this Court and should be struck with leave to revise and file consistent with the Rule of this Court should this Court allow the appeal from an untimely and improperly served notice of appeal.

WHEREFORE, Respondent has made these motions.

Respectfully submitted,

ALAN WILSON

Attorney General

JOHN W. McINTOSH

Chief Deputy Attorney General

DONALD J. ZELENKA

Senior Assistant Deputy Attorney General

S.C. Bar #5758

ATTORNEYS FOR RESPONDENT

By: 

Donald J. Zelenka

R.O. Box 11549

Columbia, SC 29211

December 13, 2013

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ATTACHMENT

“INITIAL PRO SE BRIEF dated November 5, 2013

State of South Carolina  
In The Court of Appeals

Appeal from York County  
Court of General Sessions  
John C. Hayes, III, Presiding Judge

Case No. 98-65-46-2849, 2849, 2850, 2851, 2852

General Sessions

Respondent

V.

Antonio Gordon

Appellant

Initial Pro Se Brief

Antonio Gordon  
610 Hwy 9 west  
Bennettsville, SC 29512

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## Statement of Issues on Appeal

- (A). Is S.C. Code Ann § 20-7-6605 (1), (supp. 1998) Title Define a "[c]hild" Statutory unconstitutional under the 5th and 14th Amendment U.S. Const, the Right to Due Process of Law and Equal Protection of the Law?
- (A)(1). Due to Section 20-7-6605(1) Conflict with other children code of laws, and Federal Constitutional Law and United States Supreme Court Presidential Land mark case, should the ambiguity and conflict warrant the "entire" Children's Code unconstitutional and state statute's be construed in Appellant's favor under the "Rule of lenity"?
- (A)(2). Was the Appellant Denied <sup>the</sup> Right to a hearing and Full investigation under Kent V. U.S., 86 S.Ct 4053 (1966), Patton V. Toy, 867 F. Supp 356 (1994), and sections 20-7-7605(1)(e)(1e), Title "Transfer of Jurisdiction"?
- (B). Did General sessions lack subject matter jurisdiction and lacked jurisdiction over the Appellant to accept his guilty Plea to offenses when he was under the Exclusive original jurisdiction of Family Court Pursuant to section 20-7-400(A)(3) (supp. 1998)?
- (C). Did The lower Court Abuse its discretion and commit error of Law when it Denied Appellant's Petition for writ of mandamus?

## Statement of The Case

This matter comes before the Court by way of an appeal from an order denying Appellant's Petition for writ of Mandamus. The Appellant was sixteen years of age with an IQ of 68 that placed him in the range of Borderline Function, mild mental Retardation, when he was ~~overlooked and~~ <sup>taking into custody and</sup> charged with murder, two counts of attempted arm robbery, three counts of Possession of a weapon ~~in violation~~ during the Commission of A Violent Crime, Possession of a firearm by a Person then twenty-one, and Criminal Conspiracy. The Appellant was automatically tried as an adult without a hearing or full investigation. <sup>FN1</sup> The Appellant Pled Guilty to all offenses and received a Total of forty years imprisonment.

FN2

FN1

Guilty Pka APP.9 388 line 9-15.  
You heard about his limited mental capacity. "Although he's not retarded because nobody's had the opportunity to do a full Background. ~~Because~~ Dr. Venn didn't get to speak with his family members, they didn't know much about him, but the records from DJJ from 1998 and from 1995 all indicate borderline functional IQs. 1995 Psychological show IQ of 68. Dr. Venn's IQ examination shows IQ 68."

The Appellant subsequently filed a Petition for writ of mandamus compelling General Sessions Court to release him. ~~The~~ In the Petition, the Appellant alleged (1) General Sessions Lack subject matter Jurisdiction and Lack Jurisdiction over his Person as a ~~subject~~ <sup>result</sup> his Pleas was void, (2) the Appellant was denied the right to a hearing and full investigation, and (3) S.C. Code Ann §20-7-6205 (1) is unconstitutional under the 5th and 14th Amendment U.S. const, the right to due Process of Law and Equal Protection of the law".

FN2 The Appellant ~~was~~ taking into custody on July 23, 1999, Pursuant to Section 20-7-7305, and the Appellant was indicted for all offenses on October 15, 1998, when he was under Family Court's Exclusive Jurisdiction.

S. C. Code Ann. § 20-7-6605 (1) (supp. 1998): "Title Define a "[C]hild" Statutory is unconstitutional under the 5th and 14th Amendments to the Right to due Process of Law and Equal Protection of the Law.

The Appellant submit that S. C. Code Ann. § 20-7-6605 (1) (supp. 1998), is unconstitutional under the 5th and 14th Amendment U.S. Const, the Right to due Process of Law and Equal Protection of the Law, inasmuch deprived Appellant of the Right to a hearing under Kent v. U.S., 86 S.Ct 1053 (1966), and the right to a full investigation that's required by state statutes and federal Constitutional law. See Sections 20-7-400(A)(3), Title Exclusive Original Jurisdiction, of Family Court", § 20-7-7605(1)(6)(10), Title Transfer of Jurisdiction (1998. SUPP), Kent v. U.S., supra, Patton v. Toy, 867 F. SUPP 356 (1994). Provision in the fourteenth Amendment forbidding a state to deny any Person within its Jurisdiction the equal Protection of the laws Prohibits Prejudicial disparities before the law, and under it a system which might be constitutionally unobjectionable, if applied to all, may be brought within the Prohibition of some here more favorable treatment. Williams v. Illinois, 90 S.Ct 2018. To satisfy due Process, a Penal Statute must define the Criminal offense (1) with sufficient definiteness that Ordinary People can understand what conduct is Prohibited and (2) in a manner that does not encourage arbitrary and discriminatory enforcement. U.S.C.A. Const. Amend 5 Citing Skilling v. U.S., 130 S.Ct 2896. Pursuant to the Children's Code, "[C]hild" is defined in section 20-7-6605 (1) :

"[C]hild" means a Person "less than seventeen years of age". "Child" does not mean a Person "sixteen years of age or older who is charged with a class A, B, C, or D felony as defined in Section 16-1-20 or a Felony which Provide for a maximum term of imprisonment of fifteen years or more. However, a Person sixteen years of age who is charged with a class A, B, C or D felony as defined in Section 16-1-20 or a Felony which Provides for a maximum term of imprisonment of fifteen years or more may be remanded to the family Court for disposition of the charge at the discretion of the Solicitor". See FN 1

The Appellant assert that section § 20-7-6605 (1) is ambiguous because it Provide more then one interpretation of a "[C]hild". The first interpretation Placing Appellant within "Family Court Exclusive Original Jurisdiction, less than "seventeen years of age". See Section § 20-7-400(A)(3) State in relevant Part:

Concerning any "child" alleged to have violate or attempted to violate "any state or local law" Prior to having become seventeen years of age and such Person shall be dealt with under the Provision of this Chapter relating to children.

In regards to the Class Felony the "child" committed less as he was less than seventeen years of age and violated or attempted to violate "any state or local law" he was under the Family Court's Jurisdiction. See FN 2

FN 1 Section 20-7-6605 (1) is Controlled by Statutory History Act No. 383.

FN 2 Appellant assert the language in section § 20-7-400(A)(3) (Alleged to have violate or attempted to violate "any state or local law"), is felonies included in section 16-1-20.

The second interpretation "exclude Appellant from Family Court "Exclusive Original Jurisdiction": "Child" does not mean a Person sixteen years of age charged with a Class A, B, C, or D felony as defined in section 16-1-20 or a felony that Provide for a maximum term of imprisonment of fifteen years or more maybe remanded to the family court at the discretion of the Solicitor. . . . Appellant assert that this action is unforeseen and violate his 5th and 14th Amendment right to due Process of Law. When a statute fairly and reasonably subjected to two constructions, one which would render an act Criminal, the other which would not, the statute "must be construed strictly against the state and in favor of the Appellant"; Citing William v. State, 410 S.E.2d 563 (1991) (Finding Criminal statutes are construed strictly against the state and any ambiguity in them must be resolved in favor of accused); U.S. v. Lanier, 73 F.3d 1380 (1996), Bifulco v. U.S., 477 U.S. 331 (1986); U.S. v. Bass, (1971).

The Appellant assert that section 5 20-7-6605 (1) is unconstitutional under the 5th and 14th Amendment ~~and~~ inasmuch deprived Appellant of a hearing and full investigation that's required by state statutes and Federal Constitutional law because it lack sufficient guidelines for the "solicitor" to prevent arbitrary and discriminatory enforcement. Citing Edk v. Clark County, 836 F.2d 1185 (1988), William v. Illinois, 90 S.Ct 2018. The United States Supreme Court in Kent v. U.S. at 553 S.Ct 1053, held a hearing "must be held" prior to a transfer, which certain rights are afforded to a juvenile and that a full investigation must be conducted. Kent v. U.S., 86 S.Ct 1055. Interest of Shaw, 274 S.C. 534, 126 S.E.2d 522, 536 (1980), where the South Carolina Supreme Court has held that the investigation requirements of § 14-21-560 are applicable to a transfer hearing under § 14-21-540, Patten v. Toy, supra. (Finding a full investigation was not conducted before waiver into adult court). See FN 3. Appellant assert there was no ~~hear~~ hearing ~~but~~ or full investigation conducted before the "solicitor" automatically transferred him up to be tried as an adult. Kent v. U.S. supra. See Appellant's Guilty Plea APP. P 388 line 9 - 15 Counsel held:

You heard about his limited mental capacity. "Although he's not retarded because nobody's had the opportunity to do a full background. Dr. Venn didn't get to speak with his family members, they didn't know much about him, but the records from DJJ from 1998 and from 1995 all indicate borderline functional IQ's. 1995 Psychological shows an IQ 68. Dr. Venn's IQ examinations shows IQ 68"

Appellant assert that section 20-7-6605 (1) does not provide any guidelines to prevent arbitrary and discriminatory enforcement. Citing William v. Illinois, supra, and deprived Appellant of a hearing and full investigation that's required by state statutes and federal Constitutional law. See sections § 20-7-40(C)(3) § 20-7-7605 (1)(6)(10), Kent v. U.S. supra. Patten v. Toy, supra.

FN 3 Appellant assert that section 5 20-7-6605 (1) did not "abrogate Kent mandatory language ~~and~~ a full investigation and hearing must be conducted before juvenile transferred to adult court. The United States Supreme Court in Kent at 383 U.S. 567, 86 S.Ct at 1060, approved 8 factors to be considered before determining whether jurisdiction should be waived under the District of Columbia Juvenile Court Act. The South Carolina Supreme Court, in State v. Lorey D., 339 S.C. 107, 539 S.E.2d 20 (2000), concluded that the family court may properly consider the Kent factors when determining whether jurisdiction over a juvenile should be transferred. Id at 117-18.

Appellant assert that section 20-7-1605(1) is unconstitutional under the 5th and 14th Amendment inasmuch deprived Appellant Due Process of Law and Equal Protection because it lack sufficient Guidelines to Prevent arbitrary and discriminatory enforcement. Appellant assert all sixteen year old defendant's charged with a Class A, B, C or D felony as defined in section 16-1-20 or a felony that provide for a maximum term of imprisonment of fifteen years or more are "not" similarly treated alike because the "Solicitor" ~~but~~ choose on a case by case basis which sixteen year old defendant's he deems fit for Family Court Protection without no sufficient Guidelines provided. The Appellant avers that (1) the sixteen year old defendant's handled in "Family Court" at the "Solicitor's" ~~discretion~~ discretion who is charged with a class A, B, C or D felony as defined in Section 16-1-20 or a felony that provide for a maximum term of imprisonment of fifteen years or more will:

- (A) Receive a hearing under section 20-7-7605; and Kent v. U.S.
- (B) Receive a full investigation that's required by State Statutes and federal Constitutional law. See section 20-7-400(A)(3) § 20-7-7605(D)(6)(10); Kent v. U.S., Supra, Patten v. TOY, Supra,

and (a) Defendant's sixteen years of age charged with a class A, B, C or D felony as defined in section 16-1-20 or a felony that provide for a maximum term of fifteen years or more will not receive a hearing and full investigation that's required by state statutes and federal Constitutional law. Appellant assert that this action constitute a violation of due process and equal protection of the law and is denial of fundamental fairness, shocking to the universal sense of justice. See Jacobs v. Onsi and Jacobs Co. v. City of Lawrence, 937 F.2d 1111 (10th Cir. 1991), City of Cleburne v. Cleburne Living Center, 473 U.S. 433 (1985) (Holding (1) The equal protection violation occurs when government treats someone differently than another who is similar situated, (2) The equal protection clause essentially requires that all persons similar situated be treated alike). Appellant was denied Equal Protection when he was not afforded a hearing and full investigation as those sixteen year old defendant's handled in Family Court at the Solicitor's discretion charged with a class A, B, C, or D felony as defined in section 16-1-20 or a felony that provide for a maximum term of imprisonment of fifteen years or more. William v. Illinois, Supra Skilling v. U.S. Supra.

The Appellant assert that section 20-7-1605(1) is unconstitutional under the 14th Amendment and S.C. Constitution Art. I, § 8 inasmuch it violate the Separation of Power Doctrine. Appellant avers that the legislature vested the "Family Court Judge" with the discretion to transfer any "child" who was less than seventeen years of age who have violated or attempted to violate any state or local law to General Sessions Court. See section 20-7-400(A)(3) § 20-7-7605(D)(6)(10). Section § 20-7-7605(1) state in relevant part:

If, during the pendency of a criminal or quasi-criminal charge against a child in a circuit court of this state, it is ascertained that the child was under the age of seventeen years at the time of committing the alleged offense, it is the duty of the circuit court immediately to transfer the case, together with all the papers, documents, and testimony connected with it, to the family court of competent jurisdiction. See section 20-7-400(A)(3) in conjunction.

Subsection (e) that contain no age limitation and specifically deals with when a "child" has been charged with murder Provide in relevant Part:

Within thirty days after the filing of a Petition in the Family Court alleging the child has committed the offense of murder, the person executing the Petition may request in writing that the case be transferred to the Court of General Sessions with a view to Proceedings against the child as a criminal rather than as a child coming within the Purview of this article. . . . " The

Family Court Court Judge is authorized to determine this request".

The mention children's Code of laws specifically demonstrate that transfer is within the Family Court "Judge" discretion and not the "solicitor". Therefore, Section 20-7-6605 (1) violate the separation of Power doctrine. See Segars Andrews v. Judicial Selection Comm'n, (S.C. 2010) 691 S.E.2d 453 (Defining separation of Power Doctrine).

The Appellant avers that section 20-7-6605 (1) Conflict with Kent v. U.S., supra, mandatory language that a hearing must be conduct and a full investigation be conducted before Juvenile transferred to adult court, Section 20-7-6605 (1) Conflict with section 20-7-400(A)(3) that regardless of the ~~law~~ felony long as the child was "less than seventeen years of age" and had alleged to violate or attempted to violate "any state or local law" he must be handled in Family Court, section 20-7-6605 (1) Conflict with section 20-7-7605 (1)(e)(10), that upon when a Criminal or Quasi-Criminal charge against a child in this state, it is ascertain that the child was "less than seventeen years of age at the time of committing the allege crime" it is the duty of the Circuit Court to immediately transfer the case to family court of competent Jurisdiction; and encroach on the family court's "Judge" discretion to determine waiver and transfer under the children's Code of Laws. Appellant assert due to the conflict and ambiguity in the children's Code of Laws, the entire children's Code is unconstitutional under the 14th Amendment the Right to due Process of Law and that the "Rule of Lenity" must be applied and the ambiguity must be construed in Appellant's favor. Bitulico v. U.S., 477 U.S. 381 (1980).

General Sessions Lack Jurisdiction over the Appellant to accept his Guilty Plea to the offenses because Appellant was under Family Court's Exclusive Jurisdiction

The Appellant asserts that General Sessions lacked Jurisdiction over him and should not have accepted his Guilty Plea to the offenses warranting General sessions Jurisdiction void. Guthrie, 352 S.C. at 107, 572 S.E.2d at 312. (Finding the acts of a court with respect to a matter as to which it has no Jurisdiction are void).

The Appellant avers because he was "less than seventeen years of age and had alleged to violate or attempted to violate "any state or local law" he was a Person under Family Court "Exclusive Original Jurisdiction" Pursuant to section 20-7-400(A)(3) (1985 and SUPP, 1998). Section 20-7-400(A)(3) title "Exclusive Original Jurisdiction of Family Court State in relevant Part:

- (1A) Except as otherwise Provided herein, the Court shall have exclusive Original Jurisdiction and "shall" be the sole Court for initiating action;
- (3) Concerning any child seventeen years of age or over living or found within the geographical limits of the Court's Jurisdiction, alleged to have violated or attempted to violate any state or local law or municipal ordinance Prior to having become seventeen years of age and such Person shall be dealt with under the Provision of this Chapter relating to children. See FN 4

The Appellant submit that section 20-7-400(A)(3) (1985 and SUPP. 1998), defeat Section 20-7-6605(1) because, (1) section 20-7-6605(1) is unconstitutional under the 5th and 14th Amendment right to due Process of Law and equal Protection of the Law, and (2) section 20-7-400(A)(3) was "not" repealed when the Appellant Pled guilty to the offenses to eliminate Family Court Exclusive original Jurisdiction. Inasmuch the language in section 20-7-400(A)(3) "Any child" who have "alleged to violate or attempted to violate any state or local law" is encompassed in the language outline in section 20-7-6605(1) charged with a class A, B, C or D felony as define in section 16-1-20 or a felony that Provide for a maximum term of imprisonment of fifteen years or more, because if a Person violate any state or local law he will be violating a class A, B, C or D felony as defined in section 16-1-20 or a felony that Provide for a maximum term of imprisonment of fifteen years or more. Therefore, Appellant assert because he was sixteen years of age and was charge with a class A, B, C or D felony as defined in section 16-1-20 or a felony that Provide for a maximum term of imprisonment of fifteen years or more did not eliminate him from Family Court's Exclusive Original Jurisdiction because he was "less than seventeen years of age" and had alleged to violate or attempted to violate "any state or local law and should have been dealt with under the Provisions relating to children's. See Section 20-7-400(A)(3). In interpreting a Statute, the Court's Primary function is to ascertain the intent of the legislature, citing Whitner v. State, 493 S.E.2d 777, 779, 118 S.Ct 1857 (1988). Moreover, there is a basic Presumption that the legislature has Knowledge of Previous legislation when later Statutes are enacted concerning related subjects.

Therefore, under the "Rule of Lenity" Appellant was a "Child" under the Exclusive Original Jurisdiction of family Court and section 20-7-6605(1) must be construed strictly against the "State" and in the favor of the Appellant citing William v. State, 410 S.E.2d 563 (1991), Bifulco v. U.S., 477 U.S., 381 (1986), Solcumb v. State, 522 S.E.2d at 811 (1999) (The S.C. Supreme Court held that General Sessions was without Jurisdiction to accept Juvenile's Plea because family Court has exclusive Jurisdiction of violation of state law by Persons under seventeen years of age), State v. England, 245 S.E.2d 608 (1978) (Finding that Appellant was a Person under Family Court's "Exclusive Jurisdiction"). The Principle enunciated in Solcumb v. State, supra, and State v. England, supra, apply to Appellant's case

FN 4 Facially and legally, Jurisdiction of the offenses contained in section 20-7-6605(1) "Definition of a child" statutory is erroneously Placed with the Circuit Court. The reference Statutes plainly and lucidly demonstrate that the "Exclusive Original Jurisdiction of Family Court controls all charges pending against a child under the age of seventeen. The pending charges with exclusive original Jurisdiction in the family Court and exclusive original Jurisdiction in the Circuit Court result in indictments that cannot be Placed in a legally sufficient

because he was "less than seventeen years of age and had alleged to violate or attempted to violate any state or local law". Therefore, general sessions did not have Jurisdiction over Appellant to accept his Guilty Plea, Appellant's Guilty Plea is in violation of due Process of law and is void. The definition of void under voidness Provisions of relief from Judgment rule only encompasses Judgment from Court's which failed to Provide Proper due Process, or Judgments from Court's which ~~failed to~~ lacked subject matter Jurisdiction or Personal Jurisdiction. Linda McComany Inc v. Shore, (S.C. APP 2007) 653 S.E.2d 279. If a Court lacks Jurisdiction over a Party, then it lacks "all Jurisdiction" to adjudicate that Party's rights, whether or not the subject matter is Properly before it. Citing Kulko v. Superior Court, 436 U.S. 84 (1978). The modern conception of Personal Jurisdiction generally refers to due Process. See International Shoe Co v. Washington, 306 S.C. 310 (1945). Appellant's Guilty Plea is the result of a complete miscarriage of Justice denial of fundamental fairness, shocking to the universal sense of Justice, and due to the unconstitutionality in Section 20-7-6605(1) and Conflict in the Children's Code of laws. Appellant's guilty Plea cannot be upheld. U.S.C. 14 5th and 14th Amend Const.

The lower court abused its discretion and committed error of Law when it denied Appellant's Petition for writ of mandamus

The Appellant asserts the lower court abused its discretion and committed error of Law when it denied Appellant's Petition for writ of mandamus. The Primary Purpose of a writ of mandamus is to enforce an established right and to enforce a corresponding imperative duty created or imposed by law Porter v. Jedziniak, 513 S.E.2d 497 (1999). To obtain a writ of mandamus requiring the performance of an act, the Appellant must show (1) a duty of respondent to perform the act, (2) ministered nature of the act, (3) the Appellant's specific legal right for which discharge of the duty is necessary and (4) a Lack of any other legal remedy.

The Appellant submits that (1) General Sessions had a duty to obtain Jurisdiction over Appellant's Person before accepting his Guilty Plea (2) it was mandatory Pursuant to due Process of law under the 14th Amendment U.S. Const. that General Sessions obtain Jurisdiction over Appellant before accepting his Plea (3) Appellant had a 14th Amendment U.S. Constitutional right to notice of being transferred to General Sessions Court to be handled as an adult, See Section 20-7-7605(6). Appellant had a right to a hearing and full investigation Pursuant to state Statutes and Federal Constitutional law. See Sections 20-7-400(A)(3), § 20-7-7605 (1) (6) (10), Kent v. U.S., Supra (4) Appellant can raise his Lack of Subject matter Jurisdiction claim on a writ of mandamus. Citing Anderson v. State, 527 S.E.2d 398.

Position by a statute Procedure that simplistically eliminates original family Court Jurisdiction, leaving original Jurisdiction circuit Court offenses. This Procedure violates the Constitutional and statutory function of the Grand Jury in South Carolina. State v. Green, Opinion No. 3941

State of South Carolina  
In The Court of Appeals

Appeal from York County  
Court of General Sessions  
John C. Harps, III, Presiding Judge

98-65-46-2847, 2849, 2850, 2851, 2852

General Sessions

Respondent

Antonio Gordon

v.

Appellant

Certificate of Service

I hereby certify I placed in the U.S. mail Initial Brief addressed to Attorney General Office, Post Office Box 11549 Columbia, SC 29211. This 5 day of November 2013

KI Antonio Gordon

Sworn to and subscribed before me this 5th day of NOV 2013

Chris J. Hooper  
Notary

EXP: Feb 9th 2016

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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Appeal from York County

John C. Hayes, III, Circuit Court Judge

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Appellate Case No. 2013-002411

Indictment Nos. 1998-GS-46-2847; 2849; 2850; 2851; 2852

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THE STATE,

Respondent,

v.

ANTONIO GORDON,

Appellant

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CERTIFICATE OF SERVICE

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I, Donald J. Zelenka, hereby certify that I have served Respondent's Motion to Dismiss Appeal Clarify Status of "Initial Pro Se Brief of Appellant" on:

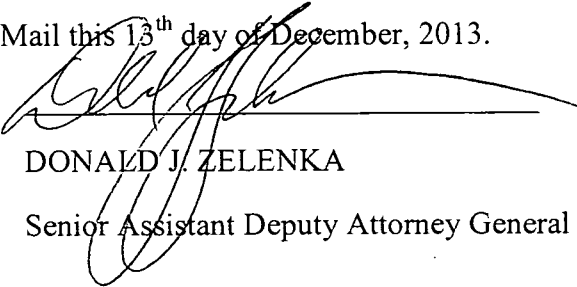
Antonio Gordon, #259798

Evans Correctional Institution

610 Highway 9 West

Bennettsville, SC 29512

by depositing a copies in the United States Mail this 13<sup>th</sup> day of December, 2013.



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DONALD J. ZELENKA

Senior Assistant Deputy Attorney General



ALAN WILSON  
ATTORNEY GENERAL

December 13, 2013

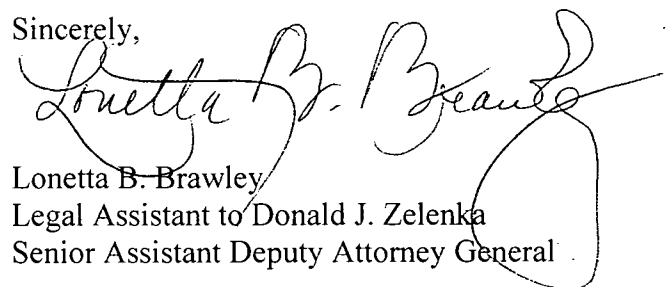
Honorable Jenny A. Kitchings  
Clerk, South Carolina Court of Appeals  
P. O. Box 11629  
Columbia, SC 29211

Re: The State v. Antonio Gordon  
Appellate Case No. 2013-002411

Dear Ms. Kitchings:

Enclosed please find the original and six (6) copies of a Motion to Dismiss Appeal as Untimely and/or clarify Status of "Initial Pro Se Brief of Appellant" in the above-captioned matter for filing in your office. By copy of this letter, I am serving Appellant with same.

Sincerely,



Lonetta B. Brawley  
Legal Assistant to Donald J. Zelenka  
Senior Assistant Deputy Attorney General

/lbb  
Enclosure

cc: Antonio Gordon, #259798

RECEIVED

DEC 13 2013

SC Court of Appeals