

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Beaufort County
Honorable Eugene Warr, Circuit Court Judge

RECEIVED
Jul 28 2026
SC Court of Appeals

THE STATE,

RESPONDENT,

V.

JAMES ETHRIDGE JONES,

APPELLANT

APPELLATE CASE NO. 2025-001761

ANDERS BRIEF OF APPELLANT

DAVID ALEXANDER
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ATTORNEY FOR APPELLANT

TABLE OF CONTENTS

TABLE OF CONTENTS.....	i
TABLE OF AUTHORITIES	ii
STATEMENT OF ISSUE ON APPEAL.....	1
STATEMENT OF THE CASE.....	2
STANDARD OF REVIEW	3
ARGUMENT	
The trial judge erred in allowing the State to amend the indictment without presenting it to the grand jury as required by the state constitution.....	4
CONCLUSION.....	9
PETITION TO BE RELIEVED AS COUNSEL	10

TABLE OF AUTHORITIES

South Carolina Cases

<u>Clair v. State</u> , 324 S.C. 144, 478 S.E.2d 54 (1996)	7
<u>State v. Dent</u> , 446 S.C. 121, 919 S.E.2d 394, 396 (2025)	4
<u>State v. Gentry</u> , 363 S.C. 93, 610 S.E.2d 494 (2005)	7
<u>State v. Green</u> , 406 S.C. 589, 753 S.E.2d 259 (Ct. App. 2014).....	7
<u>State v. Lynch</u> , 344 S.C. 635, 545 S.E.2d 511 (2001)	7
<u>State v. Means</u> , 367 S.C. 374, 626 S.E.2d 348 (2006).....	5, 6, 7
<u>State v. Myers</u> , 313 S.C. 391, 438 S.E.2d 236 (1993)	5, 6, 7

Other Authorities

S.C. Code Ann. § 16-3-656.....	4, 7
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Constitutional Provisions

S.C. Const. Art. I, § 11.....	4
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STATEMENT OF ISSUE ON APPEAL

Did the trial judge err in allowing the State to amend the indictment without presenting it to the grand jury as required by the state constitution?

STATEMENT OF THE CASE

On August 15, 2024, a Beaufort County grand jury indicted appellant for assault with intent to commit first-degree criminal sexual conduct with a minor and second-degree criminal sexual conduct with a minor. R. 316. On July 24, 2025, the grand jury returned amended indictments adding descriptive language to the first-degree charge and changing the second-degree charge to a third-degree charge. R. 316. On August 25, 2025, appellant was tried before the Honorable Eugene Warr and a jury. R. 1. Monica Main and Hunter Swanson represented the State. R. 1. Jacob McFadden and Gabriel Ingram represented appellant. R. 1. The jury convicted appellant of first-degree criminal sexual conduct with a minor after the trial judge allowed the State to amend the indictment and also convicted him on the third-degree charge. R. 303. Judge Warr sentenced appellant to concurrent terms of twenty-five years' imprisonment and five years' imprisonment. R. 312. This appeal follows.

STANDARD OF REVIEW

The standard of review is de novo because whether the indictment could be amended is a question of law.

ARGUMENT

The trial judge erred in allowing the State to amend the indictment without presenting it to the grand jury as required by the state constitution.

“Indictments matter.” State v. Dent, 446 S.C. 121, 125, 919 S.E.2d 394, 396 (2025). Every citizen in South Carolina has the right to have a grand jury consider the state’s proposed indictment. See S.C. Const. Art. I, § 11. “No person may be held to answer for any crime the jurisdiction of which is not within the magistrate’s court, unless on a presentment or indictment of a grand jury of the county where the crime has been committed. . . .” Id.

Appellant’s indictment for assault with intent to commit first-degree criminal sexual conduct with a minor was amended three times—the last time improperly. Appellant was first indicted on August 15, 2024, by the grand jury for assault with intent to commit criminal sexual conduct. R. 316. The caption says “Criminal Sexual Conduct with Minor – 1st Degree,” but the charging language indicates that appellant was being charged with the attempt version codified in S.C. Code Ann. § 16-3-656. R. 316. The charging language says that appellant “did assault [Complainant] . . . with intent to engage in sexual battery with [Complainant] . . . who was less than eleven years of age at the time of the sexual battery, all in violation of Section 16-3-655(A)(1), 16-3-656, et al. of the Codes of Law of South Carolina.” R. 317.

On July 24, 2025, the grand jury returned an amended indictment. R. 318. Again, the charging language indicated that the State was charging appellant with assault with intent to commit first-degree CSC. R. 319. The amendment added a “to wit.” R. 319. This new language stated, “to wit: digital penetration or any intrusion, however slight, of any part of her body or of any object into the genital or anal openings of her body during the alleged time frame at the residence on . . . in the Bluffton area of Beaufort County, South Carolina.” R. 319.

Instead of returning to the grand jury, the State asked before appellant's trial to amend the indictment again. The solicitor wanted to remove the language charging assault with intent and change the offense from an attempt crime to the completed crime. R. 46-48. Defense counsel opposed the amendment. R. 48-54. He argued the State wanted to completely change the charged offense. R. 48-54. Defense counsel argued the completed crime is a different offense with a different code section than the incomplete offense. R. 48-54.

The solicitor argued that the indictment had both code sections and that the defendant had notice of the completed offense from the discovery provided by the State. R. 54-55. She also argued the State was not changing the charge. R. 58. Defense counsel argued that the State cannot amend an indictment to change the charge without presentment to the grand jury. R. 56. Defense counsel admitted he knew Complainant alleged the completed act in her statement. R. 64.

But defense counsel argued this did not matter because if the offense is changed, appellant had the right to have a grand jury consider the amended indictment. R. 60-62. He stated, "Judge, regardless of what the discovery is showing here, I just—I would just re-emphasize the importance of the grand jury, and that being one of his constitutional rights in that they're trying to essentially replace their role here, stand in the position." R. 65. Judge Warr allowed the State to amend, reasoning that the defendant had notice. R. 65-66.

Before Judge Warr, the parties argued two cases and both sides claimed the cases supported their position: State v. Myers, 313 S.C. 391, 438 S.E.2d 236 (1993); State v. Means, 367 S.C. 374, 626 S.E.2d 348 (2006). Defense counsel was correct that both Myers and Means indicated that the State should not have been allowed to amend the indictment without presentment to the grand jury. In Myers, the defendant was originally indicted for second-degree

arson under section 16-11-110(B). Myers at 392, 438 S.E.2d at 237. The trial court allowed amendment of the indictment to arson under section 16-11-140. Id. at 393-94, 438 S.E.2d at 237. The Supreme Court held allowing the amendment was error. Id.

“Amendments to an indictment are permissible if they do not change the nature of the offense; the charge is a lesser included offense of the crime charged on the indictment; or the defendant waives presentment to the grand jury and pleads guilty.” Id. The two arson charges were not lesser included offenses because the statutes distinguished between the types of property burned. Id. Myers did not waive presentment nor plead guilty. Id. The Court did not even discuss whether the amendment changed the nature of the offense. Id. Likely, the reason is because the offense itself was changed from one code section to another.

Means also supports appellant’s position, but in a way that is less clear than Myers. In Means, the Court held that while the charging language controls, the caption and other parts of the indictment should be also be considered. Means at 384, 626 S.E.2d at 354. The original indictment in Means had a caption indicating the defendant was charged with aggravated criminal domestic violence, but the charging language had not language concerning any factor of aggravation. Id. at 378-79. 626 S.E.2d at 351. The State wanted to add “such act of violence being of a high and aggravated nature.” Id.

The Means Court held that the amendment was allowable because the caption put the defendant on notice and the defendant admitted he was prepared to defend the charge. Id. at 388, 626 S.E.2d at 356. However, the Means Court emphasized that a “defendant has a constitutional and statutory right to demand that a properly constituted grand jury consider his case and decide whether to issue a sufficient indictment.” Id. at 383, 626 S.E.2d at 353. Unlike in Myers, the offense did not change in Means and the amendment was properly allowed.

Here, the nature of the offense was changed from an assault and attempt to the completed act. The completed offense is codified as section 16-3-655(A)(1) of the South Carolina Code. The charging language which, according to Means controls, is the next statute, section 16-3-656. Section 16-3-656 is titled, “Criminal sexual conduct; assaults with intent to commit.” The body of the statute is: “Assault with intent to commit criminal sexual conduct described in the above sections shall be punishable as if the criminal sexual conduct was committed.” S.C. Code Ann. § 16-3-656. These two crimes are different, and as defense counsel pointed out, contain a different level of intent. Attempt crimes require specific intent. But see State v. Green, 406 S.C. 589, 753 S.E.2d 259 (Ct. App. 2014) (holding that attempt crimes are lesser included offenses of completed felonies and that an assault is a lesser included offense of a battery).

If changing the nature of the offense means an indictment cannot be amended without presentment, then changing the offense itself must also require presentment. In State v. Lynch, 344 S.C. 635, 545 S.E.2d 511 (2001), the indictment charged the defendant with first-degree burglary because the alleged crime happened at night.¹ The state sought and obtained an amendment that deleted the nighttime allegation and replaced it with an allegation that the defendant caused physical injury to a person. Id. The Court held this changed the nature of the offense. The charge did not change. The charge remained first-degree burglary and the amendment still was improper. Here, the charge itself changed. See also Clair v. State, 324 S.C. 144, 478 S.E.2d 54 (1996) (finding amendment for trafficking altering weight of drugs changed the nature of the offense).

¹ Indictment cases decided before State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005) analyze the harm in terms of subject matter jurisdiction. Gentry did away with this analysis, but the logic of the pre-Gentry cases on whether the nature of the offense has changed is still relevant.

In appellant's case, not only did the nature of the offense change, but the statutory offense changed from one code section to another. The improper amendment violated appellant's constitutional right to have the grand jury consider this charge. The trial court erred in allowing the amendment. This Court should reverse and remand for a new trial.

CONCLUSION

For the foregoing reasons, this Court should reverse and remand for a new trial.



David Alexander
Deputy Chief Attorney for Capital Appeals

ATTORNEY FOR APPELLANT

This 28th day of July, 2026.

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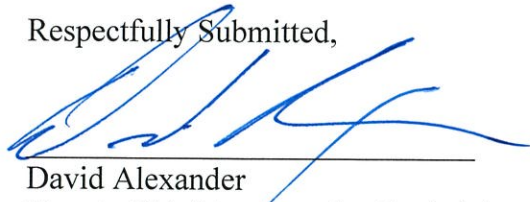
PETITION TO BE RELIEVED AS COUNSEL

Counsel for James Ethridge Jones states:

1. He is Deputy Chief Attorney For Capital Appeals for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. He has reviewed the record of appellant's trial before Judge , which was held on , and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. He has, pursuant to Anders v. California, 386 U.S. 738, 87 S. Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

Wherefore, he asks the Court to relieve him as counsel for James Ethridge Jones.

Respectfully Submitted,



David Alexander
Deputy Chief Attorney for Capital Appeals

ATTORNEY FOR APPELLANT

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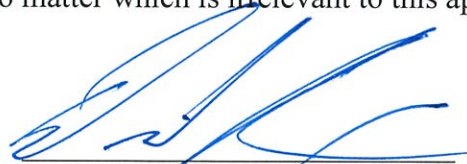
APPELLATE CASE NO. 2025-001761

**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

Appellant proposes the following be included in the Record on Appeal:

- (1) True-billed indictments
- (2) Sentence Sheets
- (3) Trial Transcript dated August 25, 2025
- (4) Trial Transcript dated August 26, 2025

I certify that this designation contains no matter which is irrelevant to this appeal.



David Alexander
Deputy Chief Attorney For Capital Appeals

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ATTORNEY FOR APPELLANT

This 28th day of July, 2026.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Anders Brief of Appellant complies with Rule 211(b), SCACR, and the April 15, 2014, order from the South Carolina Supreme Court entitled “Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings.”

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SC Court of Appeals



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Deputy Chief Attorney For Capital Appeals

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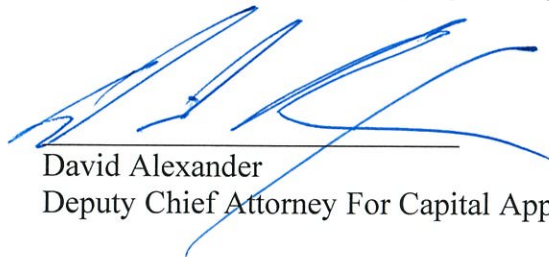
JAMES ETHRIDGE JONES,

APPELLANT

APPELLATE CASE NO. 2025-001761

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Anders Brief of Appellant and Designation of Matter in the above-referenced case has been served upon Mark Farthing, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); and on James Ethridge Jones, #00398532, at Evans Correctional Institution, 610 Hwy. 9 West, Bennettsville, SC 29512, this 28th day of July, 2026.



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ATTORNEY FOR APPELLANT

Bast, Daniel

From: Bast, Daniel
Sent: Tuesday, July 28, 2026 3:06 PM
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Cc: Alexander, David; ccollins@scag.gov
Subject: 2025-001761 - The State v. James Etheridge Jones
Attachments: 2025-001761 - The State v. James Etheridge Jones - Anders Brief of Appellant.pdf;
2025-001761 - The State v. James Etheridge Jones - Record on Appeal.pdf

Good afternoon,

Attached are copies of the Anders Brief of Appellant and Record on Appeal in the above referenced case which will be filed today, July 28, 2026, with the Court of Appeals.

All the best,

Daniel Bast
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