

Antonio Gordon 259798  
ECJ Smu A 232  
610 Hwy 9 west  
Bennettsville, SC 29512

December 30, 2013

Dear Ms. Kitchings:

Please find enclosed In case No.: 2013-002411, A motion requesting leave to file A SCR. Civ. Proc Rule 60(A)(B)(C)(D), motion in the lower court, and a Reply to motion to Dismiss Appeal as untimely. Opposing Counsel have been served with the same. I am,

Sincerely,

Antonio Gordon

RECEIVED

JAN 02 2014

SC Court of Appeals

State of South Carolina  
In The Court of Appeals

RECEIVED

JAN 02 2014

SC Court of Appeals

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

Appellate Case No. 2013-002411  
Indictment nos. 1998-65-46-2847; 2849; 2850; 2851; 2852

The State

Respondent

Antonio Gordon

v.

Appellant

Motion requesting to file motion to vacate judgment  
in General Sessions Court and Reply to motion to  
Dismiss Appeal as untimely

The Appellant makes a motion requesting leave to file a SCR, Civ. Proc Rule 60 (A) (B) (3) (4), motion in the General Sessions Court to vacate the order filed on October 10, 2013.

The Appellant filed a Pro se writ of mandamus in General Sessions Court compelling General Sessions to release Appellant from custody because the Plea Court lack subject matter jurisdiction and lacked jurisdiction over Appellant to accept his guilty plea because S. C. Code Ann § 20-7-6605 (1) is unconstitutional. See Attachment (A) The "caption" of Appellant's Petition for writ of mandamus list "[General Sessions Court]" as "[Respondent]", see Attachment (A) The Appellant received the order of ~~dismissal~~ dismissal at October 16, 2013. See FN 1 On October 17, 2013, Appellant filed his written notice of appeal and served Honorable John C. Hayes, III, as "Respondent". See Attachment (B)

On November 14, 2013, this Court issued the Appellant an order to correct the following deficiencies. See Attachment (C), (1) The "caption" does not comply with Rule 269 (A), SCAER, specifically, opposing counsel is not listed; (2) The notice of appeal is not accompanied by the order (s) and for judgment (s) and (3) The Proof of service does not show opposing counsel being served a copy of the notice of appeal.

FN 1 The Court on its own initiative Pursuant to SCR, Civ. Proc Rule 60 (A) corrected the Appellant's clerical mistake to fix the "caption" and listed the State of South Carolina as "Respondent". See Attachment (8), and denied the writ of mandamus without giving Appellant the ability to serve the complaint and summons under SCR, Civ. Proc Rule 4 (d), 5 (d), on the correct Respondent. Under SCR, Civ. Proc Rule 65 (f) (1), it states no writ of mandamus shall not be granted without notice of the motion to the adverse Party.

The Appellant should be granted leave to file a SCR. Civ. Proc Rule 60(A)(b)(3)(4), motion in the lower court.

Appellant assert this court should grant him leave to file a SCR. Civ. Proc Rule 60(A)(b)(3)(4), motion to correct clerical mistakes and vacate the Order issued October 10, 2013. Appellant made a clerical mistake of serving "York County General Sessions Court" with the mandamus. Appellant should be allowed to serve the correct Respondent under SCR. Civ. Proc Rules 4(d), 5(d), 65(F)(1), SCR. Civ. Proc Rule 60(A). See FN 1 under the Due Process Clause this denied the Appellant the right to be heard and Pursuant to SCR. Civ. Proc Rule 60(b)(3), the Appellant should be allowed to vacate the order based upon extrinsic fraud because the Court induce Appellant not to Present his Case or Claims and deprived Appellant of the opportunity to be heard. SCR. Civ. Proc Rule 65(F)(1), Hilton Head Center of S.C. v. Public Service Commission, 249 S.C. 9, 11, 362 S.E.2d 176 (S.C. 1987); Hays v. Pruitt, 509 S.E.2d (2001). Therefore the Appellant should be allowed to correct the clerical mistake and serve the correct Respondent.

The Appellant assert the order issued on October 10, 2013, is void and should be vacated because the Court of General Sessions acted in a manner inconsistent with Due Process of Law. Linda McCompan Y Inc v. Shore, (S.C. App. 2007) 653 S.E.2d 279. The "Correct Respondent" was not served with notice of the mandamus as required by SCR. Civ. Proc Rule 65(F)(1). A Primary Purpose of the notice, required by the Due Process Clause is to ensure that the opportunity for a hearing is meaningful. City of West Conover v. Perkins, 525 U.S. 234 (1999). The Court corrected Appellant's clerical mistake and listed the correct Respondent in its order of dismissal but denied Appellant's mandamus without giving him the opportunity to serve notice of the mandamus on the correct Respondent(s), and dismissed the mandamus without an evidentiary hearing. Likewise a hearing should have been held on Appellant's lack of subject matter jurisdiction claims under Anderson v. State, 527 S.E.2d 398. The Appellant assert due to the Court of General Sessions correcting his clerical mistake and listed the correct Respondent(s) and denied the mandamus without a hearing and giving Appellant the ability to serve the correct Respondent(s), the Court acted inconsistent with Due Process of Law under the 14th Amendment U.S. Const. Therefore, this Court should grant Appellant leave to file a SCR. Civ. Proc Rule 60(A)(b)(3)(4), in the lower court.

Appellant's appeal should not be dismissed as untimely

Appellant assert due to the clerical error of him serving "General Sessions" with his original Petition for writ of mandamus and served John C. Hayes, III, as respondent with the notice of appeal, the time to service the state of South Carolina should be tolled until

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FN 1 The general sessions Court corrected Appellant's mistake and listed the State of S.C. as Respondent(s) but proceeded to deny Appellant's mandamus without giving him the ability to serve the correct Respondent(s). See Attachment (8).

the order issued November 14, 2013, ended. Therefore, Appellant's appeal should not be dismissed as untimely. Conner v. City of Forest Acres, (S.C. 2002) 348 S.C. 454, 5160 S.E.2d 606. In Conner the Court held Police dispatcher's correction to her notice of Appeal by adding Police Chief and supervisor, already listed as defendant's, was not clerical error, and thus notice ~~of~~ to Chief and supervisor was untimely, requiring their dismissal from Appeal. However, Appellant's case is in *opposit* that of Conner's in the unique ways:

(1) Appellant's Original Petition for writ of mandamus listed General Sessions Court as respondent;

(2) The state of South Carolina was never listed as Respondent as in Conner. Therefore, Appellant's case is a classic example of clerical error and his appeal should not be dismissed as untimely for failing to serve Respondent, The State of South Carolina. Appellant's appeal should be held timely. Moody v. Dickinson, 32 S.E. 503 (1899).

Wherefore, Appellant has made these motions and return.

Antonio Gordon

State of South Carolina  
In The Court of Appeals

Appeal from York County  
Court of General Sessions

Appellate Case No.: 2013-002411.

State of South Carolina

Respondent

Antonio Gordon

v.

Appellant

Certificate of Service

The Appellant hereby certifies that one copy of Appellant's Motion Requesting leave to file motion to vacate judgment in general sessions court and Reply to motion to Dismiss appeal as untimely have been served on opposing counsel, Donald J. Zelenka, this 30 day of December, 2013, at:

Donald J. Zelenka  
Attorney General office  
Post-office Box 11549  
Columbia SC 29211-1149

The Appellant hereby certify a copy of the same was mailed to John C. Hayes, III, Circuit Court Judge, at

Honorable John C. Hayes, III,  
Post-office Box 649  
York, SC 29745.

Antonio Gordon

December 30, 2013

Attachment(5)

State of South Carolina  
County of York

York County General Sessions Court

Antonio Gordon  
v.  
Defendant

In The Court of General Sessions  
Sixteenth Judicial Circuit

Criminal Case No. 98-65-46-2847, 2849, 2850, 2851, 2852

Writ of Mandamus Attachment (A)

Now Comes the Defendant, Antonio Gordon, in the above captioned matter respectfully moving this Honorable Court to Grant a Writ of mandamus in the above Criminal case, compelling General Sessions to release the Defendant based upon Lack of Subject matter Jurisdiction and lack of Jurisdiction over the Person. In support of this writ of mandamus, Defendant will show unto this Honorable Court the following:

### Background

The Defendant is Presently Confined in the South Carolina department of Correction Pursuant to Orders of Commitment of the Clerk of Court for York County. On July 23, 1998, Defendant was sixteen years of age with an IQ of 68, arrested and charged with murder, two counts of attempted armed robbery, three counts of Possession of a weapon during the Commission of a violent crime, Possession of a weapon by a Person under twenty one and Criminal Conspiracy. On July 16, 1999, the Defendant Pled guilty as charge and the Honorable John C. Hayes, III, sentenced the Defendant to forty years of imprisonment. See FN 1.

### Claims

- (A) Did the General Sessions Court lack subject matter jurisdiction in accepting Defendant's Guilty Plea?
- (B) Did the General Sessions Court lack Jurisdiction over the Defendant?
- (C) Is S.C. Code Ann § 20-7-6605(c) unconstitutional?
- (D) Can lack of subject matter Jurisdiction be raised on a Writ of mandamus?

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FN 1 Defendant was indicted by the York County Grand Jury on all offenses on October 15, 1998, why the Defendant was under the Exclusive Original Jurisdiction of Family Court.

## Complaint

Primary Purpose of a writ of mandamus is to enforce an established right and enforce a corresponding imperative duty created or imposed by law. Porter v. Jedziniar, 512 S.E.2d 497 (1999). To obtain a writ of mandamus requiring the performance of an act, the Defendant must show (1) a duty of Respondent to perform the act, (2) the ministerial nature of the act, (3) the Defendant's specific legal right for which discharge of the duty is necessary, and (4) a lack of any other legal remedy. Porter v. Jedziniar, *Supra*.

Lack of Subject matter Jurisdiction can be raised at any time, including for the first time on Appeal. State v. Funderburk, 259 S.C. 256, 191 S.E.2d 520. See *FN<sup>2</sup>* Lack of subject matter Jurisdiction can be brought on writ of mandamus, Anderson v. State, 527 S.E.2d 398. (Even though inmate convicted of murder did not raise issue of subject matter Jurisdiction on appeal, he could raise it in his ensuing Petition for writ of mandamus).

Defendant assert that because he was sixteen years of age and had alleged to violate or attempted to violate any "state or local law" he was under the "Exclusive Original Jurisdiction of the Family Court" Pursuant to S.C. Code Ann §20-7-400(A)(3) (SUPP, 1998), and that the Court of General Sessions was without Jurisdiction in accepting the Defendant's guilty Plea. Solcumb v. State, 522 S.E.2d at 811 (1999). (The 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 State v. England, *Supra*, Solcumb v. State, *Supra*, apply to defendant's case because he was less than seventeen years of age and had alleged to violate or attempted to violate any "state or local law" Pled guilty in General Sessions Court when still under the Exclusive Jurisdiction of Family Court.

### Unconstitutionality in section 20-7-6605 (1)

Defendant assert that his 5th and 14th Amendment U.S. Constitutional rights have been violated when Respondent accepted his guilty Plea without first conducting a full investigation that's required by State Statutes and Federal Constitutional law. Citing Patton v. T04, 867 F.Supp 356 (1994), Kent v. U.S., 383 U.S. (1966), sections 20-7-400(A)(3), and 20-7-7605 (1)(6)(10) (SUPP, 1998). Defendant further assert that his 5th and 14th Amendment U.S. Constitutional right to due Process of Law have been violated when Respondent failed to obtain Jurisdiction over the Defendant before accepting the Defendant's Plea of Guilty. Defendant contends that section 20-7-6605(1) title "Define a Child",

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*FN<sup>2</sup>* This lack of subject matter Jurisdiction claim was raised in Antonio Gordon v. State, 2000-CP-46-1414, but the PCR Court did not make Findings of fact on this allegation, therefore, it is the first time Defendant have raised this lack of subject matter Jurisdiction claim.

Statutory is unconstitutional under the 5th and 14th Amendment, the right to due Process of law and Equal Protection of the law. The Defendant alleges that:

(1) Defendant asserts that section 20-7-6b05 (1) is unconstitutional under the 14th Amendment U.S. Constitution and that it violate Defendant's 14th Amendment right to due Process of law because it provides two construction of a "child". First Placing Defendant in Family Courts Exclusive Jurisdiction, less than seventeen years of age, and the second, excluding Defendant because he was a person sixteen years of age charged with a class A, B, C or D felony. Defendant assert that 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 Defendant. At 439, 499 S.E.2d 630, U.S. V. Lanier, 73 F.3d 1380 (1996); Bifulco v. U.S., 477 U.S. 381 (1980); U.S. V. Bassi, 404 U.S. 336 (1971).

(2) Defendant assert that section 20-7-6b05 (1) is unconstitutional under the 14th Amendment U.S. Const, the right to due Process of Law and that it violates Defendant's 14th Amendment right to due Process of law because it lack sufficient Guidelines to prevent arbitrary and discriminatory enforcement. Idk v. Clark County, 1836 F.2d 1185 (1988).

(3) Defendant assert that section 20-7-6b05 (1), is unconstitutional under the 5th and 14th Amendment U.S. Const right to due Process of law and equal Protection of the Law and that it violates Defendant's 5th and 14th amendment U.S. right to due Process of Law and equal Protection of the law because all sixteen year old defendant's charged with a class A, B, C, or D felony are not similar treated alike because the "solicitor" get to choose on a case by case basis which sixteen year old defendant's charged with a class A, B, C or D felony he deem fit for family court protection. The Defendant assert that the sixteen year old defendant's charged with a class A, B, C or D felony will receive the full investigation that's required by state statutes and federal constitutional law and the sixteen year old defendant's handled in general sessions will not. This act constitute a violation of Equal Protection of the law. Celeburne v. Celeburne Living Center, 437 U.S. 432 (1985).

(4) Defendant assert that section 20-7-6b05 (1), is unconstitutional under the 14th Amendment U.S. Const right to due Process of law and violates S.C. Const Art, I, 58 (seperation of Power doctrine) and that it violates the Defendant's 14th amendment right to due Process of Law because it violates the seperation of Power Power doctrine. The legislature provided the family court judge with the authority to determine waiver. See section 20-7-7605 (b) (10), 20-7-400 (A) (3) (Supp. 1998). Segars Andrews v. Judicial Selection Comin, (S.C. 2010) 691 S.E.2d 453, State v. Burdette, (S.C. 1999) 515 S.E.2d 525.

(6) Defendant assert that section 20-7-6605(1), is unconstitutional under the 14th Amendment U.S. Const right to due Process of law and violates the Defendant's 14th Amendment U.S. Const right to due Process of law because it conflict with Kent v. U.S., supra, (8 Factors to be Considered before waiver into adult court), Conflict with section 20-7-400(A)(3), title Exclusive Original Jurisdiction of Family Court, Conflict with Section 20-7-7605(1)(6)(10), title Transfer of Jurisdiction, Defendant, assert the ambiguity and conflict in the Children Code of Laws must be in Defendant's favor citing Bi Pulco v. U.S. 1477 U.S. 381 (1980).

The Defendant assert the unconstitutionality in section 20-7-6605(1) defendant's guilty plea cannot be upheld and that he was a person under Family Courts exclusive jurisdiction. Wherefore, General Sessions was without jurisdiction to accept defendant's guilty plea. If a court lacks jurisdiction it lacks "all jurisdiction" to adjudicate that party's rights, whether or not the subject matter is properly before it. See Kulko v. Superior Court, 436 U.S. 84 (1978). No passage of time can render a void judgment valid, and a court may always take cognizance of a judgment's void status whenever a motion for relief is brought. U.S. v. One Toshiba Color Television, 213 F.3d 147 (3rd Cir 2000).

The Defendant assert that (1) Respondent had a duty to obtain jurisdiction over him before accepting his guilty plea, (2) The Defendant assert that under Due Process of Law and section 20-7-400(A)(3), Section 20-7-7605(1)(6)(10), it was mandatory to obtain jurisdiction before defendant's guilty plea complied with Due Process of law under the 14th Amendment U.S. Const., (3) The defendant assert that he had a specific legal right under the 5th and 14th Amendment U.S. Const to a full investigation under state statutes and Federal Constitutional law, (4) The Defendant lack any other remedy and a petition for writ mandamus can be brought by defendant's on his lack of subject matter jurisdiction claim.

Defendant has met the conventional requirements for mandamus relief and have satisfied, in the unique circumstances of this case, the equities favor an affirmative exercise of the Courts discretion.

The Defendant should be released Conclusion from custody and or whatever this Court deems necessary.

Antonio Garza

State of South Carolina  
In The Court of Appeals  
Appeal from York County  
Court of General Sessions  
John C. Hayes III, Presiding Judge

York County General Sessions

Respondent

Antonio Gordon

v.

Appellant

Certificate of service

The Appellant hereby certifies that one copy of Appellants notice of Appeal in the above - entitled case has been served upon Opposing Counsel, John C. Hayes, III, Circuit Court Judge, Post - office Box 649, York, S.C. 29745, on this 17th day of October, 2013.

Antonio Gordon

Attachment (b)



# The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS  
CLERK

V. CLAIRE ALLEN  
DEPUTY CLERK

POST OFFICE BOX 11629  
COLUMBIA, SOUTH CAROLINA 29211  
1015 SUMTER STREET  
COLUMBIA, SOUTH CAROLINA 29201  
TELEPHONE: (803) 734-1890  
FAX: (803) 734-1839  
[www.sccourts.org](http://www.sccourts.org)

November 14, 2013

Antonio Gordon, 259798  
Evans Correctional Institution  
610 Highway #9, West  
Bennettsville SC 29512

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

Attachment (c)

Dear Counsel:

Upon reviewing your notice of appeal, the following deficiency or deficiencies have been noted under the South Carolina Appellate Court Rules (SCACR), and any deficiency must be corrected within ten (10) days of the date of this letter:

- The caption/title does not comply with Rule 267(a), SCACR. Specifically, opposing counsel is not listed.
- The notice of appeal is not accompanied by the order(s) and/or judgment(s) challenged on appeal.
- The proof of service does not show opposing counsel being served a copy of the notice of appeal.

FILED-RECEIVED  
STATE OF SOUTH CAROLINA )  
COUNTY OF YORK )  
2013 OCT 10 PM 3:06 )

IN THE COURT OF GENERAL SESSIONS  
SIXTEENTH JUDICIAL CIRCUIT

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

DAVID H. HAMILTON  
C.D.S.P. & A.S.  
YORK COUNTY, SC )  
State of South Carolina, )

v. )

Antonio Gordon, )

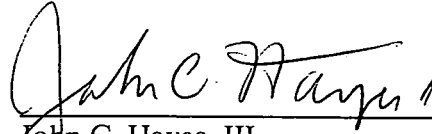
Defendant. )

ORDER

Defendant, Antonio Gordon, has filed a "Petition for Writ of Mandamus."

Defendant Antonio Gordon's Petition for Writ of Mandamus is DENIED.

IT IS SO ORDERED.

  
\_\_\_\_\_  
John C. Hayes, III  
Chief Administrative Judge

October 10, 2013  
York, South Carolina

Attachment (8)

DAVID H. HAMILTON  
CLERK OF COURT  
YORK COUNTY, SC  
2013 OCT 10 PM 4:44  
CERTIFIED TRUE COPY

State of South Carolina )  
 County OF York ) In The General Sessions Court  
 State of South Carolina ) Sixteenth Judicial Circuit  
 ) Case No.: 98-65-46-2847; 2849; 2850; 2851; 2852  
 V. ) Motion to Vacate Judgment Pursuant to SCR. Civ. Proc  
 Antonio Gordon ) Rule 60(A)(B)(3)(4)  
 Defendant )

Now Comes the Defendant in the above Criminal Case motion this Court under SCR. Civ. Proc Rule 60(A)(B)(3)(4), to Correct the Clerical mistake and vacate the Void Judgment under Due Process of Law. Defendant will show unto this Court the following:

### Background

Defendant filed a Pro se writ of mandamus on October 6, 2013, Compelling the "Court of General Sessions" to release him based upon lack of subject matter Jurisdiction and lack of Jurisdiction over the Defendant to accept his guilty Plea. On October 10, 2013, this Court denied Defendant's writ of mandamus without an evidentiary hearing being held.

### Argument

Defendant assert this Court should grant him leave to correct the Clerical mistake of serving "York County General Sessions Court" with the mandamus and serve the Correct Respondent under SCR. Civ. Proc Rules 4(d), 5(d), 65(f)(1). SCR. Civ. Proc Rule 60(A). See FN<sup>1</sup> under the Due Process clause this denied the Defendant the Right to be heard and Pursuant to SCR. Civ. Proc Rule 60(b)(3), the Defendant should be allowed to vacate the Order based upon extrinsic fraud because the Court induce Defendant not to Present his case or claims and deprived Defendant of the Opportunity to be heard. SCR. Civ. Proc Rule 65(f)(1). Hilton Head Center of S.C. v. Public Service Commission, 249 S.C. 9, 11, 362 S.E.2d 176 (S.C. 1987), Hagy v. Pruitt, 529 S.E.2d (2001). Therefore, the Defendant should be allowed to correct the Clerical mistake and serve the Correct Respondent.

FN<sup>1</sup> This Court corrected Defendant's Clerical mistake and listed the state of South Carolina as Respondent but proceeded to deny Defendant's mandamus without giving the Defendant the ability to serve the Correct Respondent. See Attachment (8)

The Defendant assert the Order issued On October 10, 2013, is void and should be vacated because the General Sessions Court acted in a manner inconsistent with Due Process of law. Linda McComany Inc v. Shore, (S.C. App 2007), 653 S.E.2d 279. The Correct "Respondent" was not served with notice of the mandamus as required by SCR, Civ. Proc Rule 65(f)(1). A Primary Purpose of the notice required by the Due Process clause is to ensure that the opportunity for a hearing is meaningful. City of West Conina v. Perkins, 525 U.S. 234 (1999). The Court Corrected Defendant's clerical mistake and listed the correct Respondent in its Order of dismissal but denied Defendant's mandamus without giving him the opportunity to serve notice of the mandamus on the correct Respondent and without an evidentiary hearing. Likewise a hearing should have been held on Defendant's lack of subject matter Jurisdiction claims under Anderson v. State, 527 S.E.2d 398. The Defendant assert due to the Court of General Sessions correcting his clerical mistake and listed the correct Respondent but denied Defendant's mandamus without giving him the ability to serve the correct Respondent(s) and denied the mandamus without a hearing, the Court acted inconsistent with Due Process of law under the 14th Amendment U.S. Const. Therefore, the Order should be vacated. SCR, Civ. Proc Rule 60(b)(4).

### Conclusion

Defendant's SCR, Civ. Proc Rule 60(A)(b)(3)(4), should be granted due to the extraordinary circumstances.

*Antoni Gordon*