

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM CHEROKEE COUNTY
Court of Common Pleas

J. Durham Cole, Circuit Court Judge

Case No. 2014-000-595

Frazier T. Williams,, Petitioner,

v.

State of South Carolina, Respondent.

PETITION FOR WRIT OF CERTIORARI

Frazier T. Williams
SCDC No. 227393
Perry Correctional Institution
430 Oaklawn Road-Q4A/124
Petzer, S.C. 29669

Other Counsel of Record

Allen Wilson
Attorney General
P.O. Box 11549
Columbia, S.C. 29211

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MAY 01 2014

SC Court of Appeals

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CERTIFICATE OF COUNSEL

The Petitioner acting Pro Se Certifies that no transcript was ordered as there was no hearing held in the lower Court.

QUESTIONS PRESENTED

- I. Did the trial Judge err in denying petitioner's Motion for recusal?
- II. Did the trial Judge err in holding that a Writ of mandamus was not a proper method for challenging the trial Court's lack of subject matter Jurisdiction?

STATEMENT OF THE CASE

The petitioner was indicted for murder (95-GS-11-474), burglary (95-GS-11-475), and armed robbery (95-GS-11-476) in the April 1995 term of General Sessions Court for Cherokee County. Petitioner proceeded to trial on October 30 thru November 3, 1995, before the Honorable J. Derham Cole, Judge and Jury. He was represented by Donald Letteer, Esq., of the Cherokee County Bar; and the State was represented by Trent Pruett of the Cherokee County Solicitor's Office. The Jury found him guilty on all the charges, and Judge Cole sentenced him to life for murder and burglary and a concurrent sentence of twenty-five (25) years for armed robbery.

A timely appeal was filed on petitioner's behalf. He was represented on appeal by Lisa T. Gregory who filed a brief pursuant to Anders v. California, 286 U.S. 738 (1967). The S.C. Court of Appeals affirmed Petitioner's convictions and sentences. State vs. Frazier Williams, Op. No. 27-MO-101 (S.C. Ct. App. filed October 29, 1997). The Remittitur was issued November 19, 1997.

The petitioner subsequently filed an application for Post-Conviction Relief (PCR) on November 4, 1998. An evidentiary hearing was on August 13, 2002, at which Petitioner was present and represented by William Winter, Esq. The PCR application was denied by written order on September 26, 2002.

A timely Notice of Appeal was filed on petitioner's behalf, and Wanda H. Haile, of the S.C. Office of Appellate Defense, represented him and submitted a Johnson Petition for Writ of Certiorari. The S.C. Supreme Court denied the Petition on August 20, 2003. The Remittitur was issued September 5, 2003.

The Petitioner next filed a petition for writ of habeas Corpus in the Court of Common Pleas for Cherokee County on October 11, 2006. The respondent made its Return and Motion to dismiss on about March 16, 2007. An evidentiary hearing was held on September 18, 2007, at the Spartanburg County Courthouse. The Petition was denied on December 14, 2009. A timely appeal was filed on Petitioner's behalf.

The S.C. Supreme Court, by order dated April 15, 2010, transferred the appeal to the S.C. Court of Appeals. On May 27, 2010, the Court of Appeals dismissed the appeal. A timely for Rehearing was filed. The Petition was denied on July 14, 2010.

On April 24, 2013, Petitioner filed a Pro se Writ of Mandamus in the Court of Common Pleas for Cherokee County. By order dated October 29, 2013, Judge J. Derham Cole denied the Writ of mandamus. Petitioner filed a motion for Judge Cole's recusal/and motion for vacation of his order. On February 21, 2014, Judge Cole denied the motions for vacation of his order and recusal. A timely notice of appeal was filed by petitioner.

ARGUMENT

I. The trial Judge erred in denying Petitioner's Motion for recusal

As shown above in the statement of this case, Judge J. Derham Cole was the Judge who presided over petitioner's Criminal trial at which he was convicted and sentenced to two life sentences and a concurrent twenty-five (25) year sentence. Also, Judge J. Derham Cole is the same Judge who presided over his Mandamus petition in which the petitioner is challenging his convictions and sentences. See Appendix 1-4.

In Floyd v. State, 400 S.E.2d 145 (1991), the S.C. Supreme Court held that it adopted a per se rule that a Judge who is scheduled to hear a post-conviction matter must, upon request, recuse himself if he presided over the guilty plea, "Criminal trial", or probation revocation for which post-conviction relief is sought. See also, e.g., State v. Watkins, 752 S.E.2d 261 (S.C., 2013)

Here, as Judge Cole has reviewed his own conduct from his trial of the petitioner, this Court should find that Judge Cole erred in denying petitioner's timely motion for his recusal and vacation of his order.

II. The trial Judge erred in holding that a writ of mandamus was not a proper method for challenging the trial Court's lack of Subject-matter Jurisdiction.

In this Case, the petitioner filed a petition for issuance of a writ of mandamus challenging the trial Court's Jurisdiction to Convict and Sentence him. In denying the writ, Judge J. Derham Cole held that petitioner's writ does not satisfy the elements, or the purpose, of mandamus as established by Case law. See Appx. p. 1-4. Contrary to Judge Cole's ruling, the S.C. Supreme Court has held that issues of Subject-matter Jurisdiction may be raised in a writ of mandamus. See, e.g., Anderson vs. State, 527 S.E.2d 398 (S.C. App. 2001).

In Anderson, the petitioner requested a hearing on his petition for writ of mandamus to determine whether the trial Court was Vested with Subject-matter Jurisdiction. He Cited the absence of the term "true bill" on the face of his indictment against him as grounds for the hearing. The Court found his request proper, and remanded the Case to the lower Court.

Here, the petitioner has requested a hearing on his writ of mandamus to determine whether the trial Court was vested with Subject-matter Jurisdiction by the presentment of his indictment outside of a term of a term of general Sessions Court. The petitioner bases his claim on an "Affidavit" submitted by the Seventh Judicial Circuit Solicitor, Trent N. Pruett, in which he asserts that petitioner's indictment was not presented by a grand Jury during a term of general Sessions Court. See Appx. p. 5-7.

Solicitor Pruett Cites the Supreme Court's holding in Brown vs. State, 449 S.E.2d 494 (1994), in support

of his assertion that the trial Court was Vested With Subject-matter Jurisdiction. However, Contrary to the Brown decision, the S.C. Legislators has nor, nor could not, enact any laws empowering the Chief Justice with authority to permit a Chief Administrative Judge to Convene a grand Jury outside of a term of general Sessions Court. This is Clear from reviewing S.C. Code § 14-7-1570 (entitled "Drawing of Grand Jurors"), which was in effect during the Brown ruling and mandated the following provision for "Empaneling a grand Jury":

Not less than fifteen days before the Convening of the first term of general Sessions (Court) for the Calendar Year, the Jury Commission shall proceed to draw from the Jury box the number of grand Jurors which the Clerk of Chief Administrative Judge for the Circuit has determined to be sufficient in order to impanel a grand Jury Immediately after these grand Jurors are drawn, the "Clerk of Court shall issue writ of venire facias for these grand Jurors, requiring their attendance on the first day of the first week of Criminal (general Sessions) Court in the County. . . ." (Emphasis added).

Obviously, while the Legislators did empower the Chief Administrative Judge with authority to "empannel a grand Jury outside of a term of Criminal Court" to determine their sufficiency to serve as grand Jurors, it did not extend that authority to empower an Administrative Judge to "Convene" a grand Jury outside of a term of Criminal (general Sessions) Court. See S.C. Const., Art. I, § 8 (entitled Separation of Government Power).

Having shown that the Chief Justice could not have authorized a Chief Administrative Judge to Convene a grand Jury outside of a term of general Sessions Court, the petitioner now directs the Court's review of whether the

Return of an indictment outside a term of general Sessions (Criminal) Court could have deprived the Court of Subject-matter Jurisdiction to Convict and Sentence him. To resolve this question, one must interpret the holding by the U.S. Supreme Court in U.S. v. Cotton, 122 S.Ct. 1781 (2002), which guided the S.C. Supreme Court's holding in State v. Gentry, 610 S.E.2d 494 (2005). In both Cotton and Gentry, the Courts held that the term "Subject-matter Jurisdiction" means the Court's Statutory and Constitutional power to adjudicate a Case.

An assessment of the S.C. Constitutional and Statutory Laws mandate that "no person may be held to answer for any Crime... unless upon presentment of indictment by a grand Jury." S.C. Arts I, §11; S.C. Code of Law §17-19-10. Moreover, the grand Jury as lawfully drawn for service upon general Sessions Court shall meet with the Court at each of its terms. S.C. Code §14-9-170. See Appx. p. 8. In conjunction, the County Solicitor shall prepare and, through the presiding Judge of general Sessions Court, submit to grand Jury bills of indictments. S.C. Code §14-9-210. See Appx. p. 9.

In conjunction, the S.C. Supreme Court has held that no indictment may be true billed by grand Jury when Circuit Court lacks Jurisdiction (or is not in a term) since grand Jury's Jurisdiction is coextensive with Criminal Jurisdiction of the Circuit in which it is Convened and for which it is to make inquiry on indictments. See, e.g., State v. McClure, 289 S.E. 2d 138 (1982).

Finally, in keeping with the mandatory provisions

... of Constitutional and Statutory laws, the Cherokee County Solicitor's office could not have lawfully obtained petitioner's indictments to confer subject matter jurisdiction upon general sessions court during a time when the Cherokee County general sessions court was not in a term on "October 19, 1994" to convene and oversee the grand jury process. Therefore, any and all acts taken by the Cherokee solicitor's office outside of constitutional and statutory restrictions to obtain petitioner's indictment is, by necessity, deemed to be null and void since the grand jury must be convened under a term of general sessions court to present bills of indictments to confer subject matter jurisdiction upon a circuit court.

CONCLUSION

WHEREFORE, for the foregoing reasons, this Honorable Court should grant the Petition for writ of mandamus to reverse and vacate petitioner's convictions and sentences.

Respectfully Submitted,

Frazier T. Williams
Frazier T. Williams #22793
Perry Correctional Inst.
430 Oaklawn Road - Q4A/124
Pelzer, S.C. 29669

Date: APRIL - 23, 2014

THE STATE OF SOUTH CAROLINA
In The Supreme Court
APPEAL FROM CHEROKEE COUNTY
Court of Common Pleas

J. Durham Cole, Circuit Court Judge

Case No. 2014-000595

Frazier T. Williams, Petitioner,

v.

State of South Carolina, Respondent.

PROOF OF SERVICE

The petitioner certifies that he served true copies
the Petition for Writ of Certiorari with the Appendix upon
the Respondent by placing the same in the U.S. Mail addressed
to: Allen Wilson, Attorney General, P.O. Box 11549, Columbia,
S.C. 29211.

151 Frazier T. Williams
Frazier T. Williams #227393
Perry Correctional Inst.
430 Oaklawn Road-24A/124
Petzer, S.C. 29669

This 23 day of APRIL, 2014

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MAY 01 2014

SC Court of Appeals

Date: 4-23, 2014

S.C. Court of Appeals
Jenny Abbott Kitchings, Clerk
Post Office Box 11629
Columbia, S.C. 29211

Re: Frazier T. Williams v. State
Appellate Case No. 2014-000595

Dear Hon. Kitchings:

Enclosed please find the original and six (6) copies of the Petition for Writ of Certiorari, one original and one copy of the Appendix, and Proof of Service of Same upon Attorney for Respondent.

sincerely,

By: Frazier T. Williams
Frazier T. Williams #227393
Perry Correctional Inst.
430 Oaklawn Road-Q4A/124
Pelzer, S.C. 29669

cc: Attorney for Respondent
Petitioner's file

RECEIVED

MAY 01 2014

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM CHEROKEE COUNTY
Court of Common Pleas

J. Derham Cole, Circuit Court Judge

Case No. 2014-000595

Frazier T. Williams Petitioner,

v.

State of South Carolina Respondent.

APPENDIX

Frazier T. Williams
SCDC No. 227393
Perry Correctional Institution
430 Oaklawn Road-Q4A/124
Pelzer, S.C. 29669

Other Counsel of Record

Allen Wilson
Attorney General
P.O. Box 11549
Columbia, S.C. 29211

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STATE OF SOUTH CAROLINA
COUNTY OF CHEROKEE
THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NO: 2013CP1100362

Frazier T Williams #227393 vs. State Of South Carolina

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY S.C.
2013 OCT 29 AM 9:48
BRANDY W. MCBEE

CHECK ONE:

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):**
 - Rule 12(b), SCRPC;
 - Rule 41(a), SCRPC (Vol. Nonsuit);
 - Rule 43(k), SCRPC (Settled);
 - Other: _____
- ACTION STRICKEN (CHECK REASON):**
 - Rule 40(j) SCRPC;
 - Bankruptcy;
 - Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
 - Other: _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 - Affirmed;
 - Reversed;
 - Remanded;
 - Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IS ORDERED AND ADJUDGED: See attached order; Statement of Judgment by the Court:

Order

Dated at Gaffney, South Carolina, this the 29th day of October, 2013.

Court Reporter:

s/ J. Derham Cole

PRESIDING JUDGE - J. Derham Cole

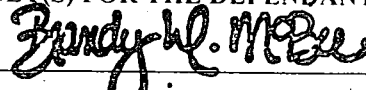
This judgment was entered on the the 28th day of October, 2013, and a copy mailed first class this the 29th day of October, 2013, to attorneys of record or to parties (when appearing pro se) as follows:

Frazier T Williams #227393 Perry Correctional Inst.
430 Oaklawn Road-Q4A/105 Pelzer, SC 29669

Alan McCrory Wilson PO Box 11549 Columbia,
SC 29211-1549

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)



Brandy W. McBee - Clerk of Court

Frazier T. WILLIAMS, SCDC #227393

The STATE of South Carolina,

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: the Court

Attorney for : Plaintiff Defendant
 or
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify

- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order Statement of Judgment by the Court:

This matter was initially before this court on Petitioner's motion to proceed *in forma pauperis* in the filing of a writ of mandamus. This court issued an order denying the request because mandamus was not a proper method for seeking the relief requested. The matter is now before this Court on motions of the petitioner for recusal of the judge and to vacate the order. After careful consideration of the request, this court finds the Petitioner's motion for recusal and motion to vacate should be and are therefore **denied**.

ORDER INFORMATION

This order ends does not end the case.
 Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

[Signature]
 Circuit Court Judge

2053
 Judge Code

2/21/14
 Date

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHEROKEE)

IN THE COURT OF COMMON PLEAS
FOR THE SEVENTH JUDICIAL CIRCUIT

FRAZIER TATE WILLIAMS,)
)
)
vs.)
)
STATE OF SOUTH CAROLINA,)
)
)

AFFIDAVIT OF
TRENT N. PRUETT

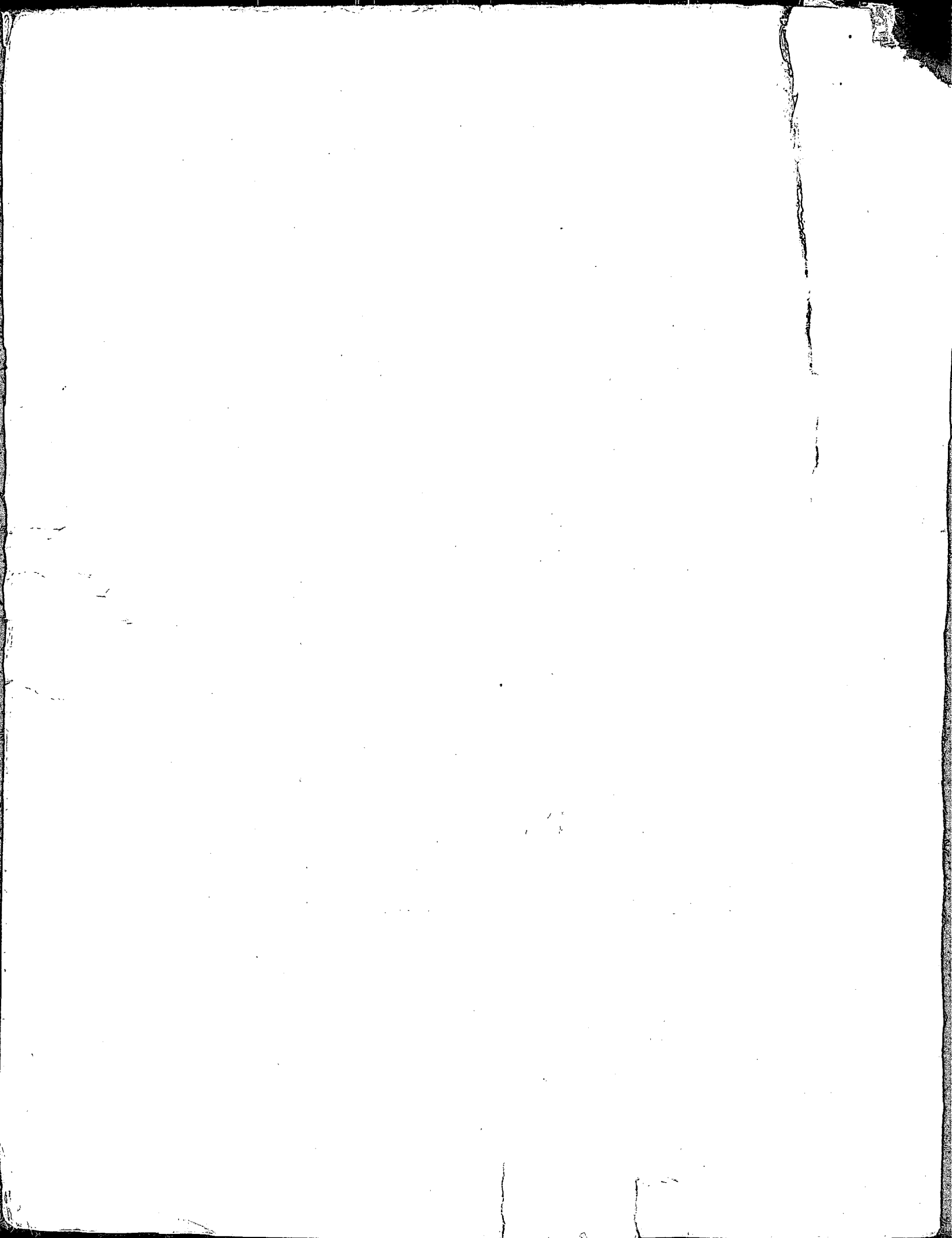
BRANDY
MCBEE

2001 OCT - 5 A 10:52

CLERK OF
SEVENTH JUDICIAL CIRCUIT
CHEROKEE COUNTY, S.C.

Personally appeared before me, Trent N. Pruett, after first being sworn deposes and states the following:

1. That I am an attorney licensed to practice in the State of South Carolina, and that I was admitted to the bar on November 16, 1983.
2. That from 1987 to 1996, I worked in the Seventh Judicial Circuit Solicitor's Office, as a Assistant Solicitor and Deputy Solicitor.
3. That from the years 1994 to 1996, I was the sole attorney working out of the Cherokee County Office for the Solicitor's Office for the Seventh Judicial Circuit, and I was responsible for the signing and submitting of indictments to the Cherokee County Grand Jury.
4. That during the time period I worked in the Solicitor's Office, from 1987 to 1996, all indictments in the Seventh Judicial Circuit, in both Spartanburg and Cherokee Counties, stated in the preamble to the body of the indictment, that "At a court of General Sessions on [DATE], the Grand Jurors of [NAME OF COUNTY] County present upon their oath....". These indictment forms were provided to the Solicitor's Office by the Attorney General's Office. The language in the preamble, that the Grand Jury convened during a term of General Sessions court, was based upon the historical practice, whereby the Grand Jury convened on the first day of a term of General Sessions court. Customarily, both the Grand Jury and the members of the Petit Jury would report to the Court of General Sessions on the first day of the term. As the Grand Jury returned indictments, and the presiding judge received the reports of the Grand Jury, Defendants were immediately arraigned, a plea of "guilty" or "not guilty" was entered, with the trial of any defendant pleading "not guilty" immediately following his arraignment. See *State v. Floyd*, 174 S.C. 288, 177 S.E. 375 (1934).



5. The practice of having the Grand Jury convene on the first day of a term of General Sessions court was abandoned before I was employed with the Solicitor's Office. During the entire time I was employed with the Solicitor's Office, the Grand Jury in both Cherokee County and Spartanburg County, convened on the Thursday before a term of General Sessions court. Although the Grand Jury convened the Thursday preceding any term of General Sessions court, the Solicitor's Office continued to use the aforesaid forms, provided by the Attorney General's Office, and inserted the date that the term of General Sessions court commenced. This very practice was addressed in *Brown v. State*, 316 S.C. 258, 449 S.E.2d 494 (1994), where the grand jury of Aiken County stated that a finding of a "True Bill" was found on an indictment on **October 19, 1994**, and the date on the indictment read the grand jury convened on **October 22, 1994**. The South Carolina Supreme Court held that the discrepancy between the two dates did not deprive the general sessions court of subject matter jurisdiction. The *Brown* Court stated:

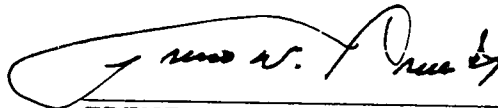
The county grand jury is empaneled during the first term of general sessions of the calendar year. See S.C. Code Ann. §§14-7-1550 to 1570 (Supp. 1993). By Administrative Order of the Chief Justice, the Chief Judge for administrative purposes in each judicial circuit is responsible for scheduling when the grand jury in each county within the circuit will convene to receive evidence and deliberate. Administrative Section, South Carolina Register, pp. CC ADMIN 3-4. This order specifically encourages the Chief Judge to convene the grand jury when the court of general sessions is not in session. After the grand jury has deliberated, it then reports its findings of "True Bill" or "No Bill" to the court of general sessions. This report may be made on the same day as the day the grand jury makes its findings, or it may be made at some later time.

In the present case, the dates show that the grand jury took action on the indictments on a date earlier than the date on which they made their report to the court of general sessions. As explained above, this is perfectly normal.

Brown v. State, 316 S.C. 258, 260, 449 S.E.2d 494, 495 (1994) (emphasis not in original opinion)


6. That because I was the solicitor in charge of signing those indictments that would be presented at the Grand Jury in Cherokee County in 1995, I can swear that the Grand Jury in fact met the Thursday before April 17, 1995, and that the indictment against Frazier Tate Williams was returned by the Grand Jury at that time, along with numerous other indictments.

7. The practice I have outlined above was followed as to every Defendant indicted in the Seventh Judicial Circuit during the time period in question, and it is my understanding that this is the practice that was then followed by most Circuit Solicitors in the State of South Carolina.



TRENT N. PRUETT

Sworn to before me this 25th
day of September, 2007

 (Seal)
Notary Public for South Carolina
My Commission Expires: 11/14/10



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TOC: Code of Laws of South Carolina Annotated, Constitution, Court Rules & ALS Combined > / > CHAPTER 9. COUNTY COURTS > § 14-9-170. Grand jury.
Terms: 14-9-170 (Edit Search | Suggest Terms for My Search)

S.C. Code Ann. § 14-9-170

SOUTH CAROLINA CODE OF LAWS ANNOTATED BY LEXISNEXIS(R)

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History

TITLE 14. COURTS
CHAPTER 9. COUNTY COURTS

GO TO SOUTH CAROLINA ARCHIVE DIRECTORY

S.C. Code Ann. § 14-9-170 (2007)

§ 14-9-170. Grand jury.

The grand jury as drawn in accordance with law for service upon the court of general sessions in each of the counties shall constitute the grand jury for the county court and shall meet with the county court at each of its terms, except the term next succeeding each session of the circuit court, at which term the grand jury need not meet with the county court.

History:

1962 Code § 15-617; 1952 Code § 15-617; 1942 Code § 87; 1932 Code § 87; Civ. P. '22 § 84; Civ. C. '12 § 3859; Civ. C. '02 § 2762; 1900 (23) 322.

NOTES:

Editor's Note

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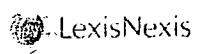
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S.C. Code Ann. § 14-9-210

SOUTH CAROLINA CODE OF LAWS ANNOTATED BY LEXISNEXIS(R)

Practitioner's Toolbox

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*** THE MOST CURRENT ANNOTATION IS DATED DECEMBER 15, 2008 ***

Case Notes
History

TITLE 14. COURTS
CHAPTER 9. COUNTY COURTS

GO TO SOUTH CAROLINA ARCHIVE DIRECTORY

S.C. Code Ann. § 14-9-210 (2007)

§ 14-9-210. Indictments for county court cases by grand jury of court of general sessions.

The county solicitor shall prepare and, through the presiding judge of the court of general sessions, submit to the grand jury, while in attendance upon the court of general sessions, bills of indictment in all cases pending in the county court in which the punishment may exceed a fine of one hundred dollars or imprisonment for thirty days, when such cases have not been previously acted on by the grand jury. The grand jury shall act thereon and report its action to the presiding judge of the court of general sessions and said judge shall direct the clerk of the court of general sessions to report the same to the presiding judge of the county court at its next ensuing term. All cases in which bills of indictment are so found shall stand for trial by the county court as though found by the grand jury while in attendance upon the county court.

History:

1962 Code § 15-621; 1952 Code § 15-621; 1942 Code § 89; 1932 Code § 89; Civ. P. '22 § 86; Civ. C. '12 § 3861; Civ. C. '02 § 2764; 1900 (23) 322.

NOTES:

Editor's Note

LexisNexis (R) Notes:

Case Notes:

- Constitutional Law > Bill of Rights > Fundamental Rights > Procedural Due Process > Scope of Protection
- Criminal Law & Procedure > Accusatory Instruments > Indictments > General Overview
- Criminal Law & Procedure > Trials > Defendant's Rights > Right to Due Process

Constitutional Law > Bill of Rights > Fundamental Rights > Procedural Due Process > Scope of Protection

1. Defendant, who successfully appealed two municipal court charges, failed to prove that her conviction in general sessions court of pointing a weapon, a violation of S.C. Code Ann. § 16-23-410, stemming from the same conduct as the municipal court charges, was vindictive prosecution in violation of her USCS Const. Amend. 14, § 1 due process rights, because under S.C. Const. art. V, § 24, and S.C. Code Ann. § 1-7-320 and S.C. Code Ann. § 14-9-210, it is the solicitor's duty to prosecute criminal charges, including procurement of the proper indictment from the grand jury, the pointing offense had been charged at the same time as the municipal court offenses, and in directly indicting defendant for assault with intent to kill the solicitor had been unaware of the disposition of the municipal court charges. State v. Fletcher, 322 S.C. 256, 471 S.E.2d 702, 1996 S.C. App. LEXIS 63 (S.C. Ct. App. 1996).

Criminal Law & Procedure > Accusatory Instruments > Indictments > General Overview

2. Defendant, who successfully appealed two municipal court charges, failed to prove that her conviction in general sessions court of pointing a weapon, a violation of S.C. Code Ann. § 16-23-410, stemming from the same conduct as the municipal court

I certify that this Appendix contains matter that
that are relevant the petition for writ of certiorari.

~~151~~ *Frazier T. Williams*
Frazier T. Williams #227393
Perry Correctional Inst.
430 Oaklawn Road - Q4A/124
Pelzer, S.C. 29669