

State of South Carolina  
In The Supreme Court

CERTIORARI To Richland County  
Court of Common Pleas

The Honorable James I. Barber III Circuit Court Judge

Case No: 2008-CP-40-0959

Christopher Williams \_\_\_\_\_ Petitioner.

V.

State of South Carolina \_\_\_\_\_ Respondent.

Petition for  
Writ of CERTIORARI

Certificate of Service

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AUG 8 9 2012

S.C. SUPREME COURT

The undersigned Indigent pro se Petitioner hereby certifies that a true copy of documents enclosed for review as Courts Exhibits in support of Petitioner Appeal. The Petitioner request for "clock stamped copies for filing purposes" addressed to: Daniel E. Shearous, Supreme Court of South Carolina Post office Box 11330, Columbia S.C. 29211. Documents as Listed:

- (1). Application for Post-Conviction Relief.
- (2). Respondent Return and motion to dismiss.
- (3). Petitioner Response to Respondent motion to dismiss.
- (4). Final order dismissing Petitioner's Per Application.
- (5). Petitioner notice of Appeal addressed to the Clerk of Court with documents; E. mail, Letter to Supreme Court, Clerk of Court information sheet.
- (6). South Carolina Department of Correction Record Summary Report.
- (7). Criminal Justice RAP sheet.
- (8). Richland County Sheriff Department Background Information.
- (9). Richland County Sentencing sheet.
- (10). Richland County Public Defender closing note sheet.
- (11). General Session Docket sheet.
- (12). Indictment (91-CJ-40-1936).
- (13). Investigation Report sheet.

*Christopher Williams*

Christopher Williams

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CASE NO: 2008-CP-40-0957

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v.

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Petition For  
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**S.C. SUPREME COURT**

Christopher Williams  
Alvin S. Glen Detention C.  
201 John W. Dial Dr.  
Columbia S.C. 29209

Attorney For Petitioner

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## Question Presented

I Did The Per Court err in holding that Pro SE Applicant's should be denied and dismissed for failure to file the action within the one year statute limitation Pursuant to S.C. Code Ann 17-27-45 and failure to Respond to Court conditional order.

## Statement of THE Case

The Petitioner is Presently Confined in the Alvin S. Glen Detention Center Pursuant of order of Commitment of the Richland County Clerk of Court. The Petitioner was Indicted at the May term of the Court of General Session for Richland County for Burglary First (1<sup>st</sup>) Degree (91-GS-40-1936). He was represented by Gwendolyn Babb Esq. and Mary Beatrice Whisonant Mills Esq. on September 16, 1991 The Petitioner Plead Guilty to Second (2<sup>nd</sup>) Degree Burglary. He was sentence by The Honorable William Traxler to Confinement for a Period of fifteen (15) Years. The Petitioner did not appeal his conviction or sentence. The Petitioner has since been release from Prison having served his sentence for (91-GS-40-1936). The Petitioner is Presently a detainee at Alvin S. Glen Detention Center related to subsequent charges of which the conviction complained of in the Application serves as a first strike.

## Statement of the Case

The Petitioner was Indicted at the January 2000 term of the Grand Jury for Richland County for First (1<sup>st</sup>) Degree Burglary (2000-GS-40-47054), carrying a Pistol unlawfully (2000-GS-40-47055) Grand Larceny (2000-GS-40-47056). The Petitioner was represented by Jill Andrews Esq. He was Given a timely notice to seek Life without Parole, on September 13, 2000 The Petitioner proceeded to trial after which he was found Guilty as charged. The Petitioner was sentence by the Honorable Perry M. Buckner to Confinement for Life without the possibility of Parole for First (1<sup>st</sup>) Degree Burglary five (5) years concurrent for Grand Larceny and one (1) year concurrent for carrying a Pistol unlawfully.

A timely notice of Appeal was filed on petitioner behalf and an Appeal was perfected. The South Carolina Court of Appeal affirmed petitioner conviction and sentence state v. Williams Op No: 2002-104 (SC Ct App) February 13, 2002.

The Petitioner filed an Application for Post-Conviction relief on May 22, 2002. The respondent made its return on November 25, 2002. an evidentiary hearing into matter was convened on January 19, 2006 at Richland County Courthouse. following the evidentiary the Honorable G. Thomas Cooper Jr. Granted Post-conviction relief by written order dated March 21, 2006. The Petitioner collaterally attacked his prior Burglary Second (2<sup>nd</sup>) Conviction which the state sought to used under a sentence enhancement statute and the Court determined to be a prior Burglary second (2<sup>nd</sup>) Degree.

The state of South Carolina filed petition for writ of Certiorari September 5, 2006. The respondent filed return to petition for writ of Certiorari January 18, 2007. Petitioner writ of Certiorari was Denied December 5, 2007.

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## STANDARDS OF REVIEW

The proper standard of review of a post-conviction relief evidentiary hearing is whether "any evidence of probative value" exists to sustain the post-conviction relief judge's findings. Cherry v. State 300 SC 115, 386 S.E.2d 624 (1989). In a post-conviction relief proceeding, the applicant bears the burden of proving the allegation in their application. Butler v. State 286 SC 441, 334 S.E.2d 813 (1985).

In a post-conviction relief proceeding, the applicant bears the burden of proving the allegation in their application where ineffective assistance of counsel is alleged as a ground for relief. The applicant must prove that "counsel conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington 416 US 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions, in the exercise of reasonable professional judgment. Strickland. The applicant must overcome this presumption in order to receive relief. Cherry v. State.

A two pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient under this prong. Attorney performance is measured by its "reasonableness" "under professional norms".

Second, counsel deficient performance must have prejudiced the applicant such that "there is a reasonable probability that but for counsel's unprofessional errors the result of the proceeding would have been different" Cherry

## Arguments

The Petitioner submits that his Application for Post-Conviction Relief should not be summarily dismissed for failure to comply with the Filing Procedures of the uniform Post-Conviction Procedure Act SC Code Ann (17-27-10 to 160) since his prior conviction complained of "still persist" and he is still suffering effects from this conviction. In M<sup>c</sup>Duffie v State 277 S.E.2d 595 (SC 1981) our Supreme Court held that where Applicant for Post-Conviction alleges in his Application that results of his prior conviction still persist even though sentence has been fully served he is entitled to an evidentiary hearing to determine whether or not he has Prejudiced (by the use of a prior unconstitutional conviction).

## Subject matter Jurisdiction

The trial court lacks subject matter jurisdiction to convict a defendant unless there has been an indictment of the offense presented by a Grand Jury. State v. Williams 552 S.E.2d 54 (SC App 2003). The jurisdiction of a court over the subject matter of a proceeding is determined by the constitution laws of the state and is fundamental. Anderson v. Anderson 382 S.E.2d 897, 900 (1989). The Petitioner contends that he didn't waive presentment of the indictment for Burglary Indictment (91-GS-40-1936) for which he was convicted is a "sham legal processed indictment that did not confer subject matter jurisdiction upon the trial court to convict him, as a collateral matter the Petitioner submits that he is not challenging the courts grant of authority to hear and determine criminal cases under Art V. sec 11. That authority is rightfully granted by our constitution State v. Gentry 363 SC 93, 610 S.E.2d 494 (2005) and is not the issue here. Instead Petitioner is challenging the courts subject matter jurisdiction to try his case solely on the authority granted by Art V. sec 11. Independent of the constitutional requirement of Art I sec 11 as the Grand Jury's jurisdiction is co-extensive with the criminal jurisdiction of the court in which it is impaneled and for which it to make inquiry see e.g. State v. Hann 12 S.E.2d 720. State v. McClure 289 S.E. 158 (SC 1982) here it is evident that the prosecution failed to present the petitioner indictment to a lawfully constituted grand jury but instead denoted a "true bill" upon the indictment without presentment in accordance with sec 14-9-210 operates as a sham legal processed indictment that fail to confer subject matter jurisdiction upon trial court to convict him.

## Argument

### BREACHED Plea Agreement

The Petitioner assert Post-Conviction relief to his Prior conviction Burglary second (2<sup>nd</sup>) (91-GS-40-1926) September 16, 1991. The Petitioner Prior Conviction was used under the Enhancement Act SC Code 17-25-45 The Petitioner argues his Plea was Involuntary because it was Induced by Promise and the essence of the contract was not Honored nor Executed. The Petitioner counsel was Ineffective as to where counsel didn't withdraw his Plea of Guilty. Pursuant to SPROUS V. STATE 585 S.E. 2d 278. The Solicitor was bound to fulfill the Plea agreement that is subject to Contract principles when approved by the Court.

The Petitioner contend and will show the Petitioner enter South Carolina Department of Correction for Burglary first (1<sup>st</sup>) Degree. The Petitioner will show the Courts Commitment and Plea Agreement to Burglary second (2<sup>nd</sup>) Degree.

### Conclusion

Base on the above arguments. This Court should grant this Petitioner for writ of Certiorari and overrule the Per Court's order granting Dismissal and grant Petitioner an evidentiary hearing to serve the Interest of Justice.

Respectfully submitted

Christopher Williams  
Christopher Williams  
Alvin S. Glen Detention Center  
201 John W. Dial Dr.  
Columbia S.C. 29209

This 27 day  
of August 2012.

State of South Carolina  
In The Supreme Court

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Appeal From Richland County  
The Honorable James R. Barber III Circuit Court Judge

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Christopher Williams

Petitioner

v.

State of South Carolina

Respondent

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CERTIFICATE of SERVICE

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The undersigned Pro se Petitioner hereby certifies that a true copy of the Petition for Writ of Certiorari has been served upon opposing counsel Brian T. Petranak by delivering one (1) copy in an envelope addressed to: Attorney General office, State of South Carolina, Post office BOX 11549, Columbia S.C. 29211-1549 with postage paid. This 27 day of August 2012

*Christopher Williams*  
\_\_\_\_\_  
Christopher Williams

Sworn to before me this 21<sup>st</sup> day  
of August 2012.

*Vanessa Jones*  
\_\_\_\_\_  
Notary Public for South Carolina.  
My Commission Expires: 2016