

State Of South Carolina
In The Supreme Court

Appeal from Cherokee
County PCR Roger L
Couch Circuit Court Judge

Barry K. Runyans
petitioner

Case #

2014-000372

✓
State of South Carolina
Respondent

Reply TO SC
Court of Appeals

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JUN 30 2014

S.C. Supreme Court

Pro-SE Petition

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S.C. SUPREME COURT

Respectfully

Barry K Runyans 121063

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Question's Presented

- (1) Was Trial Counsel ineffective under 6th Amend for failure to make a motion to quash the direct indictment, which did not go in front of a Grand Jury?
- (2) The Solicitor's Conduct in Depriving the petitioner of Due Process under the Constitution. As a result the petitioner was deprived of his 6th, 14th, and 5th Amendment.
- (3) The trial court did not have subject matter jurisdiction to try, convict and sentence petitioner. Where in the Indictment that he was originally went to trial on, that did not include all of the elements of the offense that petitioner was convicted on. And Solicitor amended the Indictment on his own to include those elements, there by not informing the petitioner or his attorney. Nor was this issue never adressed by the PCR Judge in first order.

Table of Authority

Argument #1

Strickland v Washington, 466 U.S.
688, (1984)

Johnson v State, 325 S.C. 182, 480 SE
20733 (1997)

Rule 801(B)

Rule 806

Rule 801(d)(2)(e)(i) and (E)

Curtis v SC, 305 S.C. 225, 226, 407 SE2D
643, 644 (1991)

Argument #2

SC Code ANN § 17-27-80

Pearson v Harrison, Ga (SC) (2001) 9 Fed
App x 85

Pruitt v State (SC 1992) 310, SC 254, 423
SE 20 127

Johnson v Pinchak, 392 Fe 30, 551, 556
(30 Cir 2004)

Pyle v Kansas, 317 US 213 63 Sct 177,
87 LEd 212 (1942)

Mooney v Holohan, 294 US at 269, 79
Sct at 1177

Guilt or Innocence, 360 US at 269, 79
Sct. at 1177

Brady v Maryland, Supra

Argument # 3

State v Johnson, 33 SC. 459, 510 SE 20
423 (1999)

State v Tyndull, 518 SE 2d, 278 (CT, APP
(1999)

State v Gunn, 437 SE 2d 75 (1999)

Luke v State, 533 SE 2d 324, 325 (2000)

Granger v State 333 SE 2, 502 SE 2d
322 (1988)

SC Code ANNE 17-19-20 (1985)

State v Eraws, 322 SC 78, 470 SE 2d 97 (1996)

State v Bynes, 403 SE 2d (SE APP 1991)

Stipone v United States, 361 US 212, 215-216
80 SCT 270 (1960)

United States v Floresca, 38 F 3d 706,
712-13 4th Cir (1994) [EN Banc].

State v Guthrie, 572 SE 2d 309 SC APP (2002)

Law key 105 B

Key 159 (1) Admend

Key 159 (2)

§ 17-19-100

Hopkins v State 317 SC 745 SE 2d 389

Lynch, 344 SC. at 639, 545 SE 2d 840

(1999)

Weinhaber v State, 334 SC. 327, 573 SE
2d 840 (1999)

Brown 351, SC 522, 570 SE 2d
2002 SE 2d 840 (1999)

State v Fowler 359 SC 556,
191 SE 2d 520 (1972)

Standard of Review

A writ must show support of requested relief Hunter v State, 316 SC 105, 447 SE 2d 203 (1994). Although the allegations in the petition are treated as true, Tellman v Manning, 241 SC 221, 127 SE 2d 721 (1962). The petitioner is entitled to relief, Welch v McDassall, 246 SC 258, 143 S.E. 2d 455 (1965). Crosby v State, 241 SC 40, 126, SE 2d 843 (1962). Petitioner must present sufficient factual allegations to support the petition. Hare v State, 242 SC 328, 130 SE 2d 906 (1963). It must allege petitioner arguments and any constitutional claims that requires relief.

Argument #1

Was trial counsel ineffective under The Sixth Amend for failure to make a motion to quash the direct Indictment, which did not go in front of a Grand Jury.

Clearly The trial counsel rendered ineffective assistance of counsel for failure to make a motion to quash the Direct Amended Indictment

Citing Strickland v Washington, 466 US 668 (1984) Supra, The purpose of the effective assistance of counsel guarantee is simply to ensure that a Criminal Defendant, Mr Ronyans received a fair proceeding at trial. Id See Johnson v State, 325 SC 182, 480 SE 2d 733 (1997)

A reasonable probability is a probability to undermine the confidence in the outcome of proceeding.

Under the second prong Mr Ronyans must demonstrate that he was prejudiced by his counsel deficient performance to such a degree "That there is a reasonable probability that, but for counsel unprofessional errors, The result of the trial would have been clearly different" At 694,

Mr. Runyan contends that the Benchmark for Judging any claim of ineffectiveness is whether counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result. So counsel was ineffective for not asking to quash Indictment.

Counsel was also ineffective and established prejudicial error when counsel allowed the State without running objections to use the defendant's co-defendant Joe Ramsey to use as a witness against him.

See Rule 801 (B) Declarant "A declarant is a person who makes a statement; (C) hearsay is a statement other than one made by the declarant while testifying at the trial or hearing offered in evidence to prove the truth of the matter asserted. It was reversible error under Rule 806 attacking and supporting credibility of the hostile declarant. Clearly when a statement defined in Rule 801 (d)(2)(C) (D) or (E), has been admitted in evidence. The credibility of the declarant may be attacked and if attacked may be by any

evidence which would be admissible for those purposes if declarant had testified as a witness. It was plain error and counsel fell below an objective standard of reasonableness.

Because there was no way that counsel should not have attacked the credibility against MR Runyan's co-defendant.

The burden of proof has been lifted and the petitioner has proved these allegations of his successive application Curtis v SC, 305 SC 225, 226, 407 SE 2d 643, 644 (1991)

However reviewing counsel's performance "a strong presumption [exists] that counsel's conduct falls within the wide range of reasonable professional assistance, Fel at 689 in this case it was not within the wide range of reasonable professional assistance.

Clearly Counsel fell below an objective standard of reasonableness on the direct indictment which was actually awarded and the defendant was never put on notice prior to trial.

ARGUMENT #2

The Solicitor's conduct in depriving the petitioner of Due Process under the constitution, as a result the petitioner was deprived of His 6th 14 and 5th Amendment.

(1) petitioner was deprived of a fair Grand Jury finding of True bill. (2) petitioner and his counsel was not given proper notice of the charge he would face at trial. (3) petitioner and counsel were deprived of discovery of the solicitor's Agreement with the petitioner alleged Co defendant.

The error of which the petitioner complains beg at ROA page 510 L6 - ROA page 537 L1-8 The record reveals the conduct of the solicitor's was violated of due-process and The petitioner could not as a matter of law receive a fair trial. Also the solicitor's Agreement with the petitioner's alleged Co defendant. violated The Brady disclosure rule and as such demands A new trial were such conduct would be exposed.

Petitioner raised this issue at his first post conviction relief and The Judge see App. pg 501-504 failure of the PCR court Judge to Address this issue in his order is no fault of petitioner's

Sc. Code AN § 17-27-80 Lower courts is required to make sure that the lower courts final judgment reflects a ruling on the issues and if the final judgment does not contain such a ruling. But in the specific context of PCR. The South Carolina Supreme Court has consistently vacated and remanded PCR judgment that do not contain findings on issues presented Pearson v Harrison, CA [SC 2001 9 Fed Appx 85

An order denying a defendant's request PCR would be remanded for rehearing where it failed to directly address the defendant's claims that his trial counsel was ineffective; not only does such failure deprive the parties of rulings on the issue raised, but it makes by the appellate court more difficult, and thus counsel preparing orders should be meticulous in doing so and opposing counsel have the obligation to review the judgment if the order fails to set forth the required findings and reasons Proff v State (SC 1992) 310 S.C. 254, 423 SE 2d 127.

Petitioner properly raised the claim in state PCR court declined to address it Johnson v Pinchak 392 F3d 551, 556 (3rd Cir 2004)

Concerning this issue, Petitioner testified at the PCR hearing that his CoDefendant, Timothy Joe Ramsey, had received a time cut for his testimony against petitioner, App p 501, 11. 1-7. Petitioner testified that recently prior to the PCR hearing he learned through his aunt, who is Timothy Joe Ramsey's mother, that Timothy Joe Ramsey's fifteen year violent sentence was reduced to a fifteen year non-violent with parole following petitioner's trial. App. p 502 11-2-19 petitioner entered into evidence at PCR hearing documentation showing the change in Timothy Joe Ramsey's sentence following his trial. App. p 503, 11. 8-25 p 504, 11 1-19. Timothy Joe Ramsey testified at trial that he was not offered any deal for his testimony. App. p 501, 11. 8-12 that testimony was perjury.

It was well settled that deliberate deception of a court and juror by the presentation of known false evidence cannot be reconciled with the rudimentary demands of justice Pyle v Kansas, 317 U.S. 213, 63 S.Ct 177, 87 L.Ed 214 (1942) Mooney v Holohan, 294 U.S. 103, 112, 55 S.Ct. 340, 79 L.Ed 791 (1935). Because petitioner properly raised the claim in PCR court thought court decline to address it Johnson v Pinchak 392 F3d 551, 556 (3d Cir 2004).

The principle that the state may not knowingly use false evidence applies where such evidence goes to the credibility of a witness, since "The jury's estimate of the truthfulness and reliability of a given witness may well be determinative of guilt or innocence" at 360, U.S. at 369, 79 S.Ct at 1177.

In the instant case, the solicitor allowing the perjured testimony to go uncorrected was prejudicial to the petitioner in that evidence of any understanding of agreement for leniency was relevant to Timothy Joe Ramsey's credibility and the jury was entitled to know it. The failure of the solicitor to produce this information through Brady material was prejudicial because the information was material, plus the solicitor had information in its possession and could have used it to impeach the witness's credibility. Timothy Joe Ramsey's testimony was extremely important since he was the only witness who could link petitioner to the burglary in question. The other evidence consisted of inconsistent statements signed by petitioner and testimony by detective involved in the investigation of the case. Petitioner believed that the jury's verdict might have been different had it known the full extent of Ramsey's motivation to testify against the petitioner.

Timothy Joe Ramsey has been reviewed by the parole board within the South Carolina Department of Corrections, something that would not have happened if he was serving a 85% non-paroleable sentence. Failure of the solicitor to disclose information concerning any agreement made violated the doctri~~ness~~ness as set forth in Bandy v Maryland, Supra

ARGUMENT #3

The TRIAL court did not have subject matter Jurisdiction to try an convicted AN sentence petitioner. Where in the Indictments that he was originally taken to trial on that did not include all of the elements of the offence that petitioner was convicted on, AND Solicitor amended the indictment on his own to include those Elements. There by not informing petitioner nor his Attorney. Nor was this issue Never addressed By the PCR court Judge in The first PCR,

The petitioner was taken to court on Indictments # 01-65-11-1001 for Grand Larceny. And Indictment # 01-65-11-1000 Burglary 2nd. When petitioner was at trial he was served Direct Indictment 02-65-11-0260 for Grand larceny, And Direct Indictment 02-65-11-0261 Burglary First Degree.

There was no way that petitioner was prepared to fight an Indictment that he did not have no Idea about, And that the court did not have Jurisdiction over the charge.

The conduct by the solicitor's office was outrageous in that the solicitor usurped the functions of the Grand Jurors by Amending the indictment and including a different Indictment number, and the elements which were earlier left out. There by Giving the court Jurisdiction over the charge.

The record before the court reveals a grave miscarriage of justice and prosecutor misconduct. That indictments were issued in this case even though they did not support a charge. Further, the charge of Burglary did not even specify any elements to even qualify for a burglary First charge. The critical facts being, the petitioner nor his Attorney Given Notice.

That indictments included particular elements that were not found in the original and not given to petitioner's Counsel RAFT, page 512, 41-3.

The constitutional violation which prejudice the petitioner was petitioner nor his Attorney had copies of which to prepare for trial and which the state were to proceed RQA PAGE 511, 572-2HP L 1-3 Thus by not serving the petitioner nor counsel, The court was without subject matter Jurisdiction. Also, supports petitioner's argument of ineffective assistance of Counsel RQA page 567 7-14. The Allegation are proven by former Solicitor Robert Bruce testimony at RQA p 537. L 11 page 559, L 1-25.

General in criminal case, The trial court acquires subject matter jurisdiction by way of a valid indictment, and a court lacks subject matter Jurisdiction to convict and sentence a defendant for an offense for which he was not properly indicted. STATE v Johnson, 33 SC. 459, 570 SE.2d 423 (1999) The scope of Jurisdiction conferred by indictment is limited to the charged offense and any lesser included offense. STATE v GUNN, 437 SE. 2d 75 (1999); STATE v Tundell, 518 SE. 2d 278 (CT APP, 1999)

An indictment sufficiently charge a particular offense when "it apprises the defendant of the elements of the offense intended to be

Charged and informed the defendant of the circum stances he must be prepared to defend. LUKE v STATE 533 SE 2d 324, 325 (2000) citing Branger v State 333 SC 2, 507 SE2d 322 (1988) (Emphasis added). An indictment must: (1) have all elements of the charge of whether it is a statutory or common law offense; (2) re cite the factual circum stances under which the offense occurred. See SC Code Ann, § 17-9-20 (1985); STATE v EVANS, 322 SC 48, 470 SE 2d 97 (1996).

The State of South Carolina, through its statutes of law and rules of criminal procedure. HAS guaranteed an accused the right to be tried by a Grand Jury indicted and such is required to contain all elements of the charged offense, and fairly inform defendant of the charge against which he must defend and enable him to plead double jeopardy as to bar to further prosecution. USCA Court 6th Amend STATE v BYRNES, SE 2d 403 p 126 (SC App 1991) In the instant case, the petitioner and counsel were alerted at trial and as surprised at the time what they were to face. only the Grand jury may broaden or alter the charge in the indictments. Stovner v United States, 361 US 212, 215-216 80 S Ct 220 (1960)

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Thus, a constructive Amendment violation, violates the 5th amendment right to be indicted by a grand Jury, is ERROR per-se, and must be corrected on appeal even when the defendant did not preserve the issue by objection. United States v Florese, 38 F3d 706, 712-13 (4th Cir 1994) (EN BANC). Counsel at PCR Hearing R.O.A. page 512, L1-3 states that she never saw the Documents discrepancy here is more than a simple error unrelated to the substance of the charge. This is improper conduct by appointed court counsel officials and should be taking Judicial Notice of by this Honorable court

Because Trial court erred in allowing the State to amend the defendants Burglary Indictment at trial see State v Guthrie 572 S.E2d 309 S.Ct App 2002]. Law Key 105(B). The act of a court with respect to a matter as to which it has no jurisdiction are void Key 159(2) Trial court erred in allowing the State to amend defendants Indictment at trial 159 A Indictment may be Amended provided such Amendment does not change the offense charged

law key 159 [1] Amend. To An Indictment
which charges an offence to one with
increased punishment Deprives the
circuit court of Subject matter Jurisdiction.
Just as this case at bar now, An Indictment
may be amended provided such amendment
Does not change the nature of the offence
charged. State v Lynch, 344 SC 635, 545 S.E.
2d 511 (2001) see also Granger v State, 333
SC 20, 507 S.E.2d 322 (1998) That under § 17-19-100
an Indictment may be amended at trial only
if Amendment does not change the nature of
offence charged. For example an amended
Indictment which changes an offence to
one with increasing punishment deprives the
court of subject matter Jurisdiction. Hapkins
v State, 317 SC 7, 451 S.E.2d 389 (1994) State
v Riddle 301 SC 211, 391 S.E.2d 253 (1990) How-
ever an amendment may deprive the
circuit court of Jurisdiction even if it does
not change the penalty, see Lynch, 344
SC at 639, 545 S.E.2d at 514; Weinhaber v State
334 SC 327, 513, S.E.2d 840 (1999) Brewer 357
SC 522, 570 S.E.2d 220 (Ct App (1998)) Holding
Issues related to Subject matter Jurisdiction

May be raised at Any Time STATE V
Funderburk, 259 SC 256, 191 SE 2d
520 (1972).

Conclusion

The Petitioner submits that he is being held upon an unlawful conviction and sentence which is outside the bounds of the elements for which he was charged and indicted for by a Grand Jury.

Such circumstances, in the least, requires a correction which would be consistent with both Due-Process and Equal Protection of the law.

Sworn and
Subscribed Before
me this 20th day
of June, 2014

NOT: Harri L. Lewis
EXP: Aug. 6, 2017

Respectfully Barry K. Ruyans
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State of South Carolina
IN THE Supreme Court

Appeal from Cherokee
County PCR Roger L
Couch Circuit Court Judge

Barry K Runyans
↓
STATE of South Carolina

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Respectfully *Barry K Runyans*

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