

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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JUL 03 2014

APPEAL FROM NEWBERRY COUNTY
Court of General Sessions

SC Court of Appeals

Frank R. Addy, Jr., Chief Circuit Court Judge

Appellate Case No. 2013-000196

The State of South Carolina, Respondent.

v.

James E. Wise, #250411, Appellant.

PETITION FOR REHEARING EN BANC SCACR Rule 219(a)

The Appellant petitions this Court for Petition for a rehearing En Banc pursuant to SCACR Rule 219(a).

(1.) when consideration by the full court is necessary to secure or maintain uniformity of its decisions, or

(2.) when the proceeding involves a question of exceptional importance.

Attorney General Alan M. Wilson
and Senior Assistant Deputy Attorney
Salley W. Elliott,
for Respondents.

Respectfully Submitted,
/s/ James E. Wise
James E. Wise, #250411
Appellant prose

ISSUES ON REHEARING EN BANC

1. Whether the Court erred by denying Appellant's Motion to arrest Judgment due to the sentence was in violation of Double Jeopardy, and the United States Constitution Article I, Section 12 of the South Carolina Constitution?
2. Whether the Court erred by denying Appellant's Motion to arrest Judgment due to the Court of General Sessions did not have Jurisdiction to impose Sentence to begin with?
3. Whether the Court erred by denying Appellant's Motion to arrest Judgment which was an Abuse of discretion, a denial of Due Process & Equal Protection which resulted in an Error of law which prejudiced Appellant because he is being held in Custody unlawfully?

FACTS

A 'motion for arrest of judgment' is a postverdict motion made to prevent the entry of a judgment where the charging document is insufficient or the court lacked jurisdiction to try the matter. State v. Taylor, 348 S.C. 152, 160, 558 S.E. 2d 917, 920-21 (Ct. App. 2001) (cert. granted May 30, 2002, [aff'd as mod.], 355 S.C. 392, 585 S.E. 2d 303 (2003) (finding state had not preserved this argument on appeal). A defendant may make a motion for arrest of judgment alleging an insufficiency of the indictment. Id., ; see also State v. Brown, 201 S.C. 417, 23 S.E. 2d 381 (1942) (holding motion for arrest of judgment should have been granted where trial court did not have jurisdiction to impose the sentence); State v. Jeter, 47 S.C. 2, 24 S.E. 889 (1896), (concluding it was error for trial court to deny motion for arrest of judgment where indictment was insufficient). However, the defendant may not move for a verdict in arrest of judgment based on the insufficiency of the evidence to support the charges in the indictment. Taylor, 348 S.C. at 160, 558 S.E. 2d at 921; see also State v. Miller, 287 S.C. 280, 286, 337 S.E. 2d 883, 886-7 (1985) (Ness, J., concurring in part and dissenting in part) (stating a defendant "may not move for verdict in arrest of judgment based on the sufficiency of the evidence to sustain the allegations in the indictment.") (emphasis in original), (citation omitted.) "[W]hen ruling on a motion in arrest of judgment, the trial court is limited to rectifying trial errors, and cannot make a redetermination of the credibility and weight of the evidence." 21 Am. Jur. 2d Criminal Law § 785 (1998); see also: Taylor, 348 S.C. at 160, 558 S.E. 2d at 921.

The Appellant's challenge is to the sufficiency of the Burglary 1st

indictment and the Circuit Court's jurisdiction to impose a life sentence for charges that had already been dealt with in Magistrate's Court after Appellant entered two (2) Pleas of Guilt. 1.) in exchange for the ABHAN the guilty plea of simple assault; and 2.) in exchange for Burglary 1st degree the guilty plea of malicious injury to the kicking in of the door/real property. The Solicitor that was handling the case at that time had moved on and the Appellant was thereafter indicted for a single indictment of 1st degree burglary, which constitutes Double Jeopardy because the charges had already been pled to in Magistrate's Court; therefore the General Sessions Court would not have jurisdiction to impose a sentence again, and the indictment in question is insufficient. That's totally shocking to the universal sense of Justice (Butler v. State, And 397 S.E. 2d 87, 88.).

The Appellant has shown herein that arrest of judgment is proper; furthermore, the Constitution of the United States and South Carolina State and Federal law supports Appellant's arguments. It's clear Appellant is challenging the jurisdiction and the insufficiency of the indictment in question; a miscarriage of justice of national importance is the issue here in question. See: Record on Appeal p. 3-10 State v. Brown, 23 S.E. 2d 301 (1942).

ARGUMENT

The Appellant argued in the Arrest of Judgment that he is being held in violation of the United States Constitution under the 5th-Amendment Double Jeopardy clause as well as the South Carolina Constitution Article I, Section 12; therefore the court abused its discretion, which amounted to an error of law and a violation of the treaties of the United States as well as South Carolina, and the court should have granted Arrest of Judgment in this instant matter, and ORDERED the release of Appellant.

The Appellant argued on Notice of Motion and Motion to Arrest of Judgment. See: (Record on Appeal p. 3-10), State v. Brown, 23 S.E. 2d 301 (1942).

The General Sessions Court had Jurisdiction to ARREST OF THE JUDGMENT, but was without JURISDICTION to impose a sentence that the Appellant had already disposed of in Magistrate's Court to take a plea to two lesser included offenses, in exchange of the greater offenses being Nolle Prosed; therefore the Arrest of the Judgment was proper, and the denial is an abuse of discretion as well as the sentence being in violation of the United States Constitution under 5th Amendment (Double Jeopardy) and the South Carolina Constitution Article I, Section 12; the denial amounted to an error of law.

See: United States Constitution 5th Amendment

See: South Carolina Constitution Article I, Section 12

See: Brown v. Ohio, 432 U.S. 161 (1977)

See: Yeager v. U.S., 129 S. Ct. 2360 (2009)

See: Benton v. M.D., 395 U.S. 784 (1969)

See: Riley v. South Carolina, 82 F. Supp. 2d 474; 225 F. 3d 655

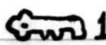
See: State v. Lawson, 305 S.E. 2d 249 (S.C. 1983)


See: State v. Kimbrough, 46 S.E. 2d 273 (S.C. 1943)

When the Court reviews an Appeal such as this one Abuse of Discretion comes into play and Appeal and Error as well as Prejudice to the moving party which resulted in an error of the law as well as a violation of the United States Constitution's 5th Amendment and the South Carolina Constitution, Article I, Section 12; therefore this Court does have Jurisdiction to Grant this Appeal and ORDER the release of the Appellant as a matter of law, because to hold him would violate clearly established State and Federal Law.

See: Abate v. Abate, 660 S.E. 2d 515, 377 S.C. 548 (App. 2008)

See: Bettis v. Busbee, 283 S.C. 502, 323 S.E. 2d 536 (Ct. App. 1984)

See: Criminal Law  1

See: Appeal and Error  946

The Appellant has shown reasons for the Grant of relief requested in the Conclusion of this Appeal and respectfully asks the Court to take serious consideration of the argument into dispute; furthermore, the Respondents have failed to argue anything, therefore they have abandoned any such rights. Furthermore, it is a miscarriage of justice. See: Butler v. State, 397 S.E. 2d 87, 88 (1990); Matthews v. State, 122 S. Ct. 1928, 535 U.S. 1062, 152 L. Ed 2d 834.

CONCLUSION

Appellant respectfully asks the Court En Banc to grant Rehearing Petition and any other relief this Court deems just and proper.

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Frank R. Addy Jr., Chief Circuit Court Judge

APPELLATE CASE No. 2013-000196

The State of South Carolina, Respondent.

v.

James E. Wise, #250411, Appellant.

CERTIFICATE OF SERVICE

I do hereby certify that I have sent a true and correct copy to the below named party on This 30th Day of June, 2014, of the following: Petition for rehearing En Banc, certificate of service; and a cover letter asking S.C. Court of appeals clerk to file. Mailed by United States Postal Mail, postage prepaid.

Attorney General Office
Attn: Ms. Salley W. Elliott, Esq.
P.O. Box 11549
Columbia, S.C. 29211

Respectfully Submitted,
/s/ James E. Wise
James E. Wise, #250411
Appellant prose

James E. Wise, #250411

Lieber Corr. Inst. E-B-49

P.O. Box 205

Ridgeville, S.C. 29472

June 24, 2014

The S.C. Court of Appeals

Attn: Ms. V. Claire Allen, Deputy Clerk

P.O. Box 11629

Columbia, S.C. 29211

Re: Appellate Case No. 2013-000196 / Filing of Petition for rehearing En Banc

Dear Ms. Allen,

Please find hereto attached a copy of my filing of a rehearing en banc to be filed on my behalf. I thank you for your time and help with this matter.

Respectfully Submitted,

/s/ James E. Wise

James E. Wise, #250411

CC. File

Salley W. Elliott, Esq.

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

James E. Wise, Appellant.

Appellate Case No. 2013-000196

Appeal From Newberry County
Frank R. Addy, Jr., Circuit Court Judge

Unpublished Opinion No. 2014-UP-224
Heard April 1, 2014 – Filed June 18, 2014

AFFIRMED

James E. Wise, pro se.

Attorney General Alan McCrory Wilson and Senior
Assistant Deputy Attorney General Salley W. Elliott,
both of Columbia, for Respondent.

PER CURIAM: Affirmed pursuant to Rule 220(b), SCACR, and the following
authorities: Rule 29(a), SCR CrimP ("Except for motions for new trials based on
after-discovered evidence, post-trial motions shall be made within ten (10) days
after the imposition of the sentence."); *State v. Taylor*, 348 S.C. 152, 160-61, 558
S.E.2d 917, 921 (Ct. App. 2001) (noting a motion for a verdict in arrest of

judgment is a post-trial motion), *aff'd*, 355 S.C. 392, 585 S.E.2d 303 (2003); *State v. Campbell*, 376 S.C. 212, 215, 656 S.E.2d 371, 373 (2008) ("[A] trial judge is without jurisdiction to consider a criminal matter once the term of court during which judgment was entered expires."); *id.* at 216, 656 S.E.2d at 373 ("[I]f [a] motion is not made within ten days of sentencing, the court will be without jurisdiction to entertain the motion.").

AFFIRMED.¹

WILLIAMS, KONDUROS, and LOCKEMY, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.