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JUL 10 2014

**S.C. SUPREME COURT**

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Certiorari to Greenville County  
Edward W. Miller, Circuit Court Judge

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WILLIAM JERMAINE HENRY,

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT,

**RECEIVED**

JUL 10 2014

**S.C. SUPREME COURT**

APPELLATE CASE NO. 2013 - 002762

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ISSUE PRESENTED

The Petitioner is entitled to a Legal Grand Jury Under Gross Miscarriage of Justice Standard and denial of Due Process of Law under the 14th Amendment of the United States Constitution.

STATEMENT

The Greenville County Grand Jury indicted William Jermaine Henry on the charges of murder, kidnapping, assault and battery with intent to kill [ABWIK] and armed robbery [AR].

On February 2 - 4, 2009, Henry proceeded to trial before the Honorable G. Edward Welmaker and a jury. The jury found Henry guilty of murder, but returned verdicts of not guilty of kidnapping, ABWIK, and AR. The court of Appeals affirmed Henry's conviction and sentence on June 27, 2011 State V. Henry No. 2011-up-333. On June 29, 2012 Henry filed an application for Post-Conviction-Relief (PCR). On November 26, 2013, Judge Miller filed an order denying Henry's PCR application and dismissing it with Prejudice. This petition follows.

## ARGUMENT

In November 2006, the Petitioner was indicted before a Court of General Sessions when the Grand Jury convened a true bill indictment. The petitioner was denied Due Process of Law and Equal Protection of Law there was "NO" Legal constituted Grand Jury returned a true billed indictment when the Court of General Sessions convened. A defendant has a constitution right to demand that a grand jury, which is properly established and constituted under the law, consider the criminal allegations against him. S.C. Const. Art. I & II; S.C. Const. Art. V, & 22. One who demands and is refused the right to be tried for a crime, charged against him only upon an indictment presented by a legal Grand Jury in instances where such indictment is required, may thereafter justly take the position that he has been deprived of Life, Liberty, or Property without Due Process of Law in violation of the South Carolina Constitution [Evans V. State, 611 S.E. 2d 510]. The South Carolina Constitution Art. I, II mandates is relevant part: No person may be held to answer for any crime the Jurisdiction over which is not within the Magistrate Court, unless on a Presentment or Indictment to a grand jury of the county where the crime has been committed.... while recognizing there were indictments returned by a grand jury, we are forced to seek the true meaning of any section of the Constitution, or any of the language there of, which may in anyway pertain to the subject under consideration to be examined. In this case the indictment to be performed by a grand jury, when utilizing divine wisdom, we know that the provisions of the Constitution shall be taken, deemed and construed to be mandatory and prohibitory, and not merely directory. Therefore, applying the literal construction of this section manifest the knowledge that this grand jury must be legally constituted under the law. Moreover, being that South Carolina has chosen to afford its citizens the Protection of an Indictment Procedure, the Equal Protection Clause must be satisfied and such a determination can be made only by looking to laws of the State that governs such Procedure [U.S. Exrel. Curtis, 463 F.2 84](1972). Therefore, reviewing the construction of S.C. code Ann & 14-9-170, mandate the convening of the Grand Jury in relevant part: The Grand Jury as drawn in accordance with the law for service upon the Court of General Sessions in each of the counties shall constitute the grand jury for the county and shall meet with the county court of each of it's terms.... The General Assembly has also enacted S.C. code Ann. & 14-5-790. For the terms of Court for Greenville County Court, which is as follows: shall be held at Greenville on the second Monday in January for 2 weeks, the second Monday in March for 2 weeks, the first Monday in May for 2 weeks, the last Monday in August for 2 weeks, the fourth Monday in October for 2 weeks, and the first Monday in December for one week.

Furthermore, any reliance on S.C. Constitution Art. V & II alone would be misplaced. Due to the fact Art. I & II and Art. V & II operates together and as a whole to ensure that the Court of General Sessions obtains complete Jurisdiction over the cause and the person in order to adjudicate the matter [State V. Hann, 12 S.E. 2d 770]. Nor any reliance on construction of Art. V & 4 because this power is only granted to the Chief of Justice when there has not been a term set by statutory Law. The Cardinal Rule of Statutory Construction is to ascertain and effectuate the legislative intent whenever possible. [State V. Fowler, 470 S.E. 2d 393] and [City of Camden V. Brassell, 486 S.E. 2d 492]. All rules of statutory construction are subservient to the one that legislative intent "must" prevail if it can be reasonably discovered in the language used, and that language "must" be construed, in the light of the independent purpose of the statute [State V. Hudson, 519 S.E. 2d 577]. The determination of legislative intent is a matter of law. [City of Sumter V. One(1) 1992 Blue Mazda Truck, 498 S.E. 2d 894] Courts should consider not merely the language of the particular clause being construed, but the word and its meaning in conjunction with the purpose of the whole statute and the policy of the law. [Whitner V. State, 492 S.E. 2d 777]. When the terms of a statute are clear, the court must apply those terms according to their literal meaning [Holley V. Mount Vernon Mills Inc., 440 S.E. 2d 373]. The statute as a Whole must receive practical, reasonable, and fair interpretation consistent with the purpose, design, and policy of lawmakers, see [Brassell, 486 S.E. 2d 495].

CONCLUSION

Petitioner respectfully requests this court grant his petition for Writ of Certiorari and order full briefing on the issue presented.

Respectfully Submitted,

s. / William Hung

This 7<sup>th</sup> day of July 2014.