

The State of South Carolina
In the Court of Appeals
(In the Supreme Court)

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AUG 28 2014

SC Court of Appeals

Appeal from Hampton County
Court of General Sessions
(Gerald C. Smoak Circuit Court Judge)

(CASE NO: 99-GS-25-170, 304
99-GS-03-183, 184, 185, 186)

The State,

Respondent.

V.

Paul Brown,

Appellant.

Notice of Appeal

Paul Brown Appeals his conviction and sentence in this case. The sentence was imposed by the Honorable Gerald C. Smoak on December 6th, 8th, 1999. This appeal is taken from the order of the Honorable Perry M. Buckner April 23, 2014 which denied Appellant a new trial, from an order deciding a post-trial motion under Rule 29(B) SC R Crim. P. Appellant received written notice of entry of this order on May 21, 2014.

MAY 21, 2014

Attorney of record
Mr. Ashleigh R. Wilson
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P.O. Box 11549
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Paul Brown
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I.

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Arguments

ISSUE I.

Petitioner Argues that he received ineffective Assistance of trial Counsel.

ISSUE II.

Petitioner Argues that his guilty pleas was not voluntary because he was not informed of and did not understand every element of the offense and because the factual basis was insufficient to prove every element of the offenses.

ISSUE III.

Petitioner Argues this post-trial motion for Re-sentencing should be granted based on a claim of Prosecutorial misconduct.

ISSUE IV.

Petitioner Argues the court erred in not sua sponte, issuing an order to vacate the conviction and remand for Re-sentencing to correct a fundamental miscarriage of Justice based on the record presented.

Statement of Case

On May 1999 and August 1999 Petitioner was indicted by the Hampton County grand jury for Criminal Sexual Conduct (CSC), first-degree (99-GS-25-170) and Burglary first-degree, (99-GS-25-304). Steve Plexico, esquire represented Petitioner. The state was represented by Ken Anderson. Petitioner pled guilty before the Honorable Gerald C. Smoak on December 6th, 1999 and received a sentence of thirty (30) years, concurrent on both counts. Subsequently, Petitioner was also indicted at the September, 1999 term of the grand jury of Allendale County for Attempted (CSC), Second degree, (99-GS-03-183) two counts of Kidnapping, (99-GS-03-184, 185) and Burglary first-degree, (99-GS-03-186). Petitioner waived appearance in Allendale County and again appeared before Judge Smoak on December 8th, 1999, pled guilty and received sentences of thirty (30) years for burglary, first, twenty (20) years for Attempted (CSC), second, and two ten (10) year sentences for both counts of Kidnapping. These are all concurrent with each other with full credit for all time Petitioner remained confined since April 27, 1999. Petitioner did not appeal his guilty pleas or sentences.

On June 6, 2012 Petitioner filed with the Hampton County Clerk of Court a "Petition for Re-Sentencing", pursuant to SCR crim. P. 29 (B), and "Memorandum in Support of Petition" to be handled in the court of General Sessions, based on, "After-discovered evidence", (2012-CP-25-0201) Alleging:

1. "The State violated Applicant's rights guaranteed by the Sixth, Fifth, and Fourteenth Amendments of the U.S. Constitution and South Carolina Law."

2. "Petitioner's Case Presents An Applied Challenge. Petitioner Challenges the guidelines enhancements that, based on fact-finding by A Judge Alone, raised his sentence above the range legally mandated for sentence enhancement purposes, determined by reference to the jury verdict."
3. "That the statute for Burglary, first degree under 16-11-311(A) (2) as applied to him violated his rights protected by the ex-post-facto clause prohibited by the United States and the South Carolina Constitution."

On March 13, 2014 Mr. Ashleigh R. Wilson, Assistant Attorney from the Attorney General's office submitted (1) A motion to dismiss S.C. crim.P. 29 (B) Petition, and (2) An order granting the state's motion to dismiss for the Judge's approval and signature. On April 23, 2014 Petitioner submitted and filed a motion to "Amend" his Petition for Re-Sentencing pursuant to Rule 59(E) S.C.R.P.; and Rule 29 (B), S.C.R. crim.P.; based on "After-discovered evidence", the following grounds for relief:

1. Ineffective Assistance of trial counsel
2. Involuntary Guilty pleas
3. Prosecutorial misconduct

On April 23, 2014 in Case No: (2012-CP-25-0201) the Honorable Judge Perry M. Buckner granted the state's motion to dismiss Petitioner's "Petition for Re-Sentencing" Petitioner now Appeals the order of the Judge which denied Appellant's motion for a new trial under Rule 29 (B) S.C.R. crim.P.

Pursuant to Plain error review, State and Federal Appellate courts may only correct error not raised at trial if there is: (1) error, (2) that is plain, and (3) that effects substantial rights, in which case Appellate court may exercise its discretion to notice error, but only if (4) error seriously affects fairness, integrity or public reputation of judicial proceedings. Fed. Rules Cr. Proc. Rule 52(B) 18 U.S.C. See Also Rule 29(B) S.C.R. Crim.P. based on "after-discovered evidence," or if Petitioner can show that a fundamental miscarriage of Justice would result from failure to hold such a hearing. See: Jones v. United States, 527 U.S. 725, 731 (1993); United States v. Cotton, 535 U.S. 625, 631-632 (2002); Johnson v. United States, 520 U.S. 461, 467 (1997); And United States v. Young, 470 U.S. 1, 15 (1985).

FACTS

In 1999 Petitioner pled guilty on December 6th, and 8th, and was sentenced to thirty (30) years concurrent on all counts by the Judge based on the preponderance of the evidence. Moreover, the use of the Petitioner's earlier prior convictions used for sentence enhancement purposes violated the Sixth and Fourteenth Amendments of the United States Constitution, as well as state law. Furthermore, the trial court's failure to warn Petitioner, as Rule 11(c)(3)(B) instructs, that he could not withdraw his guilty plea if the court did not accept the state's recommendations requires reversal. Thus, under the federal plain error rule, Fed. R. Crim. P. 52(B), a trial error that is raised for the first time on appeal is not to

Be corrected unless the Petitioner's Shows, that the error affected his "substantial rights," And required correction in the interest of Justice.

Arguments

ISSUE I.

Petitioner Argues that he received ineffective Assistance of trial Counsel.

Petitioner was denied effective Assistance of trial Counsel, when Counsel Abandoned meritorious objections to the guidelines calculations in favor of An Alternative calculation of the guidelines range. Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.ed. 2d. 674 (1984). Petitioner also contends that the Sentence-Appeal waiver in his Plea Agreement should not be enforced And that his Sentence is unreasonable because the trial court Applied A presumption of reasonableness to A within-guideline sentence And failed to properly consider relevant mitigating factors. when there has been A guilty plea, Petitioner must prove that Counsel's representation was below the standard of reasonableness And that, but for Counsel's unProfessional errors, there is A reasonable Probability he would not have Pled guilty And would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 99 L.ed. 2d 203 (1985).

ISSUE II.

Petitioner Argues that his guilty pleas was not voluntary because he WAS not informed of And did not understand every element of the offense And because the FACTUAL BASIS WAS INSUFFICIENT to prove every element of the offenses.

Petitioner Argues that his guilty pleas in both (Hampton And Allendale) WAS not voluntary because he WAS not informed of And did not understand every element of the offense And because the FACTUAL BASIS WAS INSUFFICIENT to prove every element of the offense. Petitioner did not RAISE this issue At trial or on direct Appeal, However, this review is for Plain error. see Puckett v. United States, 129 S. Ct. 1423, 1429 (2009). To be knowing And voluntary, A plea must be entered with A full understanding of the charges And the consequences of the Plea. Boykin v. ALABAMA, 395 U.S. 238, 89 S. Ct. 1709, 23 L. ed. 2d. 274 (1969); (Tr. p. 1 lines 39-15); (Tr. p. 20 lines 1-9); (Tr. p. 21 lines 7-17); (Tr. p. 22 lines 15-19); (Tr. p. 33-34). In determining guilty Plea issues, it is proper to consider the guilty plea transcripts, AS well AS evidence At the hearing.

Petitioner WAS not informed of And did not understand every element regarding his prior Burglaries under 16-11-311(A)(2), And thus, the Absence of A beyond-A-REASONABLE-doubt finding will require reduction of the enhanced sentence. Apprendi v. New Jersey, 530 U.S. 466 (2000); United States v. Cotton, 535 U.S. 625, 631-632 (2002); Johnson v. United States, 520 U.S. 461, 467 (1997); United States v.

Doe, (2d Cir. 2002); United States v. Yu, 285 F.3d.192 (2d Cir. 2002). The court did not inform Petitioner of this element of the offense. See United States v. Johnson, 381 F.3d. 506, 508 (5th Cir. 2004); See also United States v. Hooker, 997 F.2d. 67, 74 (5th Cir. 1993).

By not informing Petitioner of this element of the offense, the court erred by failing to inform Petitioner of, and ensuring that he understood, the nature of the charge, in violation of Federal Rule of Criminal Procedure 11(B)(1)(G); Additionally, the court erred in accepting Petitioner's guilty plea because there was an insufficient factual basis to support Petitioner's guilty plea as to this element of the offense. See Fed. R. Crim. P. 11(B)(3); United States v. Adams, 961 F.2d. 505, 508 (5th Cir. 1992). "The factual basis cannot be implied from the fact that the defendant entered a plea, but must appear on the face of the record and must be precise enough and sufficiently specific to demonstrate that the accused committed the charged criminal offense." (Quoting United States v. Johnson, 546 F.2d 1225, 1226 (5th Cir. 1977)). IN light of the record as a whole and Johnson, and Hooker, these errors are clear or obvious, further, these errors affected Petitioner's substantial rights. See United States v. Dominguez Benitez, 542 U.S. 74, 80-83 (2004); and there is a reasonable probability that, but for the error, he would not have entered the plea. The prejudice to the Petitioner in this case is clear... That the error must have been (1) prejudicial, and; (2) it must have affected the outcome of the trial court's proceedings." See United States v. Uiano, 507 U.S. 725 (1993) See also Marshall v. Lonberger, 459 U.S. 422, 431, (1983)

"A guilty plea... cannot be truly voluntary if the defendant" has such an incomplete understanding of the charges that his plea cannot stand as an intelligent admission of guilt." (Quoting, Henderson v. Morgan, 426 U.S. 637, 645 n.13 (1941)). Petitioner has made a prima facie showing that a new trial is warranted, on the basis of the newly discovered evidence, that the error affected his "substantial rights" and that the error is the type of error that "seriously affects the fairness, integrity, or public reputation of judicial proceedings."

Issue III,

Petitioner argues this post-trial motion for Re-sentencing should be granted based on a claim of prosecutorial misconduct.

Accordingly, at Petitioner's 1999 guilty plea in December, the Solicitor Ken Anderson, in its case in Chief, introduced certified records of Petitioner's earlier prior convictions used for sentence enhancement purposes (Tr. P. 15-16) (Tr. P. 32 Lines 9-15). It was without any doubt and well-established law at the time of Petitioner's plea that the "Due process clause of the fifth Amendment and the notice and jury trial guarantees of the sixth Amendment, any fact (other than prior conviction) that increases the maximum penalty for a crime must be charged in an indictment, submitted to a jury, and proved beyond a reasonable doubt." see Jones v. U.S., 526 U.S. 227, 143 L.

ed. 2d. 311, 119 S.Ct. 1215 (1999); Apprendi v. New Jersey, 530 U.S. 147 L.ed. 2d. 435, 120 S.Ct. 2348 (June 26, 2000); See Also Ring v. Arizona, 536 U.S. 584, 122 S.Ct. 2428, 153 L.ed. 2d. 556 (2002); Blakely v. Washington, 124 S.Ct. 2531 (2004); And United States v. Booker, 2005 U.S. Lexis 628 (Jan. 12, 2005).

Hence, Petitioner is Alleging At the time of his plea on the 6th, and 8th, the Solicitor was required by the Sixth and Fourteenth Amendments to the U.S. Constitution to specify each of the elements in the indictment and to prove the elements beyond a reasonable doubt to a Jury. Trial Counsel, Steve Plexico, never objected to the certified records that revealed Petitioner had two or more prior convictions for burglary. (Tr. P. 15-16); (Tr. P. 32 Lines 9-15); (Tr. P. 20 Lines 1-9); (Tr. P. 21 Lines 7-17); (Tr. P. 22 Lines 15-19); (Tr. P. 33-34). The standard of review of a claim of prosecutorial misconduct is whether the prosecutor's action are of such a nature as to render the trial fundamentally unfair. The fourteenth Amendment of the U.S. Constitution cannot tolerate a conviction obtained by knowing use of tainted evidence. Donnelly v. DeChristoforo, 416 U.S. 637, 94 S.Ct. 1868 (1974) moreover, while a prosecutor may strike hard blows he is not at liberty to strike fowl ones. Burger v. U.S. 78, 55 S.Ct. 629 (1935). The duty of the solicitor is not to see that a defendant is convicted, but to see that justice is done. State v. Durden, 264 S.C. 86, 212 S.E. 2d 587 (1975). The solicitor's duty is to see that no conviction takes place except in strict conformity with the laws that an accused, is not deprived of any constitutional rights, and that nothing is

done to prevent An Accused from obtaining A fair trial under the law. State v. King, 222 S.C. 108, 71 S.E. 2d 793 (1952).

The Petitioner's Sentence AS A direct result of his prior convictions used AS A part of the "sentencing factor" WAS enhanced And sentenced to thirty (30) years each on the burglary first, And (CSC) first, convictions. The Booker, And Blakely, cases is simply A clarification of the holding in Jones, And Petitioner is entitled to relief because he received enhanced punishments in violation of the sixth And fourteenth Amendments. Petitioner has A legitimate liberty interest to vacate his sentence And remanded for Re-sentencing, because his 1999 conviction has resulted in A miscarriage of Justice.

Mr. Anderson, AS Prosecuting Solicitor, for the fourteenth Judicial Circuit, employed illegal means, AS WAS condemned by our Supreme court And WAS in violation of the Due process Clause protected by the fourteenth Amendment of the U.S. Constitution. "The integrity of the entire judicial system is called into question by deliberate prosecutorial misconduct... we will not tolerate deliberate prosecutorial misconduct which threatens rights fundamental to liberty And justice. State v. Quattlebaum, 338 S.C. 441, 527 S.E. 2d 105 (2000). when evidence would not have come to light but for illegal action of the Government, And evidence has been obtained by exploitation of that illegality, the evidence should be excluded. wong sun v. United States, 371 U.S. 471, 83 S.Ct. 407 (1963). A right to Due process of law is envisioned by the fourteenth Amendment

to the U.S. Constitution.

Wherefore, Petitioner moves this court for a new sentencing trial on the basis of "after-discovered evidence." Hence, for determining whether "newly-discovered" evidence warrants a new trial. Under this test a new trial may be granted if five factors are satisfied by demonstrating that the evidence:

1. would probably change the result if a new trial is had;
2. has been discovered since the trial.
3. could not have been discovered before trial;
4. is material to the issue of guilt or innocence; and
5. is not merely cumulative or impeaching.

Petitioner argues that the proper test to be applied in this case is the one originally set out in Brady v. Maryland, 373 U.S. 83 (1963), and later clarified in United States v. Agurs, 427 U.S. 97 (1976), see also United States v. Bagley, 473 U.S. 667 (1985), and Kyles v. Whitley, 514 U.S. 419 (1995). Under Brady, analysis, a new trial may be warranted if the prosecutor withholds material evidence favorable to the defendant, and there is a "reasonable probability" that with the favorable evidence the defendant would have obtained a different result at trial. see Kyles, 514 U.S. at 432-33.

This standard applies here, because Petitioner reiterates the fact, that at sentencing when the solicitor introduced certified records of his earlier prior convictions used as a "sentencing factor" to be found by a preponderance of the evidence. The prosecutor's inactions constituted misconduct

which denied him a fair trial. State v. King, 222 S.C. 108, 71 S.E.2d 793 (1952). Hence, Petitioner Argues, that "there is a reasonable probability that, but for the error, the result of the proceeding would have been different." Moreover, defendant need only show that "the favorable evidence could reasonably be taken to put the whole case in such a different light as to undermine confidence in the verdict." Kyles, 514 U.S. At 434.

Additionally, these errors are clear or obvious, further these errors affected Petitioner's substantial rights. The error seriously affected the fairness, integrity, or public reputation of judicial proceedings. In light of Fed. Rules Cr. Proc. 52(B) U.S.C.A.; and Rule 29(B) S.C.R. Crim.P.; on the basis of "after-discovered evidence", the court of general sessions denied Petitioner an evidentiary hearing from his 1999 conviction to notice a forfeited error has resulted in a miscarriage of justice. see Jones v. United States, 527 U.S. 373, 389 (1999); United States v. Olano, 507 U.S. 725, 731 (1993); United States v. Cotton, 535 U.S. 625, 631-632 (2002); Johnson v. United States, 520 U.S. 461, 467 (1997); United States v. Young, 470 U.S. 1, 15 (1985).

Issue IV.

Petitioner Argues the court erred in not sua sponte, issuing an order to vacate the conviction and remand for re-sentencing to correct a fundamental miscarriage of justice based on the record presented.

The court of General Sessions in Hampton County has sufficient factual evidence to grant an evidentiary hearing, and to issue an order vacating his sentence pursuant to Rule 32(c)(1), Federal Rules of Criminal Procedure.

Prior to Appellants 1999 guilty pleas on the 6th, and 8th, for burglary first, and CCSC, first, solicitor Ken Anderson introduced certified records of Petitioner's earlier prior convictions used for sentence enhancement purposes. (Tr. P. 15-16); (Tr. P. 32 Lines 9-15). The judge found those facts by a preponderance of the evidence, rather than beyond a reasonable doubt, and, enhanced defendant's sentence pursuant to Section 3553(B)(1), Rule 32(c)(1); Federal Rules of Criminal Procedure.

The listed Guidelines and Policy Statement, Section 3553(B)(1), and Rule 32(c)(1), provided:

"At the sentencing hearing, the court... must rule on any unresolved objections to the presentence report... for each matter controverted, the court must make either a finding on the allegation or a determination that no finding is necessary because the controverted matter will not be taken into account in, or will not affect, sentencing."

Thus, the concerted action of Section 3553(B)(1) and the operative guidelines and the relevant Rule of Criminal Procedure resulted in unconstitutional judicial fact-finding. Therefore, the constitutionality of the sentence imposed was unconstitutional, illegal, and improper. This conduct denied Appellate a fair trial. The requirements of the Sixth Amendment

were clear. The Application of the rule violated the Petitioner's right to have the jury find the existence of "any particular fact" that the law makes essential to his punishment. That right is implicated whenever a judge seeks to impose a sentence that is not solely based on "fact reflected in the jury verdict or admitted by the defendant."

The Petitioner's sentence as a direct result of his prior convictions used as part of the "sentencing factor," was enhanced and sentenced to thirty (30) years each on the burglary first, and (CSC) first, convictions. It is obvious from the record in light of Jones, supra, Apprendi, supra, Ring, supra, Blakely, supra, and Booker, supra, for the court to deny Petitioner an evidentiary hearing from his 1999 convictions based on "after-discovered evidence," has resulted in a miscarriage of justice.

Petitioner's Post-trial motion for a new sentencing trial on the basis of "after-discovered evidence," before the court of appeals in South Carolina contains issues that was not raised at trial based on plain error. However, there is one unique and fundamental issue, which the court has never reviewed. In Griffith v. Kentucky, 479 U.S. 314, 328 (1987) a new rule for the conduct of criminal prosecutions is to be applied retroactively to all cases pending on direct review or not yet final, with no exception for cases in which the new rule constitutes a "clear break" with the past. See also Reynoldsville Casket Co. v. Hyde, 514 U.S. 749, 752 (1995); (Civil case); Harper v. Virginia Dept. of Taxation, 509 U.S. 86, 87, 97 (1993); (same).

The Petitioner has received enhanced punishment in violation of the Sixth and Fourteenth Amendments of the U.S. Constitution, based on conduct never proved to a jury beyond a reasonable doubt. Furthermore, under most of the facts and circumstances presented, the court has never reviewed this case in its entirety with the fact that Petitioner, in 1999, was treated unjustly, by the denial of his Sixth and Fourteenth Amendment rights to have the jury find the existence of "any particular fact," that the law makes essential to his punishment. In Heckler v. Mathews, 465 U.S. 728, 739 n.5 (1984). The state's failure to extend to some group a constitutionally required benefit, the court may "either declare it a nullity" or "extend" the benefit to include those who are aggrieved by exclusion. "As of today's date, Petitioner is still being denied his constitutional rights. Further, until the state adjudicate and rule on the issues presented within the meaning of the 5th, 6th, and 14th Amendments of the U.S. Constitution, then it would be the state of South Carolina who is depriving the Petitioner of his liberty.

"The framers would not have thought it too much to demand that, before depriving a man of (10) ten more years of his liberty, the state should suffer the modest inconvenience of submitting its accusation to 'the unanimous suffrage of twelve of his equals and neighbours,' rather than a lone employee of the state." Blakely, 542 U.S., At (slip op., At 18). Wherefore, the Petitioner has a legitimate liberty interest to vacate his sentence and remand for re-sentencing.

Relief Sought

The court should render the immediate release of the defendant, as time served, which would be the only justified remedy. The interest in fairness and reliability protected by the right to a jury trial - a common law right that defendants enjoyed for centuries and that is now enshrined in the Sixth Amendment - has always outweighed the interest in concluding trials swiftly. Wherefore, the court should exercise its discretion to correct this error in this case and vacate and remand petitioner's conviction for entry of a new plea. See Puckett, 129 S.Ct. At 1429 see also United States v. Hall, 110 F.3d 1155, 1162 (5th Cir. 1997).

Finally, petitioner seeks a reasonable bond pending resolution of this petition based on "after-discovered evidence," the limitations period begins to run when a re-sentencing judgment becomes final. See Boone v. Secretary, Florida Department of Corrections, (11th Cir. 2004). Pursuant to Rule 227(K) A applicant may be admitted to bail after the service of the notice of appeal by either the applicant or the state. In this case, the petition for bail shall be made to the S.C. Supreme Court, in the court of appeals and any return or reply shall comply with the requirements of Rule 224.

In deciding whether to exercise the discretionary authority to admit petitioner to bail, the following factors will be considered: (1) The probability the petitioner will prevail on appellate review and the nature of the relief

he will receive; (2) The Seriousness of the Criminal offense committed; (3) the danger the Applicant may pose to the Community if he is released; (4) the Character and Circumstances of the Applicant. If A reasonable bail is granted, the court may require the posting of A bond And impose other conditions.

Conclusion

Wherefore, for the forgoing reasons, Petitioner's Sentence And conviction Should be VACATED And remanded for Re-Sentencing to correct A gross miscarriage of Justice.

Respectfully Submitted,
/ Paul Brown

Paul Brown #263009 Petitioner
Turbeville C.I. SB-291
P.O. Box 252
Turbeville, S.C. 29162

Sworn To And Subscribed before me
This 13th Day of August 2014

Erulya White
Notary Public for South Carolina

My commission expires: 4-27-2016

The State of South Carolina
In the Court of Appeals
(In the Supreme Court)

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AUG 26 2014

Appeal from Hampton County
Court of General Sessions

SC Court of Appeals

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AUG 13 2014

MAILROOM
TURBEVILLE CI

(Gerald C. Smoak Circuit Court Judge)

(CASE NO: 99-GS-25-170,304
99-GS-03-183,184,185,186)

The State,

Respondent.

v.

Paul Brown,

Appellant.

Proof of Service

I, Paul Brown #263009 certify that I have served the notice of Appeal on Assistant Attorney General, Mr. Ashleigh R. Wilson by depositing a copy of it in the United States mail, postage prepaid, on: August 13, 2014, Addressed to: The Attorney General's office At P.O. Box 11549, Columbia, S.C. 29211

Paul Brown

Paul Brown #263009

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Turbeville, S.C. 29162

Dated: August 13, 2014

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August 13, 2014

The Honorable Kenneth A. Richstad
Clerk, South Carolina Court of Appeals
Post office Box 11629
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AUG 26 2014

SC Court of Appeals

RE: Paul Brown, #263009 vs. State of South Carolina
CASE NO: 99-GS-25-170, 304, 99-GS-03-183, 184, 185, 186
Appellate CASE NO: 2012-CP-25-0201

Dear Mr. Richstad;

Enclosed for filing is a notice of appeal in the above case. I respectfully request a clocked, docketed, stamped filed copy returned for my records. Thank you! This appeal is taken from the order of the Honorable Perry M. Buckner which on April 23, 2014 denied Appellate a new trial deciding a post-trial motion under Rule 29(B) SCR crim. P; based on "after-discovered evidence". see also Rule 52(B) 18 U.S.C.A. Fed Rules Cr. proc. Also enclosed are the following:

1. Proof of service of the notice of appeal on the respondents
2. A copy of the order which is to be challenged on appeal
3. Exhibits 1-4

This appeal is being filed with the Supreme Court because....
(See Rule 203(d)(2) (SCACR), for when an appeal can be filed with the Supreme Court. Petitioner seeks to have the Court of Appeals for S.C. General Sessions grant this post-trial motion for re-sentencing to compel the respondents to credit him with time served prior to his criminal trial. Persons seeking such post-trial motions for

(1)

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new trial based on "After-discovered evidence, could file directly in the court of General sessions And then, if dissatisfied, Appeal to the Supreme court. The provisions of Rule 29(B) SCR. Crim. P. place no time limitations on A motion for new trial based on After-discovered evidence, but do require that it be filed within A reasonable time After discovery of the evidence.

A federal criminal law, WAS broken, therefore, this request should be heard "with All deliberate speed", in the Above-captioned case, where the matter can be entertained in the court of Appeals for the South Carolina Supreme court based on the pleadings. No State shall "deprive Any person of life, liberty, or property, without due process of law," A "person" could be A firm or A corporation AS well AS AN individual, And the fourteenth Amendment protected private property And the corporation from hostile, And unreasonable State Action.

The constitution is intended to give to the courts the right to decide whether A law is contrary to the constitution. But this Authority WAS not designed to enlarge the power of the court but to confine that of the legislature.

A copy of this notice of Appeal has been filed with the lower Clerk of court, for Hampton county AS well. Thank you! for your time And consideration of this important matter And I will be looking to hear from you soon! I remain,

Sincerely,

Paul Brown

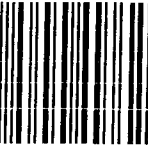
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SC Court of Appeals

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