

The State of South Carolina

In the Court of Appeals

Appeal From Sumter County

Court of Common Pleas

Case No. 2014-001597

John White, # 80622 ----- Appellate,

v.

State of South Carolina, ----- Respondent,

Designation of Matter

to be included in the Record on Appeals

(1.) Order, June 25, 2014.

(2) Office of the Attorney General, July 7, 2014

(3) Letter, date July 30, 2014.

(4) Letter, date Sept. 18, 2014

RECEIVED

SEP 30 2014

SC Court of Appeals

STATE OF SOUTH CAROLINA,

COUNTY OF Sumter

John White, #80622

RECORDED

IN THE COURT OF COMMON PLEAS

2014 JUN 26 AM 8:30

JUDICIAL CIRCUIT

JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

MOTION AND AFFIDAVIT TO
PROCEED IN FORMA PAUPERIS

VS.

Alan Wilson, Attorney General for S.C. and
Gregory T. Knowlin, Warden Turberville
C.I.

Defendant.

FILE NO.

CERTIFIED TRUE COPY
OF ORIGINAL FILE

Barbara Hauger
DEPUTY CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA

I, *John White*, being duly sworn, state that I am the Plaintiff and that I do not have the funds available to pay the costs of filing and service in the present matter. I hereby request that the complaint be filed and service made without costs.

Sworn to and Subscribed before me
this *18th* day of *June* 2014

Carla White
Notary Public for South Carolina

My Commission expires *4-27-2016*

John White

Signature of Plaintiff or
Person Filing Complaint on Behalf of
Plaintiff

ORDER

Leave is *granted* to proceed in forma pauperis.

Leave is *denied* to proceed in forma pauperis.

Dated: *June 25*, 2014
South Carolina

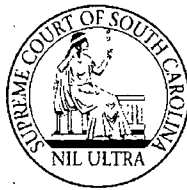
[Signature]
JUDGE/CLERK OF COURT

NOTICE TO PLAINTIFF: The Court may assess costs against either party at hearing.

RECEIVED

SEP 30 2014

SC Court of Appeals



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211
TELEPHONE: (803) 734-1080
FAX: (803) 734-1499

July 7, 2014

Mr. John White, #80622
Turbeville Correctional Institution
P.O. Box 252
Turbeville, SC 29162

RE: John White v. Alan Wilson and Gregory T. Knowlin (Sumter County Case -
No Civil Action Number Assigned)

Dear Mr. White:

This responds to your correspondence dated July 3, 2014. Please be advised that this Court cannot consider this *ex parte* communication about the above matter. If you have been aggrieved by the order of the circuit court, you may wish to timely appeal in the manner provided by the South Carolina Appellate Court Rules (SCACR).

Sincerely,

Daniel E. Shearouse

cc: Office of the Attorney General (with copy of letter)

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SEP 30 2014

SC Court of Appeals

SB1608



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SC Court of Appeals

The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

July 30, 2014

John White #80622
PO Box 252
Turbeville Correctional Institution
Turbeville SC 29162

Re: John White, #80622 v. Alan Wilson
Appellate Case No. 2014-001597

RECEIVED

AUG 04 2014

OPERATIONS

Dear Mr. White:

We are in receipt of your notice of appeal dated July 18, 2014. You are requested to submit a copy of your proposed complaint within ten (10) days of the date of this letter or your appeal will be dismissed.

Very truly yours,

V. Claire Allen, Deputy

CLERK

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AUG 11 2014

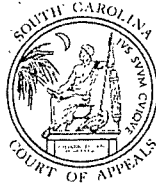
CLASSIFICATION
TURBEVILLE CI

cc: Alan McCrory Wilson, Esquire
~~Gregory T. Knowlin~~ warden

RECEIVED

AUG 7 2014

WARDEN
TURBEVILLE CI



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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September 18, 2014

John White #80622
PO Box 252
Turbeville Correctional Institution
Turbeville SC 29162

Re: John White, #80622 v. Alan Wilson
Appellate Case No. 2014-001597

Dear Mr. White:

Enclosed is the order of the Court. Please be advised the appellant's initial brief and designation of matter must be served and filed no more than thirty (30) days from the date of this letter.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Jenny A. Kitchings".

CLERK

cc: Alan McCrory Wilson, Esquire
Gregory T. Knowlin
Enclosure

The Honorable James C. Campbell

Clerk of Court

13 E. Canal St. Room 308

June 3, 2014

Sumter, SC, 29150

Re: Petition for writ of State Habeas Corpus

Dear Mr. Campbell:

Enclosed for filing are one (1) of the above-referenced pleading as I have included a SASE, please return a copy clock-stamped and docketed for my record.

Thank you.

I thank you for your assistance to the above matter.

Sincerely,

s/ John White

John White, #80622

Turbeville, C.I.

ISSUES PRESENTED

- (1.) Did The Court LACK Subject matter Jurisdiction to Accept Petitioner's Guilty Plea to Housebreaking?
- (2.) Did The Court LACK Subject matter Jurisdiction to Accept Petitioner's Guilty Plea to LARCENY?
- (3.) Did The Court ERRORS by Accepting Petitioner's Guilty Plea to Rape and Assault and Battery of A High and Aggravated Nature? AS to where it constituted Double Jeopardy.
- (4.) Did The Court LACK Subject matter Jurisdiction to Accept Petitioner's Guilty Plea to Rape?
- (5.) Ineffective Assistance of Counsel

STATE OF South CAROLINA

In The Court of Common Pleas

County of Sumter

Third JUDICIAL CIRCUIT

John White, #080622

Petitioner

CASE NO: 2014-001597

VS.

Alan Wilson, Attorney General

for the state of South Carolina

And Gregory T. Knowlin, Warden

Turbeville C.I.

Respondents.

Petition for writ of State Habeas Corpus

Rules 245 SCACP, Rules 240 SCACP, Rule 65(F)

(1) SCACP

Complaint

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SC Court of Appeals

STATEMENT

Now Comes the Above-named Petitioner in the Above styled Action pursuant to 17-17-10 et seq Rules 245 SCACP, Rules 240 SCACP, Rule 65(F)(1) SCACP, and would PRAY that this Court set a date for a hearing on this matter and would show his Reasons therefore AS follow;

Petitioner plead guilty on MARCH 4, 1976, in Sumter County before the Honorable DAN LANNEY, JR. to RAPE, housebreaking and larceny, ASSAULT and BATTERY of a High and Aggravated Nature. He was sentenced to respective terms of (40) years, (15) years and (5) years.

This Petition follows, Petition for writ of State Habeas Corpus. Petitioner seeks to have this Court GRANT this petition for writ of State Habeas Corpus to compel the Respondents to Release him from South Carolina Department of Corrections (SCDC)

The Court has made clear that the great and central office of the writ of State Habeas Corpus is to test the legality of a Prisoner's detention; and to be a means of correcting a Fundamental miscarriage of Justice a state and federal criminal law was broken therefore this Request should be heard, with all deliberate speed, in the original Jurisdiction of South Carolina Supreme Court.

COMPLAINT

Did the Court Lack Subject Matter Jurisdiction to Accept Guilty Plea to Housebreaking And LARCeny? The Petitioner was indicted in the County of Sumter, during Court of General Sessions, March term, 1976 for Housebreaking And LARCeny.

The Petitioner's Indictment Reads:

That one John Kelvin white And HARRY Lee BROWN did in Sumter County on OR About the 23rd day of November, 1975, break and enter the house, to wit: Bates Jr. High School of one Bates Jr. High School, with intent to Commit A Crime therein.

The South CAROLINA Code of LAW (1976) Statute 16-11-320. Housebreaking which is not BURGLARY: (1.) EVERY person who shall break and enter OR who shall break with intent to enter, in the daytime, Any dwelling house with intent to Commit A Felony OR other Crime of A lesser grade, shall be deemed guilty of A felony And upon Conviction shall be punished At the discretion of the Court by imprisonment for A term not exceeding Ten years. (2.) EVERY person who shall break and enter OR who shall break with intent to enter, in daytime, Any house other than dwelling house OR who shall break and enter OR shall break with intent to enter, in the Night time, Any house, the breaking and entering of which would not constitute burglary, with intent to Commit A felony OR other Crime of A lesser grade shall be deemed guilty of A felony And upon Conviction shall be punished At the discretion of the Court by imprisonment for A term not exceeding (5) five years.

The Court did not have subject matter Jurisdiction to Accept Petitioners guilty Plea to Housebreaking, because petitioners indictment Stated that he broke into A Jr. High school. Which is A building, not A house OR dwelling.

S.C. Code of LAW (1976) Statute 16-3-10.

(2.) "Dwelling" means it's definition found in 16-11-10, And Also means the living quarters of A building which is used OR normally used for sleeping, living OR lodging by A person.

No where in the Petitioner's indictment does it state that a person is sleeping, lodging, or living at the JR. High School.

The offense of privity stealing from the person or of privity entering and stealing from any house, in the nighttime or daytime shall in all cases be deemed and adjudged grand larceny. S.C. Code of Law 1976 16-13-30 Petit Larceny.

Petitioner's indictment just stated LARCENY, NOT GRAND LARCENY, NOR PETIT LARCENY. Petitioner's indictment reads as follow; That John Kelvin White and HARRY Lee BROWN did in Sumter County on or about 23rd day of November, 1975, feloniously take and CARRY AWAY the personal goods of Bates JR. High School. Described as follows, etc.

An indictment is sufficient if the offense is stated with sufficient certainty and particularity to enable the court to know what judgement to pronounce and the defendant to know what he is called upon to answer and whether he may plead an acquittal or conviction thereon.

Petitioner's indictment just states LARCENY, therefore he could not know which LARCENY by LAW to answer to Petit LARCENY OR GRAND LARCENY. Also the court would not know which charge to sentence.

ARGUMENT

Therefore Petitioner's indictment is void, and the court lacked jurisdiction to accept Petitioner's guilty pleas and sentence Petitioner's to (15) Fifteen years.

Also at the time in the year of 1976, either charge of Housebreaking only carried a max of Ten years under 16-11-320(A) and (5) Five years under 16-11-320(B).

See, State v. Ellison, 356 S.C. 33, 586 S.E. 2d 596; State v. Wilkes, 353 S.C. 462, 528 S.E. 2d 717; State v. Brown, 343 S.C. 342, 540 S.E. 2d 846; issues related to subject matter jurisdiction may be raised at any time, including for the first time on appeal in the Supreme Court.

A penal statute must be construed strictly against the state and in favor of the defendant.

Petitioner was also charged in the same indictment for LARCENY. The Court did not have subject matter jurisdiction to accept Petitioner's plea to this charge, because it deprived the Petitioner of knowing what charge he was to answer to, and it deprived the Court of what punishment to sentence the Petitioner's to.

S.C. Code of Law 1976, 16-13-20, Privily stealing from person or house as Grand LARCENY.

Therefore Petitioner's convictions and sentences for Housebreaking and LARCENY should be "VACATED" for lack of subject matter jurisdiction. See, Browning v. State, 465 S.E.2d 358; Weinbauer v. State, 513 S.E.2d 840.

Did the Court error by accepting Petitioner's guilty plea to Rape and Assault and Battery of High and Aggravated Nature, as to where it constituted Double Jeopardy?

Petitioner was sentenced to (40) Forty years for Rape and (5) Five years for the Assault Battery and High Aggravated Nature. Petitioner states that this was Double Jeopardy, because both charges arise from the same incident, and both charges failed or both indictments failed to list an aggravating circumstance. Also since Assault and Battery with High and Aggravated Nature, is considered by Law, and the Courts as a lesser included offense of Rape, the Court subjected the Petitioner to Double Jeopardy by conviction and sentencing the Petitioner for both charges, that arise from the same incident. In State v. Elliott, 552 S.E.2d 727 (S.C. 2001) This Court held that ABNAN is a lesser included offense of Rape on csc. See, Also State v. White, S.C. App. (2003) 353 S.C. 566, 528 S.E.2d 728.

A defendant was denied ineffective assistance of counsel when he was advised by attorney to plead guilty to a charge "ASSAULT with intent to kill" from same incident of Criminal Domestic Violence, which constituted Double Jeopardy. See JIVERS v. State, 304 S.C. 556, 406 S.E.2d 154.

Did the Court lack subject matter jurisdiction to accept Petitioner's guilty plea to Rape? See, Attachment A. [Consecutive sentences violates Sixth Amendment right to a jury trial. Wash, 159 Wash. 2d 731, 149 P. 3d 573, 80 CRI 273] Blakely v. Washington, 542 U.S. 296, 75 CRL 284 (2004).

ATTACHMENT A

The Court lacked Subject Matter Jurisdiction to hear and/or accept Applicant's guilty Plea to the offense alleged in Indictment #76-GS-43-338 (Rape) because the indictment was not returned by a legally constituted grand jury and the Applicant did not sign (a) waiver of presentment.

Within Indictment #76-GS-43-338, it is alleged that a legally constituted grand jury convened and True Bill the indictment March 1, 1976. "(H)owever, March 1, 1976 was not a authorized and/or legal term of Court for General Sessions for the County of Sumter, Third Judicial Circuit, pursuant to S.C. Code Ann. Sec. 14-5-640(3)(1) (Revised 6/27/80). S.C. Code Ann. Sec. 14-5-640(3)(1) Terms of Court reads as follows:

Sumter County.-the Court of general sessions for Sumter County shall be held at Sumter on the second Monday in February two (2) weeks, on the second Monday in May for two weeks, on the fourth Monday in July for two weeks, on the first Monday in November for two weeks and on the second Monday in December for one week.

It's undisputed that the schedule for that period (1976) would have followed that provided in S.C. Code Ann. Sec. 14-5-640(3)(1). It's also undisputed that the grand jury, in 1976, could only convene and True Bill and/or No Bill indictments while in the attendance upon the Court of General Sessions, pursuant to S.C. Code Code Ann. Sec. 14-9-210.

The jurisdiction of the Court and/or a particular judge over the subject matter of a proceeding depends on the authority granted by the Constitution and laws of the State and is fundamental. State v. Goris, 183 S.E. 2d 334, 256 S.C. 539 (1971).

Furthermore, Indictment #76-GS-43-338 is fatally defective and not legally binding because it does not contain the legal signature of the State Attorney and/or County solicitor which is a fundamental, necessary and controlling part of indictment.

By signing an indictment, the attorney for the State unites the State with the grand jury for the purpose of commencing the criminal proceeding. U.S.C.A. Const. Amends. 6,14. Lack of the legal signature of the Solicitor and/or Assistant Solicitor invalidates the indictment and the very fact that the face of the indictment contains a stamped name of the Solicitor does not cure the fatal defect of the indictment. The Body of the indictment contains actual charge, and caption and/or cover sheet is not the controlling part of the indictment.

Relief Sought

Therefore since Petitioner was placed in Double Jeopardy, he states that his conviction for RAPE and ARSWAN AND ALSO The Court lacked Subject Matter Jurisdiction to hear AND OR Accept Applicant's guilty Plea to the offense Alleged in Indictment #16-GS-43-338 (Rape) his sentences should be VACATED.

CONCLUSION

Petitioner ASK that this Honorable Court GRANT, him any Relief, ~~the~~ ^{the} Court deems Justice.

Respectfully Submitted,

John White

John White #080622, PRO-SE

Turbeville C.I.

P.O. Box 252

Turbeville, South Carolina 29162

Dated: This 3 day of June, 2014

Turbeville, South Carolina

STATE OF South Carolina

In The Court of Common Pleas

County of Sumter

John White, #080622

Petitioner

CASE NO: 2014-001597

VS

Alan Wilson, Attorney General

for the state of South Carolina

And Gregory T. Knowlin, Warden

Turbeville CI.

Respondents.

Petition FOR WRIT of STATE HABEAS CORPUS

Rules 245 SCACP; Rules 240 SCACP; Rule 65 (F) (1) SCRPC

Notice AND Summons

To the Respondents / Petitioner Above Named;

you are hereby summoned and required to answer the above complaint in this action; a copy which is forth with served upon you; which was filed in the office of The Clerk of Court; and Respondents are to service a copy of your answer to the complaint within (30) days after service here of, exclusive of the day of such service. If you fail to respond to the complaint; judgement by default will be rendered against you for the relief demanded in the complaint.

s/ John White

John White, #080622

Dated: June 3, 2014

Turbeville South Carolina

STATE OF SOUTH CAROLINA

County of Sumter

VERIFICATION

I, John K. White, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing Application, that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in his Application; and that the matter and allegations therein set forth are true.

s/ John White

APPLICATION TO PROCEED WITHOUT PREPAYMENT OF COSTS AND AFFIDAVIT IN SUPPORT THEREOF

I, John K. White, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my Application I declare under penalty of perjury that the following facts are true:

- (1) I am the Applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security therefor.

s/ John White

SWORN to and subscribed before me this
28th day of May, 2014.
Carol White (L.S.)
Notary Public for South Carolina

My Commission Expires: 4-27-2016

SCDC

MAY 21 2014

Turbeville

**INMATE TRUST FUND ACCOUNT REPORT
for SOUTH CAROLINA COURT FILING FEES**

MAIL ROOM

INSTRUCTIONS TO INMATE: Complete top portion then give to your mailroom. When returned from Accounting, you must mail this form with any payment to the Court.

By signing my name below, I am asking the Financial Accounting Office of the South Carolina Department of Corrections to complete this report. In accordance with SC Code of Laws §24-27-100 and 150, I authorize payment of the full filing fee. If I have insufficient funds in my account at this time to pay the court's full filing fee, I authorize SCDC to deduct the initial and subsequent payments until payment is completed. \downarrow \$ 150.00

INMATE NAME (print): John White SB760

SCDC # 080622 INMATE SIGNATURE: John White

I plan to file this action in the SC County of Sumter

The section below is for SCDC - Financial Accounting Branch's use ONLY.

- (1) Total deposits to inmate's account for preceding six months' period* \$ 0.04
- (2) Twenty percent (20%) of line 1 \$ 0
- (3) Account balance - current date \$ 15.00
- (4) PAYMENT AMOUNT **
(lesser of line 2 or line 3)
Enclosed check # \$ 0

~~15~~ freeze

****NOTE to COURT:** If payment is for partial fee, Court must notify SCDC once case is accepted and filed. Send notice with case # and balance owed to address below. SCDC will NOT process any additional payments until notification is received from Court.

South Carolina Department of Corrections
Financial Accounting - Room 234
PO Box 21787
Columbia, SC 29221-1787

*Admission date is noted here if inmate incarcerated less than six months / /

[Signature]

5/28/14

STATE OF South Carolina

In The Court of Common Pleas

County of Sumter

Third JUDICIAL CIRCUIT

John White # 080622

Petitioner

CASE NO.: 2014-001597

vs.

Alan Wilson, Attorney General

Petition for WRIT of State Habeas Corpus

for the State of South Carolina

Rules 245 SCACP; Rules 246 SCACP; Rule 65 (F) (1) SCRPC

And Gregory T. Knowlin, Warden

Turbeville CI.

Respondents.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was this date served upon the following individual(s) by placing a copy of the same in the United States mail, postage prepaid, and sent to his/her last known address as follows:

Attorney General, Alan Wilson

Dennis Bldg, P.O. Box 11549

Columbia, S.C. 29211

General Counsel (SCDC)

4444 Broad River Road

Columbia, S.C. 29221

s/ John White

John White # 80622

Turbeville CI

P.O. Box 252

Turbeville, S.C. 29162

Dated: June 3, 2014

Turbeville, South Carolina

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SEP 3 0 2014

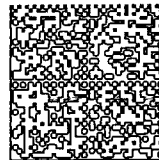
SC Court of Appeals

John White, #080622

Turbeville C.I.

P.O. Box 252

TURBEVILLE S.C. 29162



UNITED STATES POSTAGE



PITNEY BOWES

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SEP 26 2014

MAILED FROM ZIP CODE 29162

SCDC

OCT 18 2014

MAIL ROOM

South CAROLINA OF Appeals

Ms. Jenny Abbott Kitching, Clerk

Post office Box 11629

Columbia, S.C. 29211

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SEP 30 2014

SC Court of Appeals

2921181629

