

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM NEWBERRY COUNTY
Court of General Sessions

Frank R. Addy Jr. ,Circuit Court Judge

Appellate Case No. 2013-000196

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S.C. Supreme Court

The State of South Carolina,

Respondent,

v.

James E. Wise,

Petitioner.

PETITION FOR A WRIT OF CERTIORARI

James Wise, #250411
Lieber Corr. Inst. E-B-49
P.O. BOX 205
Ridgeville, S.C. 29472
Petitioner Pro-Se

Other Counsel of Record:

Salley Elliott, Assist. A.G.
Office of The Attorney General
P.O. BOX 11549
Columbia, S.C. 29211
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Attorney for Respondent

INDEX

Certificate of Counsel	1
Questions Presented	1
Statement of the Case	1&2
Arguments	2-3
1.The Court of Appeals Should have ruled that the Petitioner was entitled to relief under Arrest of Judgment Pursuant to <u>State V. Jeter</u> , 47 S.C. 2, 24 S.E. 889 (1896). <u>State v. Brown</u> , 23 S.E.2d 301 (1942).	4
2.The Court of Appeals Should have ruled that the Respondents was barred from raising any defenses due to they abandoned any known right to the Appeal, because the law is clear an issue has to be raised and ruled on in the lower court to even be considered on Appeal.	
Conclusion.....	5

CERTIFICATE OF COUNSEL

Petitioner Pro-Se certifies that the Petition for Rehearing En Banc was made and finally ruled on by the Court of Appeals on September 30, 2014.

QUESTIONS PRESENTED

1. Did the Court of Appeals err in holding that Arrest of Judgment was not proper even though it was a challenge to the Circuit Court's Jurisdiction to try and convict in a violation of Double Jeopardy ?

2. Did the Court of Appeals err in holding that the Respondents arguments was preserved for Appeal even though they were not raised and ruled upon in the lower court ?

3. Did the Court of Appeals err in holding that Arrest of Judgment was not proper even though Petitioner challenge to the sufficiency of the indictment to try the case in the jurisdiction of General Sessions after this case was already disposed of in Magistrate's Court as misdemeanors in a violation of Double Jeopardy ?

STATEMENT OF THE CASE

On November 1, 2012, James E. Wise, #250411/Petitioner Pro-se brought this action, Motion to Arrest Judgment in this case due to the circuit court's jurisdiction; sufficiency of the indictment to even try and convict Petitioner for charges that have already been disposed of in Magistrate's court. Petitioner was charged with Burglary 1st Degree, ABHAN; Escape. The Solicitor ask the Petitioner if he remanded the case to the lower Court/Magistrate Court if he would plead guilty to simple Assault for the ABHAN

and plead guilty to the malicious injury to personal property for the Burglary 1st degree, and they Nolle prosequere indictment 97-GS-36-479. But after the Petitioner went to Magistrates Court and entered a plea to the charges the State reindicted him for Burglary took him to trial and gave him a Life sentence which is clearly in a violation of double jeopardy.

Petitioner asserts his conviction is in violation of double jeopardy provision of the U.S. Constitution 5th Amendment.

Petitioner was convicted, by plea, of malicious injury to personal property and simple assault based upon the allegations of his 'Kicking open and damaging the door of Mary Bates and committing a simple assault, upon Mary Bates on 07-15-97.

Therefore, he was indicted for ⁽¹⁾ first degree burglary for the 07-15-97 events he had previously plead guilty to.

Petitioner has no other means to secure relief.

at page 346 of R.O.A. the Malicious injury warrant states ' on 07-15-97 on or about 4:56 A.M. James Edward Wise did enter the residence by breaking out the front door glass and did strike Mary Bates several times causing injury to Mary Bates.

The indictment for burglary first states at pg. 335 R.O.A. That James Edward Wise did in Newberry county, state aforesaid, on or about the 15th day of July 1997, willfully and unlawfully enter a dwelling without consent and with the intent to commit a crime therein... the said dwelling being owned and/or occupied by Mary Bates.

(1) The ABHAN and Burglary 1st degree indictment was Nolle Pros. 97-GS-36-479

Petitioner again pled guilty to entry of Mary Bates residence in Magistrate Court by kicking open the door. Petitioner can not again be prosecuted in general sessions court for the same facts he had previously pled too.

The state dismissed the general sessions ABHAN charge as Petitioner had pled guilty to simple assault upon Mary Bates based on 07-15-97 incident. But proceeded upon the burglary first charge even though magistrate plea was to the entry of residence of Mary Bates by kicking open the door.

Petitioner was given a life sentence under ~~two~~ strike to a offense barred by double jeopardy, the same door Petitioner pled to kicking and breaking glass is the same act that constitutes breaking as charged to jury in this case, for burglary, specifically breaking the door to gain entry element of offense 16-11-311(A).

The magistrate's plea to simple assault and malicious damage (to door) constitutes a barr to retrial for burglary first under assault theory same facts as magistrate court, therefore the Arrest of the judgment is proper and the Court of Appeals should have ruled that since it was a challenge as to the jurisdiction of the Court to sentence try and convict for a charge that was already taken care and disposed of in Magistrate Court.

*Arrest of Judgment was proper because it was a challenge to the trial court's jurisdiction to try convict and sentence in a violation to double jeopardy clause.

ARGUMENTS

1. The Court of Appeals should have ruled that the petitioner was entitled to relief under arrest of judgment pursuant to State v. Jeter, 47 S.C. 2, 24 S.E. 889 (1896); State v. Brown, 23 S.E. 2d 301 (1942).

2. The Court of Appeals should have ruled that the respondents was barred from raising any defenses due to they abandoned any known right to the Appeal, because the law is clear an issue has to be raised and ruled on in the lower court to even be considered on Appeal.

DISCUSSION AND CITATIONS OF AUTHORITY

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) 9 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)]. just like in Petitioner's case here at hand. 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).

"[W]hen ruling on a motion in arrest of judgment, the trial court is limited to rectifying trial errors, and cannot make a re-determination of credibility and weight of the evidence." AM. Jur. 2d Criminal law § 785 (1998) see also Taylor, 348 S.C. at 160, 558 S.E. 2d at 921.

The R.O.A. is clear that the arrest of judgment was proper because, it's a challenge to the trial court's jurisdiction to sentence the petitioner.

CONCLUSION

For the reasons stated, petitioner asks the Court to grant the petition for a writ of certiorari to resolve Arrest of Judgment issues relating to a Double Jeopardy claim as well as the Circuit Court's jurisdiction.

Respectfully Submitted,

/s/ James E. Wise

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October 27, 2014

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October 27, 2014

The S.C. Supreme Court
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S.C. Supreme Court

Re: Appellate Case No. 2013-000196/Petition for a writ of Certiorari/
Record on Appeal, Motion for Leave filing extra copies,

Dear Mr. Shearouse,

Please find for filing in the above referenced matter. I thank
you in advance for any and all help with this matter.

Respectfully Submitted,

/s/ James E. Wise
James E. Wise, #250411

CC: File
Ms. Salley Elliott, Assist. A.G.