

October 30, 2014

Randall Sanders, 332675  
Lee Corr Inst  
990 Wisacky Hwy  
Bishopville, SC 29010

Daniel E. Shearouse, Clerk  
SOUTH CAROLINA SUPREME COURT  
P.O. Box 11330  
Columbia, SC 292 14

**RECEIVED**

NOV 05 2014

**S.C. SUPREME COURT**

Dear Mr. Shearouse,

Enclosed for filing in your Court please find my original PETITION FOR WRIT OF CERTIORARI, which was mistakenly mailed to Honorable R. Knox McMahon, Circuit Court Judge for Sumter County. Appellate Defender Carmen Ganjehsani, who filed a JOHNSON PETITION FOR WRIT OF CERTIORARI in representation of my case, advised me in a phone conversation how to file my pro se PETITION, however I evidently misunderstood, and as a result mailed the enclosed PETITION to Judge McMahon. I did correctly serve the Office of the Attorney General, which is dated by the Lee Institution mailroom as 10-10-14. Will you please accept and file my PETITION as pro se, with the timely filing date of 10-10-14, in accord with Houston v. Lack?

Additionally I request that you notify me by letter when the filing of this PETITION is complete, and the status of same.

Thank you for your assistance in this appeal matter.

S/ Randall Sanders  
Randall Sanders, Petitioner

STATE OF SOUTH CAROLINA

In The Supreme Court

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CERTIORARI TO SUMTER COUNTY

R. Knox McMahon, Circuit Court Judge

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Randall Sanders,

Petitioner,

V.

State of South Carolina,

Respondent.

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PETITION FOR WRIT OF CERTIORARI

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Randall Sanders, Petitioner  
Lee Correctional Institution  
990 Wisacky Hwy  
Bishopville, SC 29010

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## HISTORY OF THE CASE

On January 3, 2008, Petitioner Randall Q. Sanders was indicted by the Sumter County Grand Jury for Possession 1st Enhanced to Possession with Intent To Distribute Cocaine, 3rd Offense, App., pg. 158-159. A jury trial was held before the Honorable Ferrell Cothram, Jr., on January 13, 14, 2009, App. 1. The State was represented by Assistant Solicitor Trey McLeod; Petitioner, however, was not present for his trial, App. 11.11. 1-3. Defense counsel made a motion for a continuance on the ground that Petitioner was not present, and because during the last communication counsel had with Petitioner, in December, 2008, Petitioner had expressed that he was dissatisfied with counsel's representation. The trial court denied counsel's motion, App. 11-11 1-23.

On April 9, 2007, Petitioner was released on bond. On December 2007 a Preliminary Hearing was held where Petitioner expressed to counsel that he was innocent of the crime and charges against him. Petitioner asked counsel to present two issues at the Preliminary Hearing, 1) illegal search and seizure, and, 2) where the drug were found. Counsel failed to address these issues. Petitioner also was accompanied at the Preliminary Hearing by a paralegal and a friend, who explained to the court how and why Petitioner's charge shouldn't be enhanced to Possession with Intent To Distribute, for the reason of the amount of drug the Officers alleged to have found, as well as where the drug was found. Counsel Lauren B. Stevens became enraged and expressed that Mr. Thomas was not a lawyer and that he was a fraud and didn't practice law or need to be practicing law. Petitioner then stated to counsel that her job should be protecting the best interest of her client. Petitioner appeared at each term of General Sessions Court for a year and a half. Petitioner answered all roll calls and was never a fugitive from justice. Petitioner made multiple attempts to contact counsel. Petitioner also left messages and phone numbers with counsel's secretary where Petitioner could be reached, but to no avail. Counsel never contacted Petitioner. The addresses and phone numbers given to counsel's secretary were not changed. On January 14, 2009, the jury found Petitioner guilty as charged - in absentia, App. 69.11.6-8. Moments later the same day Petitioner appeared for sentencing. Petitioner informed Judge Cothram that Petitioner came to the courtroom every day that week, and that

Petitioners name was never on the trial list. Petitioner did not find out until Wednesday, January 14, 2009 - AFTER THE JURY'S VERDICT - that Petitioners case had been tried in his absence, App. 72. 1.8-73 1.22. Judge Cothram sentenced Petitioner as a 3rd Offender to a term of eighteen (18) years OR a fine of \$50,000.00, App. 74.11 3-9. Thereafter counsel appeared at the holding area of the courthouse, where Petitioner asked counsel why she hadn't informed Petitioner of his trial date. Counsel stated that she didn't know of the trial date until that morning, and that she was sorry, and apologized. Petitioner then asked counsel if there was anything she could do and counsel retracted. Petitioner then asked counsel to file an appeal; counsel made no commitment. Petitioner's Direct Appeal counsel stated that she would, unbeknownst to Petitioners trial counsel, file a motion for reconsideration after a direct appeal was filed. On September 24, 2009, a hearing was held before Judge Cothram on Petitioners motion for reconsideration, App. 75-92. Defense counsel argued to Judge Cothram that the first day Petitioners name appeared on the trial list was Tuesday, and Petitioner was tried on Wednesday. Defense presented that it was their belief that if more notice of the trial date had been given, Petitioner would have been present for his trial, App. 81.11 18-22. Judge Cothram denied the motion and declined to alter or modify Petitioners sentence.

Petitioner appealed his conviction and sentence to the S.C. Court of Appeals, and was represented by Appellate Defender Robert M. Pachak, who filed a Brief Of Appellant, pursuant to Anders v. California, 386 U.S. 738 (1967), arguing the trial judges charge on reasonable doubt did not meet constitutional standards, App. 94-103. The Court Of Appeals dismissed the appeal on February 22, 2012, affirming the conviction and sentence, App. 104.

On March 15, 2012, Petitioner filed an Application For Post-Conviction Relief, asserting, in part, that he was denied the right to be present at trial, App. 105-111. The State filed Its return on or about July 25, 2012, App. 112-117. An evidentiary hearing was held before the Honorable R. Knox McMahon on October 2, 2013, App. 118-147. Petitioner was represented by Charles T. Brooks, III, and the State was represented by Assistant Attorney General Daniel F. Gourley, II, App. 118. At the conclusion of the evidentiary hearing Petitioners PCR counsel argued to Judge McMahon that Petitioner was entitled to a new trial where Petitioner never received notice of his trial date, App. 146, 11.2-5.

On December 9, 2013, Judge McMahon filed his Order Of Dismissal, ruling that Petitioner had not established any constitutional violations or deprivations that would require the court to grant his PCR Application. Judge McMahon denied and dismissed Petitioners PCR Application with prejudice, App. 149-156. In the Order Of Dismissal Judge McMahon found that trial counsels testimony was more credible that Petitioners, App. 152. Judge McMahon further ruled that Petitioner was not entitled to a new trial where the trial occurred in Petitioners absence because trial counsel testified that she met with Petitioner on the morning of the trial and informed Petitioner that his case would be tried that day, App. 154. This PETITION FOR WRIT OF CERTIORARI follows.

#### STATEMENT OF FACTS

On March 8, 2007, Petitioner attended a Drug and Alcohol Abuse Counseling Class. Petitioner was in need of a ride from class. Petitioner phoned a Ms. Renekka Nathanal to retrieve him. Petitioner rode to the residence of Ms. Nathanal, at 525 East Calhoun Street, Apt. 14, in the county of Sumter. At that residence Ms. Nathanal's Mother asked that both Ms. Nathanal and Petitioner take some overdue trash to the county dumpster. While in route Ms. Nathanal came upon a license checkpoint, off Pruitt and Liberty Street. Deputies approached Ms. Nathanal's car requesting license and registration from Ms. Nathanal, and identification from the passenger, which was Petitioner. Petitioner stated that he and Ms. Nathanal were headed to the county dump. While Petitioner was speaking with Deputy Mike McCoy, Deputy McCoy presumed he smelled marijuana. Officer McCoy then advised Ms. Nathanal and Petitioner of his observation in an attempt to search the vehicle. Ms. Nathanal Officer McCoy why and Deputy McCoy stated probable cause, then Ms. Nathanal expressed to the Deputy that the vehicle belonged to her. Ms. Nathanal then advised Officer McCoy to get a search warrant. Deputy McCoy implied that a search warrant "was in route". Moments after the Petitioners identification was confirmed by Dispatch, informing that Petitioner was currently on probation for possession of marijuana, Deputy McCoy placed Petitioner in handcuffs, stating to Petitioner that Petitioner was 'just being detained'. Deputy McCoy then performed a pat-down on Petitioner. Petitioner

was asked what was in his pocket and Petitioner responded that it was money. Petitioner explained to the Deputy that he worked for J/W Construction, and Petitioner also provided a check receipt as proof of his employment and earnings. Deputy McCoy, with the assistance of two additional Officers, conducted a search of the vehicle. In the search the Officers seized a digital scale from a trash bag behind the drivers seat. Ms. Nathanal informed the Deputies that the scales did not work and that they were trash. Deputy McCoy presumed that a drug activity had taken place, then the Officers conducted a second and third search of the vehicle, as well as conducting a full body, full cavity search of Petitioner. Petitioner became very, very enraged about how Deputy McCoy conducted the search. Petitioner stated to the Officers that he knew his rights, and that the Officers were overtly violating his rights. The Officers then conducted a pat-down search on Ms. Nathanal, then the Deputies conducted a search with a K-9 Unit, to include the ground around the vehicle. Petitioner was placed in the back of the Police Squad car, with all his possessions on the trunk of the squad car. Ms. Nathanal and Petitioner were detained well over an hour while Deputies continued to search. Thereafter Deputy McCoy had a dispute with Petitioner while conducting a fourth search of Petitioner. Deputy McCoy presumed a piece of paper fell from Petitioners person. Petitioner stated to the Officers that he never possessed anything illegal, and had nothing in his possession, and that Officer Mike McCoy and/or the assisting Officers acted in concert with Officer McCoy to plant the drug on Petitioner. It was at that point in time that Petitioner requested to make a phone call to attorney Jhon C. Clark, which request was denied. Petitioner was arrested for possession of cocaine 1st Offense.

## A R G U M E N T

### I. Ineffective Assistance of Counsel

Counsel was ineffective for failing to adequately investigate Petitioners case. Counsel failed to request the Dispatch Video Tape where the traffic stop was called in, resulting in Petitioners arrest. Counsel failed to subpoena the only witness who could testify to Petitioners good character. Counsels failure clearly deprived Petitioner of a fair and impartial trial.

Counsel failed to investigate and present to the court that Petitioner never owned a vehicle, or possessed a drivers license. This was obviously ineffective in light of the fact that counsel informed the court that she had forwarded a letter to Petitioner in reference to Petitioners case being set for trial, see Trial Transcript, pg. 11, lines 9 - 12, where Petitioners trial counsel claimed that she had a meeting with Petitioner the very morning of Petitioners trial and informed him that his trial was going forward that morning at 9:30 a.m. whether he was present or not, App. 135, 1.25-136 1.10. Counsels' testimony at Petitioners PCR evidentiary hearing, however, was in direct contradiction to her statements made to the trial court on the morning of Petitioners trial, where she advised the trial court " . . . that she had not had any communication with Petitioner since a December 2008 Preliminary Hearing"; App. 11.11. 4-8. At Petitioners trial counsel made no mention that she had spoken with Petitioner that morning, she instead represented to the trial court that "it had been a while since she had last spoken with the Petitioner." Counsel also testified that IF Petitioner had checked the trial list on January 12, 2009, that Petitioners case **WOULD NOT HAVE BEEN LISTED THAT DAY**, that Petitioners name would not have shown up until January 13th, the day of Petitioners trial; App. 141. 11. 4-17. So, it is clearly IMPOSSIBLE that counsel forwarded a letter in a timely fashion, which shows a violation of Rule 407, Failure To Communicate. In all professional functions a lawyer should be competent, prompt, and diligent. A lawyer should maintain communication with a client except so far as disclosure is required or permitted by the Rules of Professional Conduct. While out on bond the Petitioner attended and answered all Roll Calls since April 9, 2007. Therefore, for over a year and a half, Petitioner was expected to show up to each term of court - encompassing over 645 days until January 13, 2009, only to be tried in his absence. In this instance counsel is strongly presumed to have rendered unreasonable and ineffective assistance when measured against the standard required by Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984). Using the measurement of this prevailing standard of required attorney performance, Petitioner states the claim that he is entitled to the relief sought in his Post-Conviction Relief Application, and a grant of a new trial is warranted for the violations committed against Petitioners U.S.C.A. 5th, 6th, and 14th Amendment rights.

The Due Process Clause clearly establishes that Petitioner suffered violations of unconstitutional deprivations and denials, not the least of which was Petitioner's U.S.C.A. 5th Amendment right to a fair and impartial trial. The prevailing case of Cherry v. State, 300 S.C. 117, 386 S.E.2d supports Petitioner's stated constitutional claim. Petitioner states the claim that he possessed, at the time of his trial in absentia, a U.S. Constitutional right to be present at his trial, the right to confront any and all witnesses against him, the right to present any and all evidence in his favor against the indictments brought by the State, the right to call witnesses in his defense, and the right to a fair and impartial trial. The U.S.C.A. 6th and 14th Amendments support the provisions of the 5th Amendment right to a fair and impartial trial. Petitioner suffered violations of the U.S.C.A. 6th & 14th Amendments, as well as under Rule 15 of the S.C. Rules of Criminal Procedure, which reveals that Petitioner's trial counsel failed miserably to provide adequate notice to Petitioner of his trial date, which exposes that the trial judge erred in permitting the State to proceed with the prosecution against Petitioner in Petitioner's absence **WITHOUT** a clear and convincing showing that Petitioner had made the decision to avert his trial intentionally. The court relied on a bond sheet in making the decision to prosecute in absentia, yet the U.S.C.A. 6th Amendment provides that the accused shall enjoy the **right** to be informed of the nature and cause of the accusations and to be confronted with the witnesses against him. The U.S.C.A. 6th Amendment enforces that these rights and guarantees to the accused are applicable to the States under the U.S.C.A. 14th Amendment; South Carolina qualifies as a "State" for the purpose of this argument. See Pointer v. Texas, 380 U.S. 400, 85 S.Ct. 1065, 13 L.Ed.2d 923 (1967). The General Session Courts of South Carolina are also specifically mandated by Article 1, §14 of the S.C. Constitution to administer the above-named U.S. Constitutional entitlements. The right to be present at trial can be waived however, although **ONLY** if done so intelligently, knowingly, and **VOLUNTARILY**; U.S. v. Tortera, 464 F.2d 1202 (2nd Cir. 1972), cert. denied; Santoro v. U.S., 409 U.S. 1063, 93 S.Ct. 554, 34 L.Ed.2d 516 (1972). Any waiver of this all-important right is permitted **ONLY IN LIMITED CIRCUMSTANCES**; State v. Patterson, 625 S.E.2d 239, 244 (2006); Rule 16, S.C. Rules of Criminal Procedure (2005). In order for the trial judge to have lawfully and constitutionally tried Petitioner in Petitioner's absence,

the trial judge must have determined that Petitioner **voluntarily** waived his right to be present at trial. Petitioner respectfully states the claim that he has never, at any time, either verbally or in writing, waived his right to be present at trial. MOREOVER, it can be concluded from the record of the proceeding that the court never made such a determination as to whether Petitioner knowingly, intelligently, and voluntarily waived his constitutional right to be present at a proceeding to answer an indictment by the State. The court merely relied on a bond form in making a determination of the voluntary nature of Petitioner's absence. Considering Petitioner's past record of answering every Roll Call, this is unreasonable to the point of being prejudice, especially in the presence of the awareness that Petitioner was only moments late after the proceeding against him was completed. Petitioner was tried in his absence without meaningful notice of the trial, and as UNITED STATES SUPREME COURT Justice Sotomayor has recognized, "A trial conducted without actual notice to a Defendant and in his absence makes a mockery of fair process and the [U.S.] Constitution." The right to be present at trial is a fundamental constitutional right; Fairey v. Tucker, 132 S.Ct. 2218, 2221 (2012). The constitutional right to presence is rooted to a large extent in the Confrontation Clause of the U.S.C.A. Sixth Amendment; Illinois v. Allen, 397 U.S. 337, 90 S.Ct. 1057, 25 L.Ed.2d 353 (1970). A Defendant is guaranteed the right to be present at any stage of the criminal proceedings which are critical to its outcome if the Defendant's presence would contribute to the fairness of the procedure; Kentucky v. Stincer, at 745, 107 S.Ct. at 2667, 96 L.Ed.2d at 647. The UNITED STATES SUPREME COURT has also recognized that this right is also protected by the Due Process Clause in most situations where the Defendant is not actually confronting witnesses or evidence against him. In Snyder v. Massachusetts, 291 U.S. 97, 54 S.Ct. 330, 78 L.Ed. 674 (1934), the Court explained that a Defendant has a Due Process right to be present at a proceeding whenever his presence has a relation reasonably substantial to the fullness of his opportunity to defend against the charge. [The] Presence of a Defendant is a condition of Due Process to the extent that a fair and just hearing would be thwarted by his absence, and to that extent only; Id., at 105-108, 54 S.Ct. at 332-333, 78 L.Ed. at 678-679. These same principles were reiterated recently in Kentucky v. Stincer, 482 U.S. 730, 107 S.Ct. 2658, 96 L.Ed.2d 631 (1987). The Court in Snyder also stated that the exclusion of a

Defendant from a trial proceeding should be considered in light of the whole record.

**II. The Trial Judge Abused His Discretion By Denying The Motion For Continuance, Committing Reversible Error**

Petitioner now states the claim that the trial judge's refusal to grant a continuance was unjustified by statutory law and constitutional precepts, in that it denied and deprived Petitioner of his constitutional entitlement to be present at his trial; App. 11.11. 1-23. Petitioner contends that he had a right to be present under the protections and guarantees of the U.S.C.A. 6th Amendment, 14th Amendment, and Rule 15 of the S.C. Rules of Criminal Procedure (1988). The constitutional right to presence is rooted to a large extent in the Confrontation Clause of the U.S.C.A. 6th Amendment; Illinois v. Allen, 397 U.S. 337, 90 S.Ct. 1057, 25 L.Ed.2d 353 (1970).

The UNITED STATES SUPREME COURT has recognized that this constitutional right is also protected by the Due Process Clause in most situations where the Defendant is not actually confronting witnesses or evidence against him. In Snyder v. Massachusetts, 291 U.S. 97, 54 S.Ct. 330, 78 L.Ed. 674 (1934), the Court explained that a Defendant has a Due Process right to be present at a proceeding whenever his presence has a relation reasonably substantial to the fullness of his opportunity to defend against the charge (emphasis by Petitioner). The presence of a Defendant is a condition of Due Process to the extent that a fair and just hearing would be thwarted by his absence and to that extent only; Id., at 105-108, 54 S.Ct. at 332-333, 78 L.Ed. at 678-679. These same principles were reiterated recently in Kentucky v. Stincer, 482 U.S. 730, 107 S.Ct. 2658, 96 L.Ed.2d 631 (1987). The Court in Snyder also stated that the exclusion of a Defendant from a trial proceeding should be considered in light of the whole record. Further, a Defendant is guaranteed the constitutional right to be present at every stage of the criminal proceedings that are critical to the outcome if his presence would contribute to the fairness of the procedure; Kentucky v. Stincer, at 745, 107 S.Ct. at 2667, 96 L.Ed.2d at 647. A waiver of this important right is permitted **only in limited circumstances**; State v. Patterson, 625 S.E.2d 239, 244 (2006); Rule 16, S.C. Rules Criminal Procedure (2005). In order to meet constitutional

compliance for trying Petitioners case in Petitioners absence, the trial judge must have made a determination that Petitioner VOLUNTARILY waived his right to be present at trial. Petitioner respectfully contends that he has never, at any time, in any manner, waived his right to be present at any criminal proceedings the State may bring against him. MOREOVER, it is transparently clear from the record that the court never made any finding of fact or conclusion of law as to whether Petitioner voluntarily waived this all-important constitutional right. The court simply relied on a bond form to assume the voluntariness of Petitioners absence. The record of the court roster will establish as proof that Petitioner answered all roll calls, AND that Petitioner made an appearance in the courthouse only moments late on the date Petitioners case was called for trial; YET PETITIONER WAS CONVICTED IN HIS ABSENCE. The odd element in this event is that the Plea Agreement offered gave Petitioner until January 2009 to accept the Plea. In light of the Plea Offer made by the State, Petitioner had no conception that he would be tried and convicted in his absence - **WITH THE PLEA OFFER BY THE STATE STILL PENDING!!** This genuine issue of material fact reveals evidence that trial counsel provided ineffective assistance for failing to investigate and/or communicate with Petitioner. The requirements of a minimum standard of effective representation by criminal defense attorneys, as ruled in Strickland v. Washington, clearly shows trial counsel to have provided less than adequate representation, and to have made less than a reasonable effort to ensure that Petitioners constitutional rights were protected and fully administered by the court. This serious failure by trial counsel unconstitutionally deprived Petitioner of his most valuable U.S.C.A. 6th Amendment right to the effective assistance of counsel. This failure also constitutes a violation of Rule 407, and the Due Process Clause of the U.S.C.A. 14th Amendment. Counsel informed the court that she forwarded a letter to Petitioner in reference to his case being set for trial; Trial Transcript, pg. 11, lines 9 - 12. This purported letter was never received by Petitioner. On September 24, 2009, a hearing was held before the Honorable Judge Cothram regarding Petitioners Motion For Reconsideration of his sentence; App. 78-92. Counsel stated that the first day Petitioners name appeared on the trial list was Tuesday, and Petitioner was tried on Wednesday. Counsel believed that if more notice of the trial date had been given, Petitioner would have been present for his trial; App. 81.11 18-22. Petitioner was tried in his absence - WITHOUT MEANINGFUL NOTICE of the

actual trial date. Petitioner was tried in his absence in violation of Petitioners U.S.C.A. 6th Amendment right to be present at every stage of his trial. This violation gave rise to a Due Process violation of the U.S.C.A. 14th Amendment where Petitioner did not receive meaningful notice that his trial would occur on that specific date. Under S.C. Code Ann. §17-27-20(A)(1), A person whose conviction and sentence was obtained in violation of the Constitution of the United States is entitled to the grant of post-conviction relief; Gibson v. State, 329 S.C. 27, 41-42, 495 S.E.2d 426, 428 (1998). Judge Cothram declined to alter or amend Petitioners sentence, App. 91.11 9-12. The trial courts refusal of a motion for continuance in a criminal case will not be disturbed absent a clear abuse of discretion resulting in prejudice to the Petitioner; State v. Williams, 469 S.E.2d 49, 51 (1996). Here it is clear that Petitioner suffered prejudice by the denial of a continuance for the reason that the trial in absentia caused Petitioner to be subjected, WITHOUT THE RIGHT TO DEFEND - to the charge of possession with intent to distribute, whereas the guilty plea in the offer by the State would have been to possession, the difference of which is very significant; Morris v. State, 639 S.E.2d 53 (2006).

FOR THE REASONS STATED ABOVE, Petitioner is statutorily and constitutionally entitled to the grant of a new trial.

### III. SUBJECT MATTER JURISDICTION

The trial court lacked subject matter jurisdiction; App. 1, Freeman v. S.C.; Terry v. Ohio. Tainted evidence; State v. Evans, 541 S.E.2d 852; Brady Law, or Brady v. State; State v. Burton, 589 S.E.2d 6. Once the jury is polled, App. 1 4-11. Counsel failed to move jury in limine to start the suppression hearing on tainted evidence. The evidence was tainted because the Officers did not have probable cause to search the vehicle and unlawfully forced Petitioner out of the vehicle; this constitutes unreasonable / unlawful search and seizure under the protections of the U.S.C.A. 4th Amendment, citing the authority of Criminal Law §294.4(1). The Officers never found any drug(s) or paraphernalia which Officer Mike McCoy used to claim probable cause; this establishes that jeopardy attaches; Terry v. Ohio. Counsel was obligated to request the Dispatch Tape and/or the Video Recording which documented the Officers stop and subsequent search. As the video would show the Officers

stopped the vehicle to search, counsel should have moved for dismissal of all charges with prejudice. Petitioner is entitled to a separate hearing outside the jury's presence on unlawfully seized evidence. The refusal to do so is reversible error; State v. Evans, 541 S.E.2d 852, rehearing denied; the court granted reversal, 582 S.E.2d 407 (2001); State v. Burton, 589 S.E.2d 6 (2003).

Subject matter jurisdiction may be raised at any time; Browning v. State, 320 S.C. 366, 465 S.E.2d 358 (1995); with the exception of certain minor offenses, the circuit court lacks subject matter jurisdiction. Also, the court did not have subject matter jurisdiction in Petitioner's case because Petitioner could have been charged with simple possession and the Grand Jury could hear simple possession and not possession with intent to distribute. The court lacked jurisdiction to convict Petitioner of possession with intent to distribute, and the Grand Jury shouldn't have heard possession with intent to distribute, as they didn't have jurisdiction to hear possession with intent to distribute; Funderburk v. State, Evans v. S.C.; Johnson v. S.C.; Summerall v. S.C.. Possession of cocaine was a lesser included offense than possession with intent to distribute, as the elements of the statutes governing the cocaine substance merely define enhanced punishment. Thus the trial court had jurisdiction to accept Defendant's guilty plea to possession of cocaine under Code 1976, §44-53-370, §44-53-375.

WHEREFORE, for the reasons stated above Petitioner's conviction and sentence should be reversed and remanded for a new trial.

#### C O N C L U S I O N

For the reasons set forth herein, Petitioner Randall Q. Sanders respectfully concludes that this court should grant the present PETITION FOR WRIT OF CERTIORARI and find that Petitioner is indeed entitled to the relief sought, to wit, a reversal of his conviction and sentence, and a remand for a new trial. **FOR THE GRANT** of the Writ does the Petitioner pray.

Respectfully submitted,



Randall Q. Sanders, Petitioner

This 9 day of October, 2014

STATE OF SOUTH CAROLINA  
In The Supreme Court

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CERTIORARI TO SUMTER COUNTY  
R. Knox McMahon, Circuit Court Judge

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Randall Sanders,

Petitioner,

v.

State of South Carolina,


Respondent.

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CERTIFICATE OF SERVICE

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Petitioner Randall Sanders hereby affirms by his signature affixed to this Certificate that he has, this 9 day of October, 2014, served the attorney for the Respondent with a true copy of his PETITION FOR WRIT OF CERTIORARI by depositing same in the U.S. mail, first class, postage prepaid, and addressed to: OFFICE OF THE ATTORNEY GENERAL, P.O. Box 11549, Columbia, SC 29211.

s/   
Randall Sanders, Petitioner  
Lee Correctional Institution  
990 Wisacky Hwy  
Bishopville, SC 29010