

James E. Wise, #250411
Lieber Corr. Inst. E-B-49
P.O. BOX 205
Ridgeville, SC 29472

RECEIVED

DEC 12 2014

December 9, 2014

S.C. Supreme Court

SC Supreme Court Clerk's Office
Attn: Clerk of Court
P.O. BOX 11330
Columbia SC 29211

RE: Filing of reply to writ of certiorari SC Supreme Court
Appellate case num. 2014-002320

Dear Clerk,

Please find here my reply to my writ of certiorari pending
in this court I received a copy on December 1, 2014 and I'm in
my 10 day window pursuant to SCACR rule 242 (g). Thank you and
May God Bless you.

Respectfully Submitted,

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

cc. File
MS. Salley W. Elliott, Assist. A.G.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED

DEC 12 2014

S.C. Supreme Court

Appeal from Newberry County
Court of General Sessions

Honorable Paul Burch, Circuit Court Judge

Appellate Case No. 2014-002320

THE STATE,

Respondent,

VS.

James E. Wise,

Petitioner.

REPLY TO PETITION FOR WRIT OF CERTIORARI

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

Mrs. Salley W. Elliott, Assist. A.G.
Office of the Attorney General
P.O. BOX 11549
Columbia, S.C. 29211
Respondents

TABLE OF CONTENTS

TABLE OF AUTHORITIES3

QUESTION PRESENTED.....4

STATEMENT OF THE CASE.....5

ARGUMENT8-9

CONCLUSION.....9

TABLE OF AUTHORITIES

Cases:

Blockburger v. U.S.	284 US 299 (1932)	..8
State v. Jeter,	47 SC 2, 24 SE 889 (1896)	..8
State v. Brown,	201 SC 417, 23 SE 2d 381 (1942)	..8
Butler V. State		..9

Rules

Rule 220(c)		..8
Rule 29(a)SCRCrimP		..8

QUESTIONS PRESENTED

1. Did the Court of Appeals error by failing to grant relief whenever the arrest of judgment was proper pursuant to State v. Jeter, 47 SC 2, 24 SE 889 (1896) it was a challenge to the Court's Jurisdiction to try the matter and impose a sentence on GS-97-36-402 whose was another inmates indictment named Ryan Dale Hawkins see SCACR rule 220(c) grounds appearing in the record at pg. 169 lines 8-11 which in turn triggers "Shocking to the universal sense of justice in a violation of Butler v. State.

2. Petitioner herein submits his original writ of certiorari questions and issues and arguments made apart of my questions herein presented, I just wanted to point out few other things in this reply brief that the respondents are getting misplaced.

STATEMENT OF THE CASE

Petitioner James E. Wise was indicted in 1997 in Newberry County for first degree burglary, assault and battery of a high and aggravated nature (ABHAN) and escape. In August 1998, Petitioner was re-indicted for first degree burglary in a one-count indictment after a guilty plea in Magistrate's Court to simple assault and battery. (R. p. 335 and 347). Appellant proceeded to trial on October 8, 1998, before the Honorable Frank Eppes, and a jury. Petitioner was represented by Eugene Griffith. Petitioner was found guilty of first degree burglary and escape. The State sought life without parole under the state recidivist statute. (R. p.168-70). Petitioner was sentenced to life imprisonment without parole for first degree burglary and six months, concurrent, for escape. (R.p.169 line 8. Case Number GS-97-36-402)

Petitioner appealed. On appeal, Petitioner presented the issue whether the trial court erred in refusing to quash the indictment for first degree burglary because the trial on that charge constituted a violation of his right against Double Jeopardy. The record on appeal established that Petitioner moved to quash the burglary indictment on the ground his guilty plea to assault and battery as a lesser offense of the ABHAN charge was encompassed within the burglary charge and the subsequent trial for burglary violated his rights against Double Jeopardy. The appeal was dismissed by this Court after a review pursuant to Anders v. California, 386 U.S. 738 (1967). State v. Wise, Up. Op. No. 2000-UP-295 (S.C. Ct. App. Filed April 19, 2000). The remittitur was issued on May 5, 2000.

Petitioner filed applications for post-conviction relief on July 12, 2000 and September 26, 2000. The applications were merged with the July 12, 2000 action surviving. In the action, Petitioner alleged, *inter alia*, that the court of general sessions lacked subject matter jurisdiction

for the first degree burglary charge because he entered an earlier guilty plea to assault and battery arising from the same illegal transactions thus violating Petitioner's rights against Double Jeopardy. (R. p.179-185). After an evidentiary hearing, the Honorable Wyatt T. Saunders issued an order in June 2002 denying the claim and dismissing the application. In pertinent part, Judge Saunders determined that Petitioner raised the Double Jeopardy issue at trial and in his direct appeal following trial and that the claim was not cognizable in post-conviction relief. (R.p.350) Petitioner appealed and a Johnson Petition for Writ of Certiorari was submitted on Petitioner's behalf presenting an evidentiary question. (R.p.429-435). Petitioner submitted a pro se petition in which he raised the issue whether the court of general sessions lacked subject matter jurisdiction to convict him of first degree burglary because it constituted a Double Jeopardy violation.(R.p.439-465). He also complained there was a variance between the indictment and evidence. This Court denied the petition by order dated May 15, 2003 and issued the remittitur on June 3, 2003. (R.p.468-469).

Petitioner also submitted another application for post-conviction relief which was filed on April 27, 2005 in which he alleged, *inter alia*, that the trial court lacked subject matter jurisdiction to proceed with the subsequent burglary indictment because Petitioner entered a guilty plea in magistrate's court to a lesser included offense of assault and battery, contending the plea was part of the burglary charge. (R.p.406-412). The application was summarily dismissed by conditional order of dismissal dated August 29, 2005, and final order of dismissal dated April 3, 2006. (R.p.413-422). Petitioner appealed. This Court dismissed the appeal on the ground Petitioner failed to respond to the conditional order of dismissal. (R.p.424-425). The remittitur was issued on August 15, 2006. (R. p.423).

Petitioner submitted a Motion to Arrest Judgment filed November 1, 2012 in the Newberry County Court of General Sessions. (R. pp. 474-475). In an order dated December 31, 2012, the Honorable Frank R. Addy, Jr., summarily denied the motion after reviewing the motion, attachments to the motion and the records of the clerk of court. The order was filed on January 7, 2013. (R. p. 472).

Petitioner appealed and after full briefing, the South Carolina Court of Appeals issued an opinion affirming the circuit court's denial of Petitioner's motion to arrest judgment. State v. James E. Wise, Up. Op, No. 2014-UP-224 (Ct. App. filed June 18, 2014). Petitioner submitted a petition for rehearing and request for rehearing en banc to the Court of Appeals dated June 24, 2014. The State submitted a return to the petition for rehearing on July 14, 2014. The petition for rehearing was denied by order of the Court of Appeals filed September 30, 2014.

Petitioner filed a Petition for Writ of Certiorari dated October 27, 2014, asking this Court to review the decision of the Court of Appeals. This Return by the State follows., The petitioner received a copy of the states return to writ of Certio-rari on December 1, 2014, and the petitioner herein files his Reply to petition for a writ of certiorari pursuant to S.C.A.C.R. Rule 242 (g) Reply follows, December 9, 2014.

ARGUMENT

THE COURT OF APPEALS ERRED BY AFFIRMING THE CIRCUIT COURT'S
DENIAL OF PETITIONER'S MOTION TO ARREST OF JUDGMENT.

SCRCrimP Rule 29(a), (providing a post-trial motion "may, in the discretion of the court, be determined on briefs filed by the parties without oral argument").

1. Petitioner was never charged in the beginning for the lesser included offense of Malicious injury to personal property, that clearly fails the Blockburger V. U.S., 284 U.S. 299 (1932), he was giving that charge in magistrate's court for the Burglary 1st Charge, to retry is clearly in a violation of Double jeopardy

2. A defendant may make a motion to arrest of judgment alleging an insufficiency of the indictment or the court lacked jurisdiction to try the matter. See: State v. Brown, 201 SC 417, 23 SE 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 SC 2, 24 SE 889 (1896) (concluding it was error for trial court to deny motion for arrest of judgment where indictment was insufficient.

3. Pursuant to SCACR Rule 220(c) (The appellate court may affirm any ruling, order, decision or judgment upon any grounds appearing in the record)

4. See Record on Appeal page 169 lines 8

8 THE COURT All Right. Case Number GS-97-36-402, The sentence
9 of the court is you, James Edward Wise, be committed to
10 the South Carolina Department of corrections for the
11 period of your natural life.


This is shocking to the universal sense of justice because I was sentenced on The State v. Ryan Dale Hawkins Indictment, see: 97-GS 36-404 1) Distribution of crack cocaine and violation section 44-53-445.

Butler v. State, and subject matter jurisdiction can be raised at any time. The petitioner was sentenced under someone else indictment and a violation of double jeopardy clearly this case should be granted writ of certiorari, and or the grant of retrial resentencing or something this is exploited to the maximum.

CONCLUSION

The South Carolina Court of Appeals erred and this Court should exercise its discretionary review of relief granted/retrial or release from custody as a matter of law.

Respectfully submitted,

/s/ 
James Edward Wise, #250411
Petitioner prose

December 9, 2014

1 MR. PEACE: YOUR HONOR, I'M SORRY. I APOLOGIZE TO
2 THE COURT. THIS COPY WAS HARD TO READ. THERE IS ALSO
3 1991, POINTING AND PRESENTING AND ASSAULT WITH INTENT TO
4 KILL.

5 THE COURT: ALL RIGHT.

6 SENTENCE

7 BY THE COURT

8 ALL RIGHT. CASE NUMBER GS-97-36-402, THE SENTENCE
9 OF THE COURT IS YOU, JAMES EDWARD WISE, BE COMMITTED TO
10 THE SOUTH CAROLINA DEPARTMENT OF CORRECTIONS FOR THE
11 PERIOD OF YOUR NATURAL LIFE.

12 CASE NUMBER 480, THE SENTENCE OF THE COURT IS SIX
13 MONTHS CONCURRENT.

14 MR. PEACE: YOUR HONOR, JUST FOR THE RECORD IS THAT
15 LIFE WITHOUT PAROLE ON THE BURGLARY FIRST?

16 THE COURT: THAT'S WHAT I WOULD THINK. WHAT THE
17 STATUTE SAYS, YES, SIR.

18 MR. PEACE: YES, SIR. THANK YOU, YOUR HONOR.

19 THE COURT: ABOUT THREE YEARS FROM NOW, WE'LL FIND
20 OUT IF WE'RE RIGHT OR NOT.

21 MR. PEACE: WE WOULD ASK TO SUBSTITUTE A PHOTOGRAPH
22 OF THE PIG, THE CERAMIC PIG ENTERED INTO EVIDENCE AS
23 STATE'S EXHIBIT TWELVE, AND RETURN THE CERAMIC PIG TO MS.
24 BATES.

25 THE COURT: ALL RIGHT. TELL HER TO SAVE IT IF THEY

1 HAVE APPEAL SO ---

2 MR. GRIFFITH: I DON'T MIND IF SHE LOSES IT.

3 THE COURT: OKAY. LET'S SEE IT. THAT'S PRETTY
4 GOOD. I GIVE MY BOY A PIG EVERY CHRISTMAS. THAT'S A
5 GOOD ONE. LET'S DO THAT.

6 MR. PEACE: OKAY, I'LL PREPARE AN ORDER FOR YOUR
7 SIGNATURE. I'LL DO THAT.

8 THE COURT: YEAH, YEAH.

9 *****END OF TRANSCRIPT*****

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S E N T E N C E

STATE OF SOUTH CAROLINA
NEWBERRY COUNTY

Case # 97 GS-36 36-402

Ticket/Warrant # _____

~~Pled to~~/Convicted of _____

Burglary, 1st

Offense Code _____

MIN/MAX SENT.: _____

ATTEST:

(Clerk of Court/Deputy Clerk)

James Edward Wise
(Defendant)

Date Signed _____

The defendant James Edward Wise is committed to the State Department of Corrections/ Newberry County Detention Center for a term of life ^{without parole} ~~months~~ years and/or pay a fine of \$ _____, provided upon the service of _____ months/years and/or payment of \$ _____, plus pay/waive costs and assessments as applicable the balance suspended with probation for _____ months/years.

Restitution

For Physical Injury \$ _____

Yes/No

Property Damage \$ _____

to be paid _____

to Clerk for _____ **

Other conditions: _____

Date 10/8, 1998

Frank Egges
Presiding Judge

**Pay to Victim's Compensation Fund if Subrogated.

Costs and Assessments \$ _____

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Newberry County
Court of General Sessions

Honorable Paul Burch, Circuit Court Judge

Appellate Case No. 2014-002320

THE STATE,

Respondent,

VS.

JAMES E. WISE,

Petitioner.

PROOF OF SERVICE

I James e. Wise, certify that I have served the reply to petition for writ of certiorari on the respondents by depositing a true and correct copy of same in the United States mail, Postage prepaid addressed at Salley W. Elliott, Assist. A.G. Office of the attorney general P.O. BOX 11549 Columbia, SC 29211.

I further certify that On This 9th Day of December, 2014 Respondents was served a copy of my reply brief.

Respectfully submitted,

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

RECEIVED

DEC 12 2014

S.C. SUPREME COURT

Witnesses

S Wallace Taylor

Call phone 0112 + 0109
DOA 80097

Verdict

Foreman

The State of South Carolina

County of NEWBERRY

COURT OF GENERAL SESSIONS

SEPTEMBER Term, 19 97
97GS36-402

THE STATE

VS.

RYAN DALE HAWKINS

Commitment 5-20-98
BW 1-21-98

INDICTMENT FOR

- CRACK
- 1) DISTRIBUTION OF /COCAINE and
- 2) VIOLATION SECTION 44-53-445

TRUE BILL

Foreman of Grand Jury

9/16/97

McCAW PRINTERS.

COLUMBIA, S. C. 29206

F-491712

F-491713

I, Ryan Dale Hawkins, THE DEFENDANT, IN MY OWN PROPER PERSON, COME TO THE BAR OF THIS COURT, MAKE ~~GRAND JURY~~ ACTION AND FREELY AND VOLUNTARILY FLEAD GUILTY TO THE CHARGE(S) OF:

Distribution of Cocaine in Proximity to a school

THIS 16th DAY OF May A.D. 19 98

ATTEST: Jackie S. Brown
CLERK OF COURT, NEWBERRY, S. C.

Ryan Hawkins
DEFENDANT'S SIGNATURE

1
7

Witnesses

Mary Bates ✓

Todd Johnson

The State of South Carolina,

County of NEWBERRY

SEPTEMBER Term, 19 97

97GS36-479

THE STATE

vs.

JAMES EDWARD WISE

Null prosequi. CNOB

11-9-98

[Signature]

3 cases

INDICTMENT FOR

(1) BURGLARY, 16-11-311 (A) (1)

(a) (b) (c) (d) (3)

(2) ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED NATURE

[Signature]
9/15/97 Foreman of Grand Jury

F-491604

TRUE BILL

I, THE DEFENDANT, IN MY OWN PROPER PERSON, COME TO THE BAR OF THIS COURT, WAIVE GRAND JURY ACTION, AND FREELY AND VOLUNTARILY PLEAD GUILTY TO THE CHARGE(S) OF:

THIS DAY OF A.D. 19

ATTEST:

CLERK OF COURT, NEWBERRY, S. C.

Null prosequi. Convicted on reindictment, sentenced to life w/o parole.

[Signature]

[Handwritten mark]

DOA 1-15-97

Verdict

Foreman

INDICTMENT FOR

The State of South Carolina

County of Newberry

(1) BURGLARY, 16-11-311(A) (1) AND
(a) (b) (c) (d) (3)
(2) ASSAULT AND BATTERY OF A HIGH
AGGRAVATED NATURE

At a Court of General Sessions, convened on the 15th day of Newberry,
19 97, the Grand Jurors of Newberry County present upon their oath:

COUNT ONE

That JAMES EDWARD WISE

did in the county and state aforesaid, on or about the 15th day of July,
19 97, wilfully and unlawfully enter a dwelling without consent and
with intent to commit a crime therein and either, when, in effecting
entry or while in the dwelling or in immediate flight therefrom, he
or another participant in the crime was armed with a deadly weapon or
explosive; or caused physical injury to a person who was not a participant
in the crime; or used or threatened the use of a dangerous instrument;
or displayed what was or appeared to be a knife, pistol, revolver, rifle,
shotgun, machine gun or other firearm, or the entering or remaining
occurred in the nighttime, the said dwelling being occupied by Mary
Bates

COUNT TWO

That JAMES EDWARD WISE

did in the county and state aforesaid, on or about the 15th day of July,
19 97 commit an assault and battery upon the victim, Mary Bates, con-
stituting an unlawful act of violent injury to the person of the said
victim, accompanied by circumstances of aggravation, to wit: the said
violent injury being caused by the use of the hands and/or fists of
the said JAMES EDWARD WISE which were used or intended to be used in
a manner known to be capable of causing serious bodily injury or death,
and the use of his hands and/or fists did cause serious bodily injury
upon the said victim, Mary Bates

Against the peace and dignity of the State, and contrary to the statute in such cases made and
provided.

W. Thomas Jones
Solicitor