

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM CHEROKEE COUNTY
Court of Common Pleas

J. Durham Cole, Circuit Court Judge

Case No. 2014-000-595

Frazier T. Williams, # 227393, Appellant,

Vs.

State of South Carolina. Respondent.

REPLY BRIEF OF APPELLANT

Frazier T. Williams
SCDC No. 227393
Perry Correctional Inst.
430 Oaklawn Road - 04A/124
Pelzer, S.C. 29669

Other Counsel of Record:

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STATUTES

S.C. Code Ann. §14-9-2105
S.C. Code Ann. §17-19-105

CONSTITUTIONAL PROVISION

S.C. Constitution, Article I, §115
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STATEMENT OF ISSUES ON APPEAL

1. The Court did err when it denied Appellant's motion for recusal.
2. The Court did abuse its discretion when it dismissed Appellant's Writ of Mandamus without a hearing, when Appellant was not using the Writ as a method to circumvent the procedural bars to successive post-conviction relief proceedings.

STATEMENT OF THE CASE

The Appellant re-alleges as if verbatim the statement of the case as set forth in his "Initial Brief of Appellant".

ARGUMENT

1. The Court did err when it denied Appellant's Motion for Recusal.

The Appellant has alleged that Judge J. Derham Cole erred by ruling on his Petition for Writ of Mandamus and Motion to Proceed Informa Pauperis because Judge Cole was the trial Judge for Appellant's 1995 Convictions and sentences. The Appellant based his claim on the South Carolina Supreme Court's holding in Floyd v. State, 400 S.E.2d 145 (1991), which held that "in all post-conviction relief hearings . . . a Judge shall, upon motion, recuse himself if he was the Judge who presided at the guilty plea, criminal trial, or probation revocation proceeding for which relief is being sought". To rebut Appellant's claim, the Respondent has incorrectly argued that since this matter was not raised in a post-conviction relief application and a hearing held, he should not be entitled to relief. The Respondent has cited no authority in support of this claim.

Further, the Respondent has incorrectly argued that the South Carolina Supreme Court has declined to extend its Floyd decision to Appellant's claim. In support of this claim, the Respondent cites the Court's holding in State v. Watkins, 752 S.E.2d 261 (2013). In Watkins, the S.C. Supreme Court held that the Judge who held Watkins' PCR hearing was not required to recuse himself because the prior PCR proceeding did not involve Watkins' guilty plea, criminal trial, or probation revocation for which his PCR was sought. However, unlike the Judge in the

Watkins Case, Judge J. Derham Cole, who ruled on the Appellant's mandamus petition, was the same Judge who 'also' presided at Appellant's criminal trial and abused his descretion by denying appellants motion for his recusal.

Finally, in accordance with the South Carolina Supreme Court's holding in both Floyd and Watkins, the Honorable J. Derham Cole err in denying Appellant's Motion for Recusal.

2. The Court abused its discretion when it dismissed Appellant's Writ of Mandamus without a hearing, when Appellant was not using the Writ as a method to circumvent the procedural bar to successive post-conviction relief proceedings.

The Appellant Submits that the Court did abuse its discretion in summarily dismissing his Petition for Writ of Mandamus, along with his motion to proceed in forma pauperis. To satisfy his entitlement for issuance of a Writ of mandamus, the Appellant Submits that all South Carolina Solicitors must prosecute criminal cases upon lawful presentment of an indictment; an indictment is a prerequisite to trial of all criminal cases; the appellant has a Constitutional right to trial upon lawful presentment of an indictment; and he has exhausted all other remedies except Writ of mandamus to challenge the trial Court's subject-matter Jurisdiction to convict and sentence him. See S.C. Code, §14-9-210; S.C. Const., Art 1, §11; S.C. Code, §17-19-10; Porter v. Jedzmiyas, 512 S.E.2d 497 (1999). Therefore, as tested by Constitutional, Statutory, and Case law, the acts complained of by appellant in this case are ministerial. Moreover, the Appellant argued in his Writ of Mandamus that the lower Court should have reversed, vacated, and dismissed his convictions and sentences because his indictments were not presented by a grand Jury during a term of general sessions Court. See, e.g., State v. McClure, 289 S.E.2d 158 (S.C. 1982).

Moreover, the Court should also judicially note that the Respondent has not made any factual allegations by way of rebuttal to refute the appellant's claim that his trial Court lacked subject-matter Jurisdiction to legally convict and sentence him!

Nevertheless, while the state does not specifically deny that the Appellant was not lawfully indicted, it does argue instead that the Appellant is not entitled to relief because he raised his Jurisdictional Claim in a writ of mandamus instead of a PCR proceeding. Contrary to this Claim by Respondent, the issue of subject-matter Jurisdiction may be raised in a writ of mandamus after exhaustion of PCR and habeas Corpus remedies. see Andersen v. State, 527 S.E.2d 398 (S.C. App. 2001). In addition, Courts can always consider questions as to subject-matter Jurisdiction, whenever raised and even sua sponte. U.S. v. White, 139 F.3d 998 (4th Cir. (S.C.) 1998); See also Weinhauer v. State (holding that matters of subject-matter Jurisdiction may be raised at any time.).

Finally, Contrary to the Respondent's argument, it is clear that issues of subject-matter Jurisdiction are not exclusively PCR claims, and can be raised in a writ of mandamus. Therefore, the Court abused its discretion by dismissing the Appellant's writ of mandamus without a hearing on the merits of his Jurisdictional Claim.

CONCLUSION

WHEREFORE, for the foregoing reasons, this Honorable Court should not affirm the lower Court's decisions.

Respectfully Submitted

ls1 Frazier Williams
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Pro se

December 15, 2014

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM CHEROKEE COUNTY
Court of Common Pleas

J. Durham Cole, Circuit Court Judge

Case No. 2014-000-595

Frazier T. Williams, #227393, Appellant,

vs.

State of South Carolina, Respondent.

PROOF OF SERVICE

The undersigned hereby certifies that a true copy of the Reply Brief of Appellant has been served upon opposing Counsel by mailing a copy of same in the U.S. Mail, postage prepaid to:

Suzanne H. White
Assistant Deputy Attorney General
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This 15 day of December 2014,

Frazier T. Williams
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SC Court of Appeals

December 15, 2014

The Honorable Jenny Kitchins
Clerk, South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

Re: Frazier T. Williams v. State of SC
Appellate Case No. 2014-000595
Lower Court Case No. 2013-CP-42-0362

Dear Ms. Kitchings:

Enclosed for filing are the original Reply Brief
of Appellant and Proof of Service of Same for filing
with your office.

Sincerely,

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