

(5)

Dontest Gerald 281699  
Kirkland R&E, C1-51  
4344 Broad River Rd  
Columbia, SC 29210

Clerk of SC Court of Appeals  
South Carolina Court of Appeals  
P.O. Box 11629  
Columbia, SC 29211

RECEIVED

DEC 19 2014

SC Court of Appeals

Re: STATE OF SOUTH CAROLINA vs. Dontest Gerald  
Appeal Case No: 2013GS2605113

Arguable Basis For Appeal

## I. GRAND JURY INDICTMENT

### A. Deprivation of Liberty Without Due Process

1. Government engaged in conduct that interfered with rights implicit in the concept of orderly liberty by failing to indict me within the 90 day time limit pursuant to South Carolina Rules of Criminal Procedure, Rule 3(c). See *Greenholtz v. Nebraska Penal Inmates*, 442 U.S. 1 (1979); and *State v. Gentry*, 363 U.S. 93 (2006)

2. Government tried me on serious charges without presentment of a authenticated true billed indictment, in violation of the South Carolina Constitution. Furthermore, on July 21, 2013, the government initiated plea negotiations (see initial plea offer). I wasn't indicted until November 21, 2014.

3. On December 1, 2014, during the close of evidence, counsel, James C. Galmore ("counsel"), noted indictment deficiencies. However, trial judge, Deandra Jefferson ("judge Jefferson"), stated that the 15th Judicial Circuit does not practice and/or recognize constitutional indictment procedures.

#### B. Deficient Indictment And Warrant

##### 1. Insufficient Factual Basis

a. As a matter of law, there is no evidence that my conduct constitutes attempted murder as defined in S.C. Code of Laws, Section 16-3-29. Government obtained warrant and indictment solely based upon constitutionally inadmissible suggestive identification. See *Neil v. Biggers*, 409 U.S. 188 (1972); and *State v. Moore*, 343 S.C. 282 (2000).

## II. INTERSTATE AGREEMENT ON DETAINERS ACT ("I.A.D.")

### A. Speedy Trial Violations

1. On November 4, 2014, I was heard on the matter of I.A.D. speedy trial violations by judge Hayes.

2. I.A.D.'s 180 day trial clock starts when the solicitor is in receipt of a prisoners I.-I.D. request. See *U.S. v. Parades-Batista*, 140 F.3d 367, 373 (2d Cir.)

3. Solicitor, Jimmy Richardson had reason to review my I.A.D. request no later than March 19, 2013 while I was housed at United States Penitentiary Lee, P.O. Box 900, Jonesville, VA 24263-0900.

4. Upon information and belief, judge Hayes did error by denying my request for dismissal for the State's failure to make a final disposition pursuant to the 180 day time limit prescribed by the I.A.D.

### III. COURT PARTICIPATION IN PLEA NEGOTIATION

#### A. Impermissible Intervention

1. On December 1, 2014, judge Jefferson impermissibly intervened in defendant's plea negotiation in violation of South Carolina Rules of Criminal Procedure. After I made a request for trial by jury, judge Jefferson pointed out the difference between a potential sentence of 30 years if found guilty and the government's plea offer of time served. Afterwards, judge Jefferson made a suggestion for me to confer with my attorney in private to consider the plea. Fear of the possible consequences of not pleading guilty destroyed my ability to balance the risk and benefits of going to trial.

and induced me to make an involuntary plea. E.g. see *U.S. v. Casallas*, 59 F3d 1173, 1176-78 (1st Cir. 1995)

B. Abuse of Discretion

1. On December 1, 2014, prior to entering the courtroom, counsel informed me that judge Jefferson stated that she would not suppress any evidence (see motion to suppress and motion for sanctions). Counsel told me that judge Jefferson's decision was made during a discussion regarding my case in her chambers.

2. Once on the record, judge Jefferson did confirm counsel's report by stating "im not going to throw nothing out." Fear of the possible consequences of a substantial likelihood of irreparable misidentification (*Neil v. Biggers*, 409 U.S. at 198), by exposing jurors to extraneous influences (presumptively prejudicial), destroyed my confidence in a fair trial outcome and induced me to make an involuntary plea. Also, judge Jefferson's discretion to admit such evidence violated my right to due process (prejudice)

IV. DUE PROCESS VIOLATIONS

A. Impairment of Defense

1. Following acts and omissions that induced fear (see III. A.1 - B.2.), judge Jefferson then precluded me from being heard on the merits of my defense with the

exception that, first, I made a unrevocable decision to accept or reject the government's plea bargain. This preclusion gave the government the unfair tactical advantage of shielding the obvious and various shortcomings of its case from adversarial testing at the expense of impeding my defense. Upon belief, judge Jefferson abused her discretion by administering justice in that fashion.

2. The following are motions and defenses I was precluded from asserting due to judicial impairment of defense:

- (a) Motion for Sanctions, filed by counsel on Nov. 18, 2014
- (b) Motion to Suppress, filed by counsel on Nov. 26, 2014
- (c) Motion and Notice of Conflict of Interest, submitted to Administrative General Sessions judge Steven John on Nov. 23, 2014 (copy of affidavit of mailing obtained by defendant)
- (d) Speedy Trial violations pursuant to I.A.D.
- (e) Court failure to schedule Preliminary Hearing (due process, equal protection, and S.C. Rules of Criminal Procedure violations) etc. etc.

## V. BIAS

A. 1. By admitting the solicitor's suggestive identification and other extraneous influences (investigative interviews) into evidence, on one hand, and impeding my ability to

6

Challenge them by acts and commissions that induced fear (see III A.1.-B.2.), on the other hand, judge Jefferson demonstrated bias. She simply aided the solicitor in securing a guilty plea.

## VI. UNACCEPTABLE PLEA (ALFORD PLEA)

A. Factual Basis Requirement. See *McCarthy v. U.S.*, 394 U.S. 459, 467 (1969)

1. Government could not present evidence from which a court could reasonably find that I was guilty. Government failed to satisfy the strong factual basis required for an Alford plea. Compare *North Carolina v. Alford*, 400 U.S. 23, 37-38 (1970) (Court found "overwhelming evidence" of guilt); with *U.S. v. Alber*, 56 F.3d 1106, 1110-11 (9th Cir. 1995) (Strong factual basis required for Alford plea satisfied by numerous pieces of circumstantial evidence)

2. In my case, government did not possess (a) a gun, (b) my fingerprints on a gun, (c) my fingerprints on shell casing, (d) gunpowder residue on my person, (e) GSK test results administered to an alternative suspect, and (f) reliable identification of the alleged suspect minus suggestivity.

VII. CONFLICT OF INTEREST

A. Ineffective Assistance of Counsel

1. On Sunday, November 23, 2014, I mailed a Motion and Notice of Conflict of Interest (Ex Parte) to Administrative General Sessions Judge Steven John to 1302 2nd Ave., Suite 3A30, Conway, SC 29526 (copy of affidavit of mailing obtained by defendant.)

2. On December 1, 2014, the court knew or reasonably should have known that a potential conflict existed, yet, failed to avoid it by initiating an inquiry. See Cuyler v. Sullivan, 446 U.S. 335, 346-47 (1980).

3. Judge Jefferson's failure to make said inquiry constitutes a presumed violation of my right to counsel. See Holloway v. Arkansas, 435 U.S. at 484 (1978) (violation of right to effective assistance of counsel when judge failed to investigate claim of possible conflict of interest on part of defendant's attorney.)

Upon information and belief, the prejudices suffered herein constitute a miscarriage of justice in whole or in part.

I, Dentest Gerald, do hereby swear under the penalty of perjury that the forementioned is true and correct.

WHEREFORE Defendant prays:

That the Court of Appeals make an inquiry into the claims and merits stated herein and dismiss this case with prejudice for violation of laws stated herein that require such a sanction.

Lastly, in the event that this court chooses not to dismiss the case, I request withdrawal of my involuntary plea, an opportunity to be heard on all defenses and motions filed pro se and by counsel, and release on bail on my own recognizance.

Respectfully Submitted

Donte St. Gerald

Donte St. Gerald

December 17, 2014

RECEIVED

DEC 19 2014

SC Court of Appeals

Dontest Gerald 281699  
Kirkland R&E, C1-51  
4344 Broad River Rd.  
Columbia, SC 29210

Clerk of SC Court of Appeals  
South Carolina Court of Appeals  
P.O. Box 11629  
Columbia, SC 29211

LEGAL  
MAIL  
C-11

2921161629

DEC 18 2014  
KIRKLAND R&E CENTER  
MAILROOM



SC Court of Appeals  
RECEIVED

DEC 19 2014

SC Court of Appeals

THE DEPARTMENT OF CORRECTIONS  
HAS NOT CENSORED THIS ITEM  
THEREFORE THE DEPARTMENT DOES  
NOT ASSUME RESPONSIBILITY FOR  
ITS CONTENTS.

THE DEPARTMENT OF CORRECTIONS HAS NOT  
INSPECTED OR CENSORED THIS ITEM, THEREFORE, THE  
DEPARTMENT DOES NOT ASSUME RESPONSIBILITY FOR  
ITS CONTENTS.



THIS ENVELOPE IS RECYCLABLE AND MADE WITH 30% POST CONSUMER CONTENT 

© USPS 2013