

STATE OF South Carolina

IN The Court of Common Pleas

County of Sumter

RECORDED

Third Judicial Circuit

John White, #80622

2015 MAR

PM 12:58

RECEIVED

Petitioner
JAMES C. WILSON
CLERK OF COURT
SUMTER COUNTY, S.C.

APR 13 2015

V.

Department of Appeals

Alan Wilson, Attorney General for

Petition for writ of State Habeas Corpus

the State of South Carolina And

Rules 245 SCACP, Rules 240 SCACP, Rule 65(F)

Richard Cothran, Warden

(1) SCACP

Respondents.

Complaint

STATEMENT

Now Comes the Above-named Petitioner in the Above styled Action pursuant to 17-17-10 et Seq Rules 245 SCACP, Rules 240 SCACP, Rule 65(F)(1) SCACP; And would PRAY that this Court Set a date for a hearing on this matter and would Show his Reason therefore as follow;

Petitioner plead guilty on March 4, 1976, in Sumter County before the Honorable DAN LANEY, JR. to Rape, forty years, fifteen years for housebreaking, five years for ASSAULT and battery of a high and Aggravated Nature, and six years for Attempted Armed Robbery.

This Petition follows, Petition for writ of State Habeas Corpus. Petitioner seeks to have this Court grant this petition for writ of State Habeas Corpus to Compel the Respondents to Release him from South Carolina Department of Corrections (SCDC). The Court has made clear that the great and central office of the writ of State Habeas Corpus is to test the legality of a Prisoner's detention; and to be a means of correcting a Fundamental MISCARRIAGE of Justice. A State and Federal Criminal Law was broken therefore this Request should be heard, with all deliberate speed, in the original Jurisdiction of South Carolina Supreme Court.

Complaint

Did the Court lack subject matter jurisdiction to accept guilty plea to Housebreaking and Larceny? The Petitioner was indicted in the County of Sumter, during Court of General Sessions, March term, 1976 for Housebreaking and Larceny.

The Petitioner's Indictment Reads:

That one John Kelvin White and Harry Lee Brown did in Sumter County on or about the 23rd day of November, 1975, break and enter the house, to wit: Bates Jr. High School of one Bates Jr. High School, with intent to commit a crime therein.

The South Carolina Code of Law (1976) Statute 16-11-320. Housebreaking which is not Burglary: (1) Every person who shall break and enter or who shall break with intent to enter, in the daytime, any dwelling house with intent to commit a felony or other crime of a lesser grade, shall be deemed guilty of a felony and upon conviction shall be punished at the discretion of the court by imprisonment for a term not exceeding ten years. (2) Every person who shall break and enter or who shall break with intent to enter, in daytime, any house other than dwelling house or who shall break and enter or shall break with intent to enter, in the nighttime, any house, the breaking and entering of which would not constitute burglary, with intent to commit a felony or other crime of a lesser grade shall be deemed guilty of a felony and upon conviction shall be punished at the discretion of the court by imprisonment for a term not exceeding (5) five years.

The Court did not have subject matter jurisdiction to accept Petitioner's guilty plea to Housebreaking, because Petitioner's indictment stated that he broke in to a Jr. High school. Which is a building, not a house or dwelling.

S.C. Code of Law (1976) Statute 16-3-10.

(2.) "Dwelling" means its definition found in 16-11-10, and also means the living quarters of a building which is used or normally used for sleeping, living or lodging by a person.

No where in the Petitioner's indictment does it state that a person is sleeping, lodging, or living at the JR. High School.

The offense of privity stealing from the person or of privity entering and stealing from any house, in the nighttime or daytime shall in all cases be deemed and adjudged grand larceny. S.C. Code of law 1976 16-13-30 Petit Larceny.

Petitioner's indictment just stated Larceny, Not Grand Larceny, nor Petit Larceny.

Petitioner's indictment reads as follow, That John Kelvin white And HARRY Lee BROWN did in Sumter County on or about 23rd day of November, 1975, feloniously take And CARRY AWAY the personal goods of Bates JR. High School. Described AS follows, etc.

An indictment is sufficient if the offense is stated with sufficient certainty and particularity to enable the court to know what judgement to pronounce and the defendant to know what he is called upon to answer and whether he may plead an acquittal or conviction thereon.

Petitioner's indictment just states Larceny, therefore he could not know which Larceny by law to answer to Petit Larceny or Grand Larceny. Also the court would not know which charge to sentence.

ARGUMENT

Therefore Petitioner's indictment is void, and the court lacked jurisdiction to accept Petitioner's guilty pleas and sentence Petitioner's to (15) Fifteen years.

Also at the time in the year of 1976, either charge of Housebreaking only carried a max of Ten years under 16-11-320(A) and (5) Five years under 16-11-320(B).

See, State v. Ellison, 356 S.C. 33, 586 S.E. 2d 596; State v. Wilkes, 353 S.C.

462, 578 S.E. 2d 717; State v. Brown, 343 S.C. 342, 540 S.E. 2d 846; issues related

to subject matter jurisdiction may be raised at any time, including for the first time on appeal in the Supreme Court.

A penal statute must be construed strictly against the state and in favor of the defendant.

Petitioner was also charged in the same indictment for LARCENY. The court did not have subject matter jurisdiction to accept Petitioner's plea to this charge, because it deprived the Petitioner of knowing what charge he was to answer to, and it deprived the court, of what punishment to sentence the Petitioner's to.

S.C. Code of Law 1976, 16-13-20, Privily stealing from person or house AS GRAND LARCENY.

Therefore Petitioner's convictions and sentences for Housebreaking and LARCENY should be "VACATED" For lack of subject matter jurisdiction, see, Browning v. State, 465 S.E. 2d 358; Weinbauer v. State, 513 S.E. 2d 840.

Did the court ERROR by Accepting Petitioner's Guilty Plea to Rape and ASSAULT and Battery of High and Aggravated Nature, AS to where it constituted Double Jeopardy?

Petitioner was sentenced to (40) Forty years for Rape and (5) Five years for the Assault Battery and High Aggravated Nature. Petitioner states that this was Double Jeopardy, because both charges arise from the same incident, and both charges failed or both indictments failed to list an aggravating circumstance. Also since ASSAULT and Battery with High and Aggravated Nature, is considered by LAW, and the courts AS A lesser included offense of Rape, the court subjected the Petitioner to Double Jeopardy by conviction and sentencing the Petitioner for both charges, that arise from the same incident. IN State v. Elliott, 552 S.E. 2d 727 (S.C. 2001) This court held that ABNAN is a lesser included offense of Rape on CSC. See, Also State v. White, S.C. App. (2003) 353 SC, 566, 528 S.E. 2d, 728.

A defendant was denied ineffective assistance of counsel when he was advised by attorney to plead guilty to a charge "ASSAULT with intent to kill" from same incident of Criminal Domestic Violence, which constituted Double Jeopardy. See JIVERS v. State, 304 SC, 556, 406 S.E. 2d, 154.

Did the court lacked subject matter jurisdiction to accept Petitioner's Guilty Plea to Rape? See Attachment A. [Consecutive sentences violates Sixth Amendment right to a jury trial. Wash, 158 Wash. 2d 731, 149 P. 3d 573, 80 CR1 273] Blakely v Washington, 542 U.S. 296, 75 CR1 284 (2004).

ATTACHMENT A

The Court lacked Subject Matter Jurisdiction to hear and/or accept Applicant's guilty Plea to the offense alleged in Indictment #76-GS-43-338 (Rape) because the indictment was not returned by a legally constituted grand jury and the Applicant did not sign (a) waiver of presentment.

Within Indictment #76-GS-43-338, it is alleged that a legally constituted grand jury convened and True Bill the indictment March 1, 1976. "(H)owever, March 1, 1976 was not a authorized and/or legal term of Court for General Sessions for the County of Sumter, Third Judicial Circuit, pursuant to S.C. Code Ann. Sec. 14-5-640(3)(1) (Revised 6/27/80). S.C. Code Ann. Sec. 14-5-640(3)(1) Terms of Court reads as follows:

Sumter County.-the Court of general sessions for Sumter County shall be held at Sumter on the second Monday in February two (2) weeks, on the second Monday in May for two weeks, on the fourth Monday in July for two weeks, on the first Monday in November for two weeks and on the second Monday in December for one week.

It's undisputed that the schedule for that period (1976) would have followed that provided in S.C. Code Ann. Sec. 14-5-640(3)(1). It's also undisputed that the grand jury, in 1976, could only convene and True Bill and/or No Bill indictments while in the attendance upon the Court of General Sessions, pursuant to S.C. Code Code Ann. Sec. 14-9-210.

The jurisdiction of the Court and/or a particular judge over the subject matter of a proceeding depends on the authority granted by the Constitution and laws of the State and is fundamental. State v. Goris, 183 S.E. 2d 334, 256 S.C. 539 (1971).

Furthermore, Indictment #76-GS-43-338 is fatally defective and not legally binding because it does not contain the legal signature of the State Attorney and/or County solicitor which is a fundamental, necessary and controlling part of indictment.

ATTACHMENT A

By signing an indictment, the Attorney for the State unites the State with the grand jury for the purpose of commencing the criminal proceeding. U.S.C.A. Const. Amends. 6, 14. LACK of the legal signature of the Solicitor and/or Assistant Solicitor invalidates the indictment and the very fact that the face of the indictment contains a stamped name of the Solicitor does not cure the fatal defect of the indictment. The Body of the indictment contains actual charge, and caption and/or cover sheet is not the controlling part of the indictment.

Relief Sought

Therefore since petitioner was placed in double jeopardy, he states that his conviction for rape and ABHAW and also the court lacked subject matter jurisdiction to hear and or accept applicant's guilty plea to the offense alleged in indictment # 76-GS-43-43-338 (Rape) his sentences should be vacated.

CONCLUSION

Petitioner ask that this Honorable Court grant him any relief, the Court deems justice.

Respectfully Submitted,

s/John White

Dated: This 3 day of March, 2015

Turbeville, South Carolina

John White, # 80622

Turbeville CI

P.O. Box 252

Turbeville, SC, 29162

STATE OF South CAROLINA

RECORDED
2015 MAR 12 12:58 PM
JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

IN The COURT of Common Pleas

County of Sumter

John White # 80622

Petitioner

CASE NO:

v.

Alan Wilson, Attorney General for

the State of South Carolina and

Richard Cothran, Warden

Respondents,

Petition for writ of State Habeas Corpus

Rules 245 SCACP, Rules 240 SCACP, Rule 65(F)(1)

SCACP

Notice And Summons

To the Respondents / Petitioner Above Named;

You are here by summoned and required to answer the above complaint in this action; a copy which is fort with served upon you; which was filed in the office of the Clerk of Court; and Respondents are to service a copy of your answer to the complaint within (30) days after service here of, exclusive of the day of such service. If you fail to respond to the complaint, judgement by default will be rendered against you for the relief demanded in the complaint.

s/ John White

John White, # 80622

Dated: March 3, 2015

Turbeville, South Carolina

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APR 13 2015

SC Court of Appeals

STATE OF SOUTH CAROLINA

County of Sumter

} VERIFICATION

I, John white, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing Application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in his Application; and that the matter and allegations therein set forth are true.

s/ John white

John white, #80622

APPLICATION TO PROCEED WITHOUT PREPAYMENT OF COSTS AND AFFIDAVIT IN SUPPORT THEREOF.

I, John white, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my Application I declare under penalty of perjury that the following fact are true:

- (1) I am the Applicant in this action and I believe I am entitled to Redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

s/ John white

John white, #80622

SWORN to and subscribed before me this 25th day of Feb 2015. [Signature] (L.S.) Notary Public for South Carolina

My Commission Expires: 4-27-2016

STATE OF South Carolina

County of Sumter

John White, #80622

Petitioner

v.

Alan Wilson, Attorney General for

the State of South Carolina and

Richard Cothran, Warden

Respondents.

IN RE: Court of Common Pleas
 2015-03-03 Judicial Circuit
 3:47 PM
 JAMES C. GARDNER
 CLERK OF COURT
 SUMTER COUNTY, S.C.
 2015 MAR 3 3:47 PM
 JAMES C. GARDNER
 CLERK OF COURT
 SUMTER COUNTY, S.C.

Petition for writ of State Habeas Corpus Rules

245 SCACP; Rules 240 SCACP; Rule 65(F)(1) SCRPC

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CERTIFICATE OF SERVICE

SC Court of Appeals

I hereby certify that a copy of the foregoing document was this date served upon the following individual(s) by placing a copy of the same in the United States mail, postage prepaid, and sent to his/her last known address as follows:

Attorney General, Alan Wilson

Dennis Bldg, P.O. Box 11549

Columbia, S.C. 29211

(SCDC) General Counsel

4444 Broad River Road

Columbia, S.C. 29221

S/ John White

John White, #80622

Turbeville C.I.

P.O. Box 252

Turbeville, S.C. 29162

Dated: ~~March~~ MARCH 3, 2015

Turbeville, South Carolina

James C. Campbell, Clerk of Court

RECORDED

215 N. HARVIN Street, Room 303 2015 MAR - PM 12:57

Sumter, S.C. 29150

JAMES C. CAMPBELL MARCH 3, 2015
CLERK OF COURT
SUMTER COUNTY, S.C.

RE: Petition for writ of State Habeas Corpus

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APR 13 2015

DEAR MR. Campbell:

SC Court of Appeals

Enclosed for filing are one (1) copies of the above-referenced pleading AS I have included a SASE, please return a copy clock-stamped and docketed for my record.

s/John White

John White, #80622

CC: Attorney General, Alan Wilson

SCDC General Counsel

RECORDED

FILED IN ERROR

ISSUE'S PRESENTED

2015 MAR -5 PM 12:58

JAMES G. GOSBELL
CLERK OF COURT

1. Did the Court Lack Subject matter Jurisdiction to Accept Petitioner's Guilty Plea to Housebreaking?
2. Did the Court Lack Subject Matter Jurisdiction to Accept Petitioner's Guilty Plea to LARCENY?
3. Did the Court ERRORS by Accepting Petitioner's Guilty Plea to Rape and ASSAULT And Battery of A High and Aggravated Nature? As to where it constituted double Jeopardy.
4. Did the Court Lack Subject matter Jurisdiction to Accept Petitioner's Guilty Plea to Rape?
5. Ineffective Assistance of Counsel.

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SC Court of Appeals