

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

Suzanne H. White  
Asst. Deputy Attorney General  
S.C. Bar No. 78225  
Post Office Box 11549  
Columbia, S.C. 29211

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JAN 30 2015

SC Court of Appeals

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## STATEMENT OF ISSUES ON APPEAL

1. The Court did err when it denied Appellant's 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 bar 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 who presided at the guilty plea, criminal trial, or probation revocation proceeding for relief is being sought shall recuse himself upon motion by the applicant for his recusal."

To rebut appellant's claim, 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 Supreme Court held that the Judge who held Watkins' PCR hearing was not required to recuse himself because the prior proceeding did not involve Watkins' guilty plea, criminal trial, or probation for which his PCR was sought. However, unlike the Judge in Watkins' case, Judge J. Derham Cole, who ruled on appellant's mandamus, was the same Judge who also presided at appellant's trial and clearly abused his discretion by denying appellant's motion for his recusal.

Finally, in accordance with the S.C. Supreme Court's holdings in both Floyd and Watkins, the Honorable Judge Cole erred in denying appellant's motion for his 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 and Statutory right to trial upon lawful presentment of an indictment; and he has exhausted all other remedies except a writ of mandamus to Challenge his trial Court's lack of 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. Jedzmas, 512 S.E.2d 497 (1999).

Accordingly, 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 judicially note that the Respondent has not made any factual allegation by way of any rebuttal to refute the appellant's claim that his trial Court lacked Subject-matter Jurisdiction to legally Convict and Sentence him?

Nevertheless, while the Respondent does not specifically deny that the appellant was not lawfully indicted, it does argue instead that the appellant

is not entitle 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 raise in a writ of mandamus after exhaustion of PCR and habeas Corpus remedies. See Anderson 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, see U.S. v. White, 139 F.3d 998 (4th Cir. (S.C.) 1998).

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 in a writ of mandamus. Therefore, the Court abused its decretion by dismissing the appellant's writ of mandamus without a hearing on the merits of his Subject-matter Jurisdictional Claim.

### CONCLUSION

WHEREFORE, for the foregoing reasons, this Honorable Court should not affirm the lower Court's decision, and instead reverse and vacate the appellant's Unlawful Convictions and Sentences.

Respectfully Submitted

~~191 Frazier T. Williams~~  
Frazier T. Williams  
SCDC NO. 227393  
Perry Correctional Inst  
430 Oaklawn Road-04A/124  
Pelzer, S.C. 29669

January 27, 2015

December 15, 2014

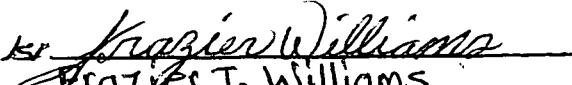
The Honorable Jenny Kitchens  
Clerk, South Carolina Court of Appeals  
P.O. Box 11629  
Columbia, SC 29211

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

Dear Ms. Kitchens:

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

Sincerely,

  
Frazier T. Williams  
SCDC No. 227393  
Perry Correctional Inst.  
430 Oaklawn Road-Q4A/124  
Pelzer, S.C. 29669

THE STATE OF SOUTH CAROLINA  
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MOTION FOR LEAVE TO FILE  
REPLY BRIEF OUT OF TIME

The Appellant moves the Honorable Court to grant him leave to file his Reply Brief out of Time to serve the interest of fundamental fairness as Respondent is proceeding pro se and is unlearned in the law.

Frazier T. Williams  
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SCDC No. 227393  
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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  
SC Bar No. 78225  
Post Office Box 11549  
Columbia, S.C. 29211

This 15 day of December 2014.

Frazier T. Williams  
Frazier T. Williams #227393  
Perry Correctional Institution  
430 Oaklawn Road-Q4A/124  
Pelzer, S.C. 29669

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SC Court of Appeals

DEC 15 2014  
P.C.I. MAILROOM

January 27, 2015

South Carolina Court of Appeals  
V. Claire Allen, Clerk  
Post Office Box 11629  
Columbia, South Carolina 29211

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

Dear Ms. Allen:

Please be advised that I am in receipt of your letter dated January 21, 2015, and received by me from the Perry CI Mailroom on January 26, 2015. In your letter you informed me that your records indicate that I have not filed and served a Reply Brief,

Honorable Allen, Contrary to your records, I filed and served my Reply Brief on December 15, 2014. See my attached "Proof of Service" of same that was dated-stamped received by the Perry CI Mailroom. I also mailed my original Reply Brief to the Honorable Jenny Kitchen on the same date (12-15-14). See attached letter addressed to Jenny Kitchens.

Nevertheless, in an abundance of caution, I am complying with your instructions and submitting another "Reply Brief" along with a "Motion to file it out-of-time" to protect myself for the record.

Sincerely

*Frazier T. Williams*  
Frazier T. Williams #227393  
Perry Correctional Inst  
430 Oaklawn Road #4A/24  
Pelzer, S.C. 29669

cc: Appellant's file

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JAN 30 2015

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