

# The South Carolina Court of Appeals

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June 17, 2015

Gary Eugene Lott, 00262345  
Ridgeland Correctional Institution  
P.O. Box 2039  
Ridgeland SC 29936

Re: The State v. Gary Eugene Lott  
Appellate Case No. 2013-000494

Dear Mr. Lott:

The Court has received your Petition for Rehearing with suggestion Rehearing En Banc. Because you are represented by counsel, we are returning your filings to you. See *Miller v. State*, 388 S.C. 347, 347, 697 S.E.2d 527, 527 (2010) ("Since there is no right to 'hybrid representation' that is partially pro se and partially by counsel, substantive documents, with the exception of motions to relieve counsel, filed pro se by a person represented by counsel are not to be accepted unless submitted by counsel.").

Very truly yours,

*V. Claire Allen, Deputy*

CLERK

cc: David Matthew Stumbo, Esquire  
Kathrine Haggard Hudgins, Esquire  
David A. Spencer, Esquire  
Alan McCrory Wilson, Esquire

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM GREENWOOD COUNTY

EUGENE G. GRIFFITH, JR., CIRCUIT COURT JUDGE

13CS24-101  
Unpublished Opinion No. 2015-UP-266

The State, Respondent,

v.

Gary Eugene Lott, Appellant.

APPELLATE CASE NO. 2013-000494  
2015 WL 3409053 (5-27-15)

RECEIVED

JUN 11 2015

SC Court of Appeals

PETITION FOR REHEARING WITH SUGGESTION  
REHEARING EN BANC

Petitioner Gary E. Lott prays that this Court will grant the petition for rehearing with suggestion for rehearing en banc under South Carolina Appellate Court Rules (SCACR) 219(a)&(b) and 221(a) on the ground(s) overlooked which is set forth below herein:

I. THE CIRCUIT COURT LACKED JURISDICTION TO  
PROCEED ON THE INDICTMENT SET FORTH HEREIN

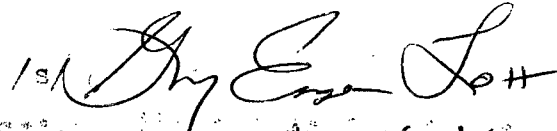
Appellant's indictment which was true billed on 1-22-13 charged Lott with criminal sexual conduct with a minor-third degree (CSC 3rd with minor) was wrongfully amended on 2-25-13 under the number set forth above herein. (tr. p. 5 l. 20; p. 7 ll. 6-7) to charge or read 'lewd act on a minor 16-15-140'. Please see indictment annexed hereto.

see also State v. Myers, 438 S.E.2d 236 (1993) ("Amendments to indictment are permissible if they do not change nature of offense"); Brown v. State, 540 S.E.2d 846, 848 (2001); Hope v. State, 492 S.E.2d 76 (1997) but see State v. Norton, 332 S.E.2d 531(1995) (Committing a lewd act upon a minor is not lesser included offense of first degree criminal sexual conduct on a minor).

Moreover, lewd act is not a lesser included offense of CSC 3rd on a minor even if CSC 3rd with a minor was an offense in October 2, or 3, 2011 for 2012 Act No. 255, §14 eff. 6-18-12 repealed §16-15-140 and the indictment could only have been amended through the Grand Jury of Greenwood County. Therefore, appellant's  
28 FEBRUARY  
January 2013 conviction and sentence must be vacated forthwith.

This 6 day of June 2015

Respectfully submitted,

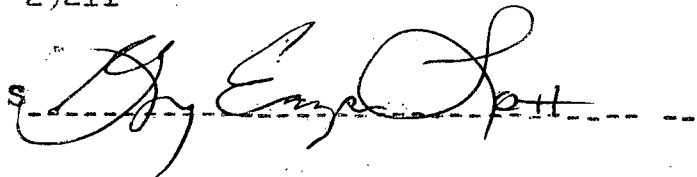


Gary E. Lett, 262345  
RGI, CA-66, POB 2039  
Ridgeland, S. C. 29936

#### CERTIFICATE OF SERVICE

Lett hereby certifies that he has caused true and correct copies of the petition for rehearing etc. and attachment(s) to be mailed, postage prepaid, to the government's attorney, Salley Elliott, POB 11549, Columbia, S. C. 29211

This 9 June 2015



**WITNESSES**

Jeff Scott  
Greenwood County Sheriff

**WARRANT NUMBER**

2012D2400100059  
DIRECT INDICTMENT

*John Biv*

*Jay W. Molina*

Foreman of the Grand Jury

Date: *1/22/13*

**VERDICT**

*Guilty*

*Michelle J. MacLeod*

Foreman

**THE STATE OF SOUTH CAROLINA**

COUNTY OF GREENWODO

**COURT OF GENERAL SESSIONS**

January Term, 2013  
Indictment # 13GS24-*101*

**THE STATE**

vs.

Gary Eugene Lott

**INDICTMENT FOR**

**CRIMINAL SEXUAL CONDUCT  
WITH A MINOR - ~~THIRD DEGREE~~ *ETC***

~~16-03-0655(C)~~  
*16-15-140*

ANGELA W. HURST  
CLERK OF COURT  
GREENWOOD COUNTY  
S.C.

**RECEIVED**

JUN 11 2015

SC Court of Appeals

**WITNESSES**

Jeff Scott  
Greenwood County Sheriff

**THE STATE OF SOUTH CAROLINA**

COUNTY OF GREENWODO

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Indictment # 13GS24-101

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2012D2400100059

DIRECT INDICTMENT

**THE STATE**

vs.

Gary Eugene Lott

*John B. ...*

*Jay W. ...*

Foreman of the Grand Jury

Date: 1/22/13

**INDICTMENT FOR**

**CRIMINAL SEXUAL CONDUCT  
WITH A MINOR - ~~THIRD DEGREE~~ EC 7**

16-03-0655(C)

16-15-140

**VERDICT**

*Guilty*

*Michelle J. ...*

Foreman

A TRUE COPY  
ANGELA W. ...  
CORPORAL ...  
GREENWOOD COUNTY  
S.C.