

RECEIVED

STATE OF SOUTH CAROLINA

MAR 06 2013

COUNTY OF Clarendon

S.C. SUPREME COURT

Dan Temple # 254316  
APPLICANT,

IN THE COURT OF COMMON PLEAS  
Lower Court case # 2010-CP-37-0005

v.

CASE # Appellate # 2012-208638

STATE OF SOUTH CAROLINA,  
RESPONDENT

CERTIFICATE OF SERVICE BY MAIL

1. I AM THE ABOVE NAMED Dan Temple # 254316 IN THE ABOVE CAPTIONED ACTION.
2. REGULAR COMMUNICATION BY MAIL EXISTS THROUGHOUT THE STATE OF SOUTH CAROLINA AND THAT THIS IS A PROPER CIRCUMSTANCE OF SERVICE BY MAIL.
3. I HAVE THIS DAY SERVED A COPY OF THE U.S. Department of Justice IN THE ABOVE-CAPTIONED MATTER ON THE FOLLOWING PERSON(S) BY DEPOSITING IN THE UNITED STATES MAIL, POSTAGE PREPAID:

U.S. Department of Justice  
Civil Rights Division  
950 Pennsylvania Ave. NW  
Washington, DC 20530

Daniel E. Shearouse  
Clerk of Court  
1231 Gervais Street  
Columbia, SC 29201

DATED THIS 1<sup>st</sup> DAY OF March, 2013.

SWORN to and subscribed before me this  
1<sup>st</sup> day of March, 2013.  
Emily Hays (L.S.)  
Notary Public for South Carolina

RESPECTFULLY SUBMITTED,  
Dan Temple JR

My Commission Expires: 4-27-2016

U.S. Department of Justice  
Civil Rights Division  
Disability Rights Section - NYA  
950 Pennsylvania Ave. NW  
Washington, DC 20530

Date: 2/26/13  
Re: Complaint to  
Justice Department

Lower court case #: 2010-CP-37-0005

Appellate case #: 2012-208638

Dan Temple # 254316

Turbeville Correctional Inst.

P.O. Box 252 TB-158

Turbeville, S.C. 29162

Dear Justice Department;

I am an inmate at Turbeville Correctional Institution, I have written to your office before concerning the legal issues of the state of South Carolina, concerning due process, and indictment and information. The Oconee County legal Grand jury of Oconee County failed to rule on the various on the allegations and proof of one and two, when government through it's presentation of evidence conviction beyond those charged in the indictment a constructive amendment "to as a" fatal Variance occurs; Constructive or fatal Variances violate the fifth amendment. Right to the indicted by a grand jury and is per se error USCA Const. Amend 5.

Page (1)

The attorney general's office keeps ordering a conditional order of dismissal, and denying the access to another PCR. The courts are well aware of the errors, and the petitioner understands that not every difference between the indictment and evidence results in a fatal variance test in whether evidence presented at trial changes, the elements of the offense charges, such that defendant is actually convicted of a crime other than that charged in the indictment and when trial evidence does not alter crime charged to indictment a mere variance occurs, and defendant's constitutional rights are not violated unless variance prejudices defendant either by separation of his defense or by exposing him to danger of a second prosecution for the same offense. Why does the State of South Carolina get away with its illegal acts of the due process and the indictments and information. The offender had been alleged to have been convicted of any of the laws of the United States or of any state, territory, or district relating to narcotic drugs. U.S. v. Mason 411 Fed appx 612. DSC 2010. The fifth amendment requires that criminal prosecutions be limited to the unique allegations of the indictments returned by the grand jury. USA Const. amend (5).

S.C. 2011 It is a rule of universal observance in so administering the criminal law that a defendant must be convicted. If convicted of all of the particular offenses charged

~~Sample~~

in the bill of the indictment. Bailey v. State, 709 S.E.2d 671 397 S.C. 422. As a citizen of the United States I am putting this honorable justice department on notice that I am being held unlawfully by the State of South Carolina in the county of Oconee county due to the grand jury standard a person must be sentenced for the body of the indictments, dates, times, and the place and must be a true bill. Oconee county failed to convict the defendant of the original offense charged in the true bill of the indictment of the true bill, and trial judge failed to allow out of state witness to testify in this case. The indictment already stated one beige rock, is a light grayish or yellowish brown beige. The court failed to address this matter, this is a material variance between charges and proof entitles the defendant to a directed verdict. Such a variance is not material if it is not an element of the offense. Bailey v. State 709 S.E.2d. 671 392 S.C. 422.

The indictment was replaced by two white like rock substance, that was not part of the original indictment. While a conviction may be sustained under an indictment which is defective, because it omits essential elements of the offense, such is not true when the indictment facially changes a complete offense, and the state presents evidence which convicts under different theory than that alleged.

"Due Process"

See; art. 1 § 3 SC constitutional privileges and immunities due process; equal protection of law, of citizens of the state of and of the United States, under this constitution shall not be abridged, nor shall any person be deprived of life, liberty, or property with due process of law, nor necessity and sufficiency of service of process under due process clause of Federal Constitutional amendments Supreme Court. 100 L Ed 2d 1015, art. 1 § 3-10. Procedural due process requires (1) adequate notice (2) adequate opportunity for a hearing (3) The right to introduce evidence and (4) The right to confront and cross examine witnesses. Moore v. Moore (SC 2008 376 SC 467, 657 SE 2d 743 constitutional law Key 3879.

Under art. 1 § 11. Presentment or indictment, the state failed to show jurisdiction in this case by stating in the indictment, the incident was on date 8/30/97 and were not 10/10/97. and were not part of the discovery under Rule 5 and 6, and there was not a waiver of presentment to the Grand Jury. The lower court failed to address these issues, and law requires if there has been an indictment returned true billed by a grand jury which sufficiently states the offense.

The record will show that there were NO white rock in the indictment, the judge stated in his order, I see two white rocks in the bag in the hearing, but the indictment did not call for two white rocks in the original indictment clearly shows, no jurisdiction in this case. S.C. art. 1 § 11, that stated, No person may be held to answer for any crime the jurisdiction over which the magistrate's court unless on a presentment or indictment of a grand jury of the county. The petitioners issue is the indictment was not presentment to grand jury as two white rock, date 10/10/97. See; Luke v. State, 3418 SC. SC. 54, 533 SE 2d 324 (2000).

Circuit Court does not have subject matter jurisdiction to convict a petitioner of an offense unless presentment of the indictment. State v. Timmons 349 SC 389. 563 SE 2d 657 (2000); State v. Prines 564 SE 2d 163 (2002). The state failed to carry this indictment to grand jury, an indictment is insufficient to County jurisdiction if it don't apprise the petitioners to the necessary elements

Of the offense intended to be charged and informs the defendant of the circumstances he must be prepared to defend. (1) Weight and the amount (1) or (2) rocks and right date of place, and who had control, not on the warrants, search and warrants and drug reports, to apprise of the necessary elements to county jurisdiction see; State v. Parker 344 SC 250, 254 SE 2d 255 (Ct. App 2001) An indictment must pass a legal muster if it doesn't charge the crime substantially in the language of the statute prohibiting the crime or so plainly that the nature of the offense charged may be easily understood. see; also, Riddle v. State 348 SC 131, 56.

As part of Due Process, we are asking this honorable Department of Justice to protect an inmates rights in the state of South Carolina, and his Constitutional rights to due process, and to look into this matter, and ask the court to rule on merit of the indictment and information that was in violation and error committed by the court.

"Chain of Custody"

A Statutory of limitations can not override a right if due process went the court overlooked the full Brady motion, in the first PCR hearing, and the court had knowledge of it, and allowed it to pass without addressing it. The courts are in error, counsel failed to file and get a full Brady motion, and he did not receive the search warrant in the discovery motion, on a order of dismissal. Counsel testified that the search warrant about which the petitioner complained did not yield any ordinance in this case, but he made a statement on another order he stated, I did not receive the search warrant in the discovery for the state. The attorney that represented me on these charges in court failed to function as the counsel that the constitution's sixth amendment guarantees. The defense attorney failed to conscientiously discharge his professional responsibilities while he handled my case, and the attorney failed to effectively challenge the arrest and seizure of the petitioner. The petitioner was provided with deficient representation by his attorney in that the conduct of his attorney was objectively unreasonable under the circumstances. see Strickland v. Washington 466 U.S. 668 (1984). The outcome of petitioner's proceeding was prejudiced, and it is reasonably probable that the outcome would have been different and counsel's performance was deficient. Strickland 466 U.S. at 694. Defense counsel was ineffective based on one or more of the following: My defense attorney failed to call alibi witnesses on my behalf which would have proven my innocence. Petitioner's counsel representation was not within the range and scope of competence, demanded by Strickland. Petitioner's claim that counsel's assistance was so defective as to require reversal of a conviction requires that, the petitioners have to show first that the deficient performance prejudiced the defense so, as to deprive the petitioner of a fair trial. J. Leeke S.C. 362 F.2d 221 (1987) citing Strickland. Butler v. State 286 S.C. 441, 334 SE 2d 813 (1985), also Hill v. Bochhart 494 US 88 (1985).

The Sixth Amendment guarantees the right to effective counsel in criminal prosecution. In *Strickland v. Washington*, the Supreme Court established a two-prong test to evaluate ineffective counsel claims, that counsel's deficient performance prejudiced the defendant, resulting in an unreliable or fundamentally unfair outcome of the proceeding. When counsel is burdened by an actual conflict of interest of the court to not allow due process of discovery of search warrant and the due process of the state, art. 1 § 3. Privileges and immunities, due process, equal protection of laws. The privileges and immunities of citizens of this state of the United States, United constitutional deprivation of property, Pro se is not protected by the fourteenth amendment may be invoked to seek judicial redress under rights statute, USCA Const. Amend. 14, 42 USCA § (1983).

Conclusion

A person in his home have jurisprudence make clear that a claim of actual innocence is it self a constitutional right to have a viable search warrant to search his home. We have made the court aware of the fundamental miscarriage of justice exception extends to free-standing claims of actual innocence. Our court has come to the same conclusion in cases with similiar circumstances. See erg. People v. More 764 NE 2d 967, 70 Cal, 484 (NY 2002) (Seizure of plastic bag protruding from defendant's rectum during strip search incident to arrest, violated fourth amendment, and State DNA collections Law, of drug seizure. For the foregoing reason, we are asking this honorable court to reverse this case, and vacate the Deonee County sentence, and remand.

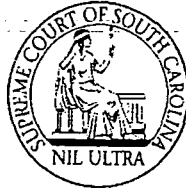
S. Dan Temple

Pro, Sc # 254316

SWORN to and subscribed before me this  
26<sup>th</sup> day of February, 2013.  
[Signature] (L.S.)  
Notary Public for South Carolina

My Commission Expires: 4-27-2016

cc copy: Justice Department  
cc copy: The Supreme Court



# The Supreme Court of South Carolina

DANIEL E. SHEAROUSE  
CLERK OF COURT

BRENDA F. SHEALY  
CHIEF DEPUTY CLERK

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October 11, 2012

The Honorable Beverly H. Whitfield  
Clerk of Court  
PO Box 678  
Walhalla SC 29691-0678

## REMITTITUR

Re: Dan Temple, Jr., v. The State  
Lower Court Case No. 2010CP3700005  
Appellate Case No. 2012-208638

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the order of dismissal, and the order recalling the prior remittitur and denying rehearing are enclosed.

Very truly yours,



CLERK

### Enclosures

Order dated March 30, 2012  
Order dated October 11, 2012

cc: Kaelon Elizabeth May, Esquire  
Mr. Dan Temple, Jr., 00254316

# The Supreme Court of South Carolina

Dan Temple, Jr., Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2012-208638

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## ORDER

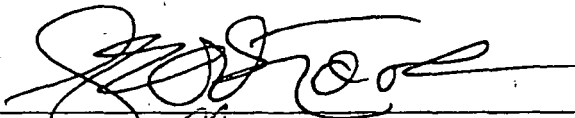
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By order dated March 30, 2012, the notice of appeal in this matter was dismissed based on petitioner's failure to provide an adequate explanation under Rule 243(c), SCACR. The remittitur was sent to the circuit court on April 17, 2012.

Prior to the remittitur being sent, this Court received several documents from petitioner. These documents are entitled "Writ of Certiorari," "Motion Writ of Mandamus under Rule 65", and "Motion to Recur, Basis on a Conflict Interest in Order." Further, after the remittitur was sent this Court received a document from petitioner entitled "Objection to Order of Dismissal" and a letter dated May 17, 2012.

We believe that the filings received before the remittitur was sent should have been construed as a petition for rehearing. Accordingly, the remittitur is hereby recalled.

To the extent the above documents seek a rehearing of the order of dismissal issued in this matter, they are denied. Further, to the extent they seek any other relief from this Court, they are denied.

  
\_\_\_\_\_  
C.J.

  
\_\_\_\_\_  
J.

*The Beards* J.  
*John K. Kitzinger* J.  
*James L. Dean* J.

Columbia, South Carolina

October 11, 2012

cc: Kaelon Elizabeth May, Esquire  
Mr. Dan Temple, Jr., 00254316



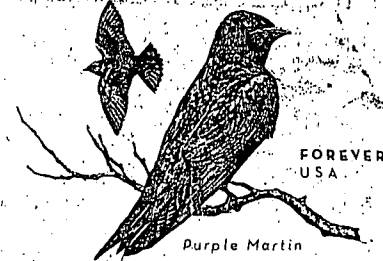
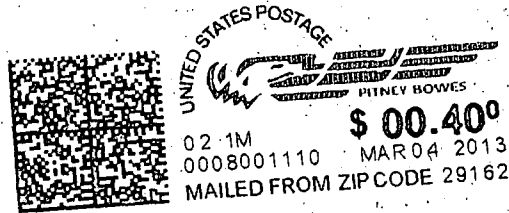
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RECEIVED

MAR 04 2013

MAILROOM  
TURBEVILLE CI

*Legal Mail*



ATTN: Daniel E. Shearouse  
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29201323699

