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9-1-15

S.C. SUPREME COURT

Dear,

Sir, or Mam

May I please get a copy of this brief
after it has been clock stamp?

Thank You

Richard A Green

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South Carolina Supreme Court

SEP 04 2015

Writ of Certiorari S.C. SUPREME COURT

Richard A Green 291708

V.

State of South Carolina

Appellate come now in good faith by way of pro se brief. Appellate seeks relief from Post Conviction Relief court after Judge Newman denied his PCR. It is the prayer of the appellate and his family that his brief be looked at with a practical eye, Giving Me a fair and non-bias, one bite at the apple.

Affording Appellate the unabridged constitutional rights ~~with~~ which is guarantee under the 14th Amendment. Up holding the Jurisprudence of our Judicial System.

Your Honor,

During my Post Conviction Relief Judge Newman stated that my lawyer did a very good job, which I agree that he did for what he were prepared for, but is

Ineffectness came because he weren't fully prepare for the case, ~~when~~ when the court came up with the attempt burglary he weren't prepare for that so therefore he weren't fully prepare which fall with Ineffectted Assistance of Counsel

On June 15, 2010 I went to the Sumter County Sheriff Office because they were at my mother house on several occasions looking for me.

On that day I were questioned by Inv. Westley Gardner, and served with a warrant for 1st degree burglary.

On Sept. 11, 2011 I went to court for the 1st degree burglary, and after doing some research Mr. Gardner had a lot of different positions in these bogus charges, which is a violation of Rule 22-5-180

State v. Culbreath

I concur in the result, I think defendant's ninth exception should be sustained. Section 45 of the Criminal Code (1912) provides that no magistrate shall deputize the person swearing out a warrant in any case to serve the same, if the ~~magis~~ magistrate has no such authority, the officer who has the warrant has no authority to deputize the prosecutor to take part in the arrest, there was testimony to the effect that John L. Outz

who announce the presence of the posse and demanded the surrender of the defendant on the night of the attempted arrest, was the man who issue the warrant before the magistrate, to the extent he participated in the attempt to arrest defendant, if he were the prosecutor the attempted arrest was unlawful.

Indictment - I were indicted for 1st degree burglary and 1st degree burglary only, and that's all that went before the Grand Jury.

① Indictment - is no more than statement of CHARGES against defendant

958 Fed Reporter 2nd 974

² An indictment must allege sufficient fact to ensure that defendant is prosecuted on the basis of the fact presented to the Grand Jury.

Attempted burglary never went before the Grand Jury

③ STATE V. Owens 346 S.C. 637, 552 S.E. 2nd 745

The circuit court does not have Subject

Matter jurisdiction to convict a defendant of an offense unless there is an **INDICTMENT** which sufficiently state the offense. (Joseph v. STATE)

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- Acquittal - This clause attaches special weight to judgement of acquittal: Verdict of ~~not~~ **NOT GUILTY** whether render by the jury or directed by the trial judge, absolutely shield the defendant from retrial, reversal based on the insufficiency of the evidence, has the same effect because it means that no rational fact finder could have voted to convict the defendant. *Tibbs v. Florida* U.S. Fla 1982, 102 S. Ct 2211, 457 US 31, 72 L.Ed2nd
 - Verdict of Acquittal on issue of guilt or innocence is absolute **FINAL**, and idea underlying such principle is that stated with all its resource and power should not be allowed to make repeated attempts to convict individual for alleged offense, subjecting him to embarrassment, expense, ordeals and compelling him to live in continue state of anxiety and insecurity, as well as enhancing possibility that even though innocent he may be found guilty. *Bullington v. Missouri* U.S. Mo 1981, 101 S. Ct

Wade v. Hunter 336 U.S. 684, 93 L.Ed.2d 974, 69 S.Ct. 934 1949. Ordinary, when conviction is over turn, because of trial error, State is free to retry defendant until he is convicted in error free trial, though once he is acquitted, whether or not in error free proceeding, that is the end and the bar of double jeopardy decends.

As can be seen in the transcript that I were ~~be~~ acquitted of the 1st degree burglary charge which were the only charge that I were indicted for, so when they came up with attempted burglary that's ~~where~~ when double jeopardy occur, which violate the 5 Amendment of the U.S Constitution.

Palazzolo v. Gorcyca 244 F.3d 512 6 Cir 2001. The double jeopardy Clause protect against a second prosecution for the same offense after conviction or acquittal, and against multiple punishment for the same offense.

U.S. V. Angleton 314 F3d 767 (5 Cir 2001)

Double jeopardy concerns are implicated where a defendant is retried for the same offense following acquittal.

Due Process - I were never put on notice for Attempted burglary, the Attempted Charge never came up until I were acquitted. My lawyer ask about the attempt which the judge said he know nothing about but after my acquittal they try to bring ~~the~~ Attempted burglary up which truly violate due Process, I were never put on notice for Attempt or no testimony what so ever were made on Attempted burglary, so how can I be sentence for something that I were never on trial for. That's A true violation of the 14 Amendment of the Constitution of the United States. Attempted burglary were nowere on the ~~indicted~~ indictment. Which STATE V. Beam

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States. Defendant is entitled to be tried only on charges set forth in the indictment and appraise the defendant of what he must be prepared to meet at trial, and before the swearing of the jury.

Your Honor: Please know that this case has many violation including Constitutional violation so please take concern for the unjust that were done in this case.

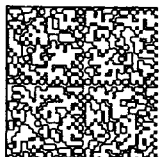
Sincerely

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