TO: OFFICE OF CLERK OF COURT
YORK COUNTY
David Hamilton
P.O. BOX 649
YORK, S.C. 29745

RECEIVED
NOV 02 2015
SC SUPREME COURT

FROM: John P Cousar #316748
L.C.I. F-1 #2148
990 Wisacky Hwy
Bishopville, S.C. 29010

Re: John P Cousar #316748 V. State of South Carolina 2014-CP-46-3485

Dear MR. HAMILTON:

Please find enclosed is an Notice of Appeal to be filed - and if its Possible could you please send me a copy of the filings when you file the said Notice of Appeal. I would be highly grateful for an response in your Earliest Convenience,

Sincerely,

John P. Cousar

IN THE STATE OF SOUTH CAROLINA
IN COURT OF COMMON PLEAS

Re: John P. Cousar #316748 v. State of South Carolina
2014-CP-46-3485

RECEIVED
NOV 02 2015
SC SUPREME COURT

Proof of SERVICE

I John P. Cousar #316748, certify a true copy of an Notice of Appeal has been served upon the state of South Carolina courts of Common pleas threw way of David Hamilton York county clerk of Courts, Placing a true copy in the United states mail.

Respectfully,

John P. Cousar

State of SOUTH CAROLINA
County OF YORK

John P Cousar III, #316748
Applicant

V.

State of South Carolina
Respondent

IN THE COURT OF COMMON PLEAS
SIXTEETH JUDICIAL CIRCUIT

2014-CP-46-3485

NOTICE OF Appeal
RULE 203, SCACR,

RECEIVED
NOV 02 2015
SC SUPREME COURT

This matter comes before the Court Pursuant to an application for Post-Conviction relief (PCR) filed October, 21 2014.

This Court did hereby notified Applicant that he must file and serve a Notice of Appeal within thirty (30) days of the Service of the Said AMENDED Final ORDER of Dismissal, to secure appellate review. See Rule 203, SCACR. Applicants attention is directed to Rule 243, SCACR, for the — Procedures following the filing and service of the notice of appeal.

NOTICE OF APPEAL

I.

Did the Court of Common Pleas err in holding that Applicant is not entitled to a PCR Evidentiary Hearing because Applicant did not assert this claim of "New Discovered Evidence" by March 17, 2007?

The Applicant has reviewed the reasons that the Court denied and dismissed his claim of Newly discovered evidence. First, the Applicant will point out that the court alleges that he didnot exercise reasonable diligence. The Court misapplies "reasonable diligence" in the case at bar. Where Applicants in South Carolina have been repeatedly denied Post Conviction Relief, on the claim of ineffective assistance of trial counsel, whenever Applicants have been afforded an evidentiary hearing and the claim was similar to or idential to the Newly discovered evidence raised in the case at bar, South Carolina's Courts, with the insistence of the Attorney General's office, have consistently held that Counsel's representation didnot fall below an objective standard of "reasonablness."

The Supreme Court of South Carolina held in McKnight v. State, 378 S.C. 33, 46, 661 S.E.2d 354, 361 (2008) "A criminal defense attorney has duty to conduct a reasonable investigation so that he may discover all reasonable available mitigation evidence, as well as any reasonable available evidence tending to rebut evidence Produced by the State." Yet, whenever Applicants Assert this identical or very simular unlawful indictment claim before courts of Common Pleas, in which the Applicants claim ineffective assistance of trial counsel, even with court certified documents to support the indictment claim, South Carolina Judges have denied Post Conviction relief and held consistent with as well as cite Ard v. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590, 597 (2007) "There is a strong presumption that adequate assistance of counsel was rendered and that reasonable care was exercised."

For the record, the Applicant is not asserting ineffective assistance of Counsel in this Notice of Appeal motion, the Applicant is merely pointing out according to Rule 501 Code of Judicial Conduct (3) a Judge shall perform the duties of Judicial office impartially and diligently. Therefore, because the PCR Courts are consistently holding that trial Counsel was not ineffective for failing to discover unlawfully obtained indictments and/or indictments returned "True Bill" contrary to South Carolina Code Ann § 14-9-210, and the PCR Courts are holding that "a reasonable investigation was done into reasonably available evidence and that adequate assistance of counsel was rendered and that reasonable care was exercised," the Court is now obligated to be impartial and the Court should not deny Applicant an evidentiary hearing on the presumption that he didnot exercise reasonable diligence, what is or is not reasonable for trial attomeys or is not reasonable for the Applicant. If criminal defense lawyers who are experts in the law, Licensed to Practice law in S.C., are not being held accountable, nor found ineffect for utterally failing to investigate or discover indictments that forfeit the court of General sessions subject Matter Jurisdiction, then the same Judges should not turn around and claim (with or without the insistence of the Attorney General office) that the Applicant and/or Prisoners that are not experts in the law, nor licensed to Practice law, could have "discovered" the unlawful indictment evidence before it's actually discovered by the Applicant,

The Court erred by claiming that Applicant didnot exercise reasonable diligence because he could have discovered that no court of General sessions for York County was convened on March 16, 2006 as published in his indictments, by March 17, 2007. Furthermore, the Applicant was entitled to "Good Faith Belief" that officers of the Courts would not Convertly act in such erroneous and egregious ways simply to Prosecute by Convenience or with Judicial economy. Thus it would be unreasonable to expect Applicant to have uncovered the acts underlying the issue of Newly discovered evidence before he did.

Applicant's trial counsel Leah B. Moody didnot discover that no Court of General Sessions was in session in York County on March 16, 2006, neither did Applicant's originally appointed PCR Lawyer Michael Johnson, neither did Applicant's replacement PCR lawyer Mathew Niemiec and the Applicant didnot have that PCR Hearing until August 4, 2009. Now, seeing that Professional legal experts trained in Criminal law did not even Stumble across this discovery during their investigation respectfully, it is extremely unfair to deny the Applicant an evidentiary only because he recently discovered this evidence.

The Applicant also humbly request that this Honorable Court take into Consideration that he does not have a high school diploma nor GED, and the fact that he was diagnosed as mentally ill at age 7, and diagnosis was Attention Deficit Disorder and Oppositional Difiant Disorder (see exhibit C Guilty Plea Tr. Pge. 13-34), as well as Attention Deficit Hyperactive Disorder. The Applicant ascerts that with Tremendous effort of overcoming his mental disorder and Lack of education that he did learn of the unlawfully obtained indictments and deliberate misconduct of the state, and through "reasonable diligence" Procur material evidence to support his claim. The Applicant had no help and his gathering of evidence was indeed a process of trial and error. Please see Corresponding letters between Applicants and South Carolina Court Administration (exhibit D - I), also see reply correspondence of York County Clerk of Court's office. (exhibit J).

The exhibits mentioned in reference to Correspondence will clearly show that Mr. Cousar first became suspicious of Potential fundamental defect with his indictments on or about March 5, 2013. From that Point, until shortly after August 11, 2014, the Applicant didnot understand what to ask for because he did not know what he sought in particular and what he was entitled to recieve upon request from the Court. These exhibits of Correspondence clearly show reasonable diligence exercised by the uneducated mentally ill Applicant and with all due respect to the Court of Common Pleas, Mr. Cousar's diligence and persistance should be rewarded with an evidentiary hearing and not be barred by the Presumption that he did not exercise reasonable diligence, for the Applicant began his investigation on a simple haunch and as of yet, No attorney representing the Applicant even considered that there was a fundamental defect in Mr. Cousar's state indictments.

The indictments "appear" to be in Perfect form and in Compliance with the Statutory Provisions contained in S.C. Code Ann § 14-9-210, which would be the accepted excuse of all of the Applicant's Previous attorneys, along with the fact that Mr. Cousar and or his attorneys were entitled to good faith belief in the Conduct of the former Assistant Solicitor for York County.

In a different Context the supreme court has recognized that "novelty of a Constitutional claim" may require a court to grant defendant relief from Waiver, Reed v. Ross, 468 U.S. 1, 14-15 (1984) relief from waiver to challenge jury instructions granted when constitutional claim so novel that legal basis not reasonably known by Counsel at trial. Reed v. Ross 104 A S.Ct. 2901.

The Applicant contends that the Courts holding from Reed v. Ross should apply to him even though somewhat different elements exist, the logic remains Consistent, is as much as the Applicant does ascert a 14th Amendment Constitutional claim, for his due process right was deliberately Violated by the former Assistant Solicitor for York County. As well the Applicant finds it appropriate to mention a sixth Amendment claim, for which he Presents this Honorable Court with State v. Quattlebaum, 338 S.C. 441, 527 S.E.2d 105 (S.C. 2000) in which our supreme Court held Consistent with Federal Precedent, that a defendant must show either deliberate Prosecutorial misconduct or Prejudice to make out a violation of the Sixth Amendment, but not both. Id 527 S.E 2d at 109.

Therefore, for the Court to indirectly assert that the Applicant waived his right to Present this newly discovered evidence via filing of P.C.R. Application, because he did not discover this fundamental miscarriage of Justice Sooner, is inappropriate and unfair to the Applicant, with all due respect to this Honorable Court.

In a different context but similar "fundamental Principles", the court in State v. Butler, 397 S.E. 2d 87 (1990) held in pertinent Pard that abuse of discretion by trial court where judge made an improper statement was "shocking to the universal sense of Justice," affording Butler relief, even though he raised this claim well after the statue of limitations and after he had already been given a P.C.R. hearing and regardless of the fact that he was Privileged to have been in possession of the error for years, the fundamental miscarriage of Justice was shocking to the Conscious, thus out weighing a statue of limitation.

For the record, the Applicant does not stand Primarily on the decision from Butler, because the applicant was not in Possession of his newly discovered evidence until on about August 30, 2014. And in Compliance with S.C. Code Am § 17-27-45(c) the Applicant filed an application requesting a P.C.R. hearing (evidentiary hearing) on october 21, 2014, which was only two months after he discovered the evidence and was well within the Gordeline of one year as Mandated in 17-27-45(c), which appropriately warrants the Applicant the claim of After Discovered Evidence.

S.C. Code Ann § 17-27-45(c) states: "If the applicant contends that there is evidence of material facts not previously presented and heard that requires vacation of the Conviction or Sentence, the application must be filed under this chapter within one year after the date of actual discovery of the facts by the Applicant or after the date when the facts could have been ascertained by the exercise of reasonable diligence."

The Assistant Attorney General made it a priority in his proposed Final order of Dismissal to highlight only the portion of the statue that is ambiguous, "after the date when the facts could have been ascertained by the exercise of reasonable diligence." A court should not consider a particular clause in a statute as being construed in isolation. For the record, the Applicant brings to this Honorable court's attention that the evidence of material facts that he now asserts was not previously presented and heard, and does require vacation of the Conviction and Sentence and that the application was filed well within the one year statue of limitation mandated above.

The Portion of S.C. code § 17-27-45(c) that states "after the date when the facts could have been ascertained by the exercise of reasonable diligence," leaves room for speculation in direct regard to all of the elements surrounding the Applicants Newly Discovered and/or After Discovered Evidence, because Applicant was entitled to good faith belief in the Conduct of the State Prosecutor and because the indictments appeared to be legitimate. Therefore Applicant meets the burden of "reasonable diligence".

Further, because the first part of S.C. Code § 17-27-45(c) states "If the Applicant contends that there is evidence of Material facts not previously presented and heard that requires vacation of the conviction or Sentence, the application must be filed under this chapter within one year after the date of discovery of the facts by the Applicants," is precise, concise, specific, and direct which leaves absolutely no room for speculation and in which a layman can correctly interpret the intent of legislature, and because it would be extremely difficult for the Attorney General's office to misapply that part of the statue, there is absolutely no ambiguity in that portion of the statue.

However, the latter part of S.C code § 17-27-45(c) that states "or after the date when the facts could have been ascertained by the exercise of reasonable diligence," is ambiguous at best. The latter portion of the statue allows for speculation and assumptions, and can very easily misapplied whether misapplication is intentional or not, because every case is different.

When a statue is ambiguous, the principle rule of lenity requires that the definition most favorable to the defendant be used. Berry v. State, 381 S.C. 630, 633, 675 S.E. 2d 425, 426 (2009). (Moreover, in construing a criminal statue, we are guided by the rule of lenity -- the principle that any ambiguity be resolved in favor of the accused.) Additionally, Precedent mandates that "Penal statutes must be construed strictly against the state and in favor of the defendant." State v. Blackmon, 304 S.C. 270, 403 S.E. 2d 660 (S.C. 1991).

This Court should rule that Judge Hall erred in concluding that the Applicant could have by exercise of reasonable diligence ascertained that there was no Court of General Sessions for York County on March 16th of 2006 by — March 17th of 2007, when Judge Daniel D. Hall is the very same former Assistant Solicitor Daniel D. Hall that expertly and covertly published false information in the Applicant's State indictments.

Common sense would tell one that Judge Hall is well aware that if the indictments appeared authentic enough to mislead the trial Court, the Applicants trial counsel, the Applicants Appellate Attorney Wanda Carter (Proof that she had Absolutely no idea that the true billed indictments were defective, see exhibits K + L), as well as Applicant's P.C.R. Counsel, who are all Professionals and experts in the law, then certainly Mr. Cousar who is a layman would have been mislead as well. A Motion for Post Conviction relief that is filed by an Applicant is worthy of an evidentiary hearing when the newly discovered evidence did indeed exist at the time of the trial but for which the Applicant was "excusably ignorant". State v. Houlcomb, 195 S.E. 2d 601, 606 (S.C. 1973)

The Applicant filed his P.C.R. Application in less than two Months after he received material evidence that confirmed his haunch of something fundamental being amiss with his state indictments, which was well within the statue of Limitations mandated in S.C. Code Ann § 17-27-45(c). The aforementioned (exhibit D-I) Prove — that the Applicant did indeed exercise reasonable diligence, for through trial and error he stumbled upon unrebuttable proof that his "Perfect Looking" state indictments, that misled the trial Court and "decieved" all of his attorneys thus far, were fundamentally defective and were alleged to be True Billed by a grand jury and Presented to a Court of General Sessions of March 16, 2006, when there was no Court of General Sessions — Convened anywhere in the entire 16th Circuit on said date as clearly shown on (Exhibit I).

The Applicant has met each burden head on and satisfied every — requirement in S.C. Code Ann § 17-27-45(c). The Applicant bares proof that his fifth and fourteenth United States Constitutional rights were intelligently violated, and proof that his fourteenth South Carolina State Constitutional rights was knowingly violated by a South Carolina State attorney. Because the above are issues of law, this Court should rule that an evidentiary hearing is necessary.

III

Did the Court err in holding that Applicant's state indictments are not defective even though there was no court of General Sessions convened in York County on March 16, 2006 as published in Applicant's indictments?

The Applicant's indictments are not only defective, each indictment is fundamentally defective. In the state's final order of Dismissal the Court erroneously held that the Applicant's allegations that his indictments are defective because there was no court of general sessions for York County on March 16, 2006, is without merit because "this court takes judicial notice of the fact that our supreme court from time to time issues administrative type orders that explain that the grand jury may be convened when the public interest may necessitate."

That is the lamest explanation the Assistant Attorney General could have prepared in his proposed Final ORDER of Dismissal. THAT reasoning DOES NOT justify the blatant 5th and 14th Constitutional Amendment violations committed by former state prosecutor Daniel D. Hall. That reasoning does not correct the lies printed in the Applicant's indictments. Indictments are criminal prosecuting — affidavits. Affidavits must be true, correct, and not to misleed. It is a CRIME to publish an indictment in a court of General Sessions that contains false information.

Intrinsic Fraud involves Perjury and or forged documents presented to a court. Extrinsic Fraud results from misleading from misleading acts by the former State Attorney, in as much as he intelligently and covertly submitted indictments to a York County Court of General Sessions that were unlawfully procured. Intrinsic and or Extrinsic Fraud were committed by former Assistant Solicitor Daniel Hall, — therefore the reasoning in the final Order of Dismissal does not justify the illegalities committed by an officer of the courts, thus rendering Applicant's indictments defective.

If this court does not agree that intrinsic and or extrinsic fraud was committed by the former county prosecutor, then so be it. Under title section 16-9-10 Perjury and subornation of Perjury, and 16-17-410 conspiracy Against public policy the former assistant and Solicitor Daniel D. Hall did indeed commit criminal violations, in as much as he knowingly, intelligently and voluntarily did print false information in Applicant's state indictments and publish them in a court of general sessions and to follow through with prosecution there on,

Even if the supreme court of South Carolina issues orders from time to time that explain that the grand jury may be convened when the public interest may necessitate, our supreme court has never issued an order that explains that County Solicitors can print lies in State indictments, our supreme court has NEVER issued an order advising County Solicitors to commit perjury. (Exhibit I) shows proof that there was no court of General Sessions convened in York County on March 16, 2006, Yet not only were the Applicants indictments True Billed on March 16, 2006, but each — indictment says "At a court of General sessions convened in York County on March 16, 2006 the Grand Jurors present upon their oath"......

the 16th Circuit Judicial Term Calendar Proves that to be a lie. No court of general sessions convened at all in the 16th Circuit on March 16 2006.

Then on July 27, 2006 the very same assistant solicitor that endorsed the indictments presented them to a truthfully convened court of general sessions in York County, and did use them to criminally prosecute the Applicant. The Applicant submits that his guilty conviction judgements are void because by fundamentally — defective indictments. Judge Hall erred by holding that Applicants indictments are not defective.

The improper and covert acts committed by an officer of the court call into question the integrity of the court itself and under mines reliability and trust worthiness of the judicial system as a whole. Bedrock Constitutional law dictates with authority that due process does not stand for the proposition that, under any circumstances can a state commit criminal acts against its citizens, in the name of executive priviledge and or judicial economy.

The above are issues of law, therefore this Honorable court should grant the Applicant an evidentiary hearing.

IV

Did the Court err in Holding that the Court of General sessions for York County did have subject matter jurisdiction over proceeding to — entertain the case against the Applicant and sentence him even-though the grand jury returned true bill indictments contrary to statue 14-9-210?

The statutory provisions contained in section 14-9-210 provide in pertinent part that "the county solicitor shall prepare and through the presiding judge of the court of general sessions submit to the grand jury while in — attendance upon the court of general sessions, bills of indictments in all cases pending in the county court in which the punishment may exceed a fine of one hundred dollars or imprisonment for 30 days. The grand jury shall act thereon, shall report its actions to the presiding judge of the court of general sessions and said judge shall direct the clerk of court of general sessions and said judge shall direct the clerk of court of general to report the same to the presiding judge of the county at its next ensuing term."

It is a Cardinal rule of statutory Construction that the Primary Purpose in interpretting Statues is to ascertain the intent of the legislature. Hodges v. Rainy, 341 S.C. 79, 85 533 S.E.2d 578, 581 (2000).

In the case at bar the grand jury allegedly returned four "true bill" indictments against the Applicant on March 16, 2006 OUTSIDE of a Court of general sessions (See exhibits M - P). If for no other reason that warrants the indictments Fundamentally defective and because this After discovered evidence and — Newly discovered evidence the Applicant can raise his claim. State statue 14-9-210 mandates that the grand jury Convened while in attendance upon a Court of general Sessions to return true bill indictments.

The Court erred in denying the Applicant's claim that the court of General Sessions did not have subject matter Jurisdiction over the Proceedings to — entertain the case against him and to Sentence him. "The jurisdiction of a Court over the subject matter of the Proceeding is determined by the laws of the State, and is fundamental." State v. Heyward, 564 S.E.2d 379 (S.C. App 2000) (Citing Anderson — v. Anderson 299 S.C. 110, 115, 382 S.E.2d 897, 900 (1989) (emphasis added).

Our Supreme Court held in Brown v. State, 343 S.C. 342, 540 S.E.2d 846 (2001) Subject Matter Jurisdiction may not be waived even with Consent of both Parties, an Applicant may challenge the subject matter jurisdiction of the trial Court and such a claim is one that may be raised at any time. The said Part in Brown can not be overruled by Gentry, because even in Gentry the Court held that true billed indictments must be returned by a grand jury and State Statue § 14-9-210 mandates that the grand jury does so while in attendance upon the Court of general Sessions.

Further, our Supreme Court of South Carolina decision that Applicant now brings to the attention of this Honorable Court should be applied to the case at bar and ensure that the Applicant is granted an evidentiary hearing; "No indictment may be true billed by grand jury when Circuit Court lack's jurisdiction, since grand jury's jurisdiction is coextensive with criminal jurisdiction of the Court in which it is impaneled — and for which it is to make inquiry. State v. McClure, 277 S.C. 432, 289 S.E.2d 158 (SC 1982)

The Court erred in holding that the Circuit court had subject matter jurisdiction over the proceeding because that ruling is completely Contrary to our supreme Court's decision in McClure. Surely the Assistant Attorney General did not intentionally propose a Final Order of Dismissal for Judge Hall to sign that holds no regard for supreme Court precedent.

Gentry cannot apply to the case at bar because the grand jury that indicted Gentry had personal jurisdiction to indict him as it was gained through a sitting court of General Sessions, therefore conferring subject matter jurisdiction to the trial court. The Applicant has shown unrebuttable "true copy" certified proof that no convened court of General Sessions was in residence in York County nor in the Sixteenth Judicial Circuit on March 16, 2006, which is the date the Applicant was indicted.

When a legislative enactment limits the way something may be done the enactment cancels the intent that it may be done another way. Thus, since the Assistant Solicitor Hall utilized an unlawful mode of procedure NOT ALLOWED under Section 14-9-210, State lacked the requisted jurisdiction to complete return of true bill indictments. Section 14-9-210 is clearly a jurisdictional statue and sets forth mandatory procedure to be utilized by state for lawful return of a true billed indictment.

A substantial body of law holds that a failure to comply with statutory law jurisdictional in nature deprives the court of subject matter jurisdiction. State v. Lee, 564 S.E. 2d 372 (SC App 2002); State v. Brown (67) S.E. 2d 559 (ct App 2002) State v. Felder 497 S.E. 2d 43 (S.C. 1993). Gray v. State, 276 S.C. 634 S.E. 2d 226 (1981). State v. Brunson, 274 S.C. 220, 262 S.E. 2d 44 (1980). State v. Castleman, 64 S.E. 2d 250 (1951), and many more.

Consequently, the trial court did indeed lack subject matter jurisdiction because grand jury lacked personal jurisdiction necessary to true bill Applicants state indictments because no court of General Sessions was open in York County on March 16, 2006 to afford grand jury the jurisdiction it is required to have to true bill Applicants state indictments as mandated by legislature in state statue 14-9-210.

For the record, the Applicant emphasizes to this Honorable Court that the case at bar is fundamentally different from Gentry because where Gentry's indictment was merely — defective and only excluded details of Gentry's "presence," the circuit court still possessed subject matter jurisdiction, but that is severly different from the case at bar, where "after discovered evidence" or "Newly discovered Evidence" confirm that <u>the grand jury lacked required jurisdiction to return true bill indictments on March 16th of 2006 in York county</u> because it was done outside of a court of General Sessions, thus not only rendering the indictments fundamentally defective <u>the indictment are void</u> and <u>Nugatory</u> and <u>without any binding legal effect</u> which indeed stripped subject matter jurisdiction from the trial court.

The matter presented for review is not a challenge to the court's general grant of authority to hear and determine cases. That authority was granted in <u>State v. Gentry</u>, 363 S.C. 93, 610 S.E. 2d 494 (2005), and is not the issue here. Instead the Applicant contends that the Court of General Sessions failed to comply with statutory law jurisdictional in nature specifying the manner and means for lawful return of true billed indictments.

The Applicant points out that indeed the indictment is only a notice document, that notice document <u>must be</u> returned by a grand jury that has the required jurisdiction to act thereon. Again, <u>No Indictment</u> may be true billed by a grand jury when circuit

Court lacks Jurisdiction. Since grand Jury's Jurisdiction is coextensive with criminal Jurisdiction of the court in which it is impaneled and for which it is to make Inquiry. The grand jury must be convened under the jurisdiction of a Convened court of general sessions before lawful return of indictment can take place. State v. McClure (citations omitted). State v. Funderburk, 259 S.C. 256, 191 S.E. 2d 520 (1972) State v. Wheeler, 259 S.C. 571, 193 S.E. 515 (1972).

The jurisdiction of the grand jury and trial court are coextensive, if one lacks statutory required jurisdiction then so does the other, its as simple as that, The United States Supreme Court has made it clear that the actions of a court without jurisdiction are void and or nugatory and a defendants rights are violated (14th Amendment) when a court entertains a case without Jurisdiction. Burnham v. Superior Court of California, 495 U.S. 604, 110 S.Ct. 2105 (1990) see pg. 2109-2110

Further still, the Applicant expresses that the language used be legislature in state statue § 14-9-210, is so clear and unambiguous that a layman can easily and correctly interpret the intent of legislature. When construing a statue the language must be read in a sense that harmonizes with its subject matter and accords with its general purpose. when a statute's terms are clear and unambiguous on their face, there is no room for statutory construction and a court must apply the statue according to its literal meaning.

State statue 17-19-10 says "offense shall be prosecuted upon grand jury indictments. No person shall be held to answer in any court for an alleged crime or offense unless upon indictment by a grand jury." State statue § 14-9-210 says in pertinent part "The County Solicitor shall prepare and through a presiding judge of the Court of general sessions submit to the grand jury while in attendance upon the Court of General sessions, bills of indictments. The grand jury shall act thereon and report its action to the presiding judge of the Court of General Sessions."

Legislature has mandated that there be a grand jury and the grand jury must return indictment in order for prosecution to ensue, but said grand jury must — return indictment while in attendance upon the court of general sessions. Again, when a legislative enactment limits the manner in which something may be done the enactment also cancels the intent that it may be done another way.

The Applicant was clearly indicted outside of a Court of general sessions and to be honest, because the former Assistant Solicitor Hall intentionally published a lie in all of the Applicant's indictments that said indictments were presented to a Court of general sessions in York County on March 16, 2006 and after discovered evidence

and or newly discovered evidence has proven that to be a lie as a matter of fact, and with the fact that grand jury proceedings are secret and not recored, there stands a very reasonable possibility that NO grand jury indicted the Applicant, especially since Applicant was only 16 years old on March 16, 2006 and jurisdiction was not waived by family Court.

The Applicant insists that this Honorable court should not overlook "Knowing and purposeful bad faith hostility to any person's fundamental Constitutional rights." NO passivity or complaisance is owed or should be given to former Assistant Solicitor Daniel D. Hall of the 16th Judicial Circuit for the County of York, S.C....

Further, the Court did indeed err in accepting a proposed Final Order of Dismissal that covers and supports illegal acts committed by an officer of the Court. That order is a disgrace to the Attorney General's office and to the integrity of the Court, in as much as it denies the Applicant an evidentiary hearing when the case at bar has overwhelming merit. If this is justice, then it is indeed blind, when it chooses to be.

The Court erred in accepting the Proposed Final Order of Dismissal when its only explanation for the unlawful convening of the grand jury was that from time to time the supreme Court issues ORDers that the grand jury may be convened when the public interest may necessitate. The courts indeed have supervisory powers which was rightfully afforded by the U.S. supreme Court in McNabb v. United States, 318 U.S. 332, 341, 63 S. Ct. 608-612.

However even our United States Supreme Court held in United States v. Widgery, 778 F.2d 325 (1985), that even "We do not have the power to by pass a statue that was enacted well within the authority of Congress. The supervisory power is a part of the common law, and no court has common law power to disregard a rule or a statue that was enacted well within the authority of Congress to enact." "The supervisory power does not permit a court to disregard the considered limitations of law it is charged with enforcing. United States v. Payner (1980) (citations omitted).

Further, the supervisory power should be exercised to deter illegal conduct by the government and by officers of the Court, not to prohibit an Applicant from something as simple as an evidentary hearing when the case has much merit and proves fundamental Constitutional violations. Accordingly, the U.S. Supreme Court held in Payner "the supervisory power is a remedy to deter illegal conduct" and it was speaking of government illegal conduct.

The Courts are bound by Pecedent to Strictly Construe statues enacted in derogation of the Common law. The function in equity is not to replace the law. In Thompson ex rel. Harvey V. Cisson Const. Co, 377 S.C. 137, 659 S.E. 2d 171 (S.C. App. 2008) the Court held "When legislature has strucck a Balance by enacting a statutory rule, the Courts have no Prerogative to annul the legislative choice by applying "Chancellar's foot" notions of equity in its place; it is not the province of the Courts to perform legislative functions."

Judge Hall erred by misinterpretting and or misapplying the "orders that the supreme Court issues from time to time" because State Statue 14-9-210 was lawfully enacted by legislature as well as state statue 17-19-10. By denying Mr. Cousar an evidentiary hearing and saying his Contention fails (Bottom p.2 Final ORDER DISMISSAL) what the Court is implying is that the Supreme Court has Committed Encroachment on legislature, because the Applicant's claims are founded and supported by the statutory provisions within 17-19-10 and 14-9-210.

The Constitution of 1868 has been, since its adoption, the fundamental law of this State, and the acts of assembly passed in pursuance thereof, has as full force and validity as any laws upon the statue book. Walker V. State, 12 S.C. 200 (1879). Legislature also uses the word "Shall" more than once in Statue 14-9-210 as well as Statue 17-19-10, the Constitution mandates that these statues be obeyed.

The Court held in Assoc. of Civilian Technicians V. Fed Labor Relations Authority, 22 F. 3d 1150-1153 (D.C. Circa 1994) "The word Shall", in a statue, indicates a Command that admits no discretion on the part of the person instructed to carry out the directive." Within Rule 501 Code of Judicial Conduct: "When the text uses "Shall" or "Shall not" it is intended to impose binding obligations. The Violation of which can result in disciplinary action."

The Court erred by inadvertantly holding that the word "Shall" in Statue 14-9-210 can be disregarded and disobeyed. A State Statue is binding on the Court and should be honored as legislature intended when it is brought to the attention of the Court. State's failure to comply with State Statue (14-9-210) constitutes a fundamental defect which inherently results in a complete miscarriage of justice. Halley V. Dorsey, 580 F. 2d. 112-115 (4th Cir 1975). Hill V. U.S, 368 U.S. 424 (1962.)

Noncompliance with State Statue Averted state Court from obtaining Jurisdiction to Sentence. Hilley, supra (citing) Hill supra. Schal V. Barse, U.S., 332, Page 174-182, 68 S.Ct. 29 92 L.Ed 368 (1948).

This Court should hold that Judge Hall erred in holding that the Applicants contention fails, when Applicant shows Proof that no Court of General Sessions was convened in York County on MARCH 16, 2006 and grand jury allegedly convened "Somewhere else to return true bill Indictments, with blatant disregard for legislative intent when they created State Statue 14-9-210 which is Jurisdictional in Nature thus violating the Constitution of South Carolina directly as well as violating the Constitution of South Carolina directly as well as violating the Applicants 14th Amendment Constitutional right.

This Court Should Consider the above as matters of Law and afford the Applicant an evidentiary hearing.

V.

Did the Court of Common Pleas err in applying S.C. Codes §§17-27-90, 17-27-10,-16, and 17-27-45(a) to Applicant's PCR Motion?

There is material evidence that Proves the Applicant could not have Known and did not Know that false information was printed in his State Indictments — until on or about August 30, 2014. (See Exhibits -D- -I-) Applicant had no reason to suspect or expect the former Assistant Solicitor Daniel D. Hall would have presented bills of indictments to a grand jury in York County when there was no Court of General sessions convened anywhere in the 16th Judicial Circuit on March 16-2006.

The Applicant had no reason to expect or suspect that an officer of the Court and representive of the Judicial System would have printed false information on Applicants State Indictments Knowingly and intelligently, inasmuch as former Assistant Solicitor Hall printed in all of Mr. Cousar's state indictments that: "At a Court of General Convened on March 16, 2006 the Grand Jurors of York County Present upon their oath."

As Already mentioned, there was no Court of General Sessions Convened in York County on March 16, 2006. The Court erred in applying Statue 17-27-90 to the case at bar because Applicant is a layman and had no reason to phantom the idea that former Assistent Solicitor would commit such atrocities. The trial Court apparently was also — deceived as well as all of Applicant's prior attorneys because the unlawful Indictments were Prepared by an expert in law and "appeared" to be in compliance with State Statue §14-9-210

Applicant Should not have been expected to raise this at his first P.C.R. hearing — because his professional licensed P.C.R. attorney did not even discover the unlawfullness of the indictments. Applicant and all of his previous attorneys were entitled to "good faith" belief in the conduct of a memer of the state bar association and an officer of the court that is sworn to uphold the integrity of the Court.

The court seriously erred in accepting the proposed Final order of — Dismissal from the Assistant Attorney General because it wrecklessly cites cases and missapplies the law. The Applicant easily meets the burdens found in Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980): Arce v. State, 409 S.E.2d 292 (1991): Arnold v. State / Pkth v. State, 420 — S.E.2d 834 (1992).

The Applicant's Current Post conviction Motion and P.C.R. Application cannot be considered successive because "a successive P.C.R. application is one that raises grounds not raised in a prior application, raises grounds previously heard and determined, or raises grounds waived prior proceedings." Graham V. State, 378 S.C. 1, 3 (S.C. 2008). The Applicant did not raise these issues in his prior PCR application, the current claims he raises are "Newly discovered Evidence" and or "after discovered Evidence" there fore it most certainly was never heard and determined and because the Applicant had no reason to expect that the Assistant Solicitor would diliberatly Print false information on his state indictments and Publish them in a Court of LAW.

S.C. Code Ann §17-27-90 does not bar this subsequent application. §17-27-90 — only bars a subsequent Application based on grounds that were already finally adjudicated or not raised in a prior application or grounds that were knowingly, Voluntarily, and — intelligently waived in the original PCR Proceeding or any other proceeding. (emphasis added.)

Since by definition the current PCR Application, does not fall within the definition of a successive application, the Applicant is not required to bear the burden of proving that the new ground raised is the subsequent application could not have been raised by him in a previous application. Only those Applicant's who have filed "successive" PCR Application must bear that burden. Arce V. State, 305 SC. 448 (S.C. 1991) the Court held "successive applications are disfavored and the burden is on the Applicant to establish that any new ground raised in a subsequent application could not have been raised by him in a previous application."

Applicant contends that this current application was erroneously summarilly — dismissed for failure to comply with the filing procedures of the uniform Post conviction — Procedure Act, §17-27-10 to 16. This current application is based on "Newly discovered evidence" and or "After discovered Evidence" which the Applicant has shown proof of and Met the —

requirements for: "Presenting ground for relief asserted which for sufficient reason was not asserted in original application."

The Contents that this Application is not barred by S.C. Code Ann § 17-27-45(c) because the Applicant has filed his Application under § 17-27-45 (c) in which Mr. Cousars Application meets the requirements thereof, also the Applicant has raised an "After discovered—Evidence claim" under Rule 29 (b) of SCRCrimP. The Court did indeed err by applying § 17-27-45(a) when the Applicant raises and meets the burden within Rule 29(b) of After discovered evidence.

Again, the Court erred by Applying Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996), to the case at bar. Again the current application is based on "Newly discovered evidence" and or "after discovered evidence". Furthermore the Applicant claims that the trial did indeed lack subject matter jurisdiction to sentence him because the grand jury lacked required jurisdiction to indict Him. Subject Matter Jurisdiction may be Raised at any time.

Conclusion of law

Section XX, Article II, of the Constitution, requires that every act or resolution having the force of Law shall relate to but one subject and shall be expressed in the title." Morton, Bliss & Co. V. Comptroller General, 4. S.C. 430; Antonio V. Mehaffy, 96. U.S. 312.

S.C. Code Ann § 14-9-210 is Titled "Indictments for Count Court cases by Grand jury of Court of general sessions." Even within the title the language begins to mandate the process the Must be adhered to when indictments are to be "true billed" by a grand jury of the Court of General sessions. Legislature enacted § 14-9-210 lawfully and with the full independence and authority of the assembly. The Court is bound by State Statue, any actions by the Court Contrary to the Provisions within State statue are Void and/or nugatory and without any binding legal effect.

§ 14-9-210 mandates that bills of Indictments "shall" be presented to and returned by a grand jury through a convened court of general sessions. The Applicant current PCR Application is based on "Newly discovered evidence" and "After discovered—Evidence" that shows proof that the Applicant was True billed indicted "Somewhere"—OUTSIDE of a Court of General Sessions on March 16, 2006 and also proves that former Assistant Solicitor Daniel Hall deliberately Printed false information in the Applicants state Indictment,

"The established Procedure in this state is for the action of the grand jury to be endorsed on the indictment over the signature of the foreman. The indictment is then Presented to the Court where, in open Court and in the Presence of the grand jury, the clerK of Courts reads the action taken. Opportunity is thus afforded any member of grand jury to disagree with the Correctness of the Presentment read by the clerK." State V. Sanders 251, S.C. 431, 163 S.E. 2d 220.

The Applicant finds it appropriate to assert that former Assistant Solicitor Daniel Hall Knew the requirements mandated by §14-9-210 aswell as Pecedent, therefore said officer of the Court did Print in Applicant's state indictment "At a Court of General Sessions Convened on March 16, 2006, the Grand Jurors of York County Present upon their OATH," false information, intending to mislead the trial Court, the Applicants Counsels and the Applicant himself. The Court Calendar Confirms No Circuit Court in the 16th Judicial Circuit was held on that DAY.

The Applicant was reasonably diligent and did discover this fundamental Mis-Carriage of Justice on his own. The Applicant investigated where there "appeared" to be no wrong doing. The Applicant discovered what the trial Court missed and what his Prev-ious Attorneys had No Knowledge of. The Applicant is a lay Man. The Applicant is a Prisoner who seeks and evidentiary hearing based on "Newly discovered Evidence" and "After Discovered Evidence" that he has diligently Procured.

The Jurisdiction of the grand jury is coexistant with the Court of General Sessions as the Court held in McClure, Funderburk, and Wheeler (Citations Added), State Statue §14-9-210 and Precedent declare this to be an issue of law. Because the grand jury lacked required Jurisdiction to true bill indictments on March 16, 2006, the Court of General Sessions was deprived of jurisdiction to entertain, adjudicate the case and Sentence the Applicant.

Where there is the same reason, there is the same law, and Judgement Should be rendered on Comparable facts. The Applicants 14th Amendment Constitutional Right was violated and Applicant does bare proof of a 6th Amendment Constitutional claim as well.

For the Above reasons, individually and or cumulatively, the Applicant should be granted an Evidentiary Hearing.

Mr. Cousar thanks this Court kindly for reviewing this notice, and Your consideration in applying the Matters of Law will be deeply Appreciated.

Sincerly:

[signature]

John P Cousar #316748
LEE C.I. F-1 A #1116
990 Wisacky Hwy
Bishopville, S.C. 29010

South Carolina Supreme Court
1231 GeRvais street
Columbia, S.C. 29201