

STATE OF SOUTH CAROLINA,
COUNTY OF Sumter

John White, 80622

vs.

The State of South Carolina

Defendant.

RECORDED
INDEXED
2015 DEC 14 AM 11:49
IN THE COURT OF COMMON PLEAS
JUDICIAL CIRCUIT

Plaintiff)
JAMES C. CAMPBELL
CLERK OF COURT)
SUMTER COUNTY, S.C.)
**COMPLAINT AND AFFIDAVIT TO
PROCEED IN FORMA PAUPERIS**

CERTIFIED TRUE COPY
OF ORIGINAL FILE

FILE NO Barbara Shays **2015-CP-43-2714**
DEPUTY CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA

I, John White, being duly sworn, state that I am the Plaintiff and that I do not have the funds available to pay the costs of filing and service in the present matter. I hereby request that the complaint be filed and service made without costs.

Sworn to and Subscribed before me
this 2nd day of Dec, 2015

Evelyn White
Notary Public for South Carolina

My Commission expires 4-27-2016

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JAN 04 2016

SC Court of Appeals

John White

Signature of Plaintiff or
Person Filing Complaint on Behalf of
Plaintiff

RECORDED
2015 DEC 14 AM 11:49
JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

ORDER

Leave is *granted* to proceed in forma pauperis without payment of the filing fee.

Leave is granted to proceed in forma pauperis without payment of the service cost.

Leave is *denied* to proceed in forma pauperis.

Dated: Dec. 14, 2015
Sumter, South Carolina

[Signature]
JUDGE/CLERK OF COURT

NOTICE TO PLAINTIFF: The Court may assess costs against either party at hearing.

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STATE OF SOUTH CAROLINA

COUNTY OF Sumter

John White #80622

Plaintiff(s)

vs.

The State of South Carolina

Defendant(s)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2015 -CP- 43 - 2714

Submitted By: John White
Address: Turbeville C 2
PO Box 252
Turbeville, S.C. 29162

SC Bar #: _____
Telephone #: _____
Fax #: _____
Other: _____
E-mail: _____

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- JURY TRIAL demanded in complaint. NON-JURY TRIAL demanded in complaint.
- This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- | | | | |
|--|---|---|--|
| <p>Contracts</p> <ul style="list-style-type: none"> <input type="checkbox"/> Constructions (100) <input type="checkbox"/> Debt Collection (110) <input type="checkbox"/> General (130) <input type="checkbox"/> Breach of Contract (140) <input type="checkbox"/> Fraud/Bad Faith (150) <input type="checkbox"/> Failure to Deliver/Warranty (160) <input type="checkbox"/> Employment Discrim (170) <input type="checkbox"/> Employment (180) <input type="checkbox"/> Other (199) _____ <p>Inmate Petitions</p> <ul style="list-style-type: none"> <input type="checkbox"/> PCR (500) <input type="checkbox"/> Mandamus (520) <input type="checkbox"/> Habeas Corpus (530) <input type="checkbox"/> Other (599) <u>60 (b)(3)(4)(5)</u> <p>Special/Complex /Other</p> <ul style="list-style-type: none"> <input type="checkbox"/> Environmental (600) <input type="checkbox"/> Automobile Arb. (610) <input type="checkbox"/> Medical (620) <input type="checkbox"/> Other (699) _____ <input type="checkbox"/> Sexual Predator (510) | <p>Torts - Professional Malpractice</p> <ul style="list-style-type: none"> <input type="checkbox"/> Dental Malpractice (200) <input type="checkbox"/> Legal Malpractice (210) <input type="checkbox"/> Medical Malpractice (220) Previous Notice of Intent Case #
20 <u>-NI-</u> <input type="checkbox"/> Notice/ File Med Mal (230) <input type="checkbox"/> Other (299) _____ <p>Administrative Law/Relief</p> <ul style="list-style-type: none"> <input type="checkbox"/> Reinstate Drv. License (800) <input type="checkbox"/> Judicial Review (810) <input type="checkbox"/> Relief (820) <input type="checkbox"/> Permanent Injunction (830) <input type="checkbox"/> Forfeiture-Petition (840) <input type="checkbox"/> Forfeiture-Consent Order (850) <input type="checkbox"/> Other (899) _____ | <p>Torts - Personal Injury</p> <ul style="list-style-type: none"> <input type="checkbox"/> Conversion (310) <input type="checkbox"/> Motor Vehicle Accident (320) <input type="checkbox"/> Premises Liability (330) <input type="checkbox"/> Products Liability (340) <input type="checkbox"/> Personal Injury (350) <input type="checkbox"/> Wrongful Death (360) <input type="checkbox"/> Assault/Battery (370) <input type="checkbox"/> Slander/Libel (380) <input type="checkbox"/> Other (399) _____ <p>Judgments/Settlements</p> <ul style="list-style-type: none"> <input type="checkbox"/> Death Settlement (700) <input type="checkbox"/> Foreign Judgment (710) <input type="checkbox"/> Magistrate's Judgment (720) <input type="checkbox"/> Minor Settlement (730) <input type="checkbox"/> Transcript Judgment (740) <input type="checkbox"/> Lis Pendens (750) <input type="checkbox"/> Transfer of Structured Settlement Payment Rights Application (760) <input type="checkbox"/> Confession of Judgment (770) <input type="checkbox"/> Petition for Workers Compensation Settlement Approval (780) <input type="checkbox"/> Other (799) _____ | <p>Real Property</p> <ul style="list-style-type: none"> <input type="checkbox"/> Claim & Delivery (400) <input type="checkbox"/> Condemnation (410) <input type="checkbox"/> Foreclosure (420) <input type="checkbox"/> Mechanic's Lien (430) <input type="checkbox"/> Partition (440) <input type="checkbox"/> Possession (450) <input type="checkbox"/> Building Code Violation (460) <input type="checkbox"/> Other (499) _____ <p>Appeals</p> <ul style="list-style-type: none"> <input type="checkbox"/> Arbitration (900) <input type="checkbox"/> Magistrate-Civil (910) <input type="checkbox"/> Magistrate-Criminal (920) <input type="checkbox"/> Municipal (930) <input type="checkbox"/> Probate Court (940) <input type="checkbox"/> SCDOT (950) <input type="checkbox"/> Worker's Comp (960) <input type="checkbox"/> Zoning Board (970) <input type="checkbox"/> Public Service Comm. (990) <input type="checkbox"/> Employment Security Comm (991) <input type="checkbox"/> Other (999) _____ |
|--|---|---|--|

Submitting Party Signature: John White

Date: 11.10.15

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

The Honorable Judge, William Jeffrey Young - Circuit Judge

141 N. Main St. Suite 303

Sumter, S.C. 29150

November 10, 2015

RE: An order VACATING Sentence OR Corrected the Sentence

Dear Judge Young:

Find Enclosed ARE one copy of the Above-referenced pleading AS I have included.

Pursuant to Motion For Relief under 60(b)(3)(4) and (5).

Wherefore, the Petitioner John White respectfully PRAY that this Honorable Court enters Judgement granting his Relief Sought And Any Relief the Court deems Justice.

Please MAKE A decision within (120) days, AS Required by statute. Thank you.

Respectfully Submitted

S/John White

John White, #80622

Turbeville CI

P.O. Box 252

Turbeville, S.C. 29162

cc: John White, #80622.

STATE OF SOUTH CAROLINA

IN The Court of Common Pleas

County of Sumter

Third Judicial Circuit

John White, # 80622

Petitioner,

Case No: 2015-CO-43-2714

V.S

The State of South Carolina,

Motion for Relief under 60(b)(3)(4) and (5).

Respondent.

Complaint

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Statement

JAN 04 2016

Now comes the Above-named Petitioner in the Above styled Action ^{SC Court of Appeals} pursuant to 60(b)(3)(4) and (5) Also Petitioner is file this Action Under Section 24-27-100 of the South Carolina Code of Laws (2007) See; Exhibit (A). Petitioner pray that this Court set a date for a hearing on this matter and would show his Reason therefore as follows;

Petitioner plead guilty on March 4, 1976, in Sumter County before the Honorable Dan Laney JA, to Rape, forty years, Fifteen years for Housebreaking and Larceny, five years for Assault and Battery of a high and Aggravated Nature, and six years for Attempted Armed Robbery.

Complaint

Did the Court Lack Subject matter Jurisdiction to accept guilty plea to Housebreaking and Larceny? The Petitioner was indicted in the County of Sumter, during Court of General Sessions, March term 1976 for Housebreaking and Larceny.

The Petitioner indictment Read; That one John Kelvin White and Harry Lee Brown did in Sumter County on or about the 23rd day of November, 1975, break and enter the house, to wit: Bates JA High School, with intent to commit a crime therein.

The South Carolina Code of Law (1976) Statute 16-11-320, Housebreaking which is not Burglary; 1. EVERY person who shall break and enter or who shall break with intent to enter, in the daytime, any dwelling house, with to commit a felony or other crime of a lesser grade, shall be deemed guilty of a felony and upon conviction shall be punished at the discretion of the Court by imprisonment for a term not exceeding Ten years. 2. EVERY person who shall break and enter or who shall break with intent to enter, in daytime, any house other than dwelling house or who shall break and

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U.S. DEPARTMENT OF AGRICULTURE

entering OR shall break with intent to enter, in the nighttime any house, the breaking and entering of which would not constitute burglary, with intent to commit a felony or other crime of a lesser grade shall be deemed guilty of a felony and upon conviction shall be punished at the discretion of the court by imprisonment for a term not exceeding five years. Petitioner should have receive five years for Housebreaking.

SC Code of Law (1976) Statute 16-11-10

d, "Dwelling" mean it's definition found in 16-11-10, and also mean the living quarters of a building which is used or normally used for sleeping, living or lodging by a person. No where in the Petitioner's indictment does it state that a person is sleeping, lodging, or living at the Bates JR. High School.

where the sentence is illegal but the conviction legal, the conviction maybe sustained and the case remanded for a legal sentence. State v. Collins, (1923) 125 SC, 267, SE 423. State v. Baker, (1900) 58 SC, 111, 36 SE 501.

SC Code of Law 1976, § 16-13-30, Petit Larceny; Grand Larceny (A) Simple Larceny of any article of good, choses in action, bank bills, bills receivable, chattels, or other article of personalty of which by law larceny may be committed, or of any fixture, part or product of the soil several from the soil by an unlawful act, or has a value of one thousand dollars or less, is Petit Larceny, a misdemeanor, triable in the magistrate's court. Upon conviction, the person must be fined or imprisoned not more than is permitted by law without presentment or indictment by the grand jury.

Petitioner's value was \$250.00 dollars, this is Petit Larceny, a misdemeanor.

(B) Larceny of good, chattels, instruments, or other personalty valued in excess of one thousand dollars is grand larceny. Upon convict, the person is guilty of a felony and must be fined in the discretion of the court or imprisonment not more than.

(1.) Five years if the value of the personalty is more than one thousand dollars but less than five thousand dollars;

(2.) Ten years if the value of the personalty is five thousand or more.

Petitioner's indictment read as follows, That John Kelvin White and HARRY Lee Brown did in Sumter County on or about 23rd day of November, 1975, Feloniously take and carry away the personal goods of Bates Jr. High School described as follows, etc.

An indictment is sufficient if the offense is stated with sufficient certainty and particularity to enable the court to know what judgment to pronounce and the petitioner to know what he is called upon to answer and whether he may plead an acquittal or conviction thereon. Petitioner's indictment just states LARCENY, therefore he could not know which LARCENY by LAW to answer to Petit LARCENY OR GRAND LARCENY. Also the court would not know which charge to sentence.

Argument

Therefore petitioner indictment is void, and the court lacked jurisdiction to accept petitioner guilty pleas and sentence petitioner to (15) fifteen years.

Also at the time in the year of 1976, either charge of housebreaking only carried a max of (10) ten years under 16-11-320(A) and (5) five years under 16-11-320(B). See, State v. Ellis, 356 S.C. 33, 586 S.E. 2d 596; State v. Wilkes, 353 S.C. 462, 578 S.E. 2d 717; State v. Brown, 343 S.C. 342, 540 S.E. 2d 846; issues related to subject matter jurisdiction may be raised at anytime.

Jurisdictional challenges to an indictment may be raised at anytime, including for the first time on appeal. Virgin Islands v. Williams, 892 F. 2d 305, 309 (3d Cir. 1989).

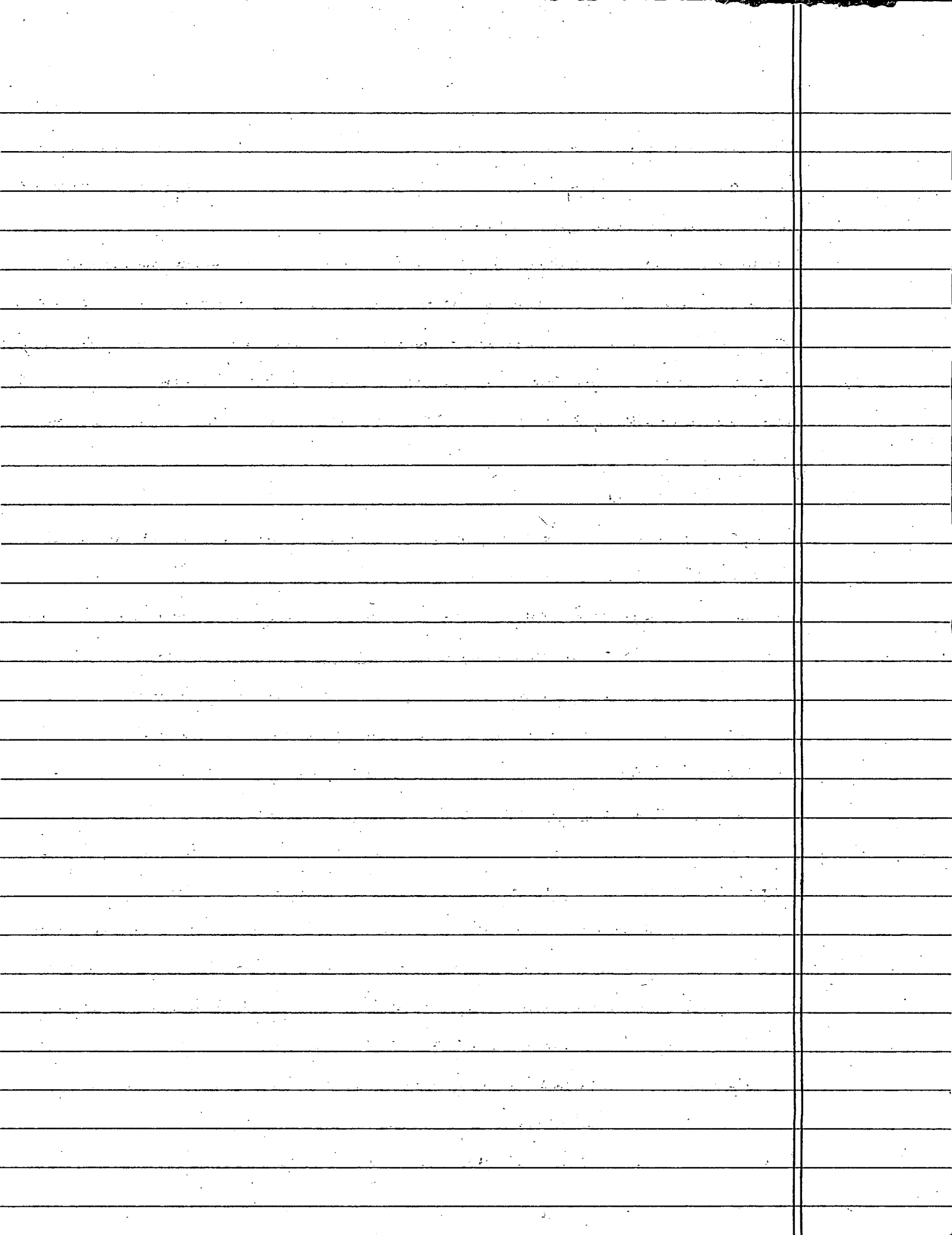
A penal statute must be construed strictly against the state and in favor of the petitioner.

Petitioner's was also charged in the same indictment for LARCENY. The court did not have subject matter jurisdiction to accept petitioner plea to this charge, because it deprived the petitioner of knowing what charge he was to answer to, and it deprived the court, of what punishment to sentence the petitioner to. (S.C. Code of Law 1976, 16-13-20), Privily Stealing from person or house as Grand LARCENY OR Petit LARCENY.

Petitioner was indicted under the wrong statute, this issue can be raised at anytime.

Relief Sought

1. An order vacating sentences and remanding for resentencing.



Therefore Petitioner convictions and sentences for Housebreaking and Larceny should be
VACATED OR CORRECTED, for lack of Subject matter Jurisdiction. See, Browing v. State, 465
S.E. 2d 359; Weinbauer v. State, 513 S.E. 2d 840.

Conclusion

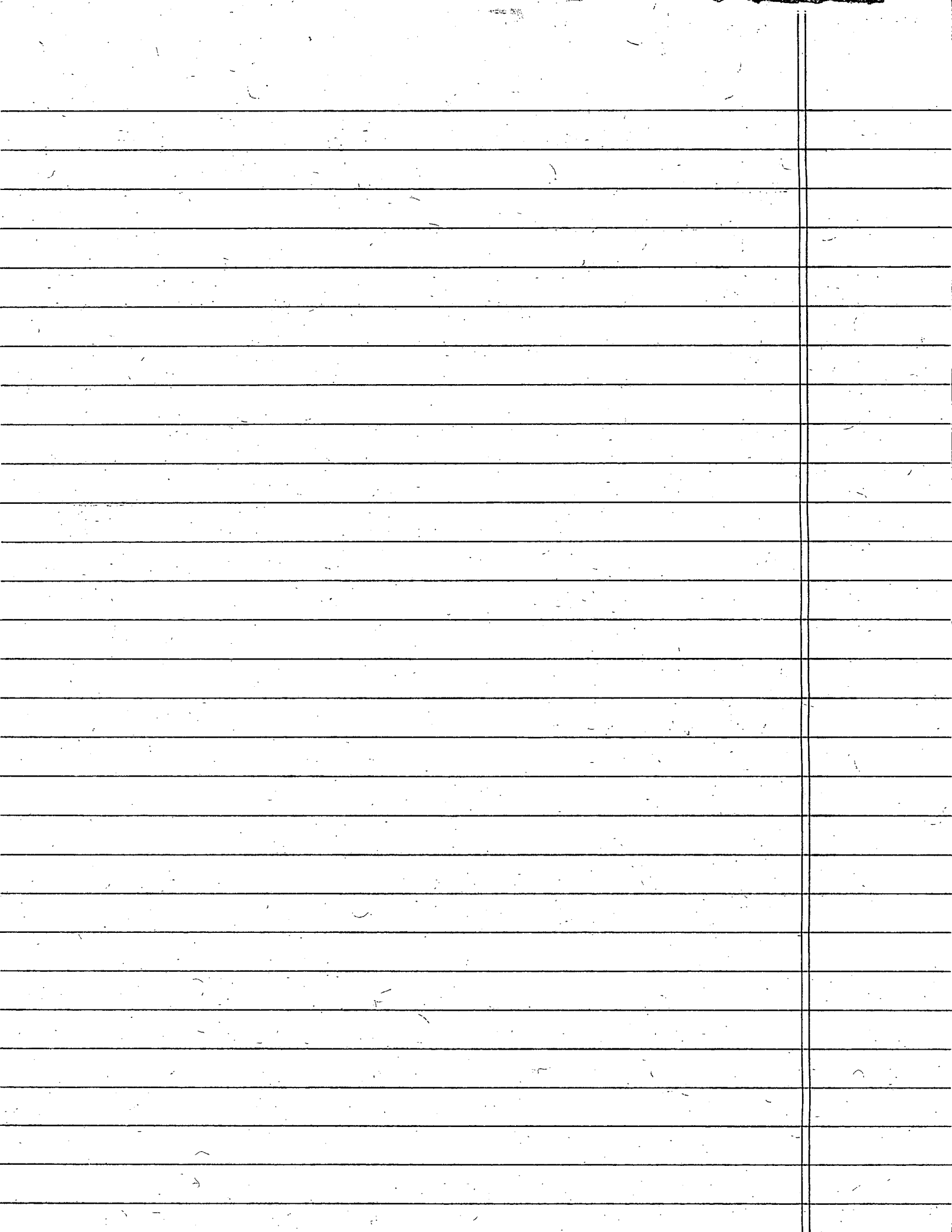
wherefore, the Petitioner respectfully pray that this Honorable court enters judgement
granting the Petitioner Relief Sought and Any Relief the Court deems Justice.

Respectfull Submitted,

S/ John white

John white, #. 80622

Dated: November 10, 2019



State of South Carolina

IN The Court of Common Pleas

County of Sumter

Third Judicial Circuit

John White, #80622

CASE No. 2015-CP-43-2714

Petitioner,

VS

Motion For Relief Under 60(b)(3)(4) and (5)

The State of South Carolina,

Notice And Summons

Respondent.

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JAN 04 2016

SC Court of Appeals

To the Respondent/Petitioner Above Named:

You ARE hereby Summoned And Required to ANSWER the Above Complaint in this Action; A Copy which is fort with served upon you, which WAS filed in the offices of the Clerk of Court; And Respondent ARE to SERVE A Copy of your ANSWER to the Complaint within (30) days After Service here of, exclusive of the day of Such Service. IF you fail to Respond to the Complaint, Judgement by default will be Rendered Against you for the Relief demanded in the Complaint.

S/ John White

John White, #80622

Dated: November 10, 2015

RICHARD

JAN 04 2018

SC Court of Appeals

State of South Carolina

In The Court of Common Pleas

County of Sumter

Third Judicial Circuit

John White, #80622

CASE NO. 2015-CP-43-2714

Petitioner,

VS

Motion for Relief under Rule 60(b)(1), (2), (4) and (5)

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The State of South Carolina

JAN 04 2016

Respondent.

SC Court of Appeals

Application To proceed without prepayment of cost AFFIDAVIT in support thereof:

I, John White, #80622 hereby apply for leave proceed in this action without prepayment of fee or cost or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- 1. I am applicant in this action and I believe I am entitled to redress.
- 2. Because of my poverty I am unable to pay the costs of said proceeding or give security therefor; See Exhibit (A) S.C. Code of Laws § 24-27-100.

SWORN to and subscribed before me this 9th day of Nov. 2015
[Signature] (L.S.)
Notary Public for South Carolina

S/ John White

John white, #80622

My Commission Expires: 4-27-2016

DEWY

JAN 04 2018

SC Court of Appeals

My Commission Expires: _____
Notary Public for South Carolina
(L.S.) _____
_____ day of _____ 20____
BWCN to and attached before me this

Turbeville

**INMATE TRUST FUND ACCOUNT REPORT
for SOUTH CAROLINA COURT FILING FEES**

INSTRUCTIONS TO INMATE: Complete top portion then give to your mailroom. When returned from Accounting, you must mail this form with any payment to the Court.

By signing my name below, I am asking the Financial Accounting Office of the South Carolina Department of Corrections to complete this report. In accordance with SC Code of Laws §24-27-100 and 150, I authorize payment of the full filing fee. If I have insufficient funds in my account at this time to pay the court's full filing fee, I authorize SCDC to deduct the initial and subsequent payments until payment is completed. \checkmark \$ 150.00

INMATE NAME (print): John White SA-132

SCDC # 080622 INMATE SIGNATURE: John White

I plan to file this action in the SC County of Sumter / Richland

The section below is for SCDC - Financial Accounting Branch's use ONLY.

- (1) Total deposits to inmate's account for preceding six months' period* \$.01
- (2) Twenty percent (20%) of line 1 \$ 0
- (3) Account balance - current date \$ 15.03
- (4) PAYMENT AMOUNT **
(lesser of line 2 or line 3)
Enclosed check # _____ \$ 0

****NOTE to COURT:** If payment is for partial fee, Court must notify SCDC once case is accepted and filed. Send notice with case # and balance owed to address below. SCDC will NOT process any additional payments until notification is received from Court.

South Carolina Department of Corrections
Financial Accounting - Room 234
PO Box 21787
Columbia, SC 29221-1787

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SEP 16 2015

SCDC FINANCIAL ACCTG
2015 SEP 16 AM 8:51

*Admission date is noted here if inmate incarcerated less than six months ____ / ____ / TURBEVILLE

Julie Ruben
Prepared by Financial Accounting Branch - SCDC

9/21/15
Date file acctrust prepared 7.97