

Date 2-16-16, 2016

The Honorable Daniel E. Shearouse  
Clerk of South Carolina Supreme Court  
Post Office Box 11330  
Columbia, South Carolina 29211

RE: Frazier T. Williams v. State of South Carolina  
Case No. 2014-000595

Dear Hon. Shearouse:

Enclosed for filing is the following: Petition for Writ of Certiorari (original and six (6) copies), Appendix (2 copies), and Proof of Service for same for filing with your office.

Sincerely,

Frazier T. Williams  
Frazier T. Williams  
SCDC No. 227393  
Perry Correctional Inst.  
430 Oaklawn Road-04A/124  
Pelzer, S.C. 29669

cc: file

**RECEIVED**

FEB 22 2016

**S.C. SUPREME COURT**

THE STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

APPEAL FROM CHEROKEE COUNTY  
COURT OF COMMON PLEAS

J. Durham Cole, Circuit Court Judge

Case No. 2014-000595

Frazier T. Williams, . . . . . Petitioner,

v.

State of South Carolina, . . . Respondent.

PETITION FOR WRIT OF HABEAS CORPUS

Frazier T. Williams  
SCDC No. 227393  
Perry Correctional Inst.  
430 Oakdown Road-DH/124  
Pelzer, S.C. 29669

Other Counsel of Record  
Attorney General Allen M. Wilson,

P.O. Box 11549  
Columbia, S.C. 29211

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## CERTIFICATE OF COUNSEL

The Petitioner, acting Pro Se, Certifies that no transcript was ordered as there was no hearing held in the lower Court.

### QUESTIONS PRESENTED

- I. Has the Court of Appeals ruling Created a Conflict with a previous decision by the S.C. Supreme Court's ruling on requirements for a trial Judge's recusal?
- II. Has the Court of Appeals erred in ruling that the trial Judge did not abuse his discretion in denying petitioner's writ of mandamus?

### STATEMENT OF THE CASE

The petitioner was indicted for murder (95-GS-11-477) burglary (95-GS-11-475), and armed robbery (95-GS-11-476) during the April 1995 term of General Sessions Court for Cherokee County. He went to trial on October 30 thru November 3, 1995, before the Honorable J. Derham Cole, Judge and Jury. He was represented by Donald Lettee, Esq., and the State was represented by Trent Pruett, Cherokee County Solicitor. The Jury found him guilty on all charges, and Judge Cole sentenced him to life for murder and burglary, and a concurrent sentence of twenty-five (25) years for armed robbery. A timely appeal was filed on his behalf.

The S.C. Court of Appeals affirmed his convictions and sentences. State v. Frazier T. Williams, OP No. 27-MO-101 S.C. Ct. App. filed October 29, 1997. The Remittitur was issued November 19, 1997. The petitioner next filed a PCR application on November 4, 1998. The PCR was denied on September 26, 2002. A timely Notice of Appeal was filed on his behalf. The S.C. Supreme Court denied the appeal on August 20, 2003. The petitioner filed a petition for a writ of habeas corpus

in the Court of Common <sup>Pleas</sup> for Cherokee County on October 6, 2006. A hearing was held on September 18, 2007, at the Spartanburg County Courthouse. During this hearing, the Seventh Circuit Solicitor provided the petitioner an "Affidavit" in which he asserted that petitioner had been indicted outside of a term of general Sessions Court. See "Affidavit" attached hereto as Appendix 1. The petition was denied on December 14, 2009. A timely appeal was filed on petitioner's behalf.

The S.C. Supreme Court transferred the case to the Court of Appeals. On May 27, 2010, the Court of Appeals dismissed the appeal. A timely Petition for Rehearing was filed. The petition for Rehearing was denied on July 14, 2010.

On April 24, 2013, petitioner filed a Pro Se Writ of Mandamus in the Court of Common Pleas for Cherokee County challenging the trial court's lack of subject-matter jurisdiction to convict and sentence him. Appendix 4. By order dated October 29, 2013, Judge J. Durham (petitioner's trial judge) denied the writ. Appendix 9. The petitioner filed a motion for Judge Cole's recusal and motion for vacation of his order. On February 21, 2014, Judge Cole denied the motions. Appendix 10. A timely appeal was filed by the petitioner.

On appeal, the S.C. Supreme Court transferred the case to the S.C. Court of Appeals for a disposition. On November 23, 2015, the S.C. Court of Appeals affirmed Judge J. Durham Cole's denial of petitioner's writ of mandamus. Appendix 11. The petitioner filed a timely Petition for Rehearing. The petition for rehearing was denied on January 21, 2016. Appendix 13.

## ARGUMENT

- I. The Court of Appeals' decision has created a conflict with a previous decision by this Court in ruling that petitioner did not show how he was prejudiced by his trial Judge's denial of his Petition for Writ of mandamus challenging his criminal convictions.

The S.C. Supreme Court has affirmatively held that it has adopted a per se rule that a Judge who is scheduled to hear a post-conviction matter must, upon request, recuse himself if he presided over the guilty plea, criminal trial, or probation revocation for which post-conviction relief is sought. Floyd v. State, 400 S.E.2d 145 (1991).

Here, the record in petitioner's case shows that the Honorable J. Derham Cole was the Judge who presided over his criminal trial, and was the same Judge who denied his writ of mandamus in which he contested his criminal convictions. Notwithstanding, to dispute his claim that Judge Cole erred by denying his recusal motion, the Court of Appeals has cited Canon 3(B)(1) of the Code of Judicial Conduct, Rule 501 SCACR ("A Judge shall hear and decide matters assigned to the Judge, except those in which disqualification is required"); and State v. Jackson, 578 S.E.2d 744, 745 (Ct. App. 2003 (holding, "it is not enough for a party seeking disqualification to simply allege bias or prejudice. The party must show some evidence of that bias or prejudice").

The petitioner submits that contrary to the Appellate Court's decision, the S.C. Supreme Court's decision in Floyd, *infra*, contains mandatory language that a trial Judge "must, upon request, recuse himself if he was the Judge who presided over the... criminal trial... for which relief is being sought". In this case the Court of Appeals has acknowledged the Supreme Court's holding in Floyd, but has nevertheless erroneously

ruled that "a party seeking disqualification of a trial Judge's ruling on his own trial in a PCR proceedings must show some evidence of his bias or prejudice."<sup>1</sup>

Finally, in reviewing the decision by the Court of Appeals on the petitioner's motion for Judge Cole's recusal, the petitioner contends that the Appellate Court's reliance on Canon 3(B)(1), ... 50V SCACR; and its holding in Jackson, Supra, are not only erroneous, but has also created a conflict with this Court's decision in Floyd, Supra, which holds, in mandatory language, that is "per se prejudicial" for a trial Judge to refuse a motion for his recusal to prevent his ruling on a PCR proceeding challenging the Judge's own criminal trial.

Wherefore, this Court should deny the decision by the Appellate Court to not only resolve this conflict, but to also afford the appellant a meaningful and fair appellate review. The petitioner's Rehearing was denied on January 21, 2016, and received from the Perry C.I.'s Mailroom by petitioner on January 25, 2016. Appendix 16.

II. The Court of Appeals erred in ruling that the trial Judge did not abuse his discretion in denying Petitioner's writ of mandamus challenging the trial Court's lack of subject-matter jurisdiction to convict and sentence him.

In this case, the record shows that the petitioner filed a petition for writ of mandamus challenging the trial Court's lack of subject matter jurisdiction to convict and sentence him. In denying the writ in the trial Court, Judge J. Derham Cole ruled that petitioner's writ of mandamus did not satisfy the elements, or the

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<sup>1</sup> The petitioner contends that the Appellate Court's acknowledgement that Judge J. Derham Cole was petitioner's trial Judge is "some evidence of Judge Cole's prejudice".

purpose, of a mandamus as established by case law. Appx. 14, Supra. Contrary to Judge Cole's ruling, the S.C. Court of Appeals has held that issues of Subject-matter Jurisdiction may be raised at anytime, including in a writ of mandamus. Anderson v. State, 527 S.E.2d 398 (Ct. App. 2000).

In support of his claim that his trial Court lacked Subject-matter Jurisdiction to Convict and Sentence him, he submits that during a habeas Corpus hearing, he was provided an "Affidavit" by the Seventh Circuit Solicitor, Trent N. Pruett, who asserts in his Affidavit that petitioner's indictments were not, in fact, presented by a grand <sup>JURY</sup> during a term of general Sessions Court. Appx. 17, Supra. In both the U.S. and S.C. Supreme Courts, the Courts held that the term "Subject-matter Jurisdiction" means the Court's Constitutional and Statutory power to adjudicate cases. See, e.g., U.S. v. Cotton, 122 S.Ct. 1781 (2002); State v. Gentry, 610 S.E.2d 494 (2005).

Likewise, an assessment of the S.C. Constitutional and Statutory Laws mandate that "no person may be held to answer for any crime... unless upon a presentment of an indictment by a grand Jury". S.C. Const., Art. I, § 11; S.C. Code § 17-19-10. In addition, the S.C. Statutory Laws also mandate that the grand Jury shall meet with the Court at each of its terms, and that the solicitor shall prepare and, through the presiding Judge of general Sessions Court, submit to grand Jury bills of indictment to be true billed to confer Subject-matter Jurisdiction upon the circuit Court for trial of all Criminal cases. S.C. Codes §§ 14-9-17D; 14-9-210. Appendix 14 and Appendix 15.

In recognition of the above Constitutional and Statutory laws, the S.C. Supreme Court has held that

no indictment may be "true billed" (to confer subject matter jurisdiction upon a criminal court) outside of a term since the grand jury's jurisdiction is co-extensive with the criminal jurisdiction of the criminal court in which it is convened and for which is to make inquiry on presentment of indictments to confer subject-matter jurisdiction upon the court to try all criminal cases. See, e.g., State v. McClure, 289 S.E.2d 153 (1982).

Furthermore, as it is evidenced from reading the above S.C. Constitutional and Statutory Laws in relation to each other, it is abundantly clear that the S.C. Constitution and Legislators have imposed a ministerial duty upon Solicitor and Circuit Courts to try all criminal upon lawful presentment of indictments. Thus, as tested by Constitutional and Statutory laws, the denial of the petitioner's writ of mandamus challenging the trial court's lack of subject-matter jurisdiction was an abuse of discretion by Judge Cole's ruling in the trial court.

Finally, as a threshold matter, this Court should take judicial notice of the fact that the Court of Appeals has not only rendered an erroneous decision regarding petitioner's entitlement to a writ of mandamus, it has also rendered a decision contrary to its own previous decision in Anderson v. State, infra. (in which the Court of Appeals held that issues of subject-matter jurisdiction may be raised in a writ of mandamus).

#### CONCLUSION

WHEREFORE, for the foregoing reasons, the Court should reject the erroneous decision by the Court of Appeals and grant the writ of certiorari to reverse petitioner's unconstitutional convictions.

~~151 Frazier T. Williams~~  
Frazier T. Williams  
SCOC No. 227393  
Perry Corr. Inst.  
430 Oaklawn Rd. - Q4A/124  
Pelzer, S.C. 29669

Date: February 16, 2016

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S.C. SUPREME COURT

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v.

State of South Carolina, . . . . . Respondent.

PROOF OF SERVICE

The petitioner certifies that he served true copies of the petition for writ of certiorari with the appendix upon the respondent by placing the same in the U.S. Mail addressed to: Allen Wilson, Attorney General, P.O. Box 11549, Columbia, S.C. 29211.

1st Frazier T. Williams  
Frazier T. Williams  
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730 Oaklawn Road-Q4A/124  
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This 16 day of February, 2016