

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

Appeal from Charleston  
County Common Pleas Court  
Robert E. Hood, Circuit Court  
Judge  
C/A No.: 2015-CP-10-3416

RECEIVED

MAR 10 2016

LARRY G. HARVIN,  
Prisoner I.D. No.: 253468,

SC Court of Appeals  
Appellant,

- Vs. -

STATE OF SOUTH CAROLINA,

Respondent.

NOTICE OF APPEAL

ABOVE-CAPTIONED APPELLANT ('Harvin') Appeals from the February 3, 2016 Judgment of the Honorable Circuit Court Judge Robert E. Hood, Dismissing Harvin's "Independent Action Motion For Relief From Judgment Based Upon Fraud Upon The Court", brought under South Carolina Rules of Civil Procedure ("SCRPC") 60(b)'s 'Independent Action' clause, based allegedly upon Judge Hood lacking jurisdiction to adjudicate claim(s) of 'Extrinsic Fraud' perpetrated upon General Sessions Court; Harvin has Attached a 'Written Explanation' to this Notice of Appeal to expound on why Judge Hood's February 3, 2016 Judgment could not be Attached hereto, as well as why Harvin asserts Judge Hood's noted Judgment ('NOTICE' received on February 8, 2016) is improper.

Other Counsel of Record:

- Mr. Alan M. Wilson, Esq.  
Atty. Gen., S.C.  
P.O. Box 11549  
Columbia, SC 29211

- Attorney For Respondent

151 L. Harvin  
Mr. Larry G. Harvin  
Prisoner I.D. No.: 253468  
M.C.I. F1-125-B  
386 Redemption Way  
McCormick, SC 29899

3 - 7 - 16

DATE

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Appeal from Charleston  
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LARRY G. HARVIN,  
Prisoner I.D. No.: 253468, Appellant,

- Vs. -

STATE OF SOUTH CAROLINA, Respondent.

AFFIDAVIT OF SERVICE

I Certify and Declare before below-signed Notary Public that, while forwarding an Original Draft of my 'Notice of Appeal' with a 'Written Explanation of Improper Determination' to the S.C. Court of Appeals for filing, I also served a copy of the 'Notice of Appeal' on Clerk of lower Court [Julie J. Armstrong, 100 Broad St., Ste. 106, Charleston, SC 29401-2258] and the Attorney for the Respondent [Alan M. Wilson, Esq., S.C. Atty. Gen.; P.O. Box 11549, Columbia, SC 29211-1549] by depositing same into the custody of the M<sup>c</sup>C.I. Mail Room Clerk (below-signed Notary Public) for immediate forwarding through the U.S. Mail System with sufficient Postage attached.

• Sworn and Subscribed to  
before me this 7<sup>th</sup> day of  
March, 2016

1/s/ L. Harvin I  
Mr. Larry G. Harvin  
Prisoner I.D. No.: 253468  
M<sup>c</sup>C.I. F.I-125-B  
386 Redemption Way  
McCormick, SC 29899

1/s/ Michael Canale  
Notary Public, South Carolina  
\* My Commission Expires: July-09 2026

STATE OF SOUTH CAROLINA  
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Appeal from Charleston  
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SC Court of Appeals

LARRY G. HARVIN,  
Prisoner I.D. No.: 253468, Appellant,

- Vs. -

STATE OF SOUTH CAROLINA, Respondent.

WRITTEN EXPLANATION  
OF  
IMPROPER DETERMINATION

• MR. LARRY G. HARVIN

Prisoner I.D. No.: 253468

M.C.I. F.1-125.B

386 Redemption Way

McCormick, SC 29899

- APPELLANT PRO. SE.

• Other Counsel of Record:

- Mr. Alan M. Wilson, Esq.

Atty. Gen., S.C.

P.O. Box 11549

Columbia, SC 29211

- ATTORNEY FOR RESPONDENT

## OVERVIEW

- By way of reference to ATTACHMENT(s) submitted herewith, Appellant ('Harvin') originally filed an "Independent Action Motion For Relief From Judgment Based Upon Fraud Upon The Court" (under the 'Independent Action' clause of SCRCP 60(b)), in the Charleston County Court of Common Pleas < Harvin v. State, C.A. No.: 2015-CP-10-3416 (June 19, 2015) >, alleging entitlement to relief from convictions obtained by Officers of the General Sessions Court conspiring to commit 'Fraud Upon the Court' and/or 'Extrinsic Fraud' to obtain Harvin's 1998 convictions. A Hearing was set for Harvin's Motion on February 3, 2016 before the Honorable Robert E. Hood, Circuit Court Judge, in the Charleston County Court of Common Pleas, which Harvin did participate; Judge Hood, however, announced that the Common Pleas Court is without jurisdiction to entertain claims of 'Extrinsic Fraud' committed by Officers of the General Sessions Court, and that Harvin should file in General Sessions Court, before Judge Hood heard anything of Harvin's action. On February 8, 2016, Harvin received a 'NOTICE' that Judge Hood entered a Judgment on February 3, 2016 [see ATTACHMENT A (1)-(2)], to which Harvin requested a copy of so as to file a Motion under SCRCP 59(e) [ATTACHMENT B (1)-(2)]; as of date of this filing, Harvin have not received a copy of February 3 Order to Attach here to, as Clerk of Court have not sent Harvin a

copy as requested by above-noted Attachment B, and Harvin could not so comply with SCAER 203(d)(1)(B)(ii) in perfecting this Notice of Appeal, but Harvin was left with no other choice than to file this Notice of Appeal off of the February 8, 2016 'NOTICE' Attached so as to not waive review of Judge Hood's claim of having no jurisdiction to adjudicate in Common Pleas Court a claim(s) of 'Extrinsic Fraud' having been perpetrated by Officers of the General Sessions Court, resulting in a criminal conviction.

## SUFFICIENT FACTS

1) Harvin submits that there is an arguable basis for asserting that Judge Hood made an Improper Determination of lacking jurisdiction to adjudicate Harvin's claim(s) of 'Extrinsic Fraud' perpetrated upon General Sessions Court, where:

(a) - The Court of Common Pleas is a department of South Carolina's Circuit Court system < S.C. Code Ann. § 14-1-70(4)(a) >, and as the Common Pleas Court was described by the South Carolina Supreme Court as "... the general fountain of justice, ha[ving] jurisdiction of every invasion of legal civil rights where no special direction is given..." < see Ex parte Lewie, 17 S.C. 153, 155-156, 1882 WL 5579 (S.C. 1882) (Modified and Quoted in Part) >, equitable considerations explicate how the Court of Common Pleas is a forum available for entertaining matters of the Criminal (or General Sessions) Court < see, e.g., State ex rel. McLeod v. Holcomb, 245 S.C. 63, 138 S.E.2d 707 (S.C. 1964) >. In fact, South Carolina's 'Post Conviction Relief Act' < S.C. Code Ann. §§ 17-27-10 to -160 > is an "Independent Action" < see SCRCP 71.1(c) > brought in Common Pleas Court where the Application states grounds of Constitutional violations occurring in General Sessions Court; Judge Hood, thus, had jurisdiction to hear Harvin's claims.

## ARGUMENT AND CITATION TO LEGAL AUTHORITY

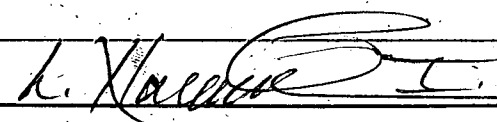
1)- The instant Appeal comes resulting from Judge Hood's refusal to entertain Harvin's claim(s) of being convicted in October of 1998 based on 'Extrinsic Fraud' committed by Officers of the General Sessions Court. Harvin specifically alleged that Officers of the Charleston County Court of General Sessions conspired to obtain Harvin's 1998 convictions by helping one another in the 'subornation of perjury' and 'depriving [Harvin] of the opportunity to be heard' by the jury, and both actions are classified as 'Extrinsic Fraud' by the S.C. Supreme Court's opinion in Chewing v. Ford Motor Co., 354 S.C. 74, 579 S.E.2d 605 (S.C. 2003), and 'Fraud Upon the Court' constructions following the United States Supreme Court's holding in Hazel-Atlas Glass Co. v. Hartford-Empire Co., 322 U.S. 238, 64 S.Ct. 997, 88 L.Ed. 1250 (1944), forbids such conduct.

2)- Harvin's papers in the lower court set forth 'clear and convincing circumstantial proof' for Judge Hood to go forward and adjudicate Harvin's 'Fraud Upon the Court' claims, through the equitable power of the Circuit Court. < Holcomb, supra; Ex parte Lewie, supra >.

CONCLUSION

• WHEREFORE, as Harvin files the instant Appeal out of caution, to not lose the opportunity for reviewing the propriety of Judge Hood's February 3, 2016 Dismissal of Harvin's 'Independent Action' due to allegedly not having jurisdiction, based upon noted Clerk of Court declining to attach or send Harvin the noted 'entered' Judgment/Order, Harvin submits that this Court should REVERSE and REMAND back to the Charleston County Court of Common Pleas for an Evidentiary Hearing to be conducted on Harvin's claim(s) of being convicted in October of 1998 based on 'Extrinsic Fraud' committed by Officers of the General Sessions Court, pursuant to the 'Independent Action' clause of SCRCP 60(b).

Respectfully Submitted,

151 

Mr. Larry G. Harvin

Prisoner I.D. No.: 253468

M.C.I. F.1 - 125.B

386 Redemption Way

McCormick, SC 29899

3 - 7 - 16  
DATE

**JULIE J. ARMSTRONG**  
CLERK OF COURT, C.P. & G.S.  
100 BROAD STREET, SUITE 106  
CHARLESTON, SC 29401-2258  
RETURN SERVICE REQUESTED



clerkofcourt.charlestoncounty.org

142



LARRY G HARVIN  
MCCORMICK CI  
386 REDEMPTION WAY  
MC CORMICK SC 29899-9000

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MAR 10 2016

SC Court of Appeals

**NOTICE OF ENTRY OF JUDGMENT/ORDER PURSUANT TO RULE 77 SCRPC**

**Order/case dismissed**

**CASE NO: 2015CP1003416**

**Larry G Harvin VS South Carolina State of**

This judgment was entered on the 03th day of February, 2016, and notice mailed first class on Thursday, February 04, 2016, to all counsel of record and/or all parties entitled to receive notice.

You may view and download this document at <http://clerkofcourt.charlestoncounty.org> or obtain a copy in person at the Clerk of Court's Office during regular Charleston County business hours.

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ATTACHMENT A (1)



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ATTACHMENT A (2)

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS

9th JUDICIAL CIRCUIT

LARRY G. HARVIN

Prisoner I.D. No.: 253468

MOVANT

- Vs. -

C.A No.: 2015-CP-10-3416

STATE OF SOUTH CAROLINA

RESPONDENT.

NOTICE OF INTENT TO FILE  
"MOTION TO ALTER / AMEND  
JUDGMENT"

[ SCRPC 59 (e) ]

AND

REQUEST FOR RECEIPT OF  
COPY OF JUDGMENT TO SO  
FILE "MOTION TO ALTER / AMEND  
JUDGMENT"

ABOVE-CAPTIONED MOVANT ("Harvin") Notifies this Court of his intent to file a Motion to Alter / Amend Judgment rendered on February 3, 2016; Movant Requests a Copy of the above-noted rendered Judgment so as to perfect the noted Motion within time prescribed under SCRPC 59(e) as Harvin have not so received copy as of date.



Mr. Larry G. Harvin

Prisoner I.D. No.: 253468

M.C.I. F.1-125-B

386 Redemption Way

McCormick, SC 29899

2-10-16  
DATE

ATTACHMENT B (1)

AFFIDAVIT OF SERVICE

I, Larry G. Harvin, do Declare in the presence of below-signed Notary Public on below-noted date, that I Did deposit an Original Draft of my 'Notice of Intent to File "Motion to Alter/Amend Judgment" ... And Request for Receipt of Copy of Judgment ...' into the custody of the M<sup>C</sup>.I. Mail Room Clerk (below-signed Notary Public) for said material(s) to be immediately forwarded by sufficient U.S. Postage to:

• Julie J. Armstrong, Clerk of Court,  
C.R. & G.S., Charleston County  
100 Broad Street, Suite 106  
Charleston, SC 29401 - 2258

• Alan M. Wilson, Esq.  
Atty. Gen., S.C.  
P.O. Box 11549  
Columbia, SC 29211-1549

• Sworn and Subscribed to

before me this 10

day of February, 2016

/s/ J. Franklin

Notary Public, South Carolina

\* My Commission Expires: 12-16-2019

/s/ L. Harvin

Mr. Larry G. Harvin  
Prisoner I.D. No.: 253468  
M<sup>C</sup>.I. F.I. - 125. B  
386 Redemption Way  
McCormick, SC 29899

ATTACHMENT B (2)

Mr. Larry G. Harvin  
Prisoner I.D. No.: 253468  
M.C.I. F.1-125.B  
386 Redemption Way  
McCormick, SC 29899

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MAR 10 2010  
SC Court of Appeals

Attn: - Clerk, S.C. Court of Appeals  
P.O. Box 11629  
Columbia, SC 29211

- LEGAL MAIL -