

THE STATE OF SOUTH CAROLINA

In the Supreme Court

Willie Junior Hines #240466

Appellant

v.

State of South Carolina

Respondent

CIA No. 2016-000454

CERTIFICATE OF SERVICE

RECEIVED

MAR 24 2016

S.C. SUPREME COURT

I Willie Junior Hines "Appellant" Certify that I have served the Explanation and Memorandum of Law upon the South Carolina Supreme Court, and the same being a copy of upon the Attorney of record Alicia A. Olive by depositing a copy and Original in the United States Mail prepaid the 21 day of March, 2016 addressed to: Daniel Shearouse "clerk" of S.C. Supreme Court P.O. Box 11330, Columbia S.C. 29211, and Attorney General Office P.O. Box 11549, Columbia, SC 29211.

SWORN TO BEFORE me this 21st
day of March 2016.

Notary Public: Nancy C. Merchant

Exp. ir: 1-23-2023

RECEIVED

MAR 21 2016

P.C.I. MAILROOM

Willie Hines ✓

Willie J. Hines #240466

THE STATE OF SOUTH CAROLINA **RECEIVED**

In the Supreme Court

MAR 24 2016

Willie Junior Hines, # 240466

Appellant

v.

State of South Carolina

Respondent

C/A No. 2016-000454

S.C. SUPREME COURT

APPELLANT EXPLANATION

AND MEMORANDUM OF LAW

IN SUPPORT FOR RELIEF FROM

ORDER PURSUANT TO RULE 60(B)

PLEASE, take notice that Appellant Willie Junior Hines # 240466 filed a 60(B) motion July 31, 2013 asking that Judgment be set aside due to Fraud Upon the Court, and was denied access to the Court on August 30, 2013 by Robin C. File Assistant Solicitor and by Spartanburg County General Sessions Department Tanya Comp on August 14, 2013 see attached documents, That's when Appellant File successive (PCR) dated September 19, 2013 which the following issues was claimed (1) "Ineffective Trial Counsel Assistance for not Investigating"; in that (a) The attorney advised applicant to plea bargain to an offense, which he never investigated see transcript (2) "Direct Appeal Violation"; in that (a) Applicant was never notified by his counsel on a timely base [sic] to file a direct appeal and when he did ask his trial counsel about appeal he was brushed off so direct appeal issues were reviewed on

These merits on PCR appeal, " and (3) Inadequate Advice on Sentencing or Collateral Consequences and actual bias, and Judicial bias", in that (a) "Applicant was advised that he would be sentenced under old law if he plead [sic] guilty. Applicant was not informed that he could not plead to 30 years life under law". These issues was never addressed.

The Appellant has shown documents over and over that shows that Respondent has Either committed perjury or Conspiracy This has just been swept under the rug. Appellant moves the Court for relief stating again the claims that, the Order of Respondent was obtained on or in violation of the Extrinsic, Intrinsic Fraud Doctrine, where during the course of the present ment of Appellant's case Appellant was deprived of a full and complete adjudication of his issues raised in his Applications and his 60 (B) motions along with the other motions he has before the honorable Court. The Respondent keeps fabricating false information by twisting the statute to meet there standards in construing the Laws as they see fit, AS WELL as refusing to address false documents. S.C. Ann Code of law 16-17-135.

Underlying Convictions

The Applicant is presently confined in the south Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Spartanburg County. The Applicant was

indicted at the July 1995 and May 1996 terms of the Spartanburg County Grand Jury for Armed Robbery (95-GS-42-3529), Murder (95-GS-42-3530) and First Degree Burglary (96-GS-42-1974); this was done twice. He was represented on the charges by Thomas Dillard and Pamela McAvoy, Esquires, on January 28, and 29, 1997 and February 25, 1997. The Applicant plead guilty to the counts as indicted. He was sentenced by the Honorable Don S. Rushing to confinement of life for Murder, life for Burglary, and thirty (30) years for Armed Robbery. The sentence were to run concurrently. The Applicant did not appeal the convictions nor sentence neither did his attorney of record.

The following cases are pertinent to the herein Appellant case and is consistent with the standard for review set forth in Austin v. State, 409 S.E.2d 395 (S.C. 1991); Pruitt v. State, 423 S.E.2d 127 (S.C. 1992); Mc Cray v. State, 408 S.E.2d 241 (S.C. 1991). and Mackey v. State, 357 S.C. 666, 595 S.E.2d 241 (S.C. 2004) and State v. Moore, No. 20966 Supreme Court of South Carolina May 23, 1979; The herein Appellant has been deprived of his appeal right effectively causing the tolling of the state statute of limitations as cited by the South Carolina Supreme Court in the ruling of Hagy v. Pruitt, 529 S.E.2d 714 (S.C. 2000); and Chewing v. Ford Motor Co; 579 S.E.2d 605 (S.C. 2003).

The Appellant previous filed motion to Alter Amend or set Aside Judgement" on April 13, 2015, in which he

argued he was sentenced outside of the applicable sentencing guidelines and is being held under an illegal penal code. The Courts again interpret the Appellant motion for something it was not. If the Honorable Courts will take notice this motion was a 60(B) and 59(e) motion combined to get the Courts to see the fraud that has been presented. see State v. Moore No. 20966 Supreme Court of South Carolina May 23, 1979; The effect of the imposition of an unauthorized sentence is thus stated in 21 Am. Jur. 2d, Criminal Law, Section 535; (stating) A Judgment by a Court in a Criminal Case must conform strictly to the statutes and any variation from its provisions, either in the character or the extent of punishment inflicted, renders the judgment void. A statute which creates an offense and prescribes a special form of punishment excludes any different or additional punishment. In the Appellant case he was sentenced to a thirty (30) year life sentence when the death penalty was never sought against him, which is strictly against statute that was present at the time of his crime. It is a cardinal rule of statutory construction that the primary purpose interpreting statutes is to ascertain the intent of the legislature, Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000); State v. Martin, 293 S.C. 46, 358 S.E.2d 697 (1987). 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 statute according to its literal meaning. Carolina Power & Light Co., v. City of Bennettsville, 314 S.C. 137, 139, 442 S.E.2d 177, 179 (1994) and words must be given their plain and ordinary meaning without resorting to subtle or forced construction to limit or expand the statutes operation, Bryant v. City of Charleston, 295 S.C. 408, 368 S.E.2d 899 (1998).

Moreover Penal statutes must be construed strictly against the State and in favor of Appellant, State v. Blackmon, 304 S.C. 270, 403 S.E.2d 660 (SC 1991).

A substantial body of South Carolina law holds that failure to comply with Statutory Law Jurisdictional in Nature deprives the Court of Subject Matter Jurisdiction, State v. Lee, 564 S.E.2d 372 (S.C. App 2002); State v. Brown, 570 S.E.2d 559 (Ct. App 2002); State v. Reider 437 S.E.2d 43 (SC 1993); State v. Richburg, 304 S.C. 162, 403 S.E. 315 (1991); State v. Loftin, 275 S.E. 2d 575 (1981); Gray v. State, 276 S.C. 634, 281 S.E.2d 226 (SC 1981); State v. Brunson, 274 SC 220, 262 S.E.2d 44 (1980); State v. Castleman, 64 S.E.2d 250 (1951), and many more.

No, local rule of Court, Administrative order, Policy, or other procedure can take precedent over Statutory Law, which is always controlling - see South Carolina Constitution Articles §§ 1, 4, and State v. Cottingham, 77 S.E.2d 897, 224 S.C. 181 (1953). (Statutes override rules of Court in conflict)

State v. Duncan, 264 S.E.2d 421 (SC 1980) (Circuit Court rule promulgated by individual judicial circuit was unconstitutional and void.).

Perjury and Subornation

S.C. Code Ann. § 16-9-10, perjury and subornation of perjury states in pertinent part: "It is unlawful for a person to willfully give false, misleading, or incomplete information on a document, record or report, or form required by law of this State. A person may be convicted under this section if he commits perjury by his own act, consent, or agreement. Perjury, that specify the false information must be included in a 'document... required by the law of this state', which in the present case the Respondents did just that see document that is attached that show that the statements the Respondent filed in their arguments 2004-LP-42-4076 and 06-CV-01530 GPA are false."

Conspiracy Against Public Policy

S.C. Code Ann. § 16-17-410 provides in pertinent part: "The common law crime 'Conspiracy' is defined as a combination between two or more persons for the purpose of accomplishing an unlawful means, unlawful object, or lawful object by unlawful means. From the evidence shown it should be determined that the Respondents committed an offense."

of perjury against public Justice by willfully printing false information about Appellant Case, see, State v. Buckman, 347 S.C. 316, 555 S.E.2d 402 (S.C. 2001); Conspiracy may be shown by circumstantial evidence including the parties consent, State v. Oliver, 275 S.C. 79, 267 S.E.2d 529, (1980), and under South Carolina Law it doesn't require an overt act. see State v. Ferguson, 221 S.C. 300, 70 S.E.2d 529, 344 U.S. 830, 73 S.Ct. 35, 97 L.Ed. 646 (1952).

The issues in the Appellant Case is and has been brought before the Honorable Court according to Fraud upon the Court citing Chewing v. Ford Motor Company 579 S.E.2d 714 (S.C. 2003).

The Respondent Claims that the statute of Limitation has barred these issues that's (incorrect); In Evans v. Gunter, 294 S.C. 525, 529, 366 S.E.2d 44, 46 (Ct. App 1988); the Court of Appeal noted one Commentator described "fraud upon the Court" as "that species of fraud which does, or attempts to, subvert the integrity of the Court itself, or is a fraud perpetrated by officers of the Court so that the judicial machinery cannot perform in the usual manner its impartial task of adjudging cases that are presented for adjudication," (citing H. Lightsey, Jr. Flanagan, South Carolina Civil Procedure, 408 (2nd ed. 1985)).

Fraud upon the Court is a "serious allegation... involving corruption of the judicial process itself;"

"Cleveland Demolition Co., Inc. v. AZ Con Scrap Corp., supra 827 F.2d at 986 quoting In re Whitney Forbes, 270 F.2d 692, 698 (7th Cir. 1985).

... Fraud on the Court; whatever else it embodies, requires a showing that one has acted with an intent to deceive or defraud the Court. A proper balance between the interests of finality on the one hand and allowing relief due to inequitable conduct on the other makes it essential that there be a showing of conscious wrong doing - what can properly be characterized as a deliberate scheme to defraud - before relief.

There is no statute of limitations when a party seeks to set aside a judgment due to fraud upon the Court. Rule 60(b), SRCP; see Hagy v. Pruitt, supra (Court has the inherent authority to set aside a judgment on the ground of extrinsic fraud in spite of any facially applicable statute of limitations). In order to secure equitable relief on the basis of fraud, the fraud must be extrinsic. As it is in this case of Appellant, citing Bryan v. Bryan, 220 S.C. 164, 66 S.E.2d 609 (1951) (Extrinsic fraud is necessary in order to secure equitable relief vacating a prior judgment), see In the matter of Goodwin, 229 S.C. 274, 308 S.E.2d 578 (1983). (Attorney has an ethical duty not to perpetrate a fraud upon the Court by

Knowingly presenting perjured testimony; because fraud upon the Court is an affront to the administration of Justice, a litigant who has been defrauded need not establish prejudice; Hazel-Atlas Glass Co. v. Hartford Empire Co., Supra; Dixon v. Comm'n of Internal Revenue, 2003 WL 1216290 (9th Cir 2003) "... the perpetrator of the fraud upon the Court should not be allowed to dispute the effectiveness of the fraud after the fact.

The fraud which is now being brought to the Court's attention is case on point with the error corrected by the South Carolina Supreme Court in the case of Pruitt v. State, Supra, where the Court stated "... Failing to address the merits of issues which have been fairly raised in these actions does nothing to alleviate these problems but rather Exacerbates them!! That Court ruled that the Appellant was entitled to file an amended application if necessary, and "... that the Order shall address all issues properly raised at the hearing McCray v. State, 305 S.C. 329, 408 S.E.2d 241 (S.C. 1991), see also, section 17-27-80. The Order of Respondent bundled the issues into a boilerplate denial under combined consideration without findings of facts and conclusions of law, therefore, these issues were not ruled on as directed by the Supreme Court in McCray v. State, Supra

For reasons of the PCR Court's failure to rule in accordance with the South Carolina Rules of Civil Procedure S.C. Code Ann. § 17-27-80 of the Code of Law, false statements and documents, appointed PCR Counsel's failure to file a Rule 59(E), to preserve issues for the applicant upon Appellate review as Appellate did, denied the right to appeal the ruling of the PCR Court on meritorious claims that were properly before the Court. See Austine State, Supra.

Extrinsic Fraud is a fraud that induces a person not to present a case or claim or Deprives a person of the opportunity to be heard. (Emphasis added). Relief is granted for Extrinsic Fraud because the Appellant upon seeking redress pursuant to S.C. Code Ann. § 17-27-10 in this case was prevented from fully exhibiting and presenting his case, as there has never been a real contest before the Court on subject matter. Hilton Head Center of S.C. v. Public Service Commission, 249 S.C. 9, 11, 362 S.E. 2d 176, 179 (S.C. 1987).

Intrinsic Fraud, on the other hand, is fraud which was presented and considered by the Court, Hagy v. Pruitt, Supra, it is fraud which leads a Court in determining issues which in the present case was the order of dismissal prepared by the Respondent - for the Appellant.

Court was divested of the requisite authority to impose sentencing; section 17-25-10 provides that "NO person shall be punished for an offense unless duly and legally convicted thereof, in a court having competent jurisdiction of the cause and of the person. Appellant was sentenced under illegal Penal Statute and Guide lines.

South Carolina law holds that words of a statute must be given their plain and ordinary meaning without resort to subtle or forced construction. See State v. Muldrow, 348 S.C. 264, 559 S.E2d 847 (2003); and Statutory prescriptions couched in language such as "shall" and "must" are mandatory in application and effect. See e.g., South Carolina Police Officer Ret. Sys. v. City of Spartanburg, 301 S.C. 188, 191, 391 S.E2d 239, 241 (1990); Starnes v. South Carolina Dept. of Public Safe., 342 S.C. 216, 221, 535 S.E2d 665, 667 (Ct App 2000). A plain reading of section 17-25-10 requires that a criminal defendant cannot be punished for an offense until after the state has duly and legally convicted the individual.

That didn't happen in the present case, accordingly it would be hard to imagine a situation where the state of South Carolina has violated more of a criminal defendant's right than in the present case. Indeed, it would take a novel rule of law,

which would allow the State to maintain a conviction and sentence under the circumstances described.

To adopt such a rule of law would be tantamount to an unrighteous and perverted judgment.

Based on the Appellant documents on record he has established that he was not duly and legally convicted and therefore was sentenced in violation, this stated in (21 Am & Jur. 2d Criminal Law, Section 535); and applicable sentencing guidelines range sec. 22 C.S. Criminal Law § 404 (1989) and § 17-25-10. Accordingly the sentence should be vacated.

The holding in Evans, should not stand for the proposition that a conviction and sentence gained through judicial acts of perjury and criminal conspiracy can be declared lawful. Judicial integrity will have been lost if the State is not constrained by its own statutory and criminal laws. Basic United States Constitutional Due Process Law dictates, with authority, that under "No" circumstances can a state commit criminal acts against its citizens in the name of judicial economy.

Appellant would point out that in the present case, the criminal acts committed by State clearly establish the essential elements of fraud upon the Court, In addressing a case involving fraud upon the Court the

United States Supreme Court explained that to be granted relief under the provision of Rule 60(b)(3), Fed. R. Civil Proc., the issue turns on whether the alleged misconduct "harms" the integrity of the Judicial System.

Tampering with the administration of Justice in the manner undisputedly shown here involves far more than injury to a single litigant; it is a wrong against the institution set up to protect and safeguard the public institution in which fraud cannot complacently be Tolerated consistently with the good order of Society. Surely it cannot be that preservation of the integrity of the Judicial process must always wait upon the diligence of litigants.

The Public Welfare Demands that the agencies of public Justice be not so, that they must always be mute and helpless victims of deception and fraud. see Hazel-Atlas Glass Co., v. Hartford Empire Co., 322 U.S. 238, 246, 64 S.Ct. 997, 1001, 88 L.Ed 1250 (1944).

wherefore Appellant Pray that this Court grant relief sought, to wit: Release Appellant from the Order of Dismissal dated January 26, 2016, where it is undisputed by the record and documents attached here in that

the Appellant was denied his Constitutional right to Effective Assistance of Trial Counsel, denied his fundamental right to a fair hearing, That the trial Court acquired Judicial subject matter Jurisdiction in violation of S.C. Const. Art. I, §15 and Section 22-5-510 and the FIFTH and Fourteenth Amendments Due Process Clause, Applicant's trial, conviction and sentence are void and null and his sentence should be set aside.

For this Relief the Appellant ever prays.

Respectfully submitted

March 21, 2016.

Willie J. Hines

Willie J. Hines # 240466

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

Willie J. Hines, SCDC# 240466,

Petitioner

v.

State of South Carolina,

Defendant.

) IN THE COURT OF GENERAL SESSIONS

) SEVENTH JUDICIAL CIRCUIT

ORDER

Case Number: 2004-CP-42-4076

The Court signed an Order on October 25, 2005 denying Petitioner's post-conviction relief (PCR) application. Petitioner submitted to the Court an un-clocked and un-filed Motion pursuant to SCRCP 59(e) dated November 23, 2005.


SCRCP 59(e) only allows 10 days in which to file such a motion. Petitioner did not submit his Motion to Alter or Amend Judgment until nearly one month after the Order was issued.

THEREFORE, it is the Order of this Court that Petitioner's Motion is denied.

IT IS SO ORDERED

Spartanburg, South Carolina

December 19, 2005



Roger L. Couch
Presiding Judge

CATE & COLLINS, P.A.

RUTH L. CATE
DAVID M. COLLINS, JR.

November 28, 2005

Willie Junior Hines Q-2-A-109
Perry Correctional Institution
430 Oaklawn Road
Pelzer, SC 29669

**RE: Willie Junior Hines v. State of South Carolina
2004-CP-42-4076**

Dear Mr. Hines:

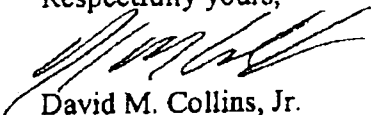
I received a copy of your recent letter to the Spartanburg County Clerk of Court.

The judge ruled from the bench at your hearing on October 25, 2005, however a written Order has not been signed by the judge as of today's date.

No appeal can be filed until a written Order is issued. Once that Order is issued, you will receive a copy.

I hope this answers your questions.

Respectfully yours,



David M. Collins, Jr.

DMC/kgb
Enclosure

Spartanburg County

Spartanburg County Court House
180 Magnolia Street
P. O Box 3483
Spartanburg, SC 29304-3483



Phone (864) 596-2591
Fax (864) 596-2259

M. Hope Blackley
Clerk of Court

Gail Moffitt
Assistant Clerk of Court

August 14, 2013

Mr. Willie Junior Hines #240466
Q1-A123
430 Oaklawn Road
Pelzer, SC 29669

RE: Rule 60 - Motion to Set Aside Judgment (1995GS4203529-30; 1974)

Dear Mr. Hines,

We are in receipt of your Motion to Set Aside Judgment under Rule 60 for cases 1995GS4203529-30 & 1995GS4201974. Please be advised that Rule 60 is a civil procedure and your motion is not a valid General Sessions motion. Enclosed you will find your documents that were forwarded to our office. If we can be of further assistance to you please let us know.

Sincerely,

Tanya Camp

General Sessions Department

State of South Carolina

Spartanburg County Court House
180 Magnolia Street
Spartanburg, S.C. 29306
Phone (864) 596-2575
Fax (864) 596-2386



Cherokee County Court House
Floyd Baker Blvd.
Gaffney, S.C. 29340
Phone (864) 487-2576
Fax (864) 487-2753

BARRY J. BARNETTE
Solicitor, Seventh Judicial Circuit

August 30, 2013

Willie Junior Hines
Inmate #240466
Q1A-123
Perry Correctional Institution
430 Oaklawn Rd.
Pelzer, SC 29669

Re: Willie Junior Hines, #240466 vs. State of South Carolina
"Motion to Set Aside Judgment Under Rule (60)."

Dear Mr. Hines:

This office is in receipt of your motion to set aside judgment under Rule 60. I am enclosing a copy of previous correspondence sent to you by our Clerk of Court indicating that there are no civil judgments against you, therefore there is no civil judgment to set aside.

Sincerely,

A handwritten signature in black ink that reads "Robin C. File".

Robin C. File
Assistant Solicitor

enclosure

Willie Junior Hines # 240466

DU B-222

Berry Correctional Institution

430 Parklawn Road

Pelzer S.C. 29669

Ans

~~EX~~
MAR 21 2010

P.C.I. MAILROOM

SUPREME COURT OF

SOUTH CAROLINA

P.O. BOX 11330

Columbia S.C. 29211