STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Certiorari to Spartanburg County

Roger L. Couch, Circuit Court Judge

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Freddie Edwards, Jr.,

Petitioner,

V.

State of South Carolina,

Respondent.

APPELLATE CASE NO. 2015-001961

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PRO-SE PETITION FOR CERTIORARI
PURSUANT TO JOHNSON V. STATE (1988).

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By: Freddie Edwards, Jr.,
BRCI-Wateree Unit
4460 Broad River Rd.
Columbia, S.C. 29210

## ISSUES TO BE CONSIDERED

1. Whether trial (i.e. guilty plea counsel) and PCR counsel both provided ineffective assistance of counsel where neither attorney eluded to the jurisdictional problems in regards to Appellant pleading guilty to crimes the indictment failed to sufficiently charge?

2. Whether Appellant's sentence is a violation of Due Process and Equal Protection, where the facts demonstrate minor participant, and the indictment fails to charge otherwise?

3. Whether this Court should take notice of the juridictional errors in this case?

## FACTUAL BACKGROUND OF CASE.

According to the State's rendition of the facts, read at the plea hearing. Co-defendant Drakkarr Crawford contacted Timothy Clayton about where he could purchase marijuana. Clayton contacted Ronnie Metcalf of Crawford's behalf. Since Crawford did not have the money to purchase the marijuana, he contacted co-defendant Fred Pearson. Pearson suggested that they rob Metcalf instead of paying for the marijuana. App. 11, 11-23.

The State alleged that later that evening, Feddie Edwards (the Petitioner) and driver, with Pearson in the front seat, and Crawford in the rear, picked up Clayton in a SUV. Clayton directed them to Metcalf's house and was unaware of the robbery plan. They droped Clayton off, but returned to Metclaf's house an hour and a half later wearing masks. Pearson was "armed with a .22 rifle". Crawford was armed with a Airsoft pistol. When they turned the corner they found five men in and around the garage area. Timothy Clayton, Izel Poates, Richard Benson, Gilbert Cook, and Ronnie Metcalf. App. 11, 1-23-13, 1-7.

The State's rendition further detailed; Metcalf and Pearson struggled over the rifle while Petitioner and Crawford were outside with the other victims, whom they had instructed to get on their knees and empty their pockets. Izel Poates opened his wallet to show them he did not have anything. Pearson called for help, at which time Petitioner allegedly hit Metcalf in the head with a red tool box, allowing Pearson to get free. Pearson fired shots as he

backed out of the garage, killing Metcalf and wounding Cook. The assailants left, taking the red grinder tool box and some cigarettes with them. Co-defendant Collin Mills hid the red grinder tool box, Airsoft gun, and rifle, which were later recovered by police. App. 13, 1-7; 14, 1-18.

STATEMENT BY FREDRICK PEARSON (Himself).
Taken 4/10/2011 Written By W.R. Foster

"I am the one who had the rifle. I went in and got two Dudes out of the little room. One of them started walking to the inside of the garage and I made him turn around and come out the front with the rest of them. That's when the bid dude grabbed the barrel of the gun and pulled it. That's when the gun went off. He kept wrestling the gun away from me and we fell up against the car. Somehow he got behind me and was still wrestling with the gun. He was mashing my finger making the gun shoot. That's when I said "Yo where ya'll at help". And Freddie came over and hit the dude twice on the head with the tool box. The dude then pushed me forward and started running towards the house. I turned around and just closed my eyes and kept pulling the trigger. Then we took off running and ran back to the car. When I started running I heard a dude say "Ya'll better run fast".
We got back to the car and Freddie back to Collins and Dra and Collin got out and I gave them everything through the window. Then me and Freddie left.
When me and the big dude first started wrestling over the gun. I told him let me go and we'll just leave. He said my Daddy's in the house getting a gun. He's gonna come out here and fuck shit up. That's when he got behind me." [End of Statement by Pearson].

THE INDICTMENT AS CHARGED.

On June 17, 2011, Petitioner was indicted by the Spartanburg County Grand Jury for one count of murder, one count of attempted murder, and four counts of armed robbery. App. 74-85 (Indictments).

Notably, of the four armed robbery indictments, only the indictment related to Cook contained the required "oject" "to wit" section, which denoted "power tools". App. 80-81. The other three indictments, related to Benson, Clayton, and Poates, generally listed "goods or monies" as taken. App. 78-79; App. 82-85.

On November 26, 2012, Petitioner entered guilty pleas to (4) Counts of armed robbery and Alford pleas to two counts of attempted murder, all for a negotiated thirty (30) year sentence. Petitioner appeared before the honorable Lee. S. Alford, and was sentenced to six concurrent sentences of thirty years, represented by Theo Mitchell. App. 17, 1-10; 18 1-5.

1.

WHETHER PCR COUNSEL PROVIDED INEFFECTIVE ASSISTANCE WHEN ADVISING HIS CLIENT TO ENTER A GUILTY PLEA OR A PLEA OF NO CONTEST WHEN THERE WAS ABSOLUTELY NO FACTUAL BASIS FOR SAID CHARGE?

In addition to counsel's filed Johnson brief. The Appellant here posits the concern with the plea transcript, held on November 26, 2012, before the Honorable Lee S. Alford. That such plea fails to be consistent with what the facts of the case, when comparing "the facts against the requisite indictment".

In otherwords, the Fourteenth Amendment right to due process and the Sixth Amendment right to trial by jury, taken together, entitles a criminal defendant to a jury determination that he is guilty of "every element of the crime with which he is charged". E.g. In re Winship, 397 U.S. 358, 90 S. Ct. 1068. This historical foun-

dation extends down centuries into common law. Although in this case and point, the Appellant did not take his allegations to trial. Such does not eliminate the due process concerns "that a criminal defendant must admit he's guilty to the charges", in which must conform with the indictment and facts of the case, in which he is charged. And if the facts fail to fall consistent with the charged instrument. The court is without authority to accept such a plea.

For example, Appellant's indictment charges [11-GS-42-2778] Murder, in violation of S.C. Code Ann. §16-3-10. It reads as follows:

> At a Court of General Sessions, convened on June 17, 2011, the Grand Jurors of Spartanburg County present upon their oath: that Freddie Edwards, Jr. did in Spartanburg County on or about April 8, 2011, felonious, willfully and with malice aforethought, kill Ronnie Lee Metcalf, by shooting him with a gun, and he died as a proximate result thereof, all in violation of §16-3-10, 0020, The South Carolina Code of Laws, (1976 as amended).

After reviewing the indictment above, and considering the bare facts the court was armed with on November 26, 2011. During the plea hearing of the Appellant. Those facts irrefutably demonstrate; "the Appellant here, himself, did not have a weapon at all during this altercation". And could not have murdered anyone based on the facts. Such is also true with the "Attempted Murder Charge", as well as the "Armed Robberies".

In criminal law, it is well settled that "guilt" can be established either by proving the facts to a jury beyond a reasonable doubt; or by admission by the defendant of every essential

fact necessary to constitute "the crime charged within the indictment". See Sullivan v. Louisiana, 508 U.S. 275, 113 S. Ct. 2078, (1992); and United States v. Gaudin, 515 U.S. 506, 115 S. Ct. 23-10 (1995).

Under South Carolina Law, in order for a indictment to be deemed sufficient, (i.e. §17-19-20); "Every indictment shall be judged sufficient and in good law which, in addition to allegations as to time and place, as required by law, charges substantially in the language of the common law or of the statute prohibiting the crime "so plainly" that the "nature of the offense charged may easily be understood" and, if the offense be a statutory offense, that the offense be alleged to be contrary to the statute in such case made and provided".

Sufficiency of the indictment "requires that an indictment be a plain concise, and definite written statement of the essential facts constituting the offense charged". U.S. v. Resendiz, 549 U. S. 102, 109 (2007). In United States v. Guadin, and Sullivan v. Louisiana, "the Due Process Clause protects the accused against conviction except upon proof beyond a reasonable doubt of every essential fact", necessary to the crime with which he is charged. There is no exclusionary provision extended to any of the 50 States of the United States regarding this fundamental constitutional rule.

Thus, on November 26, 2011, the South Carolina Circuit Court Judge, was without authority to except a guilty or no contest plea from the Appellant, where the facts required "some other element" (i.e. accomplice liability), "in which the indictment failed to

charge". Thereby eliminating any admission to such offense.

Moreover, even if the State could attempt to overcome the issue the Appellant claims here (for which reaps of jurisdictional magnitute). Arguing that the court on November 26, 2011, relied on "the hands of one hands of all theory". Such would also fail in comparison as resulting in a "impermissible constructive amendment of the indictment", United States v. Syme, 276 F.3d 131, 151 (3rd Cir. 2002); Stirone v. U.S., 361 U.S. 212 (1960).

An indictment is deemed or considered amended "when the prosecution or the court either "literally or constructively" alters the terms of an indictment after its been returned by the grand jury". See U.S. v. Thomas, 274 F.3d 655, 671 (2nd Cir. 2001) In fact, the only exclusion to the inclusion of facts necessary for the conviction and punishment is outlined in Apprendi v. New Jersey, 530 U. S. 466, 120 S. Ct. 2348 (2000), where the Supreme Court held; "otther than the fact or a 'prior conviction', any fact necessary for the conviction or punishment, must be charged by by indictment, submitted to a jury, and proven beyond a reasonable doubt, or, admitted by the accused to exist beyond a reasonable doubt".

Since the United States infers the word "fact". A 'theory" as used in South Carolina to describe "hands of one hands of all" cannot, cannot abridge this obligation under a accused Fifth, Sixth, and Fourteenth Amendment rights. Whereas, a close look at the plea trascript, (Tr. tr..p. 14-15), clearly shows the court itself failed to develop any rational factual basis for the charges.

As this Court concluded in Pierce v. State, 338 S.C. 139, 526 S.E.2d 222 (S.C. 2000); "Subject matter jurisdiction is the power of a court to hear and determine cases of the general class to which the proceeding in question belong". Dove v. Gold Kist, Inc. 314 S.C. 235, 442 S.E.2d 598 (1994). "Except for certain minor offenses, the circuit court does not have subject matter jurisdiction to hear a guilty plea unless (1) there has been an indictment which sufficiently states the offense; (2) there has been a waiver of indictment; or (3) the charge is a lessor included charge of the crime charged in the indictment". Carter v. State, 329 S.C. 355, 362, 495 S.E.2d 773, 777 (1998).

As this Court concluded in State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (S.C. 2005); "Turning to South Carolina jurisprudence, we note this Court has held that subject matter jurisdiction is the power of a court to hear and determine cases of the general class to which the proceeding in question belong. Pierce v. State; and that "issues related to subject matter jurisdiction may be raised at any time". See Brown v. State, 343 S.C. 342, 540 S.E.2d 846 (2001). That the lack of subject matter jurisdiction may not be waived, even by consent of the parties, and should be taken notice of by this Court. Id.

In the instant case at bar, murder is not a minor offense in order to omit the process of a sufficient indictment. Because a true bill indictment appears in this case, and the seriousness of the offense, "no waiver appears in this case of a sufficient indictment". And finally, even the lessor included offense to mur-

der and armed robbery is described as "serious offenses" under South Carolina Laws, that essentially requires process of proceeding by a sufficient indictment. Without which, "it according to this Court", deprives the court of subject matter jurisdiction.

In Conclusion, because this Court declared issues of concern that relate to jurisdictional questions may be raised at any time, Brown v. State, 343 S.C. 342, the Appellant respectfully moves to preserve this issue to "the Highest State Court" for review, even where Martinez v. Ryan, would have excused initial PCR counsel's failure to raise the above issue, to allow subsequent courts to review the claim on the merits.

For these reason, Appellant under the liberal standard of Haines v. Kerner, 404 U.S. 519 (1972), humbly prays that relief is granted by allowing Supreme Court review, by way of this pro-se Johnson petition for writ of certiorari. And for any other relief this Honorable South Carolina Supreme Court deems just and proper.



Respectfully Submitted,

/s/ Freddie Edwards Jr

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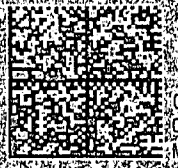

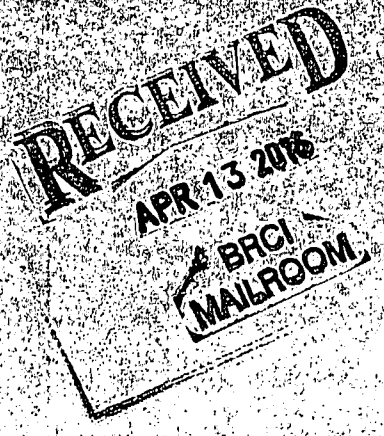


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