

NOTICE OF INTENT TO APPEAL

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

**RECEIVED**

AUG 01 2016

APPEAL FROM COLLETON COUNTY  
Court of General Sessions

**S.C. SUPREME COURT**

Perry M. Buckner, Circuit Court Judge

Indictment No. 1987-GS-15-00527, 00528 and 2015-CP-15-500

STATE OF SOUTH CAROLINA,

Respondent,

V.

Michael Linder

Appellant

COLLETON COUNTY  
GENERAL SESSIONS COURT  
2016 JUL 28 AM 9:45

NOTICE OF APPEAL

Appellant appeals the denial of his motions for a new trial and a Writ of Mandamus in this case. These motions were denied by the Honorable Perry M. Buckner on July, 14 2016.

July, 27 2016



Matthew L. Walker  
Colleton County Public Defender  
115 Benson Street  
Walterboro, South Carolina 29488  
843-549-1633  
Attorney for Appellant

OTHER COUNSEL OF RECORD:

Steven H. Knight  
Assistant Solicitor  
101 Hampton Street  
Walterboro, SC 29488  
843-549-2192

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STATE OF SOUTH CAROLINA,

Respondent,

v.

Michael Linder

Appellant

AFFIDAVIT OF SERVICE

DUE AND LEGAL SERVICE OF THE Notice of Intent to Appeal in the captioned matter is hereby  
acknowledged and copy thereof retained this 28<sup>th</sup> day of July, 2016.

July 28, 2016



Steven H. Knight  
Assistant Solicitor  
101 Hampton Street  
Walterboro, SC 29488  
843-549-2192

STATE OF SOUTH CAROLINA )  
 COUNTY OF COLLETON )  
 )  
 Michael Linder, # 14-7746 )  
                                   Plaintiff )  
 )  
                                   Vs )  
 Isaac McDuffie Stone, III, Solicitor )  
 Fourteenth Judicial Circuit )  
                                   Defendant )  
 \_\_\_\_\_ )

IN THE COURT OF COMMON PLEA  
 FOURTEENTH JUDICIAL CIRCUIT

Civil Action No. 2016-CP-15-500  
 In Re: Case #: 87-GS-15-528/529

ORDER

COLLETON COUNTY  
 GENERAL SESSIONS COURT  
 2016 JUL 26 AM 9:30

This matter came before the Court for hearing on the Motion for After Discovered Evidence filed on October 9, 2013, and Petition for Writ of Mandamus filed on March 16, 2016 filed by Michael Linder, Pro Se. After receipt of these motions, the Court appointed Matthew Walker, Assistant Public Defender to represent Michael Linder in these matters in an Order dated February 29, 2016. This hearing was held on July 14, 2016. The State was represented by Steven H. Knight, Assistant Solicitor for the 14<sup>th</sup> Judicial Circuit, and Matthew Walker, Assistant Public Defender, appeared on behalf of Mr. Linder.

Michael Linder presented the following three issues to be addressed at the hearing:

1. The Trial Judge failed to sign the Court Order to validate his conviction and sentence;
2. The conviction obtained was by action of a Grand Jury which was unconstitutionally impaneled by the Solicitor outside the Statute of S.C. Code Ann. §14-5-800 sec. (3);
3. Petition for Writ of Mandamus.

After hearing arguments of counsel and taking testimony, I find that the Original Sentence Sheets, dated June 16, 1988, filed with the Clerk of Court were signed by Judge J. Ernest Kinard, Jr. The Commitment Order has a typed electronic signature, as well as the words "see attached". The attached pages referenced are the sentencing sheets which do have an original signature.

At the hearing, counsel for Mr. Linder offered a letter dated September 12, 2015 from Judge Kinard to James E. Brennan, Jr., Assistant Division Director of Inmate Records Office, *Defendant's Exhibit # 4*, and asked the Court to compare the signature on *Exhibit # 4* with the original signatures on the sentencing sheets dated June 16, 1988. The Court is not an expert in hand writing to determine if documents are signed by the same person. Thus, the Court cannot express an opinion on this issue.

Further, I find that Michael Linder was properly indicted on November 9, 1987 by the Grand Jury of Colleton County. Mr. Linder alleges that the Grand Jury and its actions were unconstitutional because it took place outside the statutory terms of court set forth in S.C. Code Ann. § 14-5-800(3). However, S.C. Code §14-5-410 provides that a Common Pleas statutory

PATRICIA C. GRANT  
 CLERK OF COURT  
 COLLETON COUNTY  
 CERTIFIED TRUE COPIES OF RECORDS  
 Patricia C. Grant  
 CLERK OF COURT, CP & GS  
 COLLETON COUNTY, SOUTH CAROLINA  
 DATE: 7-26-2016

2 mb

term of court can be transferred to a General Sessions term of court. At the hearing, the State entered into Evidence a record from the Clerk of Court's Office, *State's Exhibit # 1*, that provided that a Term of General Sessions for Colleton County was held on November 9, 1987, the date Mr. Linder was indicted. Furthermore, these statutory terms of court have not been followed since the adoption of the unified court system.

Finally, as to Mr. Linder's Petition for Writ of Mandamus, I find that the Applicant has failed to meet the necessary requirements. In order to obtain a writ of mandamus requiring the performance of an act, the applicant must show (1) a duty of the opposing party to perform the act, (2) the ministerial nature of the act, (3) the applicant's specific legal right for which discharge of the duty is necessary, and (4) a lack of any other legal remedy. Pressley v. Lancaster Cty., 343 S.C. 696, 705, 542 S.E.2d 366, 370 (Ct. App. 2001) (citing Charleston County Sch. Dist. v. Charleston County Election Comm'n, 336 S.C. 174, 519 S.E.2d 567 (1999)).

Mr. Linder contends that the Solicitor has a duty to respond to his motion once filed and to schedule a hearing. There has been no testimony offered that the Solicitor has failed to keep a duty. This Court became aware of Mr. Linder's motion, which was the date Mr. Walker was appointed counsel, on February 29, 2016 and requested that a hearing be held on this matter in March of 2016. Mr. Walker asked the Court to continue the hearing, which was no fault of the State. There has been no evidence presented to convince this Court that the State failed to make a timely response to Mr. Linder's motion and schedule a hearing.

Mr. Linder has a duty to file a motion for a new trial brought on after discovered evidence within one year after the date of actual discovery of the evidence, or within one year after the date when evidence would have been ascertained by reasonable diligence. SCRCrimP 29(b). Though no evidence from a medical expert was presented, Mr. Linder stated at the hearing that he had some medical issues that made him not realize and be aware of things that were going on around him. Mr. Linder contends that this is the reason for his delay in filing this motion.

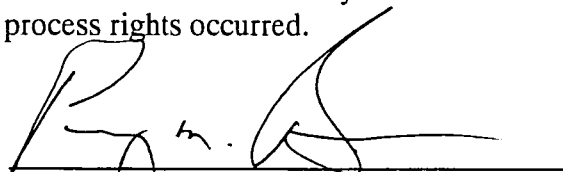
Mr. Linder was sentenced on June the 16<sup>th</sup>, 1988, and he filed his motion on October the 9<sup>th</sup>, 2013. This was after a full appeal of the issues of his trial. Therefore, as testified to at the hearing, Mr. Linder had record of the entire Appellate record between 1988 and 1990 when the Supreme Court issued its Opinion affirming his conviction.

Therefore, I find that insufficient evidence was presented to prove that a violation of Mr. Linder's due process rights occurred and DENY his request for a Writ of Mandamus.

It is further Ordered that Mr. Linder's conviction and sentence was valid; that the Grand Jury proceeding was proper; and that the Applicant failed to meet the necessary elements for Mandamus, and no violation of the Applicant's due process rights occurred.

IT IS SO ORDERED.

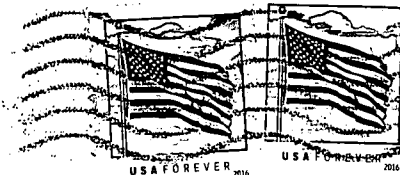
Date: July 25, 2016  
Walterboro, South Carolina

  
\_\_\_\_\_  
Chief Administrative Judge  
Perry M. Buckner

Colleton County Public Defender  
115 Benson Street  
Walterboro, SC 29488

CHARLESTON SC 294

28 JUL 2016 PM 2 L



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

29211+1330

