

August 9, 2016

RECEIVED

Richard Alvin Sims, #273381  
Allendale C.I.  
P.O.Box 1151  
Fairfax, SC 29827

AUG 10 2016

S.C. SUPREME COURT

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

RE: State of South Carolina v. Richard Sims  
Case No.: Appellate Case No.: 2016-00568  
200-GS-200,201;202

Dear Mr. Shearouse:

Please find enclosed for fill the Re-Instate Notice of Appeal, Attachments Orders and Affidavit of Indigency dated August 9, 2016, along with proof of service in the above referenced case.

Thank you for your cooperation in this matter.

Sincerely,

*Richard Alvin Sims*

Richard Alvin Sims

cc: Deputy Solicitor Dale Scott

STATE OF SOUTH CAROLINA

In The Supreme Court

**RECEIVED**

AUG 10 2016

Appeal from Newberry County

Court Of General Sessions

S.C. SUPREME COURT

HONORABLE FRANK R. ADDY, JR. CIRCUIT COURT JUDGE

2001-GS-36-200,201;202

State of South Carolina, ..... Respondent

vs.

Richard Sims, ..... Petitioner

**MOTION TO RE-INSTATE APPEAL**

Pursuant to Rule 231, SCACR, the Petitioner, Richard Sims, pro-se, hereby moves this Court to reinstate his appeal in the above case.

This appeal was taken from the July 21, 2016 Order of Dismissal of the Petitioner's Motion for After-Newly Discovered Evidence signed by the Honorable Frank R. Addy, Jr.. The action was summarily denied the Motion and the Honorable Frank R. Addy, Jr., after hearing Petitioner's Motion for After-Newly Discovered Evidence issued an order, but did not make any specific findings of fact or state expressly his conclusions of law relating to each issue presented as set forth in S.C. Code Ann. § 17-27-80 and precluded effective appellate review. See also *Pruitt v. State*, 423 S.E.2d 127

(S.C. 1992), wherein the South Carolina Supreme Court again came to the same conclusion. Petitioner under the circumstances is not taking a second bite at the apple. In fact, he has yet to have the original issues raised in his Motion for After-Newly Discovered adjudicated by a trier of fact.

The Petitioner argues that the Honorable Frank R. Addy, Jr. advise the Petitioner to premature file his Appeal without an Order. Here, the Honorable Frank R. Addy, Jr., committed "The Unpardonable Sin." [Racial Discrimination], as a result, Judge Addy, refuse to address the issues set forth in Rule 59 (e), [per Judge Addy, (As for the other statements made in the Defendant's Motion for Reconsideration, this court will not dignify those statements with a response). The United States Constitution does not allow any state to deny a person within its jurisdiction equal protection of the law. U.S. Const. amend. XIV, § 1.

In a case similar to the instant one, captioned State v. Spann, 334 S.C. 318, 513 S.E.2d 98 (1999), and State v. Hill, 359 S.C. 301, 597 S.E.2d 822 (2004). According to State v. Hill and Rule 29 of the South Carolina Rules of Criminal Procedure "newly discovered evidence is permissible when: 1, evidence would probably change the result if a new trial is had; 2, evidence has been discovered since the trial; 3, evidence could not have been discovered before the trial; 4, evidence is material to the issue of guilt or innocence; and 5, evidence is not merely cumulative or impeaching." 597 S.E.2d 822 (2004). In State v. Spann, the court held that that a new trial must be granted to the Petitioner because evidence existed that, through due diligence, could not be uncovered at the time of the first trial. 513 S.E.2d 98, 100 (1999).

The trial court illustrates that the reason this evidence should not be permitted is because the date of impaneling a grand jury does not constitute newly discovered evidence under Rule 29 (b). Further, the Court's misinterpretation or misapplication of its own rules is "error of law". The Circuit Court Judge committed an error of law, under the unusual facts of this case, in holding the newly discovered. In order to understand the after-discovered evidence, it is necessary to review certain events which occurred.

The Court [Racial Bias] has ~~deprived the Petitioner of his due process of law~~ and the Court misconstrues the respective issues before this Court. Here, the Solicitor unlawfully impaneled its grand jury out side the jurisdiction of the Court of General Sessions, and then willfully impaneled its grand jury within the Court of Common Pleas. Additionally, it should be noted that the Court of Common Pleas is vested with NO authority to take any action on matters pertaining to return of true-bill criminal indictments. "The Court is made up of the Court of Common Pleas which hears civil actions and the Court of General Sessions which hears criminal cases..." Dove v. Gold Kist Inc., 314 SC 235, 442 SE 2d 598, 600 (SC 1994); see also SC Constitution Article V § 1.

Thus, there is no grant of *concurrent* jurisdiction, and therefore NO true bill criminal indictment can be lawfully issued through grand jury proceedings held before a Court of Common Pleas. Judge Addy, alleges the arguments made by the Defendant are not based in law.

WHEREFORE, the Petitioner respectfully requests this Court Re-Instate the [Notice of Appeals] as a matter of law.

Respectfully submitted,

*Richard Alvin Sims #273381*

Richard Alvin Sims, #273381  
Allendale C.I.  
P.O. Box 1151  
Fairfax, SC 29827

August 9, 2016  
Fairfax, South Carolina

STATE OF SOUTH CAROLINA

In The Supreme Court

RECEIVED

Appeal from Newberry County

AUG 10 2016

Court Of General Sessions

S.C. SUPREME COURT

HONORABLE FRANK R. ADDY, JR. CIRCUIT COURT JUDGE

2001-GS-36-200, 201; 202

Appellate Case No. 2016-001568

State of South Carolina ..... Respondent

vs.

Richard Sims, ..... Petitioner

PROOF OF SERVICE

I certify that I have served the Motion to Re-Instate Appeal and attachments Orders on Respondent State of South Carolina by depositing a copy of same in the United States Mail, postage prepaid, on August 9, 2016, to its attorney of record, Deputy Solicitor Dale Scott, Esquire, Dale Scott, Deputy solicitor 8th Judicial Circuit solicitor P.O. Box 516 Greenwood, S.C. 29648-0516

August 9, 2016

Richard Sims # 273381

Richard Sims, # 273381  
Allendale C.I.  
P.O. Box 1151  
Fairfax, SC 29827

STATE OF SOUTH CAROLINA  
COUNTY OF NEWBERRY

IN THE COURT OF GENERAL SESSIONS

STATE of SOUTH  
CAROLINA,

**ORDER**  
2001-GS-36-200; 201; 202

-v-

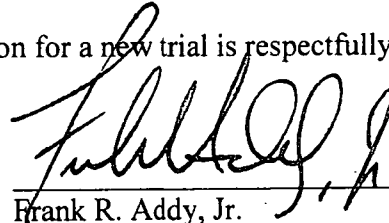
Richard Sims,  
*Defendant.*

**Addy, J.**

**THIS MATTER CAME BEFORE THE COURT** on July 21, 2016 for a hearing on Defendant's motion wherein Mr. requests a new trial pursuant to Rule 29 (b) under the South Carolina Rules of Criminal Procedure. Deputy Solicitor Dale Scott was present on behalf of the State and the defendant represented himself pro se. For the reasons set forth herein, this motion is denied.

The court has reviewed both the legal and equitable aspects of the arguments presented. The court has also reviewed the applicable statutes and case law on this topic. For the reasons stated on the record at the hearing, Mr. Sims's motion for a new trial is respectfully denied.

**IT IS SO ORDERED.**



Frank R. Addy, Jr.  
Circuit Judge, 8<sup>th</sup> Judicial Circuit

July 22, 2016  
Newberry, South Carolina

JACKIE S. BOWENS  
CLERK OF COURT

2016 JUL 22 PM 4 11

NEWBERRY COUNTY

FILED

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STATE OF SOUTH CAROLINA  
COUNTY OF NEWBERRY

IN THE COURT OF GENERAL SESSIONS

STATE of SOUTH  
CAROLINA,

ORDER  
2001-GS-36-200; 201; 202

-v-

Richard Sims,  
Defendant.

Addy, J.

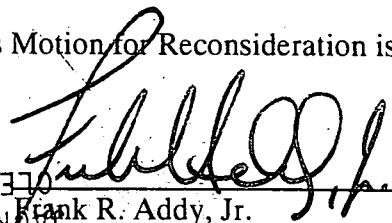
**THIS MATTER COMES BEFORE THE COURT** on July 28, 2016 on Defendant's motion wherein Mr. Sims requests a reconsideration of this court's denial of his previous Motion for a New Trial.

The Defendant originally requested a new trial pursuant to Rule 29(b) of the South Carolina Rules of Criminal Procedure. Rule 29(b) mandates that the Defendant must present a claim of newly discovered evidence in order to be granted a new trial. The date of impaneling a grand jury does not constitute newly discovered evidence under Rule 29(b). Further, the arguments made by the Defendant are not based in law. The Defendant is advised that his next course of action will be to file an appeal of this Order if he so chooses.

As for the other statements made in the Defendant's Motion for Reconsideration, this court will not dignify those statements with a response.

For the reasons set forth herein, Defendant's Motion for Reconsideration is denied.

**IT IS SO ORDERED.**



FRANK R. ADDY, JR.  
Circuit Judge, 8<sup>th</sup> Judicial Circuit

July 28, 2016  
Greenwood, South Carolina

2016 AUG 1 9 49

NEWBERRY COUNTY

FILED

# The Supreme Court of South Carolina

Richard A. Sims, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2016-001568

Lower Court Case No. 2000-GS-36-00200

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## ORDER

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Petitioner has filed a Notice of Appeal from a decision denying petitioner's motion for a new trial. A written order has not been issued. A notice of appeal shall be served on all respondents within thirty days after receipt of **written notice of entry of the order or judgment**. Rule 203(b)(1), SCACR. The written order is the trial judge's final order and constitutes the final judgment of the court. *Ford v. State Ethics Comm'n*, 344 S.C. 642, 545 S.E.2d 821 (2001). Because a written order has not yet been issued, the Notice of Appeal filed by petitioner was premature. Accordingly, the Notice of Appeal is dismissed without prejudice to petitioner's right to file a Notice of Appeal from the written order ruling on his motion for a new trial.

FOR THE COURT

BY Drunda J. Shealy  
Chief Deputy CLERK

Columbia, South Carolina  
August 1, 2016

cc:

Justin James Hunter, Esquire  
Richard Alvin Sims, 273381

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF NEWBERRY )

AFFIDAVIT OF INDIGENCY

Case Name State of South Carolina Carolina v. Richard Sims

Criminal Case No. 2001-GS-200, 201; 202

Current Address: P.O. Box 1151, Fairfax, SC 29827

Are you incarcerated? X Yes (If "Yes") Where? Allendale C.I.  
No

What were you convicted of? Assault While Resisting Arrest, Failure to Stop for a Blue, and Possession With Intent to Distribute Crack Cocaine

What was your sentence? Twenty-five (25) years concurrent with ten (10) and Three (3) years Sentence

In what county was this hearing held? Newberry County

Presiding Judge's name? The Honorable Frank R. Addy, Jr. Circuit Court Judge

Date of hearing? July 21, 2016

Are you appealing from a trial, guilty plea or from a post-conviction relief hearing? Motion for After-Newly Discovered Evidence and Rule 59 (e)

Were you represented by a court-appointed attorney, public defender, , or retained counsel?  
No Attorney Appointed by the Court

Name of attorney/public defender? N/A

If retained, how much did you pay for attorney fees? \$ 0

If you still owe money to your attorney, how much? \$ 0

.....

1. Are you presently employed? Yes \_\_\_\_\_ No X

a. If "yes," state the amount of your salary or wages per month, and give the name and address of your employer. N/A

b. If "no," state the name and address of last employment, date of termination of employment, and amount of your salary or wages per month. N/A

2. List by name, age and relationship to you, any persons who are dependent upon you for support. Indicate beside each how much you contribute toward their support. My Mother

N/A

3. Have you received within the past twelve months any money from any of the following sources? No

a. Business, profession or form of self-employment?

Yes \_\_\_\_\_ No x

b. Rent payments, interest or dividends?

Yes \_\_\_\_\_ No x

c. Pensions, annuities or life insurance payments?

Yes \_\_\_\_\_ No x

d. Gifts or inheritance?

Yes \_\_\_\_\_ No x

e. Any other sources?

Yes \_\_\_\_\_ No x

If the answer to any of the above is "yes," describe each source of money and state the amount received from each during the past twelve months. N/A

4. Do you own cash, or do you have any money in a checking or savings account?

Yes \_\_\_\_\_ No x

If the answer is "yes," state the total amount of the cash owned. \$ N/A

5. Do you own any real estate, stocks, bonds, notes or other valuable property (excluding ordinary household furnishings and clothing)? Yes \_\_\_\_\_ No x

If the answer is "yes," describe the property and state the appropriate value of the items owned. N/A

6. What kind of motor vehicle do you own? N/A

Is it paid for? Yes \_\_\_\_\_ No x

If not, what are the monthly payments? \$ N/A

7. How much do you owe (on liens, mortgages, other encumbrances or debts)?

N/A

I do solemnly swear that the account by me delivered into this Court does contain a true and full account of all my real and personal estate, debts, credits and effects whatsoever without exception, which I, or any person in trust for me, have or at the time of my possession had, or am, or was, in respect, entitled to, in possession, remainder or reversion and that I have not at any time since charges were made against me or before, directly or time since charges were made against me or before, directly or indirectly sold, leased, assigned or otherwise disposed of or made over, in trust for myself or otherwise, other than is mentioned herein.

I understand that the State shall file a claim against me in an amount equal to the cost for representation, but that such claim shall not constitute a lien against my property, unless, the claim is reduced to judgment by the Order of the Court after giving me at least thirty days' notice.

Under penalty of perjury, I certify that the information give by me on this affidavit is true and correct, and I understand that I will be subject to civil and/or criminal penalties if I knowingly furnish false information.

I am financially unable to employ counsel.

This 9 day of August, 2016.

Mr. Richard Alvin Sims  
Defendant

I understand that I am entitled to at least thirty days' notice before a claim against me may be reduced to judgment, and I do hereby waive the right to such notice.

This 8<sup>th</sup> day of August, 2016.

Mr. Richard Sims  
Defendant

SUBSCRIBED AND SWORN to before

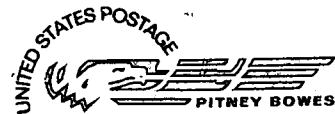
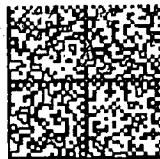
me this 8<sup>th</sup> day of August, 2016

Debbie McCasker  
NOTARY PUBLIC FOR SOUTH CAROLINA

My commission Expires: July 10, 2024

Richard Sims, #273381  
Allendale C.I.  
P.O.Box 1151  
Fairfax, SC 29827

F-4-A-10



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Attn.: Daniel E. Shearouse, Clerk of Court  
The Supreme Court of South Carolina  
P.O.Box 11330  
Columbia, South Carolina 29211

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