

The State of South Carolina  
in The Court of Common Pleas

State of South Carolina

v.  
James Edward Wise  
appellant

Newberry County  
Frank E. ...  
Circuit Court

Writ of Habeas Corpus  
Under S.C.

FILED  
CLERK OF COURT  
BOWERS  
JUL 10 5 57  
NEWBERY COUNTY

The appellant hereby appeals his life sentence without the possibility of parole in docket, GS-97-36-402, along with the misrepresentation of the facts under S.C.R.C.P. 60(B) of a prior conviction of a most serious offense along with the failure of the prosecutor serve the appellant and his attorney under rule 5 and the brady bill as well as violation of the due process of law along with other numerous of constitutional violations upon the appellant. The state alleged that on or about the 15<sup>th</sup> day of July 1997. The appellant wilfully and unlawfully entered a dwelling without consent and with the intent to commit a crime in violation of section 16-11-311 of the south Carolina code of laws (1976) as amended. on october 8, 1998. A Newberry County jury found the appellant guilty of burglary, 16-11-311 (A)(1)(A)(b)(c)(d)(3). The state alleged that the appellant had another most serious offense in the indictment 97-GS-36-409, which is false. The statute of 17-25-45(H), the solicitor could not have notified the appellant and his counsel under that section, the record speak for itself. Tr. P. 166. L. 18 to 25, Mr. Peace: your Honor, first of all, the defendant, James Edward Wise, was notified that being convicted of the burglary first offense subjects him to life without parole. This is a mandatory requirement under the south Carolina statute 17-25-45(H). The Court: yes, Sir. Mr. Peace; and your Honor, Notice given by

Mr. Woolston, deputy Solicitor in our office. When the Solicitor is required to seek or determines to seek sentencing of a defendant under this Section 17-25-45(H), Written Notice must be given by the Solicitor to the defendant and defendant counsel not less than ten (10) days before trial. The Solicitor sent the defendant counsel a letter and not the defendant. The defendant arguing that Solicitor failed to give him written notice of its intent to seek a life sentence without parole. The Solicitor sent letter to defendant counsel on the 17<sup>th</sup> of August 1998. "Counsel Mr. Eugene C. Griffin." which violates the due process of law and S.C.C. § 17-25-45(H). The General Assembly has made the sentencing provision of Section 17-25-45. The State of South Carolina Supreme Court has laid out the principles of statutory construction as applied to a criminal statute, it is well established that interpreting a statute the court primary function is to ascertain the intention of the legislature when the terms of the statute are clear and unambiguous the court must apply them according to their literal meaning, in construing to statute words must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation. When a statute is penal in nature it must be construed strictly against the state and in favor of the defendant. *State v. Blacmon*, 304 S.C. 270, 273, 403 S.E.2d, 660, 662 (1991).

*Kerr v. State*, op. No. 25295 (S.C. Supp. Ct. filed May 29, 2001). The South Carolina Constitution give sole legislative power to the general assembly, S.C. Const. Art III § 1, The legislative power of this state shall be vested in two distinct branches the one to be styled, the Senate and the other to the House of Representatives and both together the general assembly of the state of South Carolina by its words in the recidivist statute. The general assembly has ~~mandated~~ mandated that the Solicitor must

Notify the defendant and the defendant's Counsel in Writing if the Solicitor intends to seek a life sentence without possibility of parole. *State v. Johnson*, op. No. 3376 (2001). The South Carolina appeals court states that for the court to dismiss the clear and unambiguous language of the statute and merely require the defendant's Counsel to have actual notice of the solicitor's intent to seek life without parole would have the effect of amending the statute. The court of appeals view the actual notice under Section 17-25-45 (H), it is insufficient unless the general assembly decides otherwise and amends the statute itself. During trial the solicitor misrepresented the facts in convincing the court of its obvious purpose of the notice provision without the clear intent of the general assembly. The court must refuse to delve beyond the clear and unambiguous words of the statute. The notice provision is clearly for the benefit of the defendant. If the general assembly had not intended for the defendant and defendant's counsel to receive written notice it would not have so provided it. The solicitor cannot rely on the South Carolina Supreme Court's decision in *State v. Washington*, 338, S.C. 392, 526, S.E. 2d, 709 (2000) for the proposition that actual notice is sufficient under section 17-25-45 (in *Washington* the defendant was initially indicted and he received written notice that the solicitor would be seeking life imprisonment without parole. In *Washington* case he was re-indicted because of error in the original indictment, but he did not receive a second written notice from the solicitor. The Supreme Court held that the state was not precluded from applying section 17-25-45, because without a second notice being served on the re-indictment the defendant had actual notice that the state would be seeking life without parole. The Supreme Court of South ~~Carolina~~ Carolina

found that under such notice statutes, the law only requires actual notice; in the present case the defendant Mr. Wise, was re-indicted because of errors in the original indictment and the solicitor did not served a written notice on Mr. Wise, on either indictments, original indictment 97-GS-36-479; Re-indictment 98-GS-36-402; The indictment in Mr. Wise, case are now at bar, Mr. Wise, was never notified by the solicitor office in written pursuant to the statute of 17-25-45 (H). The Supreme Court cited State v. McWee, 322 S.C. 387, 472 S.E.2d 235 (1996) & State v. Young, 319 S.C. 33, 459 S.E.2d 84 (1995) both case death with notice requirements in death penalty cases. The statute requires that whenever the solicitor seeks the death penalty he shall notify the defense attorney, S.C. Code Ann 16-3-26(A), We cannot believe the Supreme Court intended to adopt abroad rule that regardless of the circumstances of the particular case all notice requirements in criminal statutes are satisfied by actual notice. therefore the due process of law has not been met in the states case, the states failure to provide actual notice to the defendant. The solicitor used improperly convictions to enhancement defendant sentence to life without parole. The solicitor committed error in used false evidences to convictions defendant, The state relied on conviction from lesser included offense, which cause for this case to be tried twice, which the defendant has an undisputable constitutional right to a fair trial, which the second indictment and trial violated the double jeopardy clause of the fifth amendment, The state and federal constitutions guarantee freedom from punishment for both offenses, lesser included offense when they are established by the same acts. The defendant Mr. Wise, convicted consisted of and than legal process, The defendant sentence should be vacated and remanded for resentencing with a maximum of 15-years.

The defendant without actual notice did prejudice the defendant in preparing a defense to the Recidivism Charges. Therefore the defendant ask that his life sentence to be revoked, because this harmful error in Violated of his Constitutional rights of due process of law. The States failure to provide actual notice, The letter that was sent to defendant Counsel, Mr. Eugene C. Griffin, Jr. is not act notice of Mr. Wise been serve with notice under South Carolina Statute §17-25-45 as requirement by laws. The defendant convicted is only a sham legal process. And his sentence should be vacated and resentencing with a maximum of 15-years sentences.

Sincerely  
James E. Wise

## Certificate of Service

I James Edward Wise, do swear Under Penalty of perjury that I have on this 22 day of May 2016, Mailed Copies of this Writ of Mandamus to those persons Names Whose address appears below, by placing Copies of this Writ in an envelope and placing that envelope in the U.S. Mail here at Lieber Cor. inst, in Ridgeville, S.C.

Jerry W. Peace  
 Assistant Solicitor 8<sup>th</sup> Circuit  
 Suite 203, Park Plaza  
 P.O. Box 516  
 Greenwood, S.C. 29648-0516

Jackie S. Bowers  
 Clerk of Court, Newberry  
 P.O. Drawer 10  
 Newberry, S.C. 29108

Barry S. Koon  
 Magistrate Court, Judge  
 3239 Lewis Rich Drive  
 Newberry, S.C. 29108

FILED  
 NEWBERRY COUNTY  
 2016 JUL 14 AM 10:57  
 JACQUELINE BOWERS  
 CLERK OF COURT

Respectfully,  
 James E. Wise