

THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

CORDELL J. MADDOX, JR., CIRCUIT COURT JUDGE

Isiah James, Jr., Petitioner,

v,

South Carolina Department of
Probation, Parole and Pardon
Services (SCDPPPS), Respondent.

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JAN 10 2017

SC Court of Appeals

PETITION FOR WRIT OF CERTIORARI
TO SOUTH CAROLINA COURT OF
APPEALS

Other Counsel of Record:

Tommy Evans, Jr.
POB 30666
Columbia, SE 29250

Isiah James, Jr., 096883
GCI, E-2-39B
4556 Broad River Road
Columbia, SC 29210

Case(s)

<u>Cook v. Taylor,</u> 252 S.E.2d 983 (1978)	...	6
<u>Cooper v. SCBPFS,</u> 661 S.E.2d 106 (2008)	...	3
<u>Davis v. Parkview Apartments,</u> 762 S.E.2d 5535 (2014)	...	6
<u>Ex Parte Martin</u> 471 S.E.2d 134 (1995)	..	4
<u>In Re Hover,</u> 754 S.E.2d 875 (2014)	...	7
<u>James v. SCBPFS,</u> 656 S.E.2d 399 (S.C. App. 2008)	...	2
<u>State v. Blakely</u> 758 S.E.2d 29 (S.C. App. 2013)	...	5
<u>State v. Gentry,</u> 610 S.E.2d 494 (2005)	...	6
<u>State v. Hewins,</u> 760 S.E.2d 814 (2014)	...	6

CERTIFICATE OF PETITIONER

Petitioner hereby certifies that the petition for rehearing was made and finally ruled on by the court of appeals' panel on 7 November 2016 (see 12.16.16 letter of Deputy Allen) which shows service on or after 12.16.16.

QUESTION(S) PRESENTED

- I. Does the 'liberty interest' announced or set forth in Furtick and Cooper warrant in forma pauperis status when a pro se prisoner seeks appellate review as matter of legal right(s)?
- II. Whether the Court of Appeals and Court's Panel erred denying petitioner's motion to proceed in forma pauperis, rehearing and reconsideration request on pauper status?
- III. Did the (LANEY) Court act in want of jurisdiction on the armed robbery indictment?

STATEMENT OF THE CASE

There was the 12-14-75 arrest of James who was charged and indicted for two (2) count(s) of murder and one count of armed robbery (therein consolidated or joint indictment(s)) after pre-trial proceeding(s) petitioner entered guilty pleas to armed robbery and two(2) count(s) of voluntary manslaughter in Sumter County. The (LANEY) court imposed 30, 30 and 25 year sentence consecutively. James became eligible for parole release on or about 2-17-88; it was disapproved. He made subsequent application(s) for parole release.

When he was denied parole release in March 2001; he brought the

action (appeal) before the Administrative Law Court (ALC) raising the claim(s) or issue(s) which included the JAMES-Cooper claim or issue. There was extreme delay, in-action therewith the ALC. He made the March 9, 2005 application for parole release (proceedings) which was dis-approved so he brought the complaint (tert-claim) in Richland County Circuit Court where mandamus, declaratory relief and etc. were sought.

When the Administrative Law Judge (ALJ) was served with the action or shortly before the initial hearing ALJ Anderson issued the 5-19-05 order* for respondent which was timely appealed to Richland County Circuit Court. Respondent's attorney filed for summary judgment concerning complaint and cause(s) of action after 2-2-06 hearing¹ circuit court judge issued 3-29-06 order of Dismissal² which was timely appealed to South Carolina Court of Appeals. See James v. SCOPPPS, 656 S.E.2d 399, (S.C. App. 2008).³

*ALJ Anderson's order related, "insofar as Appellant is arguing that the Parole Board's decision to reject him for parole at his regularly scheduled hearing was arbitrary and capricious, such a claim does not involve a determination by the Department that he is permanently ineligible for parole and is therefore not appealable to the Court under Furtick". (order p. 3, App. p. 4)

¹At the 2-2-06 hearing respondent's attorney stated: I think Judge Anderson sees a much better job than I could ever attempt to do for the Court. I would urge the court to view that, (tr. excerpt p. 12 ll. 20-22, App. 8)

²Judge Lee's order (p. 1) dictated, "Plaintiff has no right to bring an action alleging the wrongful decision of the Parole Board in deny him parole. (App. p. 10) The order (p. 4) stressed, "this Court dismisses Plaintiff's claim pursuant to the doctrine of res judicata." (App. p. 13)

³The decision set forth "FN". James also challenges the circuit court's rulings regarding the application of the doctrine of res judicate and the South Carolina Tert Claim Act." Id. at 401

The appeal from the ALC got mis-placed, probably because the change of the law (appellate jurisdiction) and the clerk of the ALC failure to adhere to court rule(s) regarding appeals therefrom. There was the 8-31-11 hearing and the circuit court judge granted respondent's motion to dismiss after subsequent appeal(s) James obtained a reversal in the High Court. Memorandum Opinion No. 2014-MC-012 (5-14-14). The (BARBER) Court granted petitioner's appeal (in part) on 12-5-14.

He filed a habeas corpus motion on or about 15 October 2015 which supplemented the initial 7-10-08 Rule 60(b)(5) Motion (see App. pp. 15-16) A hearing was conducted on 2-25-16 @ 2:00 pm; the circuit court judge issued 3-29-16 'order'. Petitioner appealed to South Carolina Court of Appeals and pauper status was denied on 6-24-16; he sought reconsideration therewith rehearing and the Court's panel issued 11-7-16 order; he comes to this Court for appellate and judicial review.

ARGUMENT(S)

1. THE LIBERTY INTEREST ANNOUNCED OR SET FORTH IN FURTICK AND COOPER WARRANT IN FORMA PAUPERIS STATUS WHEN A PRO SE PRISONER SEEK APPELLATE REVIEW AS MATTER OF RIGHT

The liberty interest announced or set forth in Furtick and Cooper warrant in forma pauperis status when a pro se prisoner seeks appellate review as matter of right. Cooper v. SCOPPPS, 661 S.E.2d 106, 112 (2008) Cooper holds, "We find the apparent failure by the Parole Board to consider the requisite statutory criteria in rendering its decision constitutes an infringement of

a state-created liberty interest and, thus warrants minimum due process procedure."

The court of appeals' 6-24-16 'order' ruled, "the motion to proceed in forma pauper is denied pursuant to Ex Parte Martin, 321 S.C. 533, 471 S.E.2d 134 (1995)" (App. p. 27) Even though James may not have cited Cooper therein the motion to proceed in forma pauperis. Ex Parte Martin does not hold that an indigent may be arbitrarily and capriciously denied pauper status which is what the court of appeals order ruled.

In Ex Parte: Martin v. State, 471 S.E.2d 134, 135 (1995), the Court wrote, "Further, where certain fundamental rights are involved, the Constitution requires that an indigent be allowed access to the courts. Compare Boddie v. Connecticut, 401 U.S. 371, 91 S.Ct. 780, 28 L.Ed.2d 113 (1971)." Therefore, the ruling is unconstitutional in James's appeal. (See App. pp 28)

2. COURT OF APPEALS AND COURT'S PANEL ERRED DENYING PETITIONER'S MOTION TO PROCEED IN FORMA PAUPERIS, REHEARING AND RECONSIDERATION REQUEST ON PAUPER STATUS

The court of appeals and court's panel erred denying James's motion to proceed in forma pauperis, rehearing and reconsideration request on pauper status. The order (see App. p. 28) pointed, "there is no basis for reinstating or granting a rehearing. The 'order' (p. 3) of the circuit court averred:

The Plaintiff is also not entitled relief pursuant to Rule 60 due to the length of time expired from the Court's decision to the filing of the motion. Pursuant to Rule 60, the 'motion shall be made within a reasonable time.' Rule 60 SCRPC. Nine years have elapsed, this cannot be considered reasonable when seek relief. App. p. 24

The 3-29-16 order failed to note as it is set forth in the statement of the case (p. 3) that James filed and served the Rule 60(b)(5) Motion the summer (7.19.08) of 2008 shortly thereafter the Cooper decision; it cannot be faulted or pointed to petitioner that the circuit court failed to go forward, proceed with the initial motion which had to be supplemented on 10-15-15 to secure a hearing but the James decision of 12-5-14 (see App. pp. 17-21) was not received by petitioner until January 2016; it was received in time to present at the 2-26-16 hearing.

Which shows (contrary to Judge Lee's 3-29-06 order (p. 4); it stated "Plaintiff did not appeal that decision and it has become final") that he was successful in securing a reversal of ALJ Anderson's 5-19-05 order (App. pp. 18) More it was the basis of Judge Lee's decision and Court of Appeals' decision--res judicata.

3. THE (LANEY) COURT ACTED IN WANT OF JURISDICTION ON THE ARMED ROBBERY INDICTMENT

The (LANEY) Court acted in want of jurisdiction on the armed robbery indictment; again there was the consolidated indictment(s) for homicide, The State v. Maurice Mack et al., no. 79GS43-139 (Annexed hereto) which was true-billed at the March 1979 term of Court of General Sessions of Sumter County. The government chose the joint arraignment on 3-26-79. State v. Blakely, 752 S.E.2d 29, at 35 (S.C. App. 2013) (for a discussion on South Carolina mandatory joinder rule).

Petitioner proceeded to pre-trial proceeding before the (FINNEY) court on 6-1-79 (see Excerpt(s) from tr. p. 3 ll. 1-3) There was a Brady (discovery) ruling therein for Mack (p. 35 ll. 17-20); Solicitor of Third Judicial Circuit commented or set forth:

The information for his defense in the armed robbery case, the case has been called and will be called as murder. (p. 35 ll. 2-4)

What is important under rule(s) of law, the FINNEY Court adhered thereto the law of the case doctrine from more than one point of view concerning Mack and followed the Cook v. Taylor, 252 S.E.2d 923 (1978) rule (of law). There were other motion(s) therein, severance and etc. Blakely supra since the guilty pleas were jointly on June 18, 1979; it is apparent separation was denied. Moreover, South Carolina has no plain error rule. see State v. Gentry, 610 S.E.2d 494 (2005) but see also State v. Hewins, 760 S.E.2d 814, 821 (2014) And the government did not appeal pre-trial ruling(s).

The Laney Court adhered to the law of the case for Mack and he deviated on James; even more he violated the long standing Rule 60 of Circuit Court Rules of Practice (CCRP) and relevant case law(s) by going forward without jurisdiction, contrary to res judicata doctrine on armed robbery indictment. See indictment no. 79GS43-141 annexed hereto Further evenmore pre-trial discovery can/may/has established, set forth the law of the case. Davis v. Parkview Apartments, 762 S.E.2d 535, 543 (2014); Hewins supra. Hover dictates, commands that a circuit court judge has to have power to have adequate, suf-

ficient jurisdiction. In Re Estate of Haver, 754 S.E.2d 875, 8 (2014). The record(s) demonstrate, shows and set forth (on its face) that Lane had inadequate, no jurisdiction on the armed robbery indictment as a matter of South Carolina law(s)..

Since petitioner's 60 year sentence has expired as of 2010 (see 'Conviction Summary' annexed hereto); he should be released forthwith--immediately.

This 7 day of January 2017.

/s/ *Isiah James, Jr.*
Isiah James, Jr., 096883

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he has caused true and correct copies of the PETITION FOR WRIT OF HABEAS CORPUS to be mailed, postage prepaid, to the parties set forth below herein this 7 day of January 2017.

Tommy Ever, Jr.
GENERAL COUNSEL, SCPPPS
P.O. Box 50000
Columbia, SC 29240

Hon. Jenny A. Kitchings, Clerk
S.C. Court of Appeals
P.O. Box 11629
Columbia, SC 29211

RECEIVED

JAN 10 2017

SC Court of Appeals

131 *Leiah James, II*

The State of South Carolina

INDICTMENT FOR MURDER

County of SUMTER

At a Court of General Sessions, convened on the 19th day of March

19 79, the Grand Jurors of Sumter County present upon their oath:

That one MAURICE MACK and one ISIAH JAMES, JR.

did with malice aforethought in Sumter County on or about the 25th day
of October, 19 78, kill one Norman Guest Reames
by means of shooting

CERTIFIED TRUE COPY
OF ORIGINAL FILE

R. V. Poyner
CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA

and that the said Norman Guest Reames

did die in Sumter County as a proximate result thereof on or about the 25th
day of October, 19 78

Against the peace and dignity of the State.

R. Kirk McLeod
R. Kirk McLeod Solicitor

APPENDIX A

STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA,

vs.

TRANSCRIPT OF RECORD

MOTIONS: June 1, 1979

MAURICE MACK and
ISIAH JAMES, JR.,

Defendants.

CERTIFIED TRUE COPY
OF ORIGINAL FILED

Mary S. Fuller

DEPUTY CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA

BEFORE: Honorable Ernest A. Finney, Jr.
Resident Judge

June 1, 1979

APPEARANCES

For The State:

For The Defendants:

R. KIRK McLEOD, SOLICITOR
Third Judicial Circuit
HARRY B. BURCHSTEAD, JR.,
Assistant Solicitor
Sumter, South Carolina 29150

SAM HASKELL, ESQUIRE
PHILLIP NEWSOM, ESQUIRE
JOHN S. HOAR, ESQUIRE
RUBEN L. GRAY, ESQUIRE
Sumter, South Carolina 29150

APPENDIX

B

SUMTER, S.C. 29150

The Defendants Maunice Mack and Isiah James were indicted on Indictments Number 79GS43-139 and 79GS43-140, respectively, for two counts of murder as to each indictment.

The matter came on to be heard on June 1, 1979, on the disposition of motions filed in the Court of General Sessions for Sumter County before the Honorable Ernest A. Finney, Jr., Resident Judge, at Sumter, South Carolina.

The State of South Carolina was represented by R. Kirk McLeod, Solicitor for the Third Judicial Circuit, and Harry B. Burchstead, Jr., Assistant Solicitor, both of Sumter, South Carolina.

Present and appearing on behalf of the Defendant Maurice Mack were Sam Haskell, Esquire, Phillip Newsom, Esquire, and John S. Hoar, Esquire, all of the Sumter County Bar and Sumter, South Carolina.

Present and appearing on behalf of the Defendant Isiah James, Jr., was Ruben L. Gray, Esquire, of the Sumter County Bar and Sumter, South Carolina.

The following represents a true record of the proceedings.

SUMNER, S.C. 29159

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1 BY SOL. McLEOD: I might point out, Judge, that the list
 2 that he is talking about, the information for his defense
 3 in the armed robbery case, the case has been called and
 4 will be called as murder.

5 BY THE COURT: Yes sir, I understand that; but I
 6 gather he is talking about one of the---

7 BY SOL. McLEOD: Of course, that's a back-up case---

8 BY ATTY. NEWSOM: Your Honor, I think Brady---

9 BY THE COURT: That's all right, let me go through
 10 these.

11 BY ATTY. NEWSOM: Yes sir.

12 BY THE COURT: Number 3, all written statements of
 13 the accused, whether signed or unsigned; any objection,
 14 Solicitor General's Laboratory, etc. etc. etc. etc. etc. etc. etc.

15 BY SOL. McLEOD: They have them, sir, eh?

16 BY ATTY. NEWSOM: We already have them, Your Honor.

17 BY THE COURT: All right, sir, that's granted.
 18 Number 4, all written statements made by witnesses or any
 19 other persons, whether signed or unsigned, which relates
 20 to this case; you've got any.

21 BY SOL. McLEOD: So far as I know, they have
 22 everything that they have asked for.

23 BY THE COURT: All right, sir. That one would be
 24 granted with the exception of if there are people within
 25 the State's file that they consider to be confidential,

SUMNER, S.C. 1118

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1 on that and I'll think about it for a while. Do you wish to
2 be heard on that one, Solicitor? Criminal records of any
3 witnesses...

4 BY SOL. McLEOD: I don't see where it's got anything
5 to do with the prosecution of the defense of this case
6 because like I started off before, the only thing we are
7 concerned with is trying these two people for murder.

8 BY THE COURT: All right, sir, fine thank you.

9 BY ATTY. NEWSOM: Your Honor, I'd like to make one
10 other point at this time if I could?

11 BY THE COURT: Yes sir?

12 BY ATTY. NEWSOM: Our request for this information
13 does not necessarily only go as to the guilt or innocence
14 phase. We feel that we are entitled to, I think through
15 Brady, to any information of the same nature and all of
16 these other previous requests that go to the sentencing
17 phase---

18 BY THE COURT: The sentencing phase---

19 BY ATTY. NEWSOM: ---And that would be to the charge
20 of the aggravating circumstance of armed robbery.

21 BY THE COURT: All right, sir, fine thank you. I
22 think that takes care of your Brady motion. Now, Mr.--that
23 takes care of all of your motions, doesn't it?

24 BY ATTY. NEWSOM: Yes, Your Honor, it is a continuing
25 motion. Is that my understanding, that the motion is

SUMNER, S. C. 2150



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CERTIFICATE

I, the undersigned Daisy M. Moore, official court reporter for the Third Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings in the within captioned case which were held in the Court of General Sessions for Sumter County on June 1, 1979, before the Honorable Ernest A. Finney, Jr., Resident Judge, at Sumter, South Carolina.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

Daisy M Moore

December 28, 1983

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SUMTER, S.C. 29150

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SCDC OFFENDER MANAGEMENT SYSTEM
COMMITMENT APPLICATION
CONVICTION SUMMARY

3 54
01/13/94

SCDC # 96883
JAMES, JR., ISIAH -

SMITHKIM

OFFENDER TYPE: ADULT-STRAIGHT SENTENCE

CURR LOC: RIDGELAN

OFFENDER CATEGORY: UNCLASS

CURR SENT SERVING CAT: UNCLASS
CONV VII

NUM	CONVICTION OFFENSE	INCARC	SENT	SENT	SENT	DATE	START	PROJ	COMP	STAT	INI
?_ * S00002	ARMED ROBBERY	025	00	000	06/18/79	12/14/78	11/26/2023	ACT		L	
?_ S00001	MANSLAUGHTER	060	00	000	06/18/79	12/14/78	10/14/2010	ACT		L	

MAKE A SELECTION AND PRESS <ENTER>...

PAGE: 00001

PF11-QUIT PF10-MAIN MENU PF7-BACKWARD PF8-FORWARD

SCDC OFFENDER MANAGEMENT SYSTEM
RELEASE DATE SCREEN

01/13/99

CM

SMITHKIM
LOC: RIDGELAND

SCDC ID: 00096883
JAMES, JR., ISIAH -

OFFENDER CATEGORY: UNCLASSIFIED
CURR SENT SERVING CAT: UNCLASSIFIED

OFFENDER TYPE...: ADULT-STRAIGHT SENTENCE - SEXUAL PREDATOR...
TOTAL SENTENCE...: 085-00-000 CONSECUTIVE SENTENCE ...: Y
CURRENT SENTENCE: 085-00-000 CURRENT SENT START DATE: 12/14/1978

PROJECTED COMPLETION DATES

MAXOUT DATE: 11/26/2023 CURRENT EWC ..: 3 F 5
YOA SIX YEAR DATE: / / CURRENT EEC ..: NOT CURRENTLY EARNING EEC
INITIAL PAROLE DATE: 02/01/1988 NEXT PAROLE HEARING DATE: 03/18/2001

TOTAL GT DAYS EARNED: 004740 LABOR CREW/WORK PROG DATE: 99/99/9999
TOTAL EARNED WORK CREDITS ...: 001565 LABOR CREW DISQ REASON:
TOTAL EDUCATION CREDITS: 000000 OFFENSE > CAT 3
TOTAL EXTRA EARNED CREDITS ..: 000
TOTAL SERVICE TIME EARNED ...: 007229

PFKEYS: 5: HISTORY OF DATE CHANGES

APPENDIX E

County of SUMTER

COURT OF GENERAL SESSIONS

MARCH Term, 1979

THE STATE

vs.

MAURICE MACK

ISIAH JAMES, JR.

Made plea as to Maurice Mack. Plea guilty to murder.

INDICTMENT FOR

Armed Robbery.

Robbery against Maurice Mack

MAURICE MACK
ISIAH JAMES, JR.
Foreman of Grand Jury
MAGNAN FRANTERA, 2ND DEPT. ST., COLUMBIA, S. C. 29205

Witnesses

Shepherd J. Boyd Parnell II

LT. Ted Owens SLED

J.L. Bonds SLED

Tom Henderson SLED

Carlson Medley SLED

IRA B. PARNELL, JR. SLED

H.A. Martinis

T.R. Wims

W.L. Poulos

J.A. Byatt

R.J. Poisey

R.M. Jones

Verdict

THE PRISONER ISIAH JAMES, JR. IS PUT TO THE BAR AND ARRAIGNED AND, UPON HIS ARRAIGNMENT PLEADS GUILTY AS CHARGED.

ATTEST:

W. L. Poulos
C. C. P. & G. S.

THE SENTENCE OF THE COURT IS THAT THE PRISONER Isiah James, Jr. BE HELD TO HARD LABOR IN THE SOUTH CAROLINA DEPARTMENT OF CORRECTION FOR A PERIOD OF 25 years OR BE CONFINED AT HARD LABOR IN ONE OF THE DEPARTMENTS DESIGNATED COUNTY FACILITIES, OR PAY A FINE OF \$ —

W. L. Poulos
PRESIDING JUDGE

CERTIFIED TRUE COPY OF ORIGINAL FILED
John & Betty
DEPUTY CLERK OF COURT
SUMMER COUNTY
SOUTH CAROLINA

JUN 18 1979 *Consecutive to Indictment # 140 and 139*

The State of South Carolina

County of SUMTER

INDICTMENT FOR ARMED ROBBERY,
~~ROBBERY AND GUN BARRERY~~

At a Court of General Sessions, convened on the 19th day of March
19 79, the Grand Jurors of Sumter County present upon their oath:

COUNT ONE—ARMED ROBBERY

That one MAURICE MACK and one ISIAH JAMES, JR;

did in Sumter County on or about the 25th day of October

19 78, while armed with a deadly weapon, to wit: .38 calibre pistol

feloniously take from the person in the presence of Gary Cusamano and Norman Guest Reames

by means of force or intimidation goods or monies of the said Gary Cusamano and Norman Guest Reames

such goods or monies being described: a quantity of Marijuana

COUNT TWO—ROBBERY

That

did in County, on or about the day of

19, feloniously take from the person or presence of

by means of force or intimidation goods or monies of the said

such goods or monies being described:

COUNT THREE—LARCENY

That

did in County on or about the day of

19, feloniously take and carry away the goods and monies of

of a value of

described:

with intent to deprive the owner permanently of such goods and monies.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

R. Kirk McLeod

R. Kirk McLeod Solicitor

APPENDIX

C

Isiah JAMES, Jr. 096883
GOODMAN C. I. B2 39B
4556 Broad River Road
Columbia, SC 29210

RECEIVED



UNITED STATES POSTAGE
PITNEY BOWES
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MAILED FROM ZIP CODE 29210



JAN 10 2017

HON. JENNY A. KITCHINGS, Clerk

SC Court of Appeals

SOUTH CAROLINA COURT OF APPEALS

1220 SENATE STREET

COLUMBIA, SOUTH CAROLINA 29201

SCDC

JAN 09 2017

LEGAL MAIL ROOM
MAIL

SCDC
Christmas
Packet