

Elson McKanic, Jr., #182215
Perry Correctional Institute
430 Oaklawn Rd. / Q1
Pelzer, SC 29669

Date: 12-21 - , 2016

Clerk of Court
Post Office Box 703
Union, SC 29379

Re: Elson McKanic, Jr. v. State

Dear Clerk:

Enclosed please find my original petition for writ of Mandamus, Memorandum of Law in support of petition for writ of Mandamus, Summons, and Proof of Service for filing with your office.

I have also enclosed a self-addressed envelope for your return to me clock-stamped copies of these documents for my records.

Sincerely,

Elson McKanic, Jr.

Cc: File

RECEIVED

DEC 28 2016

Referred to SCDC, cc/Lynce
Answered _____

Elson McKanic, Jr., #182215
Perry Correctional Institute
430 Oaklawn Rd. / Q1
Pelzer, SC 29669

Date: 12-21-, 2016

Mr. Allen Wilson
S.C. Attorney General
Post Office Box 11549
Columbia, SC 29211-1549

Re: Elson McKanic, Jr. v. State

Dear Honorable Wilson:

Enclosed please find copies of my petition for Writ of
Mandamus, Memorandum of Law in support of Writ of Mandamus,
Summons and Proof of service for same.

Sincerely,

Elson McKanic, Jr.

Cc: File

STATE OF SOUTH CAROLINA
COUNTY OF UNION

) IN COURT OF COMMON PLEAS
)
) SIXTEENTH JUDICIAL CIRCUIT

Elson McKanic, Jr., #182215
Petitioner,
v.
State of South Carolina,
Respondent.

C/A NO: _____

SUMMONS

To the above Respondent, you are hereby summoned and required to serve upon the petitioner, whose address is listed below, an answer to the petition for Writ of Mandamus, which is herewith served upon you, within thirty (30) days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgement by default will be taken against you for the relief demanded in the petition for Writ of Mandamus.

Respectfully submitted,

Date: 12-21-2016
Greenville County

Elson McKanic
Elson McKanic, Jr., #182215
Perry Correctional Institute
430 Oaklawn Rd. / Q1
Pelzer, SC 29669

STATE OF SOUTH CAROLINA
COUNTY OF UNION

) IN COURT OF COMMON PLEAS
)
) SIXTEENTH JUDICIAL CIRCUIT

Elson McKanic, Jr., #182215
Petitioner,
v.
State of South Carolina,
Respondent.

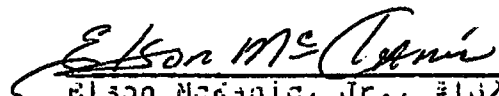
C/A NO: _____

PETITION FOR WRIT
OF MANDAMUS

COME NOW, the above-named petitioner does hereby petition the Honorable Court for an issuance of a Writ of Mandamus to release him from his unconstitutional conviction and sentence as set forth in his attached Memorandum of Law in support of his petition.

Respectfully submitted,

Date: 12-21-2014
Greenville County


Elson McKanic, Jr., #182215
Perry Correctional Institute
430 Oaklawn Rd. / Q1
Palzer, SC 29669

STATE OF SOUTH CAROLINA)	IN COURT OF COMMON PLEAS
)	
COUNTY OF UNION)	SIXTEENTH JUDICIAL CIRCUIT
Elson McKanic, Jr., #182215)	C/A NO: _____
)	
Petitioner,)	
)	
v.)	MEMORANDUM OF LAW IN
)	SUPPORT OF PETITION FOR
State of South Carolina,)	WRIT OF MANDAMUS
)	
Respondent.)	
)	

COME NOW, the above-named petitioner to hereby present his Memorandum of Law in support of his petition for Writ of Mandamus and would show the following unto the Honorable Court.

STATEMENT OF THE CASE

The petitioner pled guilty on March 15, 1971, to Armed Robbery in Spartanburg County without waving his rights to counsel, or having a counsel appointed to represent him in said proceedings. He was, thereafter, sentenced to five (5) years, on the service of one (1) year; the remainder to be served on probation.

The petitioner was indicted at the September 1975 term of the Union County Grand Jury for Armed robbery (1975-GS-44-0177). Jack S. Flynn, Esq. represented him on the charges. On September 18, 1975 applicant went to trial and was found guilty as indicted. The Honorable Clarence E. Singletary sentenced him to twenty-five (25) years. A timely appeal was filed on petitioner's behalf. The S.C. Supreme Court affirmed his conviction and sentence; State v. McKanic, OP. NO. 76-21 (S.Ct. filed March 16, 1976).

The petitioner was indicted at the August 1991 term of the Union County Grand Jury for Armed Robbery (1991-GS-44-0557), Assault and Battery with Intent to Kill, and Possession of a Firearm or Knife During the Commission of a Violent Crime

(1991-GS-44-0558). Joseph Workman, Esq. represented him on the charges. On September 26, 1991, the jury found him guilty of Armed Robbery, Assault and Battery of a High and Aggravated Nature, and Possession of a Firearm or Knife During the Commission of a Violent Crime. The Honorable H. Dean Hall sentenced him to confinement for a period of life without parole for Armed Robbery and ten (10) years for Assault and Battery of a High and Aggravated Nature. Applicant did not appeal his convictions and sentences.

STANDARD OF REVIEW

(A) To obtain a Writ of Mandamus requiring the performance of an act, the petitioner must show (1) a duty of the opposing party to perform the act; (2) the ministerial nature of the act; (3) the specific legal right for which discharge of the duty is necessary; and (4) a lack of any other legal remedy. See Porter v. Jedziniak, 512 S.E.2d 497 (1994); Anderson v. State, 527 S.E.2d 497 (1994).

(B) In addressing a Miscarriage of Justice claim, the S.C. Supreme Court has held that finality must be realized at some juncture to achieve a semblance of effectiveness in dispensing justice; at some juncture review must stop with only the very rarest of exception, "when to continue a petitioner's imprisonment without a review (of the merits) would amount to a miscarriage of justice." See Aice v. State, 409 S.E.2d 392 (1991). The imposition of a sentence in excess of S.C. statutory and constitutional laws should qualify as a miscarriage of justice to excuse a procedural bar.

ARGUMENT

The court should entertain the merits of this Writ of Mandamus to correct the miscarriage of justice regarding petitioner's unlawful Life Sentence for three (3) armed robbery convictions.

In the applicant's case, the record shows that he was convicted of his first armed robbery in 1971. He was again convicted for armed robbery in 1975, and he was finally convicted of his current armed robbery in 1991. After his conviction for the last armed robbery offence, the judge sentenced him to a life sentence under the "Habitual Offender Law" set forth under the "1986 Omnibus Crime Bill and Safe Street Act."

Accordingly, in 1986 the S.C. Legislators enacted the Omnibus Crime Bill which denied parole eligibility for all prisoners who committed a violent crime subsequent to the passage of this Bill. However, there was no provision in this Bill that authorized a judge to impose a sentence beyond the statutory maximum, as he did in petitioner's case, by unlawfully sentencing him to an illegal life sentence for armed robbery.

Moreover, with regard to any procedural bar, the petitioner submits that his unconcealed 1971 armed robbery was employed to enhance his sentence to life without parole which still persists to entitle him to a review on the merits of his claim. See McDuffie v. State, 277 S.E.2d 595 (S.C. 1981); Jackson v. State, 489 S.E.2d 415 (1997).

In addressing an excessive sentence such as that alleged by petitioner, the S.C. Supreme Court has held that if the Court unyieldingly enforces post-conviction relief as the only avenue of relief in his case, there exists a real threat that the petitioner will unlawfully continue to remain in prison beyond his life expectancy [fn. 1]. Thus, under such exceptional circumstances, the Court held that a case such as petitioner's should be remanded to the circuit court for resentencing. See e.g., State v. Johnson, 510 S.E.2d 423 (S.C. 1999).

[fn. 1] In 1990, the maximum sentence for armed robbery was twenty-five (25) years, which was not parolable under the Omnibus Crime Bill.

In conjunction, the petitioner submits that it cannot seriously be denied that his unlawful life sentence for armed robbery does not amount to a gross miscarriage of justice to foreclose an evidentiary review on the merits of his claimed violations set forth above. Aice, Butler, and Johnson, at supra.

CONCLUSION

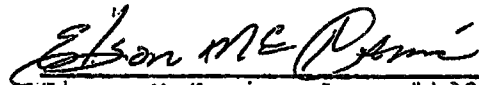
Wherefore, for the foregoing reasons, this Honorable Court should grant an evidentiary hearing to correct a fundamental miscarriage of justice suffered by the petitioner.

Respectfully submitted,

Date:

12-21-2016

Greenville County



Elson McKanic, Jr., #182215
Parry Correctional Institute
430 Oaklawn Rd. / Q1
Pelzer, SC 29869

STATE OF SOUTH CAROLINA
COUNTY OF UNION

) IN COURT OF COMMON PLEAS
)
) SIXTEENTH JUDICIAL CIRCUIT

Elson McKanic, Jr., #182215
Petitioner,

) C/A NO: _____
)

v.

) PROOF OF SERVICE
)

State of South Carolina,
Respondent.

I, Robert E. Dillard, pursuant to Rules 4 and 5, SCRCP, do hereby certify that I personally served Petition for Writ of Mandamus and Summons upon the Respondent on behalf of petitioner Elson McKanic, Jr. by certified mail, addressed to: Allen Wilson, S.C. Attorney General; P.O. Box 11549, Columbia, SC 29211

I further certify that I am not a party or attorney to this action, that I am over eighteen (18) years of age.

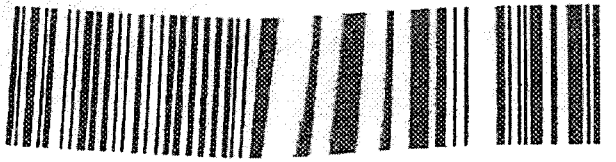
Date: 12/21/16
Greenville County

Robert E. Dillard
Robert E. Dillard, #220045
Perry Correctional Institute
430 Oaklawn Road 04B/209
Pelzer, SC 29669

SWORN TO AND SUBSCRIBED before me, this
21st day of December, 2016
Nancy C. Murchick
Notary Public for South Carolina
My Commission Expires: 1-23-2017

RECEIVED
DEC 21 2016
P.C.I. MAILROOM

[Handwritten scribbles]



7016 0910 0002 0306 2773

UNITED STATES POSTAGE
FOREVER
02 1P
\$ 006.21⁰
6000879471 DEC 21 2016
MAILED FROM ZIP CODE 29669



S.C. 29669

RECEIVED

DEC 28 2016

Referred to
Answered

*Mr. Allen Wilson
S. C. Attorney General
Post Office Box 11549
Columbia, S. C. 29211-1549*

SODC
Christmas
Packet

1 161549 8099