

DANIEL Shearouse
Clerk of court
THE SOUTH CAROLINA Supreme court
P. O. BOX 11330
Columbia, S. C. 29201

RECEIVED
FEB 06 2017
S.C. SUPREME COURT

Dear Honorable Shearouse

Filing The notice of Appeal

Re: TO James Brown V. State of South Carolina

Enclosed for filing is a notice of Appeal
in the case above the following.

- (1) Proof of service of the notice of Appeal on the respondents,
- (2) A copy of the order which is to be challenged on Appeal.
- (3) copy of the issue to be raised on Appeal,
- (4) Sworn Affidavit.
- (5) Affidavits 243(C) Explanation.
- (6) copy of envelope date received.

Dated 1-31-2017.

Styfoner Brown

Notice of Appeal from
A Post-conviction Relief hearing

RECEIVED

FEB 06 2017

THE STATE OF SOUTH CAROLINA
SUPREME COURT
S.C. SUPREME COURT

APPEAL FROM SPARTANBURG COUNTY COURT
OF General Sessions
Judge mark Hayes
Case NO. 2014-CP-42-1662

James A. Brown # 18-2981 Appellant,

VS.

State of South Carolina respondent.

James A. Brown appeal his Denial P.C.R. IN this case. This appeal is taken from the order Judge Hayes dated December 29, 2016, Appellant received written notice of entry of this order on January 10, 2017.

S/James Brown

THE STATE OF SOUTH CAROLINA

SUPREME COURT

RECEIVED

APPEAL FROM SPARTANBURG COUNTY FEB 06 2017

COURT OF General Sessions S.C. SUPREME COURT

Judge MARK Hayes

CASE NO. 2014-CP-12-1662

James A. Brown #282981 Appellant,

VS.

State of South Carolina Respondent,

PROOF OF SERVICE

I, James A. Brown #282981 certify that I have served the notice of Appeal on the Respondents by placing a copy in the Perry Correctional inst mailroom handed for mailing, posted Pre Paid Addressed to the follows: Allen Wilson Attorney General P.O. Box 1549 Columbia, S.C. 29211 Daniel Shearouse Clerk of Court South Carolina Supreme Court P.O. Box 11330 Columbia, S.C. 29201

I, James A. Brown certify and verify under the penalty of perjury that the foregoing is true and correct.

Dated 1.31 2017.

James A. Brown

State of South Carolina
County of Spartanburg
James A. Brown #282981

Petitioner,

v.

State of South Carolina
Respondent,

IN THE COURT OF COMMON PLEAS
CASE NO. 2014-CP-42-1662

SWORN AFFIDAVIT

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FEB 06 2017

S.C. SUPREME COURT

The Applicant complaining in the above would show the Court:

- (1) Petitioner is a resident of Spartanburg County South Carolina,
- (2) Respondent, South Carolina Attorney General is the custodian of Petitioner,
- (3) The Applicant James A. Brown is presently incarcerated at Perry Correctional Inst. Pursuant to the Spartanburg County Clerk of Court's order of commitment.
- (4) During the months of February 22, 2001 Court Term's of general sessions, the Grand Jury indicted the applicant for murder,
- (5) The Petitioner raised the following claims relief which are deemed true and correct until refuted by the State.
- (6) The Petitioner is alleging a (5th) (6th) and (14th) amendment violation.

I James A. Brown certify and verify under the penalty of perjury that the following foregoing is true and correct.

James A. Brown

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

James A. Brown,
SCDC No. 282981,
Applicant,

v.

State of South Carolina)
Respondent.)

IN THE COURT OF COMMON PLEAS
OF THE SEVENTH JUDICIAL CIRCUIT
2014-CP-42-1662

MEMORANDUM OF LAW IN OPPOSITION
CONDITIONAL ORDER OF DISMISSAL

This matter comes before the Court by way of an application for post-conviction relief filed by James A. Brown (Applicant) on April 21, 2014. Respondent made its Return requesting the application be summarily dismissed. On January 20, 2016, Chief Judge for Administrative Purpose J. Mark Hayes II for the Seventh Judicial Circuit pursuant to S.C. Code Ann § 17-27-70(b) issued a Conditional Order advising Applicant of the Court's intention to dismiss the Application with prejudice unless Applicant provides specific reasons factual or legal why his Application should not be dismissed in its entirety.

Applicant was granted twenty (20) days from the date of service of the Order upon him to show why the Order should not become final. Applicant received the Order on January 28, 2016, and this memorandum of law in opposition to the Order of the State follows.

Reason's Why The Order Should Not Become Final

Argument I

FILED
2016 FEB 15 AM 10:23

The Respondent in this matter alleges that the Application should be dismissed because (1) it is Successive; (2) that it is time bared due to the Statute of Limitations pursuant to S.C. Code Ann § 17-27-90 (1985); S.C. Code Ann § 17-27-10-160 (Supp. 2003), as well as S.C. Code Ann § 17-27-45(a). Page 3-4 of Conditional Order.

However, in MCCoy v. State, 737 S.E.2d 623 (S.C. 2013), the S.C. Supreme Court held:

"When considering the State's motion for summary dismissal of an application for post-conviction relief, where no evidentiary hearing has been held, the Judge must assume facts presented by the applicant are true and view those facts in the light most favorable to the applicant. Code 1976 § 17-27-80."

The Court further held in MCCoy, supra, that:

"Where post-conviction applicant alleges facts that would establish an exception to either the statute of limitations or the prohibition against successive applications and those facts are not conclusively refuted by the record before the trial Court, a question of fact is raised which can only be resolved by a hearing." See 737 S.E2d 624 n. 1-2.

In this case, applicant has alleged facts that establishes an exception to the statute of limitations and prohibition against successive applications and those facts are not conclusively refuted by the record before the trial court and only can be resolved by a hearing.

The current claims in Browns new application has not be raised in his previous application and are newly discovered and can be brought before the court pursuant to § 17-27-45(c). See MCCoy,

2015 FEB 25 AM 10:23
MCCOY, SEAN L.

CONCLUSIONS

For all the reasons stated, the Court should not issue the Order, but in the alternative order the appointment of counsel for Brown and hold a hearing on the subject of whether the claims made in the current application falls under § 17-27-45(c).

Respectfully submitted

James Brown

Date: Feb 8 2016

CERTIFICATE OF SERVICE

I James Brown # 282981 do hereby
Certify that on Feb 8, 2016 I served a
Complete copy of my memorandum
In opposition to the conditional order
of all parties who name and address
appear below by first ~~class~~ CLASS MAIL

M. Hope Blackey
Clerk of Court Spartanburg Co
Post office box 3483
Spartanburg, South Carolina
29304-3483

4.

S/James Brown

2016 FEB 15 AM 10:24

State of South Carolina
County of Spartanburg

James A. Brown #282981
Petitioners

V.

State of South Carolina
Respondent.

IN SOUTH CAROLINA SUPREME COURT

CASE NO. 2014-CP-42-1662

243(C) Explanation

This matter comes before the court by way of an Application for Post-conviction relief filed February 8, 2016. By the Petitioner, the court finds that the P.C.R. Application should be summarily dismissed because it is procedurally barred. First it is impermissibly successive to the first Application.

in this current Application Mr. Brown alleges that his custody is unlawful for the following reasons:

- (1) in effective assistance of trial counsel (A) Failure to quash the indictment (b) Failure to motion for a directed verdict that Mr. Brown acted in self defense,
- (2) Newly discovered evidence.

Petitioner will show this Honorable court the following Explanation,

MEMORANDUM OF LAW

IN SUPPORT OF P. C. R. APPLICATION

S. C. Code ANN. . . 17-27-20(A)4

S. C. Code ANN. . . 17-27-45(c)

This matter comes by way of newly discovered evidence which is material evidence which has never been presented before the court, and this newly discovered evidence is so genuine material facts that will prove that the applicant just discovered this evidence pursuant to S. C. code of laws 17-27-20(A)(4).

That there exist evidence of material facts not previously presented and heard that requires vacation of conviction and sentence in the interest of justice the applicant have filed this P. C. R. application under this chapter within one year after date of actual discovery of the facts by the applicant or after the date when the facts could have been ascertained by the exercise of reasonable diligence.

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

James A. Brown,)
S.C.D.C. No. 282981,)
Applicant,)

v.)

State of South Carolina,)
Respondent.)

IN THE COURT OF COMMON PLEAS
FOR THE SEVENTH JUDICIAL CIRCUIT

Case No. 2014-CP-42-1662

FINAL ORDER OF DISMISSAL

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed April 21, 2014. Respondent made its return on or about October 14, 2015, requesting the application be summarily dismissed based upon the expiration of the statute of limitations, the presumption against successive PCR applications, and the failure to make a prima facie showing of newly discovered evidence.

Pursuant to this request, and after reviewing the pleadings in this matter and all of the records attached thereto, this Court issued a Conditional Order of Dismissal signed January 20, 2016, and filed January 20, 2016, provisionally denying and dismissing this action, while giving the Applicant twenty (20) days from the date of service of said Order in which to show why the dismissal should not become final. Attached to this Final Order and incorporated herein by reference is an Affidavit of Service dated February 11, 2016, serving the above-mentioned Conditional Order of Dismissal on the Applicant.

Applicant filed a document titled "Memorandum of Law in Opposition Conditional Order of Dismissal" on February 15, 2016, in which Applicant argues his Application should not be dismissed due to newly discovered evidence.

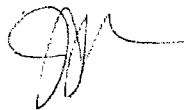


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M. HEPPELACKLEY

This Court has reviewed Applicant's responses to the Conditional Order of Dismissal in their entirety, in conjunction with the original pleadings, and finds a sufficient reason has not been shown why the Conditional Order of Dismissal should not become final.

This Court notes the Applicant was convicted and sentenced on March 27, 2002, and the Remittitur was issued on September 30, 2003, in his appeal. As this action was filed on April 21, 2014, it was clearly filed well outside the expiration of the statute of limitations. See S.C. Code Ann. § 17-2745(a) (Supp.2003). This is the Applicant's *third* application for post-conviction relief. This Court notes successive PCR applications are disfavored. See Land v. State, 274 S.C. 243, 246, 262 S.E.2d 735, 737 (1980). This Court finds the Applicant had the opportunity to litigate all issues related to his case at the evidentiary hearing for his first PCR application on April 5, 2005, at the Spartanburg County Courthouse (2003-CP-42-0296). See Odom v. State, 337 S.C. 256, 261 523 S.E.2d 753, 755 (1999). (“[A]n Applicant is entitled to a full adjudication on the merits of the original petition, or ‘one bite at the apple.’”).

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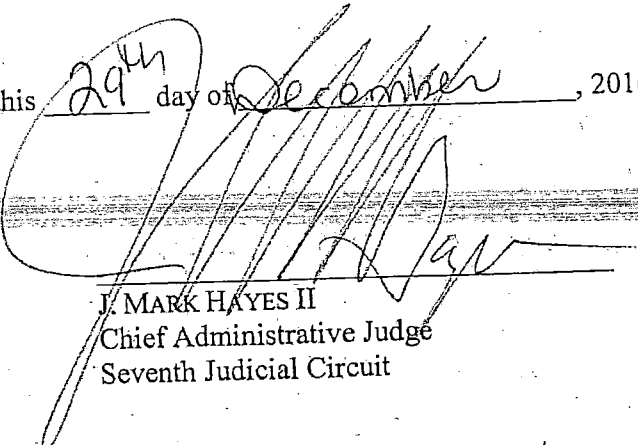


CLERK OF COURT
SPARTANBURG COUNTY
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M. HOPE BLACKLEY

IT IS THEREFORE ORDERED that, for the reasons set forth in the Court's Conditional Order of Dismissal, the Application for post-conviction relief is hereby denied and dismissed with prejudice.

This Court hereby advises the Applicant that he must file and serve a Notice of Appeal within thirty (30) days of the service of this Order to secure appellate review. See Rule 203, SCACR. Applicant's attention is directed to Rule 243, SCACR., for the procedures following the filing and service of the notice of appeal.

AND IT IS SO ORDERED this 29th day of December, 2016.



J. MARK HAYES II
Chief Administrative Judge
Seventh Judicial Circuit

Spartanburg, South Carolina.

DEPT. OF PROBATION & PAROLE
SPARTANBURG COUNTY
2016 DEC 30 PM 2:41
M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)
)
 James A. Brown,)
 S.C.D.C. No. 282981,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 OF THE SEVENTH JUDICIAL CIRCUIT
 2014-CP-42-1662

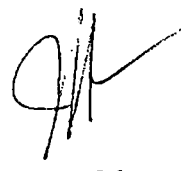
CONDITIONAL ORDER OF DISMISSAL

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed by James A. Brown (Applicant) on April 21, 2014. Respondent made its Return, requesting the application be summarily dismissed.

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Spartanburg County. Applicant was indicted at the February 2001 term of the Spartanburg County Grand Jury for murder (01-GS-42-296). He was represented by J. Michael Bartosh, Esquire. On March 25 - 27, 2002, Applicant proceeded to trial after which he was found guilty as indicted. The Honorable Donald W. Beatty sentenced him to confinement for life.

A timely Notice of Appeal was filed on the Applicant's behalf, and an appeal was perfected. The South Carolina Court of Appeals affirmed the Applicant's conviction pursuant to Anders v. California, 386 U.S. 738 (1967). State v. Brown, Op. No. 2003-UP-516 (S.C. Ct. App. filed August 27, 2003). The Remittitur was issued on September 30, 2003.

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2003-CP-42-0296

Applicant subsequently filed his first PCR application on September 23, 2003, in which he alleged that he was being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel; and
2. Subject matter jurisdiction.

An evidentiary hearing was convened at the Spartanburg County Courthouse on April 5, 2005. Applicant was present and represented by David M. Collins, Jr., Esquire. Molly R. Crum, Assistant Attorney General, represented Respondent. By written order dated May 9, 2005, the Honorable John M. Milling denied and dismissed the application with prejudice.

A timely Notice of Appeal was filed on the Applicant's behalf and a Johnson Petition for Writ of Certiorari was submitted by the South Carolina Office of Appellate Defense. On February 14, 2007, the South Carolina Supreme Court denied the Petition. The Remittitur was issued on March 5, 2007.

2007-CP-42-1238

Applicant filed his second PCR application on April 4, 2007, alleging he was being held unlawfully for the following reasons:

1. Lack of Subject Matter Jurisdiction

Respondent made its Return and Motion to Dismiss on or about August 15, 2007. An evidentiary hearing into the matter was convened on November 5-6, 2007, at the Spartanburg County Courthouse. Applicant was present at the hearing and was represented by Kenneth P. Shabel, Esquire. On August 16, 2010, the Honorable Roger L. Couch filed an order denying and dismissing Applicant's application with prejudice for being successive, filed beyond the statute of limitations, and without merit.



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A timely Notice of Appeal was filed on Applicant's behalf by Kenneth P. Shabel, Esquire. In a written Order, dated October 5, 2010, the Supreme Court of South Carolina dismissed Applicant's appeal for failure to show an arguable basis for asserting that the determination by the lower court was improper. The Remittitur was issued on October 22, 2010.

Current Application

In his third and current application for post-conviction relief, Applicant alleges he is being held unlawfully for the following reasons:

1. Ineffective Assistance of Trial Counsel
 - a. Failure to quash the indictment
 - b. "Failure to motion for a directed verdict that Brown acted in self-defense..."
2. Newly Discovered Evidence

Before this Court are the records of the Spartanburg County Clerk of Court Records, Applicant's prior PCR and appellate records, Applicant's records from the South Carolina Department of Corrections, Applicant's PCR Application and Respondent's Return and Motion to Dismiss.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

Successiveness

The Court finds that the current Application for post-conviction relief must be summarily dismissed because it is successive to the previous application for post-conviction relief. S.C.

Code Ann. § 17-27-90 (1985) states:

All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental or amended application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence, or in any other proceeding the applicant has taken to secure relief, may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which, for sufficient reason, was not asserted or was inadequately raised in the original, supplemental or amended application.



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Successive applications are disfavored and the burden is on Applicant to establish that any new ground raised in a subsequent application could not have been raised by him in a previous application. Foxworth v. State, 275 S.C. 615, 274 S.E.2d 415 (1981); Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991); Arnold v. State/Plath v. State, 309 S.C. 157, 420 S.E.2d 834 (1992).

This Court finds that the current allegations could have been raised in prior proceedings based on Applicant's prior application for post-conviction relief, and thus the current application is successive and barred under S.C. Code § 17-27-90. Applicant has failed to establish sufficient reason why he could not have raised his current allegations in his previous application for post-conviction relief; therefore, he has failed to meet the burden imposed upon him. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980); Aice v. State, 409 S.E.2d 392 (1991); Arnold v. State/Plath v. State, 420 S.E.2d 834 (1992).

Statute of Limitations

The Court finds that this Application for post-conviction relief must also be summarily dismissed for failing to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §17-27-10 to -160 (Supp. 2003). S.C. Code Ann. §17-27-45(a) reads as follows:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). The Remittitur from Applicant's unsuccessful direct appeal was issued on September 30, 2003.

This Application was filed on April 21, 2014, which was well after the statutory filing period had expired.

Summary dismissal of a PCR application is appropriate when the application is filed after the statutory filing period. Leamon v. State, 363 S.C. 432, 611 S.E.2d 494 (2005). In addition, S.C. Code Ann. § 17-27-70(c) (1985) authorizes the Court to "grant a motion by either party for summary disposition of [an] application when it appears from the pleadings . . . that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." Therefore, Applicant failed to file within the time mandated by the Post-Conviction Procedure Act and Applicant's post-conviction relief application must be summarily dismissed.

Newly Discovered Evidence

This Court finds that Applicant's claim of alleged "newly discovered evidence" is fails to make a prima facie showing that he is in actual possession of such evidence or how that evidence likely would have changed the outcome at trial. While under S.C. Code § 17-27-45(c), a newly-discovered evidence claim can be timely raised within one year of actual discovery or within one year of when, by the exercise of due diligence, such evidence *could have been* ascertained, Applicant claims his allegations constitute newly discovered evidence because he recently discovered the issues of ineffective assistance of counsel as it relates to quashing the indictment and moving for a directed verdict. This Court finds that Applicant has failed to set forth a legitimate reason why such alleged evidence was not readily discoverable at the time of trial, direct appeal, previous PCR actions, or previous PCR appeals. Before the Court will hold an evidentiary hearing, the Applicant must make a prima facie showing that he is entitled to relief. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). Applicant has failed to make such a prima facie showing that he is

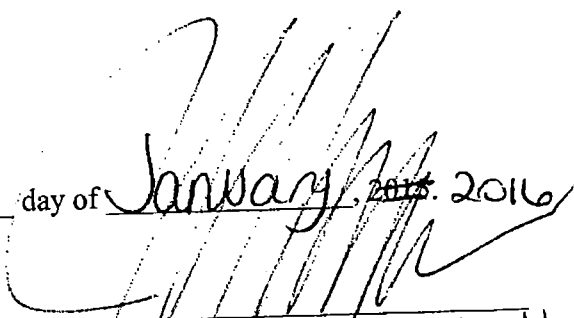
entitled to relief based on the information set forth and, therefore, he is not entitled to an evidentiary hearing in the matter. Accordingly, this allegation must be summarily dismissed with prejudice.

CONCLUSION

Pursuant to S.C. Code Ann. §17-27-70(b), the Court intends to dismiss this Application with prejudice unless Applicant provides specific reasons, factual or legal, why the Application should not be dismissed in its entirety. Applicant is granted twenty (20) days from the date of service of this Order upon him to show why this Order should not become final. Applicant shall file any reasons he may have with the Spartanburg County Clerk of Court and shall serve opposing counsel at the following address:

Office of the Attorney General
Patrick L. Schmeckpeper
PCR Division
P.O. Box 11549
Columbia, SC 29211

AND IT IS SO ORDERED this 20 day of January, ~~2015~~ 2016


~~R. KENNEDY~~ J. Marks Hayes II
Chief Judge for Administrative Purposes
Seventh Judicial Circuit

Spartanburg, South Carolina

2016 JAN 20 PM 3:50

Spartanburg County

Spartanburg County Court House
180 Magnolia Street
P. O. Box 3483
Spartanburg, SC 29304-3483

Phone (864) 596-2591
Fax (864) 596-2239



M. Hope Blackley
Clerk of Court

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS

7TH JUDICIAL CIRCUIT

James A. Brown
Applicant # 282981

CASE # 2014CK12-1662

CERTIFICATE OF SERVICE

Stee
Respondent

I certify that, on this date, I served a copy of the Conditional Ord. Dismissal
In this action dated 1-20-2016 on 1-21-16

By mailing to him/her, at his/her last known address, by depositing it in the U.S. Mail, in an envelope with sufficient postage affixed, addressed as follows:

Blackley, Hareceth
James Brown

1-21-16
(Date)

Cecilia Spivey
(Signature)

ARGUMENT

THE TRIAL COURT LACKED SUBJECT MATTER JURISDICTION TO CONVICT AND SENTENCE THE APPLICANT.

To begin with, the S.C. Constitution and statutory laws mandate that no person may be held to answer for any crime, ... except upon a "lawful presentment of indictment" by a Grand Jury in the County where the crime took place. S.C. Const., Art. I, § 11; S.C. Code Ann. §§ 17-19-10.

ALSO

Lacked^{of} SUBJECT MATTER JURISDICTION CAN BE RAISE AT ANY TIME AND ANY FORMAT. NOT WITHSTANDING ANY PROCEDURAL BAR INCLUDING SUCCESSIVENESS OR STATUTE OF LIMITATIONS.

IN THIS CASE, THE APPLICANT CONTENDS THAT HIS INDICTMENT INDICATES THAT THE FEBRUARY 2001 TERM OF GENERAL SESSIONS COURT BEGAN ON FEBRUARY 26, 2001, (WHICH WAS ON A MONDAY).

HOWEVER THE "ACTION OF THE GRAND JURY" SECTION SHOWS THAT ~~it~~ IT "TRUE BILLED" HIS INDICTMENT ON FEBRUARY 22, 2001 (WHICH WAS A THURSDAY BEFORE GENERAL SESSIONS COURT BEGAN ITS TERM). HAVING SHOWN THERE WAS NO FEBRUARY 22, 2001 TERM OF GENERAL SESSIONS COURT FOR PRESENTMENT OF HIS INDICTMENT, PLEASE SEE APPLICANT'S LETTER FROM CLERK OF COURT OF ORDER PERTAINING TO CIRCUIT COURT TERMS AND A COURT ~~and~~ SCHEDULE FOR FEBRUARY 2001 AND APPLICANT'S INDICTMENT DOCKET-NO. 01-GS-42-0296 WHICH SHOWS DATE AND SIGNATURE OF FOREPERSON OF GRAND JURY 2-22-01, AND DATE FOR TERM OF COURT OF GENERAL SESSIONS FEB. 26, 2001 AS EXHIBIT (A), WHICH WILL CLEARLY SHOW THE CART BEING PUT BEFORE THE HORSE.

THE APPLICANT NOW DIRECTS THE COURT'S INQUIRY TO WHETHER THE PRESENTMENT OF HIS INDICTMENT OUTSIDE OF A TERM OF GENERAL SESSIONS COURT DEPRIVED THE COURT OF SUBJECT-MATTER JURISDICTION TO CONVICT AND SENTENCE HIM.

THIS QUESTION HAS BEEN RESOLVED BY THE U.S. SUPREME COURT'S DECISION IN U.S. V. COTTON, 122 S. CT. 1781 (2002), THAT GUIDED THE S. C. SUPREME COURT'S DECISION IN STATE V. GENTRY, 610 S.E. 2D 494 (2005).

IN BOTH COTTON AND GENTRY, THE COURTS HELD THAT THE TERM "SUBJECT-MATTER JURISDICTION" MEANS THE TRIAL COURT'S STATUTORY AND CONSTITUTIONAL POWER TO ADJUDICATE (TRY) CASES.

HERE, A REVIEW OF S.C. CONSTITUTIONAL AND STATUTORY LAWS SHOWS THAT, NO PERSON MAY BE TRIED FOR ANY CRIME EXCEPT UPON PRESENTMENT OF A INDICTMENT BY A GRAND JURY (S.C. CONST., ART. I § 3 II), AND (S.C. CODE § 17-19-10). IN CONJUNCTION, THE GRAND JURY SHALL MEET WITH GENERAL SESSIONS COURT AT EACH OF ITS TERMS TO PRESENT BILLS OF INDICTMENTS (S.C. CODE, § 14-9-120); AND THE COUNTY SOLICITOR SHALL PREPARE AND, THROUGH THE PRESIDING JUDGE OF GENERAL SESSIONS COURT, PRESENT TO GRAND JURY (WHILE IN ATTENDANCE UPON GENERAL SESSIONS COURT) BILLS OF INDICTMENTS FOR GENERAL SESSIONS COURTS JURISDICTION TO TRY CRIMINAL CASES (S.C. CODE, § 14-9-210). THUS, IT IS CLEAR FROM STATUTORY LAWS THAT NO INDICTMENT MAY BE PRESENTED, OR BE BILLED, BY A GRAND JURY OUTSIDE OF A TERM OF GENERAL SESSIONS COURT SINCE THE GRAND JURY'S JURISDICTION IS COEXTENSIVE (MUST BE TOGETHER) WITH THE CRIMINAL JURISDICTION OF THE GENERAL SESSIONS COURT IN WHICH IT IS CONVENED AND FOR WHICH IT IS TO MAKE INQUIRY (ON PRESENTMENT OF INDICTMENTS). SEE STATE V. McCLURE, 289 S.E. 2D 158 (1982)

9

THEREFORE, IN KEEPING WITH THE MANDATORY PROVISIONS OF S.C. CONSTITUTIONAL AND STATUTORY LAWS, THE SPARTANBURG COUNTY SOLICITOR COULD NOT HAVE LAWFULLY PRESENTED APPLICANTS' INDICTMENT TO BE TRUE BILLED BY A GRAND JURY ON FEBRUARY 22, 2001 (A THURSDAY) BEFORE GENERAL SESSIONS COURT OFFICIALLY BEGAN ON FEBRUARY 26, 2001 (THE FOLLOWING MONDAY). ACCORDINGLY, APPLICANTS' TRIAL COURT LACKED SUBJECT-MATTER JURISDICTION TO CONVICT AND SENTENCE HIM.

CONCLUSION

FOR THE FOREGOING REASONS, APPELLANT JAMES A. BROWN RESPECTFULLY REQUEST THAT THIS COURT REVERSE AND VACATE HIS CONVICTION.

RESPECTFULLY SUBMITTED

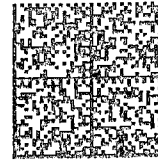
/s/ James Brown

282981

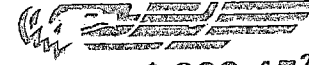
M. HOPE BLACKLEY
Clerk of Court, Spartanburg County
Post Office Box 3483
Spartanburg, South Carolina 29304-3483

**RETURN SERVICE
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ComBasPrice



U.S. POSTAGE >> PITNEY BOWES



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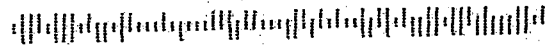
POST ROOM

JAMES A BROWN # 282981
PERRY CI *YB110*
430 OAKLAWN RD
PELZER SC 29669

*VR
YB110*

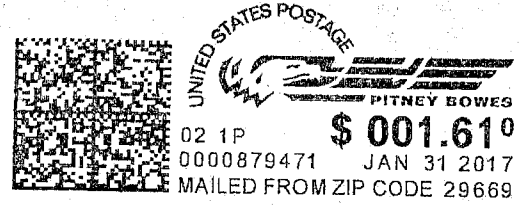
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A. Brown ^W 282981
directional inst
Lawn Road

S. C. 29669



RECEIVED
FEB 06 2017
S.C. SUPREME COURT

Honorable Daniel Shearouse
Clerk of Court
South Carolina Supreme Court
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