

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Certiorari to Spartanburg County  
J. Mark Hayes, II, Circuit Court Judge

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Jeffrey E. Jeter -- Appellant,

-vs-

State of South Carolina -- Respondent,

Appellate Case No. 2017-000076

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PETITION FOR WRIT OF CERTIORARI  
PURSUANT TO RULE 243, SCACR.

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Jeffrey E. Jeter  
SCDC# 131471  
Perry Corr. Inst.  
430 Oaklawn Rd.  
Pelzer, SC. 29669

Appellant, pro-se

**RECEIVED**

FEB 22 2017

S.C. SUPREME COURT

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## QUESTION PRESENTED

THE LOWER COURT ERRED IN DENYING APPELLANT'S RULE 60(B)(3) ,SCRCP MOTION WHERE APPELLANT PROVIDED SUFFICIENT EVIDENCE OF "FRAUD AND MISREPRESENTATION" TO THE COURT BY THE SOLICITOR WHEN THE SOLICITOR MISLED THE COURT BY STATING THAT APPELLANT WAS PLEADING GUILTY TO FORGERY OVER \$5,000 and THAT APPELLANT WAS CHARGED AS A SUBSEQUENT THIRD OFFENSE ; WHEN IN FACT APPELLANT WAS INDICTED FOR FORGERY UNDER \$5,000 AND WAS NOT CHARGED NOR INDICTED AS A THIRD OR SUBSEQUENT THIRD OFFENSE AND THEREFORE THE COURT LACKED SUBJECT-MATTER JURISDICTION AS THIS CHANGED THE NATURE OF THE OFFENSE AND ENHANCED THE POSSIBLE SENTENCES THAT COULD BE IMPOSED.

## STATEMENT OF THE CASE

Appellant is presently confined in the South Carolina Department of Corrections pursuant to commitment orders of the Spartanburg County Clerk of Court. Appellant was initially indicted during the March 2009 term of the Spartanburg County Grand jury for five counts of forgery under \$5,000 (09-GS-42-1413; 1414; 14151 ; 1416 and 1802) two counts of receiving stolen goods (09-GS-42-1419 and 1420), and obtaining money by false pretenses (09-GS-42-1421). Appellant was subsequently indicted in October 2010 for [two counts of "petit larceny" -- 3rd or subsequent (10-GS-42-5616 and 5617)]. On October 28, 2010, Appellant pleaded guilty before the Honorable Roger Couch as indicted. Judge Couch sentenced Appellant to confinement for concurrent terms of ten years for one count of forgery (09-1802), obtaining money under false pretenses, petit larceny, and both receiving stolen goods. Judge Couch also sentence Appellant to **ten years** for the remaining forgery counts, to be served consecutively to the other sentences.

On February 22, 2016, Appellant filed Rule 60(B)(3), SCRCP, motion based on the soley on the five forgery under \$5,000 stated above as a result of the solicitor's "fraud and misrepresentation" to the Court regarding those offenses and the Court's lack of subject matter jurisdiction.

On September 1, 2016 Respondent's filed a Return (Appendix (C)) and on October 31, 2016 the lower court denied relief. (Appendix (D)). On November 23, 2016 Appellant filed a timely Rule 52(b) & 59(e), SCRCP motion(s) seeking the Court to alter/amend and/or reconsider judgment. On December 7, 2016 Respondent's filed their Return to Appellant's motion to alter/amend or reconsider judgment and on December 13, 2016 the lower Court denied the motion to

alter/amend and/or reconsider judgment. Appellant filed a timely Notice of Appeal with this Court. This Court subsequent by way of letter dated January 18 , 2017 advised Appellant he had thirty-days (30) within which to file his brief in accordance with SCACR Rul 243. That Explanation is as follows:

## ARGUMENT

### QUESTION PRESENTED

THE LOWER COURT ERRED IN DENYING APPELLANT'S RULE 60(B)(3) ,SCRPC MOTION WHERE APPELLANT PROVIDED SUFFICIENT EVIDENCE OF "FRAUD AND MISREPRESENTATION" TO THE COURT BY THE SOLICITOR WHEN THE SOLICITOR MISLEAD THE COURT BY STATING THAT APPELLANT WAS PLEADING GUILTY TO FORGERY OVER \$5,000 and THAT APPELLANT WAS CHARGED AS A SUBSEQUENT THIRD OFFENSE : WHEN IN FACT APPELLANT WAS INDICTED FOR FORGERY UNDER \$5,000 AND WAS NOT CHARGED NOR INDICTED AS A THIRD OR SUBSEQUENT THIRD OFFENSE AND THEREFORE THE COURT LACKED SUBJECT-MATTER JURISDICTION AS THIS CHANGED THE NATURE OF THE OFFENSE AND ENHANCED THE POSSIBLE SENTENCES THAT COULD BE IMPOSED.

### FACTS

Appellant was indicted on five (5) counts of Forgery under \$5,000. See Appendix (A). On October 28, 2010 Appellant entered a plea of guilty as indicted and Judge Couch sentenced Appellant to concurrent terms of [ten years] for [one] count of forgery (09-1802), obtaining money under a false pretense, petit larceny, and both counts of receiving stolen goods. Judge Couch also sentenced Appellant to 10 years for the remaining forgery counts, to be served consecutively to the other charges and the probation revocation, for an aggregate sentence of forty-years.

Appellant submits that he was never indicted for forgery over \$5,000 nor was he indicted as a third or subsequent offense. The "fraud and misrepresentation" transpired the the inappropriate misconduct of the solicitor as was recorded before the plea court

Solicitor Kendall: Your Honor, before the Court is Jeffrey Jeter on indictment 09-1802, 09-1414, 09-1413. Those four are for forgeries over \$5,000 all third or subsequents.

09-1419, receiving stolen goods under \$1,000.

09-1415, an additional forgery.

09-1420, receiving stolen goods \$1,000 to \$5,000.

obtaining property by false pretenses under indictment  
09-1421.

Forgery under \$5,000 on indictment 09-1416.

A petit larceny under indictment of 10-5616.

A petit larceny under indictment 10-5617.

Each of these, Your Honor, are third and subsequent of-  
fense.

App.16, 11.10-23.

One need only glean the procedural history of the lower Court's order at Appendix (D) and it's apparent that the **only** offenses that were indicted as [third or subsequent] was in fact the (2) two petty larcenies] listed above and Appendix (D). Appellant was never indicted for forgery **over** \$5,000 or as a third or subsequent third as "misrepresented" by the solicitor and therefore the plea court lacked subject matter jurisdiction to to accept a plea to forgery over \$5,000. The prejudice incurred is easily seen. Appellant agreed to plead guilty **as indicted**. Therefore the five forgery counts [as] indicted were for forgery under \$5,000. Appellant was only facing 5-years on each of the forgery's rather than the 10-years for each as handed down by the Court. i.e. forgery under \$5,000 is punishable by five (5) years, as where forgery over \$5,000 carries 10-years. The Court was without authority to sentence Appellant to 40-years aggregate for forgery over \$5,000.

During the plea colloquy the solicitor further advised the Court:

Mr. Jeter pleads to five counts of forgery with two counts of petit larceny to run concurrently with each other and with his probation violation for -- additionally that Mr. Jeter plead to one count of obtaining money under a false pretenses and two counts of receiving stolen goods with a recommendation of a consecutive ten years suspended to five years probation with restitution. The remaining three charges will be dismissed in this indident .

As is clearly noted the above was merely a recommendation by Solicitor. However, the solicitor's previous "misrepresentation" to the Court that Appellant was indicted on five counts of forgery over \$5,000 and that such offenses were third and subsequent offenses openly allowed the plea court to somehow "enhance" the five forgery counts under \$5,000 to forgery over \$5,000 in violation of Appellant's due process rights as Appellant was never indicted for forgery over \$5,000. See Appendix (A).

The 40-year aggregate sentence handed down by the court for five counts of forgery under \$5,000 exceeds the statutory maximum as forgery under \$5,000 carries a maximum penalty of (5) five-years. Therefore, the Court could have only sentenced Appellant to 20-year aggregate sentence.

Appellant submits the sentencing court was without statutory authority to enhance Appellant's five counts of forgery under \$5,000 to foergery over \$5,000. Thus the sentencing court lacked subject matter jurisdiction because Appellant was never indicted as a third and subsequent offense nor was he indicted for forgery over \$5,000.

The effect of the judgment of an unauthorized sentence is thus stated in 21 AM. JUr.2d. Criminal law, Section 535:

A judgment by a court in a criminal case must conform strictly to the statute, and any variation from it's provisions, either in character or the extent of punishment inflicted, renders the judgment "VOID". A statute which creates an offense and prescribes a special form of punishment excludes any different or additional punishment.

See State v. Moore, 255 S.E.2d 447 at 449 (1979). The judgement regarding the 40-year aggregate sentences handed down by the court for forgery over \$5,000 is [VOID] as the Appellant was never charged or indicted for forgery over \$5,000 by a grand jury and therefore the Court was without subject matter jurisdiction in that regard.

Subject matter jurisdiction may be brought at any time. Brown v. State, 343 S.C. 342, 540 S.E.2d, 846 (2001), overruled in part by Gentry v. State, 363 S.C. 96, 610 S.E.2d 494 (2005). However, "[c]ircuit courts obviously have subject matter jurisdiction to try criminal matters. Gentry, 610 S.E.2d at 499. Thus, the applicant must present evidence that his case is of some class over which the circuit court does not have authority to preside.

Appellant submits that a court in the instant matter lacked subject matter jurisdiction to convict Appellant for forgery over \$5,000 because there has been no indictments handed down by the grand jury for that offense. State v. Williams, 552 S.E. 54 (S.C. App.2003); also see Appendix (A).

Clearly the lower court erred in not granting relief on this claim.

In a motion seeking relief pursuant to Rule 60(B), SCRCP, the movant has the burden of presenting evidence (Appendix (A)), usually provided by affidavits, proving facts essential to entitle

him to relief. *Bowers v. Bowers*, 304 S.C. 65, 403 S.E.2d 127 (Ct. App.1991). Further relief under Rule 60(B), requires the existence of a meritorious defense. See *Mitchell Supply v. Gaffney*, 297 S.C. 160, 375 S.E.2d 321 (Ct.App.1988).


Rule 60(B)(3), SCRCP, provides that the Court may relieve a party from a final judgment based upon "fraud, misrepresentation, or other misconduct of an adverse party [.]"

Appellant is entitled to relief in the instant matter.

CONCLUSION

Petitioner respectfully requests this Court reverse the decision of the lower court, and remand for a new hearing with instructions consistent with the relief this Court deems just and appropriate in the instant matter.

Respectfully Submitted

/s/ 

Jeffrey E. Jeter

Appellant, pro-se

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Spartanburg County  
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Jeffrey E. Jeter -- Appellant,

-vs-

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CERTIFICATE OF SERVICE

The undersigned hereby certifies he has served a true and correct copy of the enclosed Rule 243 Explanation on the Assistant Attorney General Alicia A. Olive, P.O. Box 11549, Columbia, SC. 29669, by placing the aforesaid in a properly addressed, first-class postage affixed envelope and placed in the U.S. Mail this 15 day of February 2017.

Sworn to and subscribed before me

this 15 day of February, 2017

Tamara Conwell  
NOTARY PUBLIC

My Commission Expires September 25, 2023

Respectfully Submitted,

/s/ Jeffrey E. Jeter

Appellant, pro-se