

STATE OF South CAROLINA
COUNTY OF NEWBERRY

IN THE COURT OF APPEALS
OF SOUTH CAROLINA

CASE NO: 2001-GS-36-0200-0201-0202

State of South Carolina

VS.

MOTION FOR AFTER-NEWLY DISCOVERED
EVIDENCE

Richard Alvin SIMS, #273381
DEFENDANT

PLEASE TAKE NOTICE that the Defendant Richard Alvin Sims, #273381 through its undersign Pro SE will move before the Court of General Session at place and time at Newberry County Courthouse that the Court may appoint counsel and a motion for After-Newly Discovered Under Rule 29 (B), S.C.R. Crim.P and Pursuant to Rule 60 (B)(3), SCRCP in the Court of General Sessions. There is no ~~statute~~ ~~of~~ time limitations within which such motions must be brought forth. Also there is no statute of limitation when a party seek to set aside a judgment due to fraud upon the citing Roode v. mobile oil cooperation, 862 F.2d 1115, 1118 (1st Cir. 1989); Carole v. State supra; State v Williams, 108 S.C. 895, 93 S.E. 106.

ALLEGATIONS

In his current motions, Defendant alleges that he is being in custody unlawfully for the following reasons:

Ground A: "Did the solicitor committed (sic) a "Procedural Error" by unlawfully impaneling its Grand jury outside the statute of S.C. Code Ann. § 14-5-730 Sec.(4).

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SC Court of Appeals

SUPPORTING FACTS AND ARGUMENT

The Defendant humbly contends that the Solicitor did committed a "Procedural Error" and "Contempt of the Proceeding" by unlawfully impaneled its grand jury outside the Statute 14-5-730 Sec.(4), and then willfully printed and published false and misleading information in its indictment in order to deep secret its violations of statutory law.

However, here evidence will establish that the General Assembly did not enacted a provision in S.C.Code Ann.§14-5-730 Sec.(4),that set forth a Term of Court for [April] in the Court of General Sessions.

S.C.Code Ann.§ 14-5-730 Sec.[4], which provides:

The Court of Eighth Judicial Circuit shall be held as hereinafter.

- ° The Court of General Sessions for Newberry County shall be held at Newberry County on the third Monday in February , in the third Monday in May, the third Monday in September and the fourth Monday in November in each case for one week.

Both ~~du~~ process and common sense dictate that the Solicitor unlawfully impaneled its Grand Jury in the Court of Common Plea. The Second half of this State in Section 14-5-730 (4), which provides:

- ° The Court of Common Plea for the County shall be held at Newberry on the fourth Monday in January the fourth Monday in April the third Monday in June the third Monday in October and the first Monday in December in each case for one week.

Additionally, it should be noted that the Court of Common Pleas is vested with No authority to take any action on matters pertaining to return of true-bill criminal indictments. "The court is made up of the Court of Common Pleas which hears civil actions and the Court of General Sessions which hears criminal cases..." see Dove v. Gold Kist Inc., 314 SC 235, 442 SE 2d. 598,600 (SC 1994); see also, SC Constitution Article V § 1.

Thus, there is no grant of concurrent jurisdiction, and therefore No true bill criminal indictment can be lawfully issue through grand jury proceedings held before a Court of Common Pleas.

In the case at hand the indictment reads as follows:

° At a Court of General Sessions Convened on the 9th day of April 2001
the Grand Juror of Newberry County present upon their Oath:

In 1876 Ex Parte Lilly, illustrated that "defects in the indictment that are of such a fundamental character as to make the indictment wholly invalid are not subject to waiver by a defendant." 7 S.C.372, 1876 WL 5977. Lilly, would latter be followed by State v. Henderson, 134 S.E. 364, 136 S.C. 363, (S.C.1926), IN 1926 where the South Carolina Supreme Court held that " the [Legislature] has provided by statute for the terms of the Circuit Court for each County." As set forth, in 14-5-730 (4), there is no [Term of Court] for the month of "April" in the Court of General Sessions. See Ex Parte De Hay, 3 S.C.564, 1872 WL 4888 S.C.1872, the whole proceeding was without authority of law and void. As a result, each week of court is a separate term, so the changes of the "Term of Court" by the Solicitor were not foreseeable that the Solicitor would impaneled its Grand Jury in the Court of Common Pleas. Thus, the Solicitor did committed Obstruction of Justice and Conspiracy to commit Official Misconduct, Perjury and Fraud upon the Court. In the current situation, nowhere in S.C.Code Ann. § 14-5-730 (4), does the legislature provide a "Term of Court" for [April] in the Court of General Sessions.

GROUND B. Prosecutorial Misconduct

SUPPORTING FACTS AND ARGUMENT

Solicitor knew there was no Court of General Sessions at the time the indictment was to be handed down. He still presented knowingly the false documents, clothes informal procedure, to the court as it is was done properly. He commits perjury by bring a criminal matter in the Court of Common Pleas, which is unethical.

GROUND C. Newly Discovered Evidence no grand jury convened discovered April 9, 2001 in the Court of General sessions.

SUPPORTING FACTS AND ARGUMENT

The Defendant contends he was indicted on April 9, 2001, in a Court of Common Pleas. According to § 14-5-730 (4), there is no Court legislated to be held that week. And according to South Carolina Court of Administrations Court calender for Newberry County there was no Court of General Sessions for the grand jury to convene, on the day it swore upon its oath that it convened.

According to State v. Hill and Rule 29 (b) of the South Carolina Rules of Criminal Procedure "Newly Discovered Evidence is premissible when: 1, evidence would probably change the result if a new trial is had; 2, evidence has been discovered since the trial; 3, evidence could not have been discovered before the trial; 4, evidence is material to the issue of guilt or innocence; and 5, evidence is not merely cumulative or impeaching." 597 S.E.2d 822 (2004). In State v. Spann the court held that a new trial must be granted to the Defendant because evidence existed that through due diligence could not be uncovered at the time of the first trial. 513 S.E.2d 98,100 (1999).

In the case bar, the Defendant met the requirement of the five-pronged test outlined in State v. Spann. The Solicitor did Obstruct the Due Administrative of Justice by unlawfully its grand jury in the Court of Common Pleas on a criminal matter.

CONCLUSION

For all the reason stated herein above it is respectfully requests that this Honorable Court grant Defendant's Motion and vacate the conviction and sentence as a matter of law.

Respectfully submitted,

Richard Alvin Sims #273381

Richard Alvin Sims, #273381

Subscribed and sworn before me this 16th Day Jun = 2018

Debbie R. McCasky
My Commission expires: Feb 24

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May 28, 2017

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V. Claire Allen, Deputy Clerk
Columbia, S.C. 29211

To whom this letter concern, I
Richard Sims, #273381 have been
unauthorize to use the law
library to respond to file my brief
so I am sending a court copy
that I wish to argue at the
Court of appeals so could your
office send a stamp file copy
to the attorney General office
and one back to me. Thanks
for your time concerning this
matter.

Sincerely yours,

Richard Sims
#273381

→over

my unauthorize to the low library
was due to lock down status.

Mr. Richard Sims #273381
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P.O. Box 1151
Fairfax, S.C. 29827

Interdepartment

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