

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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JUN 13 2017

SC Court of Appeals

Appeal From Sumter County  
Maite Murphy, Circuit Court Judge  
Appellate Case No. 2014-002437

THE STATE

RESPONDENT

v.

WILBERT FRANKLIN, JR.

APPELLANT

PRO-se MOTION FOR RECONSIDERATION

*Wilbert Franklin*

Wilbert Franklin, Jr.  
386 Redemption Way  
McCormick, SC 29899

STATEMENT OF ISSUE ON APPEAL

Whether the trial court lacked subject matter jurisdiction because the indictment failed to set forth the property taken.

STATEMENT OF THE CASE

Appellant was convicted of strong armed robbery after a jury trial held before Honorable Maite Murphy on November 9-12, 2015, in Sumter County. A fifteen (15) years sentence was imposed and it was ordered to be served consecutive to a sentence he was already serving. Stephen Story, Esq. was trial counsel. John Meadors, Esquire. was the solicitor.

## ARGUMENT

Whether the trial court lacked subject matter jurisdiction because the indictment failed to set forth the property taken.

The appellant was indicted for armed robbery and found guilty of strong armed robbery and his indictment read: That on or about August 16, 2014, in Sumter County, South Carolina, the Defendant, Wilbert J. Frankin Jr. at 660 West Liberty Street, Sumter, South Carolina, by use of force, threats or intimidation and while armed with a deadly weapon, or while allegation, either by actions or words, he was armed while using a representation of a deadly weapon or other object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, did take and carry away goods and /or monies from the person or immediate presence of Chaunise Carter, an employee of Kangaroo, with the intent to permanently deprive the victim of possession thereof, in violation of Section 16-11-330(A) of the South Carolina Code of Laws, 1976, as amended.

State v. Gentry, 610 S.E.2d 494 (S.C. 2005) Lack of subject matter jurisdiction may not be waived, even by consent of the parties and should be taken notice by the Supreme Court. State v. Knickles, 560 S.E.2d 426 (S.C. App. 2002) The subject matter jurisdiction may not be waived even by consent of the parties,

and should be taken notice by the Court. The action of a court regard a matter as to which it has no jurisdiction is void. Issues related to subject matter jurisdiction may be raised at anytime. Browning v. State, 463 S.E.2d 358 (S.C. 1995). Questions regarding subject matter jurisdiction mat be raised at any time. State v. Bullard, 560 S.E.2d 436 (S.C. App. 2002).

In State v. Hiott, 276 S.E.2d 163,167 (S.C. 1981) the Court said, however, a fundamental principal of law is that an accused be given sufficient notice of the crime for which he is charged. The purpose is actually three-fold, (1) the defendant may adequately prepare his defense (2) the Court may know what judgment to pronounce and (3) the acquittal or conviction may be effectively place in bar to subsequent convictions. For these reasons, an indictment for robbery must sufficiently, described the property taken, of necessity, however, no better description is required than the circumstances permit. 77 C.J.S. Robbery 36.

In State v. Parker, 571 S.E. 2d 288 (S.C. 2002) the Court displayed and said, further each indiotment charged each respondent with armed robbery. 16-11-330 (A) and state they did in Marlboro County or or about November 02, 1997, along with a co-defendant while armed with a deadly weapon feloniously take from the person or presence of the victim Blvd Express, by means of force or intimidation good or monies of said victim, such good or monies being described as follows: 1192.00 and two pistols. It


is evident the indictment in the case end with good and/or monies.

CONCLUSION

Having shown the court lacked subject matter jurisdiction the judgment is void and the Appellant should be release from custody of the Respondents.

Dated

June 8, 2017



Wilbert Franklin, Jr.

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APPELLANT

PROOF OF SERVICE

The undersigned hereby certify that he mail a pro-se brief to Kenneth Richstad, Clerk of Court, S.C. Court of Appeals, P.O. Box 11629, Columbia, S.C. 29211 by depositing same in the U.S. mail at McCormick mailroom.

SWORN TO AND SUBSCRIBE BEFORE ME

THIS 9<sup>th</sup> day of June 2017  
Michael Carone

NOTARY PUBLIC OF SOUTH CAROLINA

MY COMMISSION EXPIRES July 09, 2025

Wilbert Frankin, Jr.  
Wilbert Frankin, Jr.

June 8, 2017

S.C. Court of Appeals  
Kenneth A. Richard, Clerk  
P.O. Box 11629  
Columbia, SC 29211

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RE: State v. Wilbert

2014-002437

Dear Mr. Richstad:

Enclosed please find Pro-se motion for reconsideration  
that is served upon you for filing.

Sincerely,

Wilbert Frankle

Wilbert J. Franklin Jr. #229450  
MCCI FIA-186  
386 Redemption Way  
McCormick, S.C. 29899

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