

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenville County
Court of General Sessions
Chief Admin. Judge Hon.
Letitia H. Verdin
#2002-GS-23-1576

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JUL 12 2017

SC Court of Appeals

The State

Respondent

vs

Jerome Williams

Appellant

APPELLANT'S INITIAL BRIEF

other counsel of record
Deputy Solicitor
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RULES

S.C.R. Civil P. - Rule 1	7, 12
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STATEMENT OF ISSUES ON APPEAL

(1) WHETHER THE COURT WAS REQUIRED TO ADDRESS APPELLANT'S 60 (b) ACTION AS A CIVIL MATTER AND TRANSFER HIS ACTION TO THE COURT OF COMMON PLEAS

(2) WHETHER THE COURT OF GENERAL SESSIONS LACK SUBJECT MATTER JURISDICTION TO RULE ON APPELLANT'S 60 (b) ACTION ITSELF

(3)

STATEMENT OF CASE

On June 19, 2002 in Greenville Co. Appellant, Jerome Williams pled guilty to first-degree burglary and received a sentence of 30 years imprisonment in the South Carolina Department of Corrections. On 10-13-2014 Appellant moved to set aside the judgment of his criminal indictment thus his guilty plea pursuant to S.C.R. Civil P. - Rule 60(b)(3) and (5). This 60(b) action was mistakenly filed in the Court of General Sessions.

On May 12, 2017 Appellant appeared before Hon. Judge. Letitia H. Verdin

to address his action. On May 15,
2017 Judge Verdin denied Appellants
60 (b) action. On June 14, 17 Appellant
filed his notice of appeal
this appeal follow:

(5)

ARGUMENT (1.)

The court was required to address Appellant's 60 (b) action as a civil matter and transfer his action to the court of common pleas. Where Appellant mistakenly filed his 60 (b) action in the the court of General Sessions SEE: Ex B arguing that his action involves Appellant's attempt to gain relief from the judgment and conviction and sentence entered against him on June 19, 2002. The rule 60 (b) (3) (5) S.C.R.C.P motion raises claim of a fraud upon the

(6)

court, resulting from acts of gross misconduct and criminal violation of the law, as perpetuated by Lora A. Reese, the Greenville County Assistant Solicitor, in office on Feb. 19, 2002, at the time the violations herein alleged arose.

It was very clear that Appellant's action was made for relief from judgment under S.C.R. Civil P. Rule 60 (b) (3): Where Rule 1, S.C.R. Civil P. govern the procedure in all South Carolina courts in all suits of a civil nature, it's clear that Appellant action should have been heard in the court of Common pleas.

Here Appellant's 60 (b) action rest within the sound discretion of the trial

" " "
court of common pleas SEE: Savo Investments
v Ocean Holiday Partnership 314 S.C. 116, 441
SE2d 835; Thomas v Hammond 382 SE2d
900. A motion asserting "Fraud upon the
Court concerns the integrity of the judicial
process itself and a judgment may be set
aside for fraud upon the court at any time
SEE: 12 Joseph T. McLaughlin, Morris Federal
Practice 60.21:4 (a) at 60-61 Also see
Chewing v Ford Motor Credit 579 SE2d 605
There is no statute of limitation when a
party seeks to set aside a judgment due
to fraud upon the court. Indeed, the very
language of rule 60(b)(3)(5) so provides,
this rule does not limit the power of the
court... to set aside a judgment for fraud
upon the court.

In this case, Williams bill of indictment prints that, at a Court of General Sessions, convened on Feb, 19, 2002, the Grand Jurors of Greenville Co. presented upon their oath SEE: Exhibit 1 "Indictment" and the title page prints that it was published at a court of General Sessions during its Feb term 2002.

Although, Deputy Solicitor Betty C. Stoin submitted State's Exhibit A showing the Chief Administrative Judge for General Sessions in Greenville Co. order when they should have convene SEE: Exhibit A

Appellant argue that he presented clear evidence SEE: Exhibit 1 and Exhibit 2 that established that no court of General Sessions had in fact been open on the

indictment's February 19, 2002 date of return. SEE: Exhibit 2 certified true copy Ct. term calendar and Exhibit 1 clearly shows that no General Sessions Ct. had been open on the date in question. And, although Deputy Solicitor Ms. Strom submitted Exhibit A, there is no proof that the court convened on the date in question.

Therefore, Assistant Solicitor Reese's act can be said, subvert the integrity of the court in a way that was extrinsic fraud upon the court SEE: Evans v Gunter 366 SE2d 44

Here, Appellant met his burden of presenting evidence that proved the facts essential to entitle him to relief SEE: Bowers v Bowers 403 SE2d 127.

Wherefore, the court was required to address Appellant's 60 (b) action as a civil matter, and transfer Appellant's to the court of common pleas SEE: S.C.R. Civil P. - Rule 82 (b); SEE: Ex. C; Ex D and Ex E.

ARGUMENT (2)

The court of General Sessions lack subject matter jurisdiction to rule on Appellant's 60 (b) action itself. When Appellant mistakenly filed his 60 (b) action in the court of General Sessions.

The Appellant argue that the court

of General Sessions was required to transfer his action to the court of Common pleas per S. C. R. Civil P. - Rule 82 (b): Which states in part: VENUE OF ACTION

When an action is brought in the wrong county or in the wrong court, the court SHALL not dismiss the action but SHALL transfer it to any proper county or court in which it could have been brought.

Also see S. C. R. Civil P. Rule 5 1 and 2
Ex C; Ex D and Ex E.

Wherefore, the court of General Sessions lack subject matter jurisdiction to rule on Appellant's 60 (b) action itself.

CONCLUSION

Based upon the foregoing arguments Appellant's case should be remanded back to the court of Common Pleas.

Date: 7-10-77

(12)

Respectfully submitted
Jerome Killions

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Appeal from Greenville Co.
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Hon. Chief Adm. Judge
Letitia H. Verdin
#2002-GS-23-1526

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SC Court of Appeals

The State

vs

Respondent

Jerome Williams

Appellant

CERTIFICATE OF COUNSEL

The undersigned certifies that this initial
brief complies with Rule 208 SCACR

Date: 7-10-17

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Jerome Williams vs Appellant

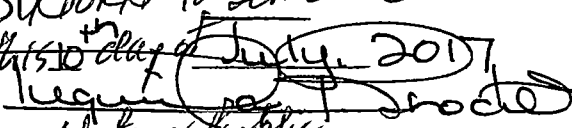
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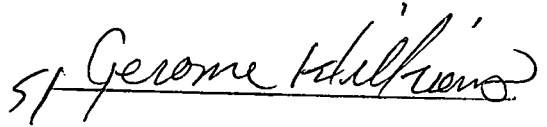
I hereby certify that I have served the below persons my initial brief, designation of matter and certificate of counsel. By placing the above said into the T.R.C.F. mail room on this 10 day of 2017, July to be placed in the U.S. mail w/ postage prepaid

The Hon. Clerk of Ct. of Appeals
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SUBORN to before me
this 10 day of July, 2017

Notary Public



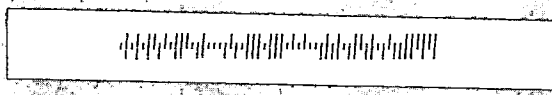
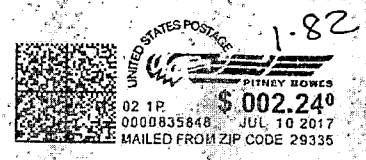
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