

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of General Sessions

Benjamin H. Culbertson, Circuit Court Judge

Appellate Case No. 2015-002107

RECEIVED
SEP 05 2017
SC Court of Appeals

THE STATE,

RESPONDENT,

v.

ARNOLD LEA WARD,

APPELLANT.

**MOTION TO DISMISS APPEAL FOR
FAILURE TO CORRECT DEFICIENCIES
AND LACK OF JURISDICTION**

Respondent (“the State”), through its undersigned counsel, would respectfully show unto the Court as follows:

I.

Based upon a search of the Fifteenth Judicial Circuit Public Index, it appears Appellant was arrested for burglary in 2006 (Warrant No. J316250) and was subsequently indicted at the January 25, 2007 term of the grand jury for Horry County for first-degree burglary. (Indictment No. 2007-GS-26-00418). He was represented by William Thomas Floyd, Esquire, and the State was represented by Assistant Solicitor Bradley Coy Richardson. Appellant proceeded to trial by jury and was convicted as charged. He was sentenced by the Honorable Steven H. John to fifteen (15)

years imprisonment and is currently incarcerated in the South Carolina Department of Corrections.

II.

In 2015, Appellant, acting pro se, submitted a Rule 29(b), SCRCrimP, "Motion for Newly Discovered Evidence" in the Horry County Court of General Sessions. A hearing on Appellant's motion was convened on September 1, 2015, at the Horry County Courthouse before the Honorable Benjamin H. Culbertson. Appellant appeared pro se and Bradley C. Richardson appeared on behalf of the State. At the conclusion of the hearing, Judge Culbertson denied Appellant's motion. (Tr.p.1-6) (See Exhibit #1). A Form 4 Order denying Appellant's Motion for Newly Discovered Evidence was issued the same day. Appellant apparently made a motion for reconsideration and in a Form 4 Order dated September 17, 2015, that motion was also denied by Judge Culbertson. Appellant subsequently served and filed a Notice of Appeal from the two Orders with this Court.

Appellant eventually obtained a transcript of the September 1, 2015, hearing before Judge Culbertson and now appears to have filed an Initial Brief and Designation of Matter in this appeal. On August 3, 2017, this Court wrote to Appellant notifying him of deficiencies in his appeal which were to be corrected within ten (10) days of the date of the letter, or the appeal might be dismissed. In describing one of those deficiencies this Court stated: "Please provide proof that you served the initial brief of appellant and designation of matter on the Attorney General."

III.

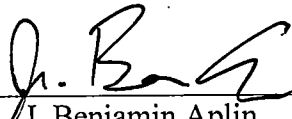
As of today's date, approximately one month after the date of the deficiency letter, the Attorney General's Office had not been served by Appellant with either an initial brief or a designation of matter. In light of this continued deficiency, the State hereby moves this Court to dismiss this appeal per the Court's August 3, 2017, letter.

WHEREFORE, the State respectfully requests that this Court dismiss Appellant's appeal for his continued failure to correct deficiencies in his appeal.

Respectfully submitted,

ALAN WILSON
Attorney General

J. BENJAMIN APLIN
Senior Assistant Deputy Attorney General

BY: 

J. Benjamin Aplin
S.C. Bar #8729

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

September 5, 2017

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS

COUNTY OF Horry) 2007-GS-26-00418

State,)

Plaintiff,)

vs.)

Arnold Lea Ward,)

Defendant.)

Transcript of Record

September 1, 2015

B E F O R E:

Honorable Benjamin H. Culbertson
Horry County Courthouse
Conway, South Carolina

A P P E A R A N C E S:

Bradley C. Richardson, Esquire
Attorney for Plaintiff

Defendant Appearing Pro Se

Grace L. Hurley, CVR-CM-M
Circuit Court Reporter

1 (There were no exhibits marked during the hearing.)
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1 (On the record, September 1, 2015.)

2 THE COURT: All right. As I said, this is citation
3 J316250, State of South Carolina versus Arnold Lea Ward. The
4 matter is before the Court -- my roster says motion for after
5 newly discovered evidence. Present Mr. Bradley C. Richardson
6 for the State and you are Mr. Ward?

7 MR. WARD: Yes, sir.

8 THE COURT: All right. Mr. Ward's appearing pro se. All
9 right. Mr. Ward, this is your motion.

10 MR. WARD: Yes, sir.

11 THE COURT: All right. Let me hear from you.

12 MR. WARD: I put a motion for a null and a void
13 indictment on the rule that 14-9-210 that the indictment was
14 processing through a Grand Jury that it wasn't convened on the
15 25th of January and I move to have that indictment removed.

16 THE COURT: Okay. What do you mean they weren't
17 convened? How do you know that?

18 MR. WARD: The -- in 14-5-810 it states the time that you
19 could have an indictment run through a Grand Jury and there --
20 it doesn't -- those dates doesn't match up. January 25th is
21 one of the dates that doesn't match up with that, that
22 statute.

23 THE COURT: Okay. All right. Mr. Richardson, have we
24 got an indictment?

25 MR. RICHARDSON: I've got a copy. I've got a copy of the

1 indictment, Your Honor.

2 THE COURT: The true-billed indictment?

3 MR. RICHARDSON: Yes, sir.

4 THE COURT: All right.

5 MR. RICHARDSON: This is the file copy.

6 THE COURT: All right. Shows true-billed indictment
7 signed by the Grand Jury foreman on January 25th, 2007.

8 MR. WARD: Yes, sir.

9 THE COURT: And so what is your argument?

10 MR. WARD: There wasn't a Grand Jury convened on January
11 25th of 2007.

12 THE COURT: Okay.

13 MR. WARD: They convened, Grand Jury only convenes the 2nd
14 week of January in 2007 and the first week in March of 2007.
15 So there's no way they could have convened during the 25th.

16 THE COURT: Okay. You're referring to a statute that
17 sets it? I think it's allowed -- that those --

18 MR. WARD: Statute 14-7 -- I'm sorry, 14-5-810.

19 THE COURT: Yeah. And, and, and it allows the
20 administrative judge can set alternate dates for the Grand
21 Jury. So I'm going to deny your motion. I see where he's
22 presented one that's been signed by the foreman that showed
23 that they did convene on January the 25th. All right.

24 MR. RICHARDSON: Thank you, Your Honor.

25 THE COURT: Thank you.

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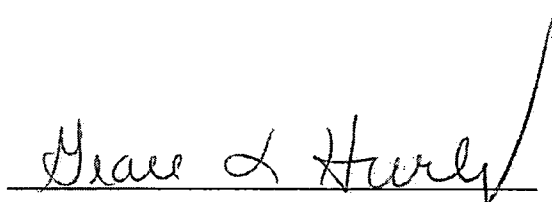
(Adjourned.)

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C E R T I F I C A T E

I, the undersigned, Grace L. Hurley, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the Hearing held in the case of State versus Arnold Lea Ward, held in the Court of General Sessions for Horry County, Horry County Courthouse, Conway, South Carolina, on September 1, 2015.

I do hereby certify that I am neither of kin, counsel, nor interest to any party hereto.



Grace L. Hurley, CVR-CM-M
Official Reporter

July 1, 2017.

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM Horry COUNTY
Court of General Sessions

Benjamin H. Culbertson, Circuit Court Judge

Appellate Case No. 2015-002107

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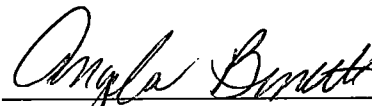
APPELLANT.

PROOF OF SERVICE

I, Angela S. Bennett, certify that I have served the within Motion to Dismiss on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Arnold Lea Ward, #109169
Allendale Correctional Institution
P.O. Box 1151, Hwy 47
Fairfax, SC 29827

I further certify that all parties required by Rule to be served have been served. This 5th day of September, 2017.



ANGELA S. BENNETT
Legal Assistant

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727



ALAN WILSON
ATTORNEY GENERAL

September 5, 2017

The Honorable Jenny A. Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

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RE: The State v. Arnold Lea Ward:
Appellate Case No. 2015-002107

Dear Ms. Kitchings:

Enclosed please find the original and six (6) copies of the Motion to Dismiss, along with proof of service, for filing in the above-referenced appeal.

Sincerely,

J. Benjamin Aplin
Senior Assistant Deputy Attorney General
S.C. Bar Number 8729

JBA
Enclosures

cc: Arnold Lea Ward, #109169
Victim Services