

Case No. 2017-001780

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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S.C. SUPREME COURT

Certiorari to Dillon County

Paul M Burch, Chief Administrative Judge Fourth Judicial Circuit

ARTIE TYRONE BURNS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

INITIAL BRIEF FOR WRIT OF CERTIORARI

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## APPENDIX

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Ann 14-5-650

Ann 14-9-170

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South Carolina Constitution Art 1 & 3

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## ISSUES PRESENTED

- 1) Whether the Trial court had Subject Matter Jurisdiction to hear, convict and sentence petitioner for Trafficking Cocaine when the petitioner indictment is for possession with Intent to Distribute Cocaine.
- 2) The Court of General Session was without authority to indict applicant for possession with intent to distribute “trafficking” during the May term.
- 3) The state is asking for a dismissal on the grounds res judicata.
- 4) Petitioner’s objection to conditional order of dismissal was filed in a timely manner.

## STATEMENT

Petitioner Artie Tyrone Burns was convicted of trafficking in cocaine per jury trial held during October 2006 term of the Dillon County General Sessions Court before Judge JohnL Breeden, Jr. Petitioner was represented at trial by David Watson. Petitioner appealed, but his conviction and sentence were affirmed. See State v. Burns, Opinion No. 2009-UP-262 (Ct. App. filed June 1, 2009).

## ARGUMENT

The State had the Judge to sign a final order of Dismissal on the Grounds of Untimely Successive and barred by the doctrine of res Judicata: because Applicant's Subject Matter Jurisdiction and indictment allocation were without merit: because Applicant's claim of actual innocence was not cognizable: and because applicant's prayer for a belated appeal was without merit: see Final Order of Dismissal page 1. and the ruling was improper.

In respondent conditional Order of Dismissal and Final Order of Dismissal respondent failed to address applicant precise challenge. These are a few reasons that the application should not have been summarily dismissed as untimely successive and barred:

- 1) Subject Matter Jurisdiction may be raised at anytime *Brown v. State* 320 S.C 366 465 S.E 2d 801 (1993). *Slack v. State* 429 S.E 2d 801 (1973). Applicant is not challenging the sufficiency of the indictment. Applicant is challenging whether the trial court had subject matter Jurisdiction to hear, convict and sentence applicant for Trafficking Cocaine when applicant indictment is for Possession with Intent to Distribute Cocaine. See Indictment. Subject Matter Jurisdiction may not be waived even by consent of the parties and should be taken notice of by this court *Carter v. State* 329 S.C. 355. 495 S.E 2d 773 (1998) *State v. Fonderburk* 259 S.C. 256. 191 S.E 2d 520 (1972). The Circuit Court lacks Subject Matter Jurisdiction to conduct a trial of a criminal charge where there has been no Presentment of an indictment by the Grand Jury. S.C Const art 1&11: *State v. Lanarus* 83 S.C. 215 65 S.G 270 (1909). S.C. Const art 362 required serious criminal cases come before the court of General Jurisdiction "through the medium of a Grand Jury by indictment. It is certainly reasonable to state that on an indictment must meet General Fourteenth Amendment Standards no matter how a state chooses to charge a criminal defendant the Due Process Clause requires that a criminal defendant receive notice of specific charge and a chance to be heard in a trial of the issues raised by that charge *Cole v. Arkansas* 333 U.S. 196.201.68 Sct 514.517 92 L.Ed 644 (1948) *Olsen v. Mcfoul* 843 F2d 918. 930 (6th cir 1988). In other words a criminal defendant

must receive adequate notice of the charges against him so that he may defend himself against those charges *Koontz v. Glossa* 731 F2d 365 369 (6th cir 1984) it prejudiced defendants opportunity to defend himself the prejudice was serve enough for a Due Process violation. The indictment “did not recite a sufficient portion of the statue to set out all the elements of the offense for which he was tried and convicted. The indictment did not allege all the facts necessary to establish a violation of subsection (e).

- 2) Circuit Court was without authority to indict applicant for Possession with Intent to Distribute Cocaine during the May term of court. 14-5-650 TERM OF COURT IN FOURTH CIRCUIT The courts of General Sessions at Dillon County on the second Monday in March. The first Monday in June the second Monday in September. In conjunction the South Carolina legislature has enacted SC, code & 14-9-170. which mandates the following provisions for convening of the Grand Jury for service upon the General Sessions courts. Further, the S.C legislature has enacted S.C code & 14-9-210. which imposes the following lawful requirements upon the county solicitor to obtain indictment: The county solicitor shall prepare and through the presiding Judge of the court of General Sessions, submit to the Grand Jury “while in attendance upon the court of General Sessions.” bill of indictment in all cases in which the punishment may exceed a fine of one hundred dollars or imprisonment for thirty days. As can be shown from the plain and unambiguous language of the foregoing statutory enactments the S.C. legislature has not enacted any “May term” of General Sessions court in Dillon County as indicated by applicants indictment. Thus, applicants allegedly obtained by the solicitor at a “May term” of General Sessions for Dillon county. While no lawful Grand Jury was in attendance that failed to confer Subject Matter Jurisdiction upon trial court since there was no “legal existing” Grand Jury in attendance at a non existing term contrary to S.C. & 14-9-170 and S.C 14-9-210. See *Q.G.ST. vs. Hann* 12 S.E. 2d 726 (1940). It was not in accordance with the requirements laid down by the statute. Applicant was deprived of life and property without Due Process of law and applicant was denied the equal protection of the law.

- 3) The respondent couches its procedural argument of res Judicata. However in a PCR action the doctrine res Judicata does not apply to issues of Subject Matter Jurisdiction. State V. Parham 2000 WL 1176529.
- 4) Petitioner was not late in filing response to conditional order of dismissal. Houston v. Lack (1988) Fallen v. United States 378 U.S. 139 Stewart) concurring) unskilled in law, unaided by counsel and unable to leave the prison, a pro se prisoner's control over the processing of his notice necessarily ceases as soon as he hands it over to the only public officials to whom he has access the prison authorities and the only information he will likely have is the date he delivered the notice to those authorities and the date ultimately stamped upon it. The state does not argue that Burns failed to deposit his notice of appeal into the prison mail system before the July 3rd deadline. Which makes the state argument void that he received it on July 05, 2017. However, petitioner deposit in a prison mailbox in a timely manner. See exhibit 2. Applicant is not asking for a belated appeal. Applicant is asking for vacate of applicant's convictions on the charge of trafficking cocaine.

CONCLUSION

Applicant provides specific reasons, factual and legal why the application should not be dismissed. Applicant prays this court will grant his application for a hearing.

Respectfully,

Artie Burns

Artie Burns #318252

Lee C.I . F4-B-1260

990 Wisacky Highway

Bishopville, SC 29010

September 13, 2017

Honorable Paul M Burch  
Chief Administrative Judge Fourth Judicial Court  
Post Office Box 11330  
Columbia, South Carolina 29211

RE: Artie Burns

My name is Quankiedra Burns-Thomas, a law student at University of Chaminade in Honolulu, Hawaii. I'm the niece of Artie Burns. Artie was more like a father figure to me than an uncle. I know him to be family oriented, a hard working man, very supportive and community minded. Majority of the children looked up to him in our neighborhood. I understand the trouble my uncle Artie is in. I am able to help him after his legal troubles are over.

For the past 12 years since Artie's been incarcerated, a lot of tragic events has taken place within our family, To begin with, his wife Dana passed away in October 2015 from a heart attack. Artie wasn't around to support their three (3) children in their time of mourning. Next, his oldest son Artie Burns Jr, was drafted in the NFL by the Pittsburgh Steelers, yet again my uncle Artie wasn't around for that joyous moment of his child life to congratulate him on his future journey. Last but not least, his mother Sadie Mae Burns which is my grandmother passed away in November 2016 and yet again Artie wasn't in attendance.

Your honor I can assure you that Artie Burns has learned a lesson from his incarceration and he fully understand the consequences that follows behind trouble. I trust and obey the law to the fullest and I know that the courts will move on what's in the best interest of justice.

Thank you in advance for your time and help to Artie Burns in this important time.

Respectfully yours,  
Quankiedra Burns-Thomas



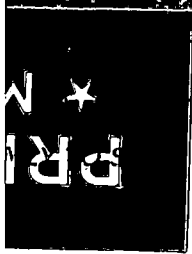
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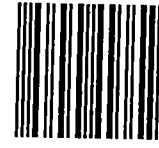
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