

Michél Andre DUKES, SR. }  
 Petitioner, #311176 }  
 V. }

Appellate case No. -  
 2016-000040

State of South Carolina; }  
 Alan Wilson, Willie L. Eagleton, }  
 Warden }

Lower court case No.  
 2013 CP 2602686

written explanation as to why  
 the determination by the circuit  
 court was improper

The pro-se petitioner, Michél A. Dukes, SR. #311176 hereby would like to explain to the honorable courts why the circuit court's <sup>determination</sup> was improper and that the writ of habeas corpus should issue and relief should be given to the petitioner. For now the petitioner will explain: On 9-15-03 petitioner requested through the order specifying methods and conditions of release a preliminary hearing; in which was given to petitioner by the honorable Clifford L. Welsh. The hearing was set for 11-21-03 at 8:30 am within the Horry Judicial Center, Conway, S.C. It is the petitioner's contention that this preliminary hearing was never had and shows that the Court of General Sessions had no jurisdiction of the case until after such preliminary hearing was held and also that the court was without jurisdiction because a demand for a preliminary hearing was timely made and the indictment was returned before the timely demanded preliminary hearing; in which is a nullity. (§22-5-320) (Effect of demand for hearing on jurisdiction) The petitioner's indictment was true billed and returned on 11-20-03 a day before the properly demanded preliminary hearing. This is error, pursuant to Slack v. State, 429 S.E.2d 801 (1993) where the circuit court ruled that petitioner's motion for a writ of habeas corpus was untimely filed and that the motion, even if treated as a PCR action, could not be granted. This was error. The issue of subject matter jurisdiction may be raised at any time. Cf. State v. Funderburk, 259 S.C. 256, 191 S.E.2d 520 (1972).

Under Article V, §5, of the South Carolina constitution this court is vest with the authority to issue extraordinary writs and entertain actions in its original jurisdiction, and the courts primary function is to act as an appellate court to review appeals from the trial courts. It is petitioner's contention that there is an extraordinary reason such as a question of significant public interest where the petitioner properly and timely requested a preliminary hearing; in which was granted but never held within the Horry County courts and show that petitioner was denied due process of law, S.C. constitution Article I, §18; Code 1976, §17-27-20(b); Art. 5,

§ 5; Code 1976, § 17-27-20 (b); Art. I, § 11.

To further the explanation it has been determined that under Art. I, § 11 (Preliminary Examination by Magistrate) that this rule has been applied to an act requiring magistrates to hold a preliminary investigation on the issue of a warrant charging a crime at the demand of the defendant, State v. Brown, (S.C. 1902) 62 S.C. 374, 40 S.E. 776 (Grand Jury Key - 26). Also see Habeas Corpus

KEY 613 which states that although matter cognizable under Uniform Post-Conviction Procedure Act may not be raised by petition for writ of habeas corpus before circuit or other lower courts, Supreme Court retains ability, pursuant to State Constitution, to entertain writs of habeas corpus in its original jurisdiction and grant relief in those unusual instances where there has been violation which, in setting, constitutes denial of fundamental fairness shocking to universal sense of justice. Const. Art. I, § 18; Art. 5, § 5; Code 1976, § 17-27-20 (b). It is petitioner's contention that there has been violation which, in setting, constitutes denial of fundamental fairness shocking to universal sense of justice due to not receiving a property demanded preliminary hearing on 11-21-03... It is the contention of the petitioner that the court was without jurisdiction and the acts of the trial court in the matter over which it had no jurisdiction are void. State v. Funderburk, 191 S.E. 2d 520 Courts Key - 40 - (§ 22-5-320)

Petitioner is also enclosing documents showing where the petitioner timely requested for a preliminary hearing, void indictment that was returned before the timely requested preliminary hearing was held, and an invalid arrest warrant that violates U.S. Constitution under the 4th amendment of due process of law and shows that there was no probable cause determination for petitioner's arrest. SEE § 17-13-140; Art. I, SECTION 10 of the S.C. Constitution

For the petitioner ever prays for relief through this honorable courts...

Sincerely,

Michael A. Duke, Jr.  
ECI-F-S-A-170  
610 Hwy 9 West  
Bennettsville, S.C.

29512

Date: 4-18-16

# In The Supreme Court of South Carolina

MichêL A. Dukes, <sup>SR.</sup> #311176 }  
Petitioners }

v.

State of South Carolina; }  
Alan Wilson; Willie L. }  
Eagleton; Warden }

Appellate case No. - 2016-000040  
Lower court case No. 2013 CP 2602686

AFFIDAVIT OF MichêL A. Dukes, <sup>SR.</sup>  
#311176

Following:

By way under the penalty of perjury I state the

- 1) I am the petitioner in the above-captioned action.
- 2) Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
- 3) Due to no fault of petitioners' own the clerk of court of horry county has caused the filing of the notice of appeal to be late for filing within the Supreme Court of South Carolina.
- 4) I have this day served a copy of the explanation, Affidavit, and notice of appeal in the above-captioned matter on the following person[s] by depositing same in the United States mail, postage prepaid:

The Supreme Court of South Carolina  
Daniel E. Shearouse, Clerk of Court  
Post Office Box 11330  
Columbia, S.C.

29211

**RECEIVED**

APR 20 2016

SC SUPREME COURT

Sincerely,

MichêL A. Dukes, <sup>SR.</sup> #311176  
ECI-FS-A-170  
610 Hwy 9 West  
Bennettsville, S.C.

29512

Date: 4-18-16

In The Supreme Court of South Carolina

Certificate of Service

I Michel A. Dukes, <sup>SP</sup>#311176 hereby certify that I have served the motion to allow the late filing of the notice of appeal or motion to reinstate pursuant to rule 240 SCACR, and also the written explanation as to why the determination was improper, and a Affidavit upon the clerk of the Supreme Court of South Carolina, by depositing a copy of the above following in the U.S. Mail postage prepaid addressed as follows:

The Supreme Court of South Carolina  
Daniel E. Shearouse, Clerk of Court  
Post Office Box 11330  
Columbia, S.C.  
29211

RECEIVED

APR 20 2016

SC SUPREME COURT

Sincerely,

Michel A. Dukes <sup>SP</sup>#311176  
ECT-F5-A-170  
610 Hwy 9 West  
Bennettsville, S.C.  
29512

Date: 4-18-16

ARREST WARRANT

NGP

H-299368

STATE OF SOUTH CAROLINA

County/ Municipality of NO MYRTLE BCH MUNICIPAL COURT

THE STATE against

CLW

MICHAEL ANDRE DUKES

Address: 510 GOVERNORS ROAD

WILMINGTON, NC 28411

Phone: (910) 397-0897 SSN:

Race: B Height: 5'04" Weight: 140

NC DL #: 26512244

B: 12/08/1978 Agency ORI#: SC0260700

Prosecuting Agency: NO MYRTLE BCH DEPT PUBLIC SFTY

Prosecuting Officer: RAY ATHOOD

Offense: TRAFFICKING IN CRACK COCAINE

Code/Ordinance Sec. 44-53-375

This warrant is CERTIFIED FOR SERVICE in the County/ Municipality of

The accused is to be arrested and brought before me to be dealt with according to law.

Signature of Judge (L.S.)

RETURN

A copy of this arrest warrant was delivered to defendant Michael Dukes

on 9-12-03

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

CLIFFORD L. WELSH, MUNICIPAL JUDGE 1015 SECOND AVENUE SOUTH NORTH MYRTLE BEACH, SC 29582 803-280-5520

STATE OF SOUTH CAROLINA

County/ Municipality of

NO MYRTLE BCH MUNICIPAL COURT

AFFIDAVIT

SCCA 518

Personally appeared before me the affiant JAMES BROWN JW who being duly sworn deposes and says that defendant MICHAEL ANDRE DUKES

did within this county and state on September 11, 2003 violate the criminal laws of the State of South Carolina (or ordinance of County/ Municipality of NO MYRTLE BCH MUNICIPAL COURT)

in the following particulars:

DESCRIPTION OF OFFENSE: TRAFFICKING IN CRACK COCAINE

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

ON OR ABOUT SEPTEMBER 11, 2003, THE DEFENDANT MICHAEL ANDRE DUKES, AND DURING A LAWFUL SEARCH WAS FOUND TO BE IN POSSESSION OF 20.2 GRAMS OF CRACK COCAINE WHICH FIELD TESTED POSITIVE.

FILED IN MYRTLE BEACH COUNTY SEP 29 AM 11:55

Sworn to and subscribed before me on 09/12/2003

Signature of Affiant James E. Brown

Affiant's Address 1015 SECOND AVE SOUTH NORTH MYRTLE BEACH, SC 29582

Affiant's Telephone 843-280-5511

Signature of Issuing Judge (L.S.)

STATE OF SOUTH CAROLINA

County/ Municipality of

NO MYRTLE BCH MUNICIPAL COURT

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that on September 11, 2003 defendant MICHAEL ANDRE DUKES did violate the criminal laws of the State of South Carolina (or ordinance of

County/ Municipality of NO MYRTLE BCH MUNICIPAL COURT) as set forth below:

DESCRIPTION OF OFFENSE: TRAFFICKING IN CRACK COCAINE

Now, therefore, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

Judge's Address 1015 SECOND AVENUE SOUTH NORTH MYRTLE BEACH, SC 29582

Judge's Telephone 803-280-5520

Signature of Issuing Judge (L.S.) Judge Code:

Issuing Court: Magistrate X Municipal Circuit

ORIGINAL

H-299368

Xref #: 200328867

WITNESSES

BROWN/NMBPD

ARREST WARRANT NO. H-299368

CDR: 0452 44-53-0375 (C) (1) (c)

DOA: 9-12-003

ACTION OF GRAND JURY  
**TRUE BILL**

*ESH* NOV 20 2003

Foreman of Grand Jury

VERDICT

*Guilty*

8-9-05

*Claude E. Belcher*  
Foreman of Petit Jury Date:

DOCKET NO. 2003-GS-26-3445

THE STATE OF SOUTH CAROLINA

COUNTY OF HORRY

GD 71872

COURT OF GENERAL SESSIONS

NOVEMBER TERM 2003

THE STATE

VS.

*ad*  
MICHAEL ANDRE DUKES

510 GOVENORS ROAD

WILMINGTON, NC 28411

SSN 247-41-9038 DOB 12-08-78

Attorney

INDICTMENT FOR:  
TRAFFICKING CRACK COCAINE  
MORE THAN 10 GRAMS, LESS THAN 28 GRAMS

J. GREGORY HEMBREE, SOLICITOR

ORIGINAL

NMB

Bnd# 2003-09 3

Ticket or Warrant No.: 299368 H-299369  
IN THE COURT OF GENERAL SESSIONS  
( ) MAGISTRATE'S COURT  
( ) MUNICIPAL COURT OF

STATE OF SOUTH CAROLINA  
COUNTY OF Horry  
STATE OF SOUTH CAROLINA  
Michel Andre Dukes  
Name of Defendant

ORDER SPECIFYING METHODS AND CONDITIONS OF RELEASE  
(Bail Proceeding Form 2)

Offense Charged: Trafficking Crack; Poss With Intent Heroin  
At a bail proceeding conducted by undersigned judge, for the defendant named above, it was determined by the court (check one or both):

- The release of the defendant on recognizance will not reasonably assure his appearance as required.
  - The release of the defendant on recognizance will result in an unreasonable danger to the community.
- This determination was based upon the following findings of fact:

Nature of Charge; Defendant from out of state

[Considerations: Nature and circumstances of the offense charged, the accused's family ties, employment, financial resources, character and mental condition, the length of his residence in the community, his record of convictions, and any record of flight to avoid prosecution or failure to appear at other court proceedings.]  
THEREFORE, IT IS HEREBY ORDERED:

1. That the above named defendant be released from custody on the condition that he will personally appear before the designated court at the place, date and time required to answer the charge made against him and do what shall be ordered by the court and not depart the State without the permission of the court and be of good behavior.
2. That the above named defendant be released from custody provided as follows (check one):

CASH IN LIEU OF BOND

The defendant, acknowledging himself to be indebted to the State of South Carolina, deposits \$ \_\_\_\_\_ to secure his release from custody. Should the defendant fail to comply with all terms and conditions of this Order, this sum of money is subject to being forfeited to the State.

CASH PERCENTAGE IN LIEU OF BOND

The defendant acknowledges himself to be indebted to the State of South Carolina in the sum of \$ \_\_\_\_\_, his release to be obtained by payment to the court of \_\_\_\_\_ ( % ) of this bond in cash, this amount being \$ \_\_\_\_\_. The defendant will be obligated to the State in the full amount of \$ \_\_\_\_\_ such sum to be levied on his real and personal property for the use of the State, should he fail to perform the conditions of this Order.

APPEARANCE RECOGNIZANCE WITH SURETY

The defendant will provide good and sufficient surety approved in the court, in the form set forth on the reverse side, acknowledging an indebtedness to the State in the amount of \$ 30,000.

3. That the defendant shall appear at (check one):

the term of the court of general sessions beginning on [Date: Nov 21, 2003] at [Time: 8:30] o'clock, A.M., at [Place: Horry Judicial Center, Conway SC]

the session of magistrate/municipal (circle one) court beginning on [Date: \_\_\_\_\_] at [Time: \_\_\_\_\_] o'clock, \_\_\_\_\_ M., at [Place: \_\_\_\_\_]. If no final disposition is made during that session, the defendant shall appear at such other times and places as ordered by the court.

Initials of Defendant MD

4. That the defendant will notify the court promptly if he changes his address from the one contained in this order and he will comply with those conditions described on the reverse side which are marked.

Clifford L. Wilk  
Signature of Judge  
9/12/03  
Date

ACKNOWLEDGEMENT BY DEFENDANT

I understand and if I violate any condition of this Order, including any conditions included on the reverse side of this Order, a warrant for my arrest will be issued.

I understand and have been informed that I have a right and obligation to be present at trial and should I fail to attend the court, the trial will proceed in my absence.

It has been explained to me that if I fail to appear before the court as required, an additional criminal charge will be instituted against me. If the failure to appear is in connection with a felony charge, or while awaiting sentence, or pending appeal or certiorari after conviction, the penalty is a fine of not more than \$5,000 or imprisonment for not more than five years, or both; if I fail to appear in connection with a misdemeanor charge, the penalty is a fine of not more than \$1,000 or imprisonment for not more than one year, or both.

I acknowledge the receipt of a copy of this Order and understand the conditions of my release and the penalties applicable to me in the event I violate any condition of the Order or fail to appear, as required.

510 Governors RD  
Address

Wilmington, N.C. 28411  
City/State/Zip

297-0897  
Social Security Number/Telephone No.

Michel A Dukes  
Signature of Defendant

9-15-03  
Date

ORIGINAL AND ONE COPY OF THIS FORM ARE TO BE COMPLETED IN EVERY BAIL PROCEEDING IN WHICH IT IS USED.

Original copy for the Trial Court - Copy for the Defendant

POWER AMOUNT  
\$53,000.00

**Accredited**

Property & Casualty Insurance since 1971  
400 SOUTH PARK AVENUE, SUITE 320, WINTER PARK, FL 32789-4320

POWER NO.

AD 31149

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS: that Accredited Surety and Casualty Co., Inc., a Corporation duly organized and existing under the laws of the State of Florida, has made pursuant to a Code of its By-Laws which was adopted by the Directors of the said Company on the 31st day of August, 1971 and is now in effect, does constitute and appoint, and by these presents does make, constitute and appoint below named agent its true and lawful Attorney-in-Fact for it and in its name, place and stead, to execute, seal and deliver for and on its behalf and as its act and deed, as surety, a bail bond only. Authority of such Attorney-in-Fact is limited to APPEARANCE BONDS ONLY and cannot be construed to guarantee payment of fines, costs, alimony, wage claims, or any other financial obligation, nor delivery or immigration bonds on behalf of below named defendant.

This power of attorney is void if altered or erased. The obligation of the company shall not exceed the sum of  
**FIFTY THREE THOUSAND, (\$53,000.00) DOLLARS**

and provided this Power-of-Attorney is filed with the bond and retained as a part of the Court records. The said Attorney-in-Fact is hereby authorized to insert in this Power-of-Attorney the name of the person on whose behalf this bond was given.  
IN WITNESS WHEREOF, ACCREDITED SURETY AND CASUALTY CO., INC., has caused these presents to be signed by its duly authorized officer, proper for the purpose and its corporate seal to be hereunto affixed this 15 day of Sept, Year 2003

Bond Amount 30,000.00 Appearance Date Nov 21 03  
Defendant Michael Andrew Dukes  
Court MS City Conway State SC  
Offense Wrecking Crew & Poss w/out Permission  
Executing Agent JMK

ACCREDITED SURETY AND CASUALTY CO., INC.



*Deborah Jallad*

DEBORAH JALLAD  
PRESIDENT

ASC 312 (06/01)