

State of South Carolina  
IN THE COURT OF APPEALS  
Appeal from LEE County  
Hon Fennell Cothran Jr  
2016 - CP - 31 - 0115

RECEIVED  
OCT 23 2017  
SC Court of Appeals

Bruce B Thomas  
Appellant  
vs.

Original Brief

State of South Carolina  
Respondent

October 19 2017

Bruce B. Thomas, Pro-SE  
Broad River Court Inst  
4460 Broad River Rd  
Columbia, S.C. 29210

# Table of Contents

Table of Contents	- Page 1
Table of Authorities	Page 2
Statement of the Case	Page 3/4
Issue Presented	Page 5
Argument	Page 6-9
Conclusion	Page 9

# Table of Authorities

State v. Thomson	534 S.E.2d 708	Page 6, 7
Agrie Chem. Co. v. Thomas	34 S.E.2d 592	Page 6
State v. Grim	533 S.E.2d 329	Page 7
State v. Invesdale	296 S.E.2d 528	Page 7
U.S. v. Cox	923 F.2d at 524	Page 7
Hook v. State	577 S.E.2d 211	Page 8
State v. Ritard	638 S.E.2d 72	Page 8
State v. O'Leary	393 S.E.2d 186	Page 8
State v. Peppers	552 S.E.2d 288	Page 9
State v. Rice	737 S.E.2d 485	Page 9

## Statement of The Case

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of the Lee County Clerk of Court. Applicant was indicted at the February 2007 Term of the Lee County Grand Jury, for, Murder, Assault and Battery with the intent to kill and possession of a firearm during a crime of violence. On February 15, 2007 Applicant pled guilty as indicted before Honorable John C. Few Judge. Judge Few sentenced Applicant to life imprisonment for Murder, twenty years for A.B.W.D.K. No appeal was filed. On January 11, 2008 Applicant filed an Application for Post Conviction Relief. The State filed its return on May 20, 2008. On April 28, 2010, an evidentiary hearing was held at the Sumter County Courthouse, before the Honorable W. Jeffrey Young. On September 8, 2010 Judge Young issued an Order of Dismissal. Applicant filed a timely Notice of Appeal and a Petition for Writ of Certiorari was filed by the Office of Appellate Defense. On April 6, 2012 the South Carolina Supreme Court denied the petition. Applicant filed a petition for writ of Habeas Corpus in Federal District

Court on February 24, 2012, On January 4, 2013 the Honorable Bristow Marchant, issued a Report and Recommendation recommending that the Petition be dismissed and that the States Motion for Summary Judgment be granted. On March 5, 2013 Petitioner filed timely Objections to the R & R. Petitioner was denied by Hon. R. Bryan Howell U.S. Dist. Judge on April 11, 2013. Petitioner appealed to U.S. Court of Appeals for the Fourth Circuit which was dismissed on September 24, 2013. On April 22, 2015 Applicant filed in the Lee County Circuit Court the present Petition for Habeas Corpus. On May 23, 2017 by order this Petition for writ of Habeas Corpus was dismissed (copy enclosed). On June 8, 2017 Applicant filed with the Court of Common Pleas Lee County a motion to reconsider Order of Dismissal Pursuant to Rule 59(e), the Respondent made their Return on July 12, 2017. The Hon Judge Cochran denied the Motion dated August 1, 2017, received by Applicant on September 25, 2017. This Appeal follows:

## Issue Presented

Did The Court err when it failed to rule on Appellant's claim that the Court lacked Subject Matter Jurisdiction to Accept his plea?

Did the Court err when it failed to rule on Appellant's claim that the Court lack subject matter jurisdiction to accept his plea?

Appellant in his motion to reconsider motion to dismiss at number 6, pages 2 and 3, states "The Court has overlooked this fact as presented in the petition for writ of Habeas Corpus, when the petitioner denied the element of Malice during the plea colloquy that he acted with Malice and the State put forth no evidence in support of Malice, petitioner has asserted his legal innocence by denying he acted with Malice". Once petitioner made this statement to the plea court. The Court was without jurisdiction to accept a plea from petitioner. State v. Thomson 534 S.E.2d 708.

Subject Matter Jurisdiction of a Court derives from either the Constitution or the Law of the State, and it cannot be conferred by Consent, American Agric. Chem. Co. v. Thomas 34 S.C. 2d 592. Lack of Subject Matter cannot be waived, therefore, a party may object to the Court's lack

of Subject Matter Jurisdiction at any time. State v. Grims 533 S.E.2d 329. The State in their return to Petitioner's Motion to Reconsider failed to address this properly raised claim, even though as an attachment to their return they included a copy of Petitioner's Motion to Reconsider.

Petitioner, in his Memorandum in Support of State Habeas Corpus Pages 11-15 raises the claim that the Court was without authority/power to accept a Conditional. This plea being made conditional by the fact that Petitioner denied the element of Malice. State v. Truesdale 296 S.E.2d 528. SEE U.S. v. COX 923 F.2d at 524 "I understand there has been a denial of charges brought against him and the essential elements therein, I cannot accept the guilty plea at this time." MALICE IS AN ESSENTIAL ELEMENT OF MURDER. MALICE IS A ELEMENT THAT MUST BE PROVEN, RATHER THAN A MERE SENTENCING FACTOR. THE COURT MUST FIND THAT THE FACTS PRESENTED BY THE STATE, AND REFLECTED IN THE DEFENDANT'S OWN STATEMENT SUPPORT THE PLEA. State v. THOMPSON 534 S.E.2d 708 "A PLEA OF GUILTY AND THE ENSUING CONVICTION COMPREHEND ALL OF THE FACTUAL AND LEGAL ELEMENTS NECESSARY TO SUSTAIN A BINDING FINAL JUDGEMENT OF

of guilty AND A LAWFUL SENTENCE. SEE HOOKS  
V. STATE 577 S.E.2D 211 (Absence of Element) AND  
STATE V. RITARD 638 S.E.2D 72 (Factual Basis).

Nowhere in the Plea Hearing does the State  
admit or produce any evidence of Malice in fact  
they are silent during the petitioner's denial.  
The Court permitted the petitioner to condition  
his plea when he allowed and accepted the plea  
of guilty to murder, while denying the element  
of Malice. Malice is an element of Murder that  
must be proven, without Malice there is no Murder.

Guilty Pleas are unconditional, and if an accused  
attempts to attach any condition or qualification  
to a guilty plea, then the trial court should direct  
a plea of NOT guilty. STATE V. O'LEARY 393 S.E.2D  
186.

Clearly this is a Jurisdictional question, which  
as a matter of law, can be raised at any  
time. The Court was without, Authority, Power, Jurisdic-  
tion to accept a Conditional Plea. Petitioner has  
raised this claim in his Motion to Reconsider, Dismiss-  
all of his state habeas corpus, his state habeas corpus  
and his PCR Application; however, this claim has been  
misstated, avoided, overlooked, but never ruled upon.

By every Tenet of the Laws of this State  
Petitioner is serving an illegal sentence. This Court  
MUST Step in and Correct the errors be Committed  
by the Lower Court.

SEE State v. Peppers, 552 S.E.2d 288, State v. Rice  
737 S.E.2d 485 " IF the trial Court Accepts a  
Conditional guilty Plea, then the Plea will be VACATED  
ON APPEAL".

### CONCLUSION

A NEW TRIAL is the only fair remedy.

Oct. 21<sup>st</sup>, 2017

Bruce B. Thomas

State of South Carolina  
In The Court of Appeals  
Appeal from Lee County  
Hon. Farrell Cothran Jr.  
2016-CP-31-0115

RECEIVED

OCT 23 2017

SC Court of Appeals

Thomas

Appellant

v.

State

Respondent

CERTIFICATE OF SERVICE

Appellant, Bruce B. Thomas, declares under the penalty of perjury that he mailed a copy of his Original Brief and Explanation to the parties listed below. By placing them in the U.S. Mail, clearly addressed.

Clerk, S.C. Court of Appeals  
P.O. Box 11629  
Columbia, S.C. 29211

Bruce B. Thomas  
Broad River Court, East  
4460 Broad River Rd  
Columbia, S.C. 29210

Ms. Julie A. Coleman  
Asst. Attorney General  
P.O. Box 11549  
Columbia, S.C. 29211

Dated: Oct. 19 2017  
cc: file

RECEIVED

OCT 23 2017

SC Court of Appeals

Ms. Jenny A. Kitchings  
Clerk, S.C. Court of Appeals  
1220 Senate St  
Columbia, S.C. 29201

Oct 19 2017

Appellate Case No. 2017-002007

Dear Ms. Kitchings;

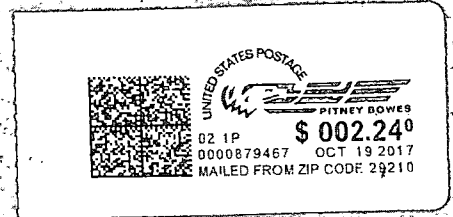
Per your communication please be advised of the following: I am an indigent incarcerated inmate in the S.C. Dept. of Corrections. who is challenging his conviction and sentence pro-se. I have been granted leave to proceed in forma pauperis by the lower court on this matter.

Enclosed is a written explanation as required. Also enclosed is a certificate of service providing proof that the clerk of the trial court was served as required.

Copies of the court's order of dismissal to the petition for writ of Habeas Corpus and Motion to Reconsider are enclosed as well.

Thank You  
Bruce B. Thomas

Bruce B. Thomas 320186  
BRCI Mur. 148  
4460 Broad River Rd.  
Columbia, S.C. 29210



**RECEIVED**  
OCT 19 2017  
BRCI  
MAILROOM

**RECEIVED**  
OCT 23 2017  
SC Court of Appeals

Clerk, S.C. Court of Appeal  
1220 Senate St.  
Columbia, S.C. 29201

Legal