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BAMBERG COUNTY
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JAMES B. HIERS
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SC Court of Appeals

STATE OF SOUTH CAROLINA	IN THE GENERAL SESSIONS COURT
COUNTY OF BAMBERG	SECOND JUDICIAL CIRCUIT
STATE OF SOUTH CAROLINA v. JOHNNIE L. JONES, Defendant.	**ORDER DENYING MOTION FOR NEW TRIAL AND PETITION FOR WRIT OF MANDAMUS** 2007-GS-05-0168 and 2007-GS-05-0169

This matter came before the Court for hearing on Defendant's motion captioned "Motion for After-Newly [*sic*] Discovered Evidence and Motion to Expand Record" filed on April 26, 2016, and Defendant's subsequent "Petition for Writ of Mandamus" filed May 11, 2017. A hearing on the motions was conducted at the Barnwell County courthouse on July 25, 2017. The State was represented at the hearing by Deputy Solicitor David W. Miller. The Defendant was present for the hearing and appeared *Pro Se*. After hearing from the parties, I hereby find and rule that the Defendant's Motion and Petition for Writ of Mandamus should be dismissed for the reasons outlined below.

PROCEDURAL HISTORY

The Defendant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Bamberg County Clerk of Court. The Defendant was indicted during the June 2007 term of the Bamberg County Grand Jury for assault and battery with intent to kill (2007-GS-05-0168) and attempted kidnapping (2007-GS-05-0169). He was represented by Dan Luginbill, Esquire. Defendant proceeded to a jury trial and was convicted of attempted kidnapping and assault and battery of a high and aggravated nature, a lesser included offense of assault and battery with intent to kill. On April 19, 2010, I sentenced the Defendant to a period of eighteen years confinement attempted kidnapping and ten years for assault and battery of a high and aggravated nature, with the sentences to be served concurrently.

The Defendant subsequently filed a Notice of Appeal and an appeal was perfected. On January 25, 2012, the South Carolina Court of Appeals affirmed the sentences and convictions and dismissed the Appeal. State v. Jones, (Op. Np. 2012-UP-034). Thereafter,

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on April 30, 2012, the Defendant filed a *Pro Se* Petition for Post-Conviction Relief. Counsel was appointed to represent the Defendant and the matter proceeded to hearing ~~on~~ before the Honorable R. Ferrell Cothran. Following the hearing, Judge Cothran dismissed the Petition by order dated August 19, 2013.

The Defendant subsequently filed this motion captioned "Motion for After-Newly [*sic*] Discovered Evidence and Motion to Expand Record" and, subsequent to that filing, the "Petition for Writ of Mandamus".

DEFENDANT'S ALLEGATIONS

The Defendant alleges in his motion that he is being held unlawfully on three grounds. First, he claims the Bamberg County Grand Jury and the General Sessions Court were convened unlawfully, in contravention of S.C. Code §14-5-630, which purports to establish, by statute, the terms of General Sessions and Common Pleas court in the Second Judicial Circuit. Defendant claims that because he was not tried during the week beginning the third Monday in February or the second Monday in September, the Grand Jury and his trial Court were unlawfully convened and lacked jurisdiction to adjudicate his case. S.C. Code Ann. § 14-5-630(2).

Next, the Defendant alleges the Circuit Court lacked jurisdiction to conduct a trial on the charge of "attempted kidnapping" because the legislature did not enact a statute outlawing attempted kidnapping and there is no provision within the kidnapping statute (S.C. Code §16-3-910) defining attempted kidnapping.

Finally, the Defendant alleges the Solicitor withheld certain exculpatory information in violation of Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963).

DISCUSSION

I. WERE THE 2007 GRAND JURY AND 2010 GENERAL SESSIONS TERMS OF COURT LAWFULLY CONVENED?

Defendant claims the June 2007 Grand Jury and the April 2010 General Sessions terms were convened unlawfully and therefore had no jurisdiction to consider his case. While Defendant is correct that S.C. Code §14-5-630 provides for the scheduling of terms of General Sessions and Common Pleas courts in the Second Judicial Circuit, the statute is in direct contravention to the subsequent enactment of the South Carolina Constitution, which vests exclusive control of the Courts of this State in the Supreme Court of South Carolina. The Circuit Court is part of the unified judicial system as set forth in Article V, Section 1, of the Constitution. This constitutional provision states, "The judicial power shall be vested in a unified judicial system, which shall include a Supreme Court, a Circuit Court, and such other courts of uniform jurisdiction as may be provided for by general law."

Article V, Section 4 of the South Carolina Constitution provides, in relevant part,

> The Chief Justice of the Supreme Court shall be the administrative head of the unified judicial system... ***The Chief Justice shall set the terms of any court and shall have the power to assign any judge to sit in any court within the unified judicial system.*** Provided, each county shall be entitled to four weeks of court each year and such terms therefor shall be provided for by the General Assembly. Provided, further, that the Chief Justice shall set a term of at least one week in any court of original jurisdiction in any county within sixty days after receipt by him of a resolution of the county bar requesting it. The Supreme Court shall make rules governing the administration of all the courts of the State... [emphasis added] S.C. CONST Art. V, § 4 (1985).

The terms of General Sessions Court are constitutionally set by the Chief Justice of the Supreme Court and notice of the terms of Court are thereafter published by South Carolina Court Administration. *See* State ex rel. Riley v. Martin, 274 S.C. 106, 262 S.E.2d 404 (1980) (The statutory vesting of the power to set terms [in the legislature] of the Court of Appeals, therefore, infringes upon the constitutional authority of the Chief Justice to set the terms of any court within the unified system, and violates the provisions of Article 5, Section 4, of the Constitution.)

Accordingly, the June 2007 Grand Jury that considered the Defendant's indictments and the subsequent April 2010 General Sessions term when the Defendant was tried were lawfully convened pursuant to the authority vested in the Chief Justice of the South Carolina by the South Carolina Constitution.

II. DID THE COURT HAVE JURISDICTION TO TRY THE DEFENDANT FOR THE OFFENSE OF ATTEMPTED KIDNAPPING?

The Defendant has alleged the Circuit Court had no jurisdiction to try him for the offense of attempted kidnapping. S.C. Code §16-1-80 provides, "A person who commits the common law offense of attempt, upon conviction, must be punished as for the principal offense." The common law offense of attempt requires (1) an overt act, (2) by the defendant, (3) to commit a specified felony. The Defendant is correct that the legislature has made no statutory provision for attempted kidnapping, however that simply means an attempt to commit a kidnapping is punished under the common law as though the kidnapping was completed pursuant to S.C. Code §16-1-80. *Cf.* S.C. Code §16-3-0029 (attempted murder)(A person who violates this section is guilty of a felony, and, upon conviction, must be imprisoned for not more than thirty years) and S.C. Code §16-3-10 (murder) (murder must be punished by death, or by a mandatory minimum term of imprisonment for thirty years to life), S.C. Code §16-11-330(B) (attempted armed robbery)(A person who commits attempted robbery while armed...is guilty of a felony and, upon conviction, must be imprisoned not more than twenty years) and S.C. Code §16-11-330(A)(armed robbery)(A person who commits robbery while armed... is guilty of a felony and, upon conviction, must be imprisoned for a mandatory minimum term of not less than ten years or more than thirty years, no part of which may be suspended or probation granted).

SUFFICIENCY OF THE INDICTMENT

The Defendant alleges the trial court lacked subject matter jurisdiction over the charge of attempted kidnapping. At the hearing and in his motion, the Defendant appears to claim the court lacked subject matter jurisdiction because the indictment in his case was defective, arguing there is no language in S.C. Code 16-3-910 "which implies it [includes] (*sic*) a provision for attempted kidnapping".

The United States Supreme Court, in United States v. Cotton, 535 U.S. 625, 122 S.Ct. 1781, 152 L.Ed.2d 860 (2002), held that a defective indictment does not deprive a court of jurisdiction. The South Carolina Supreme Court has held that subject matter jurisdiction is the power of a court to hear and determine cases of the general class to which the proceedings in question belong, Pierce v. State, 338 S.C. 139, 526 S.E.2d 222 (2000); and that issues related to subject matter jurisdiction may be raised at any time. Brown v. State, 343 S.C. 342, 540 S.E.2d 846 (2001). In State v. Munn, 292 S.C. 497, 357 S.E.2d 461 (1987) our Supreme Court concluded that, subject to certain minor exceptions, the trial court lacks subject matter jurisdiction to convict a defendant for an offense when there is no indictment charging him with that offense when the jury was sworn. Thereafter, in State

v. Gentry, the South Carolina Supreme Court clarified "the confusion created by Munn" by adopting the holdings of the United States Supreme Court in Cotton and the Missouri Supreme Court in State v. Parkhurst, 845 S.W.2d 31 (Mo.1992), finding subject matter jurisdiction of the circuit court and the sufficiency of the indictment are two distinct concepts and the blending of these concepts serves only to confuse the issue. Circuit courts obviously have subject matter jurisdiction to try criminal matters. State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005)

The indictment for attempted kidnapping in this matter alleges: "That JOHNNIE LEE JONES did in Bamberg County on or about January 9, 2007 unlawfully ***attempt*** to seize, confine, inveigle, decoy, kidnap, abduct or carry away the victim Donald Hiers without authority of law, all in violation of §16-3-910 of the *Code of Laws of South Carolina*, (1976), as amended." (emphasis added) As stated by our Supreme Court in State v. Faile, 43 S.C. 52, 59–60, 20 S.E. 798, 801 (1895), *overruled on other grounds by* State v. Torrence, 305 S.C. 45, 406 S.E.2d 315 (1991) (citations omitted):

> The indictment is the charge of the state against the defendant, the pleading by which he is informed of the fact, and the nature and scope of the accusation. When that indictment is presented, that accusation made, that pleading filed, the accused has two courses of procedure open to him. He may question the propriety of the accusation, the manner in which it has been presented, the source from which it proceeds, and have these matters promptly and properly determined; or, waiving them, he may put in issue the truth of the accusation, and demand the judgment of his peers on the merits of the charge. If he omits the former, and chooses the latter, he ought not, when defeated on the latter,—when found guilty of the crime charged,—to be permitted to go back to the former, and inquire as to the manner and means by which the charge was presented.

The indictment is a notice document. A challenge to the indictment on the ground of insufficiency must be made before the jury is sworn as provided by S.C. Code §17–19–90. If the objection is timely made, the circuit court should judge the sufficiency of the indictment by determining whether (1) the offense is stated with sufficient certainty and particularity to enable the court to know what judgment to pronounce, and the defendant to know what he is called upon to answer and whether he may plead an acquittal or conviction thereon; and (2) whether it apprises the defendant of the elements of the offense that is intended to be charged. *State v. Wilkes,* 353 S.C. 462, 578 S.E.2d 717 (2003); *see* *also* S.C. Code § 17–19–20 (2003) (sufficiency of indictment). In determining whether an indictment meets the sufficiency standard, the court must look at the indictment with a practical eye in view of all the surrounding circumstances. *State v. Adams,* 277 S.C. 115, 283 S.E.2d 582 (1981).

It is clear from the indictment that the Defendant was accused of attempting to kidnap Donald Hiers. To the extent the indictment fails to cite to the common law of attempts or S.C. Code §16-1-80, and instead refers to the statutory offense of kidnapping, any alleged deficiency was waived when not brought to the attention of the Court prior to the swearing of the jury. Applying Faile to the facts here, the Defendant chose to "put in issue the truth of the accusation, and demand the judgment of his peers on the merits of the charge." Having made that choice, he is not now "permitted to go back to the former, and inquire as to the manner and means by which the charge was presented".

III. ALLEGED MISCONDUCT BY THE SOLICITOR

In his Motion, the Defendant alleges the Solicitor withheld certain exculpatory information in violation of Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963). When offered an opportunity to explain and argue this allegation at the hearing, the Defendant withdrew this claim for relief.

IV. OTHER ALLEGATIONS OR CLAIMS NOT RAISED

As to any allegations that were raised in the motion or at the hearing in this matter and specifically not addressed in this Order, this Court finds the Defendant failed to present any testimony, argument, or evidence at the hearing regarding such allegations. Accordingly, this Court finds the Defendant has abandoned any such allegations.

V. ADDITIONAL BASIS OF DENIAL OF RELIEF

In addition to the prior discussion of the Defendant's allegations herein, the Defendant filed an application for post-conviction relief that was dismissed on August 19, 2013. While this matter was not captioned as an application for post-conviction relief, the claims raised in the "motion" are collateral challenges to his convictions and sentences. Successive applications for post-conviction relief are disfavored. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980). S.C. Code Ann. § 17-27-90 (1976) states:

> All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental or amended application. Any ground

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> finally adjudicated or not so raised, or knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence, or in any other proceeding the applicant has taken to secure relief, may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which, for sufficient reason, was not asserted or was inadequately raised in the original, supplemental or amended application.

Under this statute, successive post-conviction relief applications are forbidden unless an applicant can point to a "sufficient reason" why new grounds for relief were not raised or were not properly raised in previous applications. Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991). Any new ground raised in a subsequent application is limited to those grounds that "could not have been raised . . . in the previous application." Id., 305 S.C. at 450, 409 S.E.2d at 394. Because the Defendant could have raised these allegations in his previous application, the Defendant may not raise these grounds in successive applications. Id. The Defendant has not met his burden of showing that the allegations could not have been raised previously. Land, 274 S.C. 243, 262 S.E.2d 735 (1980).

The Defendant could have raised these grounds for relief in his prior post-conviction relief application. He has failed to present any reasons why he could not have raised the current allegations in his previous post-conviction relief applications. Accordingly, summary dismissal of this motion is appropriate because it is successive.

VI. DEFENDANT'S PETITION FOR WRIT OF MANDAMUS

The Defendant filed a Petition for Writ of Mandamus on May 11, 2017. In his Petition, Defendant requested that this motion be scheduled for hearing. Because the motion has now been heard, the Petition for Writ of Mandamus is moot. Therefore, the Petition is dismissed.

CONCLUSION

Based on the foregoing, the Defendant's motion for new trial should be, and hereby is, DENIED.

IT IS SO ORDERED.

Doyet A. Early, III
Resident Judge,
Second Judicial Circuit

August 24, 2017
Aiken, South Carolina

LEGAL MAIL

State of South Carolina
In The Court of Appeals

Appeal From Bamberg County
Doyet A. Early III, Circuit Court Judge

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SC Court of Appeals

Appellate Case No: 2017-002619

The State of South Carolina, Respondant,

Vs.

Johnnie Jones, Appellant.

Proof of Service

I Certify That on the date stated below, I have served a Copy of The Order denying motion for New trial and petition for Writ of mandamus on The Parties listed below by depositing a Copy of The Same in The United States Mail, Postage Prepaid....

January 15, 2018:

Respectfully Submitted,

Johnnie Jones

Johnnie Jones, SCDC# 340271

(Parties of Record):

South Carolina Court of Appeal
Ms. Jenny Abbott Kitchings, Clerk
Post-office Box 11629
Columbia, South Carolina 29211

South Carolina Attorney Generals office
Mr. Alan Wilson, Attorney General
Post-office Box 11549
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LEGAL MAIL

Johnnie lee Jones, SCDC. #340271
Allendale Correction Institution
Post-office Box 1151 F-3-B-23
Fairfax, South Carolina 29827

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SC Court of Appeals

January 15, 2018

South Carolina Court of Appeals
Ms. Jenny Abbott Kitchings, Clerk.
Post-office Box 11629
Columbia, South Carolina 29211

RE:, Jones vs. State: Reply to deficiencies:
Appellate Case No: 2017-002619

Dear Honorable Clerk,

Please find enclosed for filing in your Honorable Courts a Copy of The original Court Order denying motion for New trial and The petition for Writ of mandamus in The above referenced Case...

Appellant recieved a letter from This office with notification of deficiency or deficiencies on January 10, 2018 to be Corrected within (10) Ten days... This letter follows in support of Such with Proper Documents and Proof of Service So as to Comply to Appellate Court Rules...

Appellant would like to take a moment to Thank you and your office in advance for any or all assistance That may be Provided in Procuring The legal matter stated above...

Respectfully Submitted,

Johnnie Jones
Johnnie Jones, SCDC #340271

CC: (Parties of record):
South Carolina Court of Appeal:
Ms. Jenny Abbott Kitchings, Clerk

South Carolina Attorney General office
Mr. Alan Wilson. Attorney General:

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