

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM DORCHESTER COUNTY
Court of General Sessions
Edgar W. Dickson, Circuit Judge

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SC Court of Appeals

Case No: 2007-GS-18-0261

The State of South Carolina Respondent,
Vs.
Phillip Turner, #288680 Appellant,

Initial Brief of Appellant

Feb. 05, 2018
(Of the Counsel of Record)
Mr. Blair Tennings
Dorchester County Solicitor
Post Office Box _____
St. George, South Carolina 29477

Phillip Turner
Phillip Turner, SDC #288680
Allendale Correctional Inst.
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Did the lower Court error in denying the Motion for Newly Discovered Evidence under Rule 29(b) of the South Carolina Rules for Criminal Procedures, (SCRCrimP) where opposing parties failed to produce rebuttal evidence of prosecutorial misconduct (fraud) under South Carolina Appellate Court Rules, (SCA-CR), Rule 407 "Professional Conduct," Rule 3.8, "Special Responsibilities of a Prosecutor,"?? ... (4)

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Cases

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State v. Wheeler	259 S.C. 571, 193 S.E.2d 515 (1972) ... (5)
State v. Williams	1822-WL-690, 18 S.C. 301 (1822) ... (6)
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Statutes and Rules

Fourteenth United States Constitution Amendment	(1, 7)
Rules of Professional Conduct, Rule 3.8, SCACR 407	(i, 1)
South Carolina Rules of Crim. Procedures: Rule 77-(E)	(b)
South Carolina Appellate Court Rules, Rule 501, subsection Rule 2-(A)	(7)
S.C. Code Ann. 14-5-140	(7)
S.C. Code Ann. 14-5-410	(5)
S.C. Code Ann. 14-5-620	(i, 1, 3, 5, 7)
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S.C. Code Ann. 14-9-210	(ii, 3, 4, 5)
S.C. Code Ann. 14-17-540	(2, 6)

Statement of Issues on Appeal

(1) Did the Court error in denying the petitioner's Motion for Newly Discovered Evidence, where opposing parties (Attorney / Solicitor) and/or Dorchester Clerk's Office failed to produce supportive evidence to rebut the claim of fraud against the State, where the solicitor did commit (sic) a "Procedural Error" and "Contempt of Court of the proceedings" by unlawfully and/or illegally impaneling its Grand Jury outside of the of the statute S.C. Code Ann. 14-5-620 and without a signed order by the Supreme Court Justice or a presiding Associate Justice for a special term of court pursuant to S.C. Code Ann. 14-9-910.

(2) Did the Court error in denying of petitions Motion for Newly Discovered Evidence, where in recognizing the jurisdictional requirements set forth in S.C. Code Ann. 14-9-210 and 14-5-620, Courts would back the required jurisdiction to process a fraudulent indictment through a trial proceeding

under an unlawful and illegal impanelment of outside the mandatory provisions set forth and by statutory law and/or without an Affirmed and Approved signed order from the South Carolina Supreme Court Chief Justice or the presiding Associate Justice

"Statement of Case"

On Dec. 06, 2015, I, Phillip Turner, acting ProSe Attorney [herein after], petitioner, filed a petition for a Motion for Newly Discovered Evidence in the Dorchester County Clerk's Office, alleging trial court's without jurisdiction, where the solicitor's office committed fraud (sic) a "procedural error" and "contempt of the proceedings" by unlawfully and illegally impaneling of it's Grand Jury outside of South Carolina Code of laws and without South Carolina Supreme Court Chief Justice affirmed and/or approval of order to due such action...

On Dec. 06, 2016, Petitioner appeared before the Honorable Judge Edgar W. Dickson with an oral argument, where such petition/motion was denied... A written notice of entry of the order was received by mail on Dec. 14, 2016

Petitioner filed a timely petition/motion for reconsideration on the application and received a final order of the denial on Dec. 28, 2016 by the Honorable Edgar W. Dickson...

Petitioner filed a timely "Notice of Appeal" on Jan. 8, 2017 This [Initial] brief of Appellant, facts, and argument are as followed:

"Facts"

Petitioner argues court error violated his Fourteenth Amendment of Due Process rights by denying his Motion for Newly Discovered Evidence, where during the hearing proceedings, opposing parties (attorney / solicitor) and/or Dorchester County Clerk's Office failed to present any supportive evidence that was a substantial rebuttal of petitioner's claim of court's lack of jurisdiction to process a fraudulent indictment under a unlawful and illegal impaneling (ment) and for a signed order to do such action by the Supreme Court Chief Justice to be without merit...

"Argument"

Petitioner humbly contends that the (attorney / solicitor) did commit a "procedural error" and "contempt of the proceedings" (fraud) by unlawfully and illegally impaneling its Grand Jury (as is on Exhibit A) on Mar. 8, 2007, also listing a Mar. 12, 2007 term and a Apr. 12, 2007 Court term... which is outside of the statute of S.C. Code Ann. § 14-5-620 and without a signed order for a special term of Court by the Supreme Court Chief Justice, pursuant to S.C. Code Ann. § 14-5-910, then willfully printed and published the false and misleading information in the indictment in order to keep secret and all the violations of statutory law...
Thereby violating the Rules of Professional Conduct Rule 3.8, SCACR 407...

LEGAL MAIL

In furtherance, the petitioner claims during the hearing procedure, the court erred in denying the motion where the opposing parties (attorney/solicitor) and/or the Dorchester County Clerk's Office failed to present any supportive evidence from the Court of general sessions journal; (see): S. C. Code Ann. § 14-17-540 [books, calendars and records to be kept by the Clerk], showing that the allegations of fraud claimed against the State to be without merit and failing to present a signed roster by the grand jury and/or the Foreman on the grand jury reports on the specific day of Mar. 12, 2007. (see the attached documents - Exhibit - A) - E In - Re: Signatures and reports of all the Dorchester County Grand Jury for the year of 2007].

Petitioner presented clear and convincing evidence beyond a reasonable doubt that did establish the General Assembly did not set forth a "Term of Court" in the S. C. Code Ann. § 14-5-620 for the week of March, "more specific" for the date of Mar. 12, 2007 as follows:

S. C. Code Ann. § 14-5-620(2) Dorchester County - The Court of General Sessions for Dorchester County shall be held at St. George on the third (3RD) Monday in ~~the~~ February, the second (2ND) Monday in April, the fourth (4TH) Monday in June and the second (2ND) Monday in November for one week each.

According to S.C. Code Ann. § 14-9-210, it requires a strict compliance with its provisions and mandates that a grand jury must be impaneled under the jurisdiction of the court of general sessions before Lawful return of a True Bill indictment can take place, in reviewing the court's ruling under State v. Henderson, 134 S.E. 304, 136 S.C. 363 (S.P. August 16, 1926)... The South Carolina Supreme Court briefly recanted the procedural history of Ex-Parte Lilly, 7 S.C. 372 (1876) W-5977, against the background of Henderson... The courts in Henderson case noted that Lilly's case, the South Carolina Supreme Court had apparently already concluded the Term of Court to be set up under Statutory Law... Thus, just like Lilly and Henderson, when analyzing the "Term of Court" in the case at hand, it is very similar of the ruling and fails to comply to the statute § 14-5-620 and § 14-9-210 as presented in the above argument, there/here, petitioner's indictment reads as follows:

At a Court of General Sessions, convened on Mar. 12, 2007 the grand jury of Dorchester County presented under oath:

Therefore, recognizing the Jurisdictional requirements set forth in S.C. Code Ann. § 14-9-210 and 14-5-620, mandating the only process allowed for the impaneling of a lawful Grand Jury and considering the

facts and evidence of issues presented above, it becomes apparent that the [Petitioner/Defendants] indictment was unlawfully convened outside of the jurisdiction of General Sessions Court and by a mode of procedure that the State had no lawful authority to adopt and/or without a signed order by the Supreme Court Chief Justice allowing such proceedings ... (see): State v. Edwards, 168 S.C. 318, 47 S.E. 394 (1904) ...

Here, since the court utilized an unlawful mock of procedure not allowed under Section: § 14-9-210, the State lacked the requisite jurisdiction for a Jury to complete and return a True-Billed indictment ... When a legislative enactment limits the manner in which the same things may be done. The enactment also evinces the intent that it shall not be done another way ...

Clearly as established above Section: § 14-9-210, is a S.C. jurisdictional statute and sets forth mandatory procedures to be utilized by the State for a lawful return of a true billed indictment ... A substantial body of South Carolina law holds that failure to comply with statutory law, jurisdiction in nature, deprives the court of subject matter jurisdiction ... (see): State v. Loftin, 275 S.E.2d 575 (S.C. 1981); Gray v. State, 276 S.C. 634, 281 S.E.2d 226 (S.C. 1981); and many more ...

Consequently, and in keeping with the mandatory provisions set in Section: §14-5-620 and 14-9-210, the State had no jurisdiction to issue the return of a true bill indictment except during a time when the general sessions court is lawfully convened to oversee the Grand Jury process... Any act of the courts that is taken outside of these statutory restrictions would clearly by necessity be Null and Void... Thereby, the courts lacked the jurisdiction and proper authority to present the [Defendant] to a trial proceeding... (see): State v. McClure, 277 S.C. 432, 289 S.E.2d 158 (1986); State v. Thunderburk, 259 S.C. 856, 191 S.E.2d 520 (1972); State v. Wheeler, 259 S.C. 571, 193 S.E.2d 515 (1972); and many more....

One additional piece of evidence very clearly settles the matter of the State's fraudulent action... The information contained in the indictment will establish that No Special Term for a general sessions court was convened on Mar. 12, 2007. The opposing parties (Attorney/Solicitor) and/or Dorchester County Clerk's Office has failed to submit any supportive documents of a signed court order for a special term of general sessions court and/or any specific reasoning of public interest that satisfies such special sessions of court under the provisions of S.C. Code Ann. § 14-5-410, or S.C. Code Ann. § 14-5-910, 920, 930, 940, 950... (see) State v. Gossett, 117 S.C. 76, 108 S.E. 290 (S.C. 1921)...

In furtherance, during the hearing proceedings and/or further notification & questioning in such departments as the opposing parties (Attorney Solicitor), Dorchester County Clerk's Office and/or the Clerk's Office of the S.C. Supreme Court Chief Justice has failed to produce any supportive documents that will establish a legally action of order to allow general sessions proceedings in a common pleas court and/or showing that a one day, "Special Term" of general sessions court, "More Specifically" Mar. 12, 2007 was affirmed / approved by the South Carolina Supreme Court Chief Justice and/or the presiding Associate Justice... (see) S.C. Code Ann. § 14-17-540 - (2) - [books, calendars, and records that is to be kept by the Clerk], (see) Tate v. State, 2009-WL-9529483; State v. Evans, 611 SE 2d 510, (S.C. 2005)...

South Carolina Rule 77 - (e) (SCRPC), [cancelling and/or ordering terms of court]. "Quotes": No term of a court shall be canceled, nor additional terms scheduled without the proper approval of the Chief Justice... When the local bar request that a week of General Sessions court not be held and/or vice versa. The Clerk shall immediately notify the administration of this State...

Thereby, statutes and rules of court presents the power to call for any special term of court of Common Pleas and/or General Sessions... which must be conferred on the Chief Justice of the Supreme Court or on the presiding Associate Justice before the County courts would have jurisdiction to let a Grand Jury be lawfully impaneled and have the return of a true-billed indictment take place... (See State v. Williams, 1822 WL:690, 13 S.C. 301...)

Here, in consideration of the evidence presented above, the attorneys/solicitors did commit a "procedural error and contempt of proceedings" when neglecting his lawful duty, pursuant S.C. Code Ann. § 14-5-140, "neglect of duty as to holding terms, disobeying orders of assignment and other violations of the proceedings." by allowing an illegal and unlawful impanelment of the Court's Grand Jury outside the statute: § 14-5-620 (1), without jurisdiction and/or authority for such proceedings to take place and then submitting the same fraudulent documents to the Clerk of Court requesting of such documents to be filed and processed for trial proceedings...

Furthermore, petitioner contends trial court violated his Fourteenth Constitutional Amendment to Due Process Clause by denying of the motion for newly discovered evidence... "Specifically," when reviewing of the evidence that was presented above, it should be noted that the code of judicial conduct, (see South Carolina Appellate Court Rules, Rule 501, Canon # 2-(A), "Quoting," The rule is a Judge shall respect and comply with the law and shall act at all times within a manner that promotes public confidence in the integrity and impartiality of the judiciary...

Conclusion

Based on the foregoing, the petitioner respectfully request that this Honorable Court find a conclusion of error in the trial courts ruling on the denial of the motion for newly discovered evidence and request this Court find merit in petitioners claim and grant the application to vacate the conviction and sentencing as a matter of law....

Feb. 05, 2018

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PROOF OF SERVICE OF NOTICE OF APPEAL

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM DORCHESTER COUNTY
COURT OF GENERAL SESSIONS
Edgar W. Dickson, Circuit Court Judge
Case No: 2007-GS-18-0261

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State of South Carolina Respondent,
V.
Phillip M. Turner, #288680 Appellant,

PROOF OF SERVICE

I certify that I, Phillip M. Turner, hereby have served the Initial Brief of Appellant on Ms. Jennifer Abbott-Kitchens, Clerk of Court, and Mr. Alan Wilson, Attorney General, in the above referenced case, by depositing one (1) true copy of each in the United States Mail, postage prepaid, addressed to:
South Carolina Court of Appeals, 1280 Senate Street, Post Office Box 11629, Columbia, South Carolina 29211-1629; South Carolina Attorney General's Office: 1000 Assembly Street, Post Office Box 11549, Columbia, South Carolina 29211-1549. Respondent on Feb. 05, 2018.

Feb. 05, 2018

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Re: Phillip Turner v. State of South Carolina
Case No: 2007-GS-18-0261
Appellate Case No: 2017-000061

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SC Court of Appeals

Mr. Wilson,

Please find enclosed for filing in your Honorable Court a copy of the original initial brief of Appellant and designation of matter with a subsequent Proof of Service on the applications.

Appellant filed with the South Carolina Court of Appeals a motion for extension of time in pursuant to SCR Crim P, Rule 240(b) on Jan 05, 2018 notifying the Attorney General's Office and other parties of this action, so as to have time to investigate and/or search for lost documents pertaining to the above captioned case. The alternative for filing a motion for an extension of time is to prepare a duplicate copy for the court of appeals.....

The Appellant is incarcerated at Allendale Correctional Institution. South Carolina Department of Corrections and is afforded a restricted amount of time to "Access to the Courts" of up to two (2) days a week per SDC Policy GA 01.03 Access to the Courts in the Law Library.

to prepare legal documents and legal materials to be in compliance with the South Carolina Appellate Court Rules (SCACR) and request.

Appellant would like to take the time to thank you and your office in advance for any and all assistance that you may provide the Appellant with helping to process this matter. In kindest regards, respond in kind.

Respectfully Submitted,
Phillip Turner
Phillip Turner
Appellant

cc: file
Ms. Jennifer Abbott-Kitchens
Clerk of Court: S.C. Court of
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January 29, 2018


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Re: Phillip Turner v. State of South Carolina
Appellate Case No: 2017-000061
Case No: 2007-GS-18-0261

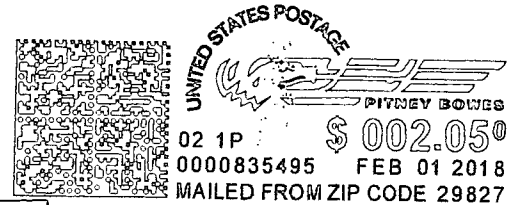
Ms. Jennifer Abbott-Kitchens,

Enclosed for filing with the above referenced captioned case, please find "Appellant's Initial Brief" and "Designation of Matter". The Respondent has been served copies as affirmed by the enclosed Proof of Service. Thank you for your assistance in this Matter.

Respectfully Submitted,

Phillip M. Turner

cc: file
Mr. Alan Wilson

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