

STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM AIKEN COUNTY  
Court of Common Pleas

The Honorable Robert E. Hood, Circuit Court Judge

Appellate Case No. 2016-002367

**RECEIVED**  
APR 30 2018  
SC Court of Appeals

Cedric L. Woods #265789,.....Appellant.

v.

State of South Carolina,.....Respondent.

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**INITIAL BRIEF OF THE RESPONDENT, STATE OF SOUTH CAROLINA**

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STATEMENT OF ISSUES ON APPEAL

- I. Mr. Woods' issue is not preserved for appellate review.
- II. Mr. Woods must challenge his underlying criminal conviction in a PCR. This appeal is from an action for declaratory judgment. He could not (and did not) challenge his criminal conviction below, and he should not be allowed to make this challenge now.
- III. Mr. Woods' indictments are valid.
- IV. Mr. Woods has not challenged the contents of the appealed order, so, under Rule 220(c), the State asks the court to affirm that ruling on any ground appearing in the Record on Appeal.

## STATEMENT OF THE CASE

Mr. Woods, under the authority of *State v. Thompson*, 415 S.C. 560, 785 S.E.2d 189 (2016), filed a declaratory judgment action on April 4, 2014. He asked the court to declare that his kidnapping conviction did not contain a criminal sexual offense or an attempted criminal sexual offense, and that the Sex Offender Registry Act<sup>1</sup> does not require him, upon his release from incarceration, to register as a sex offender because of his kidnapping and ABHAN convictions. For a time, his declaratory judgment action was somehow misconstrued as an application for post-conviction relief, but Judge Hood eventually held a hearing (on September 21, 2016) and decided the case under the authority of the Uniform Declaratory Judgment Act.<sup>2</sup> (Order of Judge Hood, p. 3). Judge Hood ruled (on October 14, 2016) that Mr. Woods kidnapping and ABHAN convictions included a criminal sexual offense or an attempted criminal sexual offense. (Order of Judge Hood, pp. 5-6). Judge Hood also ruled that the request to declare that Mr. Woods does not have to register upon his release from prison was not yet a justiciable controversy; so, he made no ruling on that issue.<sup>3</sup> (Order of Judge Hood, p. 6). On November 22, 2016, Mr. Woods filed a notice of appeal.

In his appeal, however, Mr. Woods does not challenge the lower court's determinations; instead, he challenges his underlying criminal conviction. (Appellant's Initial Brief, p. 2). Specifically, he asks the court to decide, whether "the Solicitor of the Second Judicial Circuit [in] Aiken County [,] South Carolina commit[ted] procedural error by unlawfully impaneling the county's Grand Jury outside the Statute of Law [sic] S.C. Code [sic] §14-5-630(1)?" This issue was not raised or ruled upon, in either the hearing or the order. (September 21, 2016 Transcript of

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<sup>1</sup> S.C. Code Ann. §§23-3-400 *et seq.*

<sup>2</sup> S.C. Code Ann. §§15-53-10 through -140.

<sup>3</sup> SCDC will not release Mr. Woods until 2024. (Order of Judge Hood, p. 6).

Record); (Petition for Declaratory Judgment (March 21, 2014); and (Order of Judge Hood).

Mr. Woods mentions an equal protection claim in the body of his brief, but not in his issue statement. Rule 208(b)(1)(B) (“Ordinarily, no point will be considered which is not set forth in the statement of the issue on appeal.”). Although Mr. Woods’s equal protection claim really is irrelevant to this action (because it is dependent upon the invalidity of the indictments), the State notes he has failed to allege, much less show, that he is treated differently from similarly situated individuals. *State v. Walker*, 422 S.C. 89, 92, 810 S.E.2d 38, 40 (2018) (“The initial inquiry in any equal protection analysis is whether the plaintiff made ‘a showing that similarly situated persons received disparate treatment.’”) (Citing among other cases *Grant v. S.C. Coastal Council*, 319 S.C. 348, 354, 461 S.E.2d 388, 391 (1995)). He also mentions “fraud” in the body of his brief rather than his issue statement. Rule 208(b)(1)(B) (“Ordinarily, no point will be considered which is not set forth in the statement of the issue on appeal.”). His fraud theory similarly depends on the invalidity of the indictments.

The argument in support of the single issue in his issue statement goes like this. The Grand Jury that issued indictments against him did not convene during the terms of the Aiken County General Sessions Court. Unless convened during a term of General Sessions, grand juries do not have authority to issue indictments. In addition, the date of the grand jury foreperson’s signature and the action of the grand jury (“True Bill” or “No Bill”) is before the date the grand jury convened. Mr. Woods then proceeds to argue that these defects mean the indictments are invalid, which in turn means that the Court of General Sessions did not have subject matter jurisdiction over his criminal case. The lack of subject matter jurisdiction renders his conviction and sentence void. The State will show that his argument is meritless.

## ARGUMENT

### I.       **The issue is not preserved for appellate review.**

“The general rule of issue preservation states that if an issue was not raised or ruled upon below, it will not be considered for the first time on appeal.” *State v. Passmore*, 363 S.C. 568, 583, 611 S.E.2d 273, 281 (2005). In the civil declaratory judgment action below, only two issues were raised during the hearing and ruled upon in the order. The first was, whether Mr. Woods’s kidnapping conviction contained a criminal sexual offense or attempted criminal offense. The second was, whether he would have to register upon his release from incarceration. Thus, the issue presented in this appeal, concerning the grand jury indictments in the underlying criminal conviction, is not preserved for review by this court. Because the issue presented is not preserved for review, this court should affirm the lower court.

### II.       **Mr. Woods must challenge his underlying criminal conviction in a PCR. This appeal is from an action for declaratory judgment. He could not (and did not) challenge his criminal conviction below, and he should not be allowed to make this challenge now.**

Challenges to the subject matter jurisdiction of the General Sessions court must occur in a post-conviction relief action. S.C. Code Ann. §17-27-20(A)(2). PCR takes the place of all other remedies, including actions for declaratory judgment. S.C. Code Ann. §17-27-20(B) (“Except as otherwise provided in this chapter, it comprehends and takes the place of all other common law, statutory or other remedies heretofore available for challenging the validity of the conviction or sentence. It shall be used exclusively in place of them.”); *see also Simpson v. State*, 329 S.C. 43, 46, 495 S.E.2d 429, 431 (1998). Mr. Woods is appealing from an action for declaratory judgment. He could not (and did not) make this jurisdictional challenge in his declaratory judgment action; he

certainly should not be allowed to make this challenge in his appeal.

The Court should affirm the ruling of the lower court.

### **III. Mr. Woods' indictments are valid.**

The case of *Brown v. State* disposes of Mr. Woods' argument. Just like Mr. Woods, the Petitioner in *Brown* claimed, "the trial court lacked subject matter jurisdiction because the indictments were true billed before the grand jury convened." *Brown v. State*, 316 S.C. 258, 259, 449 S.E.2d 494, 495 (1994). The argument in support of this contention is also the same:

Petitioner bases his argument on two portions of the indictments. On one page of each of the indictments, in the section designated as 'Action of the Grand Jury,' the words 'True Bill' are written, along with the date October 19, 1990, and the signature of the foreman of the grand jury. Another page of each of the indictments states that 'At a Court of General Sessions, convened on October 22, 1990, the Grand Jurors of Aiken County present upon their oath...' and then the crimes for which petitioner was charged are set forth.

*Id.*, 316 S.C. 258, 259-60, 449 S.E.2d 494, 495.

The Supreme Court disagreed with the Petitioner then, and this court should disagree with Mr. Woods now. County grand juries are empaneled "during the first term of the General Sessions of the calendar year." *Id.*, 316 S.C. 258, 260, 449 S.E.2d 494, 495. In each judicial circuit, the Chief Judge for Administrative Purposes schedules when grand juries will convene. *Id.* Chief Judges have been "encourage[d] to convene the grand jury when the court of general sessions is not in session." *Id.* (emphasis added). After deliberations, a grand jury reports its findings of "True Bill" or "No Bill," which "may be made on the same day as the day the grand jury makes its findings, or it may be made at some later time." *Id.* The fact that the grand jury took action on a date that was earlier than the date the jurors made their actual report to the Court of General Sessions is, in the Court's words, "perfectly normal." *Brown v. State*, 316 S.C. 258, 260, 449

S.E.2d 494, 495.

As already stated, Mr. Woods is making the same argument as the Petitioner in *Brown*. He claims grand juries must meet while a court of general sessions is in session. He also points out that the grand jury foreperson signed his or her name beside the words “True Bill” and a date of February 24, 2000 (2000-GS-02-494), which is four days prior to the date the grand jury convened. In addition, in his amended initial brief, Mr. Woods added a second indictment (2000-GS-02-535) containing a similar issue: the grand jury foreperson signed beside the words “True Bill” and a date (March 30) that is earlier than the date on which the grand jury convened (April 10). Because grand juries can meet outside of the terms of General Sessions, and because grand juries can report their decision on a date that is later than the date they took action, doing so cannot render criminal indictments, for those reasons alone, invalid. As the Supreme Court ruled in 1994, both practices are “perfectly normal.” *Id.* Consequently, Mr. Woods’ argument is specious.

Nevertheless, even if the court considers the date discrepancies odd, it should assume this is a clerical error. Absent evidence to the contrary, “the regularity of the proceedings of a court of general jurisdiction will be assumed.” *Pringle v. State*, 287 S.C. 409, 411, 339 S.E.2d 127, 128 (1986) (considering the validity of an indictment that does not have the signature of the grand jury foreperson). Mr. Woods has not offered any evidence, other than the discrepancy, to overcome the applicable assumption of regularity—and the discrepancy is not enough. “[W]hile it is preferable for the grand jury foreperson to sign the true bill, the foreman’s signature is not essential to the validity of the indictment [,] when the indictment is in writing and published by the clerk.” *Id.*, 287 S.C. 409, 410, 339 S.E.2d 127, 128. The indictment is in writing, and Mr. Woods has not offered any evidence that suggests the clerk did not publish it. Thus, in Mr. Woods’ case, the grand jury foreperson did not even have to sign the indictment. Consequently, the date discrepancy alone

cannot render the indictment defective. In addition, the indictment is also marked with the words “True Bill.” This obviates the concern raised in cases such as *State v. Grim*. *State v. Grim*, 341 S.C. 63, 533 S.E.2d 329 (2000) (The Court remanded a case for a hearing to determine whether the indictment was “true billed,” because the indictment was not marked with “true bill,” and there was no other evidence to indicate that the indictment was in fact “true billed”).

The indictments of Mr. Woods are valid. Without the existence of invalid indictments, his subject matter jurisdiction argument (which proceeds on that basis) is unsustainable; thus, the court should affirm the ruling of the lower court.

**IV. Mr. Woods has not challenged the contents of the appealed order, so, under Rule 220(c), the State asks the court to affirm that ruling on any ground appearing in the Record on Appeal.**

Mr. Woods has not challenged the lower court’s ruling in this appeal. We ask the court to affirm the ruling on any ground appearing in the Record on Appeal, under the authority of Rule 208(b)(2) and Rule 220(c), SCACR.

CONCLUSION

To recapitulate, (1) Mr. Woods did not preserve his issue for appellate review. (2) Mr. Woods’ must make a jurisdictional challenge to his conviction in a PCR; this is an appeal from a declaratory judgment action, which should preclude this argument on appeal (especially as he did not even make this argument in the court below). (3) Grand juries can convene outside of the terms of General Sessions. (4) A grand jury can report its decision on a date that is later than the date it took action. (5) The date discrepancies do not overcome the fact that, (a) the grand jury foreperson did not need to sign either indictment, and (b) written on both indictments are the words “True Bill.” (5) Mr. Woods has not challenged the contents of the appealed order, so, under Rule 220(c),

the State asks the court to affirm that ruling on any ground appearing in the Record on Appeal.

The Court should affirm the lower court.

Respectfully submitted,

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April 30, 2018

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**PROOF OF SERVICE**

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I certify that I served the Appellant with copies of the Respondent's Initial Brief and Designation of Matter via U.S. mail. The copies were sent to the following address:

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