THE 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

Cedric L. Woods, # 265789, Appellant,

v.

State of South Carolina, Respondent.

MOTION FOR SUMMARY JUDGMENT

This Petitioner, Cedric L. Woods, seeks a Rule 56 Motion for Summary Judgment due to the State's failure to respond as required by Rule 12(b). The State has been granted numerous expansions of time in which to respond and since it is now in default of the March 30, 2018 Order issued by this Court, Rule 55(a) and (b)(2) should be applicable, and this Petitioner therefore respectfully asks this Court to grant him relief by means of Summary Judgment and vacate his sentences and convictions.

This Petitioner asserts that the State cannot put forth any conceivable argument based in either law or fact, as required by Rule 12(b), to counter why he should not be granted relief. As such, this Court has the authority to do so if it is in agreement with this Petitioner.

As to preservation of these issues, there is no statue of limitations on fraud upon the court, Rule 60(b)(3) and Chewning v. Ford, 579 SE2d 605, (2003), and matters of jurisdiction may be raised at any time, St. v. McClure, 289 SE2d 158, (1982).

In § 14-5-630, the State Legislature set forth the dates in which each county in this State shall hold its Courts of General Sessions and Common Pleas. These two courts do not convene at the same time in the same county. This statue designates that the Court of Common Pleas for Aiken County be held on the

fourth Monday in February for a term of two weeks, and on the second Monday in April for a term of one week. In the year 2000, the February term for the Aiken County Court of Common Pleas started on Monday, February 28th, and the April term started on Monday, April 10th.

Coincidentally, the indictments complained of, and copies of which have already been submitted to this Court, show the grand jury's term as dated February 28, 2000, and April 10, 2000, which as stated above are dates designated by the State Legislature for the Aiken County Court of Common Pleas and not the Court of General Sessions which holds the jurisdiction of Aiken County grand juries.

Since grand juries are co-extensive with the Courts of General Sessions and not with the Court of Common Pleas which were to be convened at the dates printed on the challenged indictments, these grand juries were an "illegal body" and a nullity and void, as are any indictments they handed down, and as such, failed to give the proper notice required by due process of law; Article I, § 3 and §11.

This all elaborated in Evans v. St, 611 SE 2d 510 (2005). Citing St. v. Edwards, 47 SE 395, (1904) "[G]rand jury was an illegal body and thus murder indictment was a nullity and incurable."

Also cited, St. v. Rector, 155 SE 389, (1937), "[O]ne who demands and is refused the right to be tried for a crime charged against

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him only upon an indictment presented by a legal grand jury,... May therefore justly take the position that he has been deprived of life, liberty, or property without due process of law in violation of the State Constitution."

St. v. Means, 626 SE2d 348, (2006), futher strengthens this Petitioner's assertions. It held, "A defendant has a constitutional and statutory right to demand that a properly constituted grand jury consider his case and decide whether to issue a sufficient indictment. — In other words it is to prevent the abuse of government power."

McClure, supra, stated, "No indictment may be true billed when the circuit court lacks jurisdiction since the grand jury is co-extensive with criminal jurisdiction of the court it is impaneled and for which it is to make inquiry."

It would seem well accepted that the Courts of Common Pleas have no jurisdiction over criminal cases and since a grand jury is co-extensive only with a court with criminal jurisdiction or in other words, it is co-extensive only with the Courts of General Sessions and it could not have convened during the dates indicated on these indictments. Ergo, the grand jury that issued these challenged indictments was an illegal body without jurisdiction, and as such both the grand juries and these indictments were a nullity and void and jurisdictional claims may be raised at any time.

In addition to the above jurisdictional defects is the obvious facts that the dates of issue are four to ten days

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prior to the dates of the supposed terms of court shown on the faces of the indictments. The indictments for the February 28th term of court are true billed on February 24, 2000, four days too early and the indictments for the April 10th term are dated as true billed on March 30, 2000, ten days too early. These fatal flaws raise a serious issue of fraud upon the court, a violation of Rule 60(b)(3) of which there is no statue of limitations. See Chewning, Supra.

These flaws also make the indictments nullities, void and incurable. Indictments cannot legally be true billed four to ten days before the date the grand jury session. The State cannot provide any possible, rational, or credible explanition for the discrepancies in dates. Were it only one or even two days it might be explainable as a scrivener error, but four and ten days points toward fraud and that is something no court should take lightly. These indictments cannot hold up to scrutiny.

As to fault for these errors, this Petitioner asserts that not only was his trial counsel negligent for failing to challenge these incurable flaws, but the prosecutor and the trial court also bear the responsibility for the violation of his substantial due process rights. They are all officers of the court and are equally bound by ethics and canons of law to protect his rights. It is the trial judge's responsibility to oversee and insure a fair trial process. The Solicitor is in fact a "quasi-judicial official" and it is their job to see that the indictments are handed down by a legal grand jury

body, to see that justice is done, Not a conviction at any cost, and it is his trial counsel's duty to protect his client's rights. Scrutinizing all of the documents pertaining to the trial is the responsibility of all three of them and the indictments should be at the top of the list in importance and priority.

How could all three of them fail to take notice of the discrepancies of these dates on the faces of the indictments without suspicion? All of them are charged to protect his right to a fair trial and to protect the integrity of the trial process and our system of jurisprudence.

Since all three, the prosecutor, the trial judge and his trial counsel bear responsility for these errors, the Petitioner futher asserts that his complaint meets all four prongs of the Olano test. See U.S. v. Olano, 113 S Ct. 1770 (1993), and Rule 52 (b) - plain error.

First, there is "error;" second, it is "plain error;" third, it "effects substantial rights;" and fourth, the error[s] "effect the fairness, integrity, [and] public reputation of the judicial process."

In U.S. v. Hicks, 137 S Ct 2000, (2017), Justice Gorsuch, in delivering one of his first U.S. Supreme Court opinions paraphrased a remark from U.S. v. Sabillon-Umana, 772 F 3d 1328, (CA10 2014), stating, "[W]hat reasonable citizen wouldn't bear a rightly diminished view of the judicial process and its integrity if its courts refused to correct obvious errors of their own device...?"

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With all four prongs of the Olano test for plain error met, this is an additional reason for this Court to grant relief. This whole case reeks of fraud and abuse of goverment power. These fatal flaws are quite obvious.

Since all of these convictions were intertwined, the Petitioner asserts that they all should be vacated. The "cumulative error" doctrine, as recently mentioned in St. v. Thompson, 803 SE2d 44, (2017), as well as the Winship doctrine should apply hereas well. See Winship, 90 SCt 1068, (1970)

The Winship doctrine requires that all elements of a criminal Charge, Not just some of them, be proven beyond a reasonable doubt. The four weapons charges of which the Petitioner was acquitted were inextricably linked to both charges of "ARMED" robbery and burglary 1st. These convictions should not stand since the jury found him Not guilty of any of the four weapons charges which were essential elements of these two convictions. This offends the Winship doctrine.

According to Winship and its progeny, if a defendant is able to demonstrate that he was convicted without any one of the required elements essential to the crime charged being proven beyond a reasonable doubt, his conviction must be reversed. Here, the jury has demonstrated that by acquitting him of Not one or two of the weapons charges, but all four. Clearly the required and essential elements of a weapon were not proven by the Winship standard in either the armed robbery or burglary 1st convictions as both require a weapon. Neither conviction should stand. Neither are constitutionally sound.

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Sullivan v LA, 113 SCt 2078, (1993), held; "The prosecution bears the burden of proving all elements of the offense charged and must pursuade the fact-finder 'beyond a reasonable doubt' of the facts necessary to establish each of those elements. — It is self-evident, we think, that the Fifth Amendment requirement of proof beyond a reasonable doubt and the Sixth Amendment requirement of a jury verdict are interrelated. It would not satisfy the Sixth Amendment to have a jury determine that the defendant is 'PROBABLY' [italics] guilty, and leave it up to a judge to determine (as Winship requires) whether he is guilty beyond a reasonable doubt. In other words, the jury verdict required by the Sixth Amendment is a verdict of guilty beyond a reasonable doubt."

This quote seems rather apropos here. More or less, the jury left it up to the judge as to guilt beyond a reasonable doubt here. It is overtly obvious that the element of a weapon that is required to convict on these two charges was Not proven and our system of justice demands proof of facts necessary to prove each and every element of the crime charged beyond a reasonable doubt. This did Not happen here and since the weapons elements were Not proven, this issue can be addressed as a claim of actual innocence and a claim of miscarriage of justice as well, since by clearly established law as decided by the U.S. Supreme Court, he cannot be guilty of armed robbery or burglary 1st sans a conviction or guilty verdict on at least one of the weapons charges connected to these two convictions.

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In fact, because he was acquitted of all four weapons charges, if he is now granted a new trial, double jeopard would preclude his being indicted for either armed robbery or burglary 1st.

Also implicated by the fact he was convicted of these two charges without a conviction of the weapons charges inextricably intertwined, is that either the jury instructions were inadequate, the verdict form was defective, or that the jury failed to understand the instructions or the elements of the crimes charged and required to return a constitutionally adequate verdict of guilty on these two charges.

There is plenty of case law to support what a "reasonable jury" likely understood in relationship to jury instruction. The fact that the trial judge allowed these unconstitutional verdicts to stand as well as trial counsel's failure to challenge them by a post-trial motion to set them aside also bears scrutiny. Leaving this issue to be appealed without any post-trial motion to correct is clearly ineffective assistance of counsel.

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Conclusions

1. These indictments complained of, by clear and convincing evidence right on their face, show that they were issued without jurisdiction due to the fact that the Courts of General Sessions and Common Pleas do not meet during the same terms in the same counties and because the term of court that was published on all of the indictment's faces was for a term only for the Aiken County Court of Common Pleas as set forth by statue §14-5-630, and since grand juries are co-extensive only with the criminal jurisdiction of the court in which it is impaneled and to which it is to make inquiry, these indictments are therefore nullities, void, and failed to give the required notice demanded by due process and jurisdictional claims may be raised at any time.

2. These indictments were fraudulent as indicated on their faces by clear and convincing evidence, because the dates of "true bill" are four to ten days prior to the supposed terms of court published therein and are outside the jurisdiction of any court and again were nullities and could not have given the required notice, and jurisdictional claims may be raised at any time and there is no statue of limitations on fraud upon the court.

3. The above errors complained of meet all four prongs of the Olano test for "plain error" and therefore are consistant with this Courts authority to grant the Petitioner relief.

4. The doctrines of Winship and cumulitive error also apply here due to the fact conviction of a weapons charge was inextricably linked to both the robbery and burglary charges and the Petitioner was acquitted on all four of the weapons charges which implicates either defect in the jury instructions, the verdict form or that there was a "reasonably likelihood" that the jurors misunderstood the elements required to convict on these two charges and or applied the instructions unconstitutionally as indicated by a finding beyond a reasonable doubt that there were no weapons involved in

any of the charged offenses as would be required by Winship.

For the foregoing reasons and conclusions this Petitioner respectfully asks this Court to grant him relief by Summary Judgment and vacate all all of his sentences and convictions and any other relief it should see appropriate.

Respectfully submitted

Cedric L. Woods

Cedric L. Woods

pro se

Citings

S.C. Cases

Chewning v. Ford, 579 SE2d 605, (2003)

Evans v St, 611 SE2d 510, (2005)
St v Edwards, 47 SE 395, (1904)
St v McClure 289 SE 2d 158, (1982)
St v Means 626 SE2d 348, (2006)
St v Rector 155 SE 389, (1937)

Federal Cases

In re Winship 90 S.Ct 1068, (1970)
Sullivan v. LA 113 S Ct 2078, (1993)
U.S. v Hicks 137 S Ct 2000, (2017)
U.S. v OLano 113 S Ct 1770, (1993)
U.S. v Sabillion-Umana, 772 F3d 1328, (CA10 2014)

Court Rules

Rule 12 (b)
Rule 52 (b)
Rule 55 (a) and (b)(2)
Rule 56
Rule 60 (b)(3)

S.C. Statue

§ 14-5-630

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PROOF OF SERVICE

I certify that I have served a copy of my Motion for Summary Judgment on the State by delivering said copy to the mail room at Allendale Correctional Institute to sent to the Office of the Attorney General at PO Box 11549, Columbia, SC 29211-1549, on this the 23rd day of May, 2018.

May 23, 2018

Cedric L. Woods, #265789
ACI F3B-03
POBox 1151
Fairfax, SC 29827

V. Claire Allen, Deputy Clerk
S.C. Court of Appeals
POBox 11629
Columbia, SC 29211

Re: Cedric L. Woods v. State
Appellate Case No. 2016-002369

I am in receipt of your letter of May 18, and have on this day, sent a copy of my motion for summary judgment and a proof of service to the A.G.'s office, as instructed. Your letter stated that a copy of my motion was attached with your letter, but it did not arrive with it.

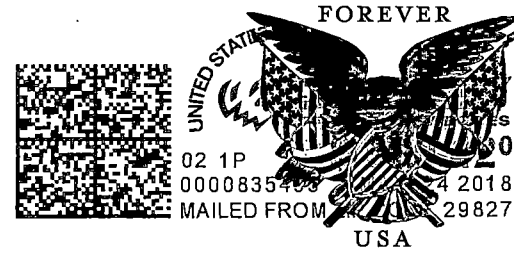
We were on State-wide lock-down due to the situation at Lee at the time I sent the motion and I was unable to have copies made. I am sending a copy of the proof of service that I am sending to the State for your records along with the caption page.

Sincerely,

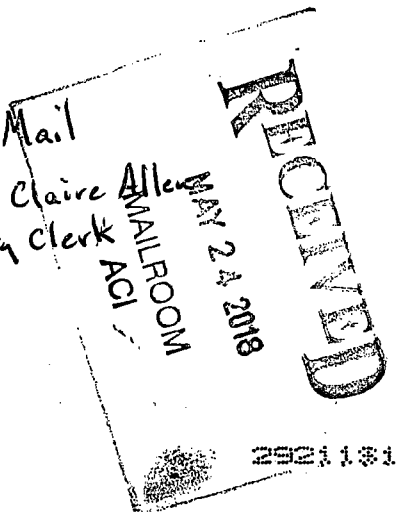
Cedric L Woods

Cedric L. Woods
pro se

Cedric L. Woods, #265789
ACI - F3B-03
PO Box 1151
Fairfax, SC 29827



Legal Mail
Attn: V. Claire Allen
Deputy Clerk



Clerk of Court
S.C. Court of Appeals
PO Box 11629
Columbia, SC 29211