

Petitioner proceeded to trial before the Honorable H. Dean Hall and a jury, where he was convicted as indicted. Judge Hall sentenced Petitioner to a term of life imprisonment without the possibility of parole.

Petitioner filed a timely notice of appeal. Assistant Appellate Defender Tara S. Taggart of the South Carolina Office of Appellate Defense represented Petitioner and perfected an *Anders*² brief on his behalf. Thereafter, the South Carolina Court of Appeals dismissed the appeal. *State v. Jones*, Op. No. 2001-UP-55 (S.C. Ct. App. Filed July 11, 2001). Thereafter, Petitioner filed a Petition for Rehearing, which was denied on August 23, 2001. Subsequently, Petitioner filed a *pro se* Petition for Writ of Certiorari in the Supreme Court of South Carolina, which was denied on January 24, 2002.

2002-CP-04-1817

Petitioner then filed an application for post-conviction relief on July 6, 2002. In his application, Petitioner set forth the following allegations:

1. Counsel was ineffective for presenting and failing to object to evidence of the Applicant's use of drugs;
2. Counsel was ineffective for failing to present evidence that the crime was committed by someone else; and
3. Ineffective assistance of appellate counsel.

Thereafter, Petitioner filed a *pro se* document entitled "Applicant's Additional Supplemental to Original Post-Conviction Relief Application" on August 6, 2002. In this amended application, Petitioner raised the following allegations:

1. Counsel was ineffective for failing to properly and thoroughly impeach State witnesses Joshua Stewart and Shirley Rainey with their out-of-court statements;

² *Anders v. California*, 386 U.S. 738 (1967).

RECEIVED
JUN 29 2018
SC Court of Appeals

behalf. On November 16, 2005, the Supreme Court of South Carolina denied Petitioner's Petition for Writ of Certiorari. The Remittitur was issued on December 2, 2005.

Thereafter, Petitioner filed a *pro se* document in the Circuit Court entitled "Motion for New Trial Based on After Discovered Evidence of Unconstitutional Grand Jury Proceedings" on November 5, 2008. On October 7, 2009, Judge Maddox denied Petitioner's Motion for New Trial and again dismissed Petitioner's post-conviction relief action.

Petitioner appealed from this Order on October 9, 2009, and filed a *pro se* Petition for Writ of Certiorari on February 16, 2010. By Order dated May 13, 2011, the Supreme Court of South Carolina denied Petitioner's Petition for Writ of Certiorari. The Remittitur was issued on June 1, 2011.

3:06-788-TLW-JRM

Petitioner filed a Petition for Writ of Habeas Corpus on March 24, 2006, in the United States District Court for the District of South Carolina. In his Petition, Petitioner alleged the following grounds:

Ground One: Lower Court erred in failing to grant a directed verdict were [sic] evidence was constitutionally insufficient.

Supporting Facts: States case was wholly circumstantial, there was no DNA, no forensics, no eyewitness, no fingerprints to place Petitioner at the scene. Coroner did nothing scientific to determine time of death thus giving the State a 6 hr window. State used testimony Petitioner had money days after crime to say he robbed the victim.

Ground Two: Counsel was constitutionally ineffective for failing to bring fourth [sic] evidence of third party guilt.

Supporting Facts: Counsel admitted during PCR that he only perused the evidence concerning third party guilt the day before trial. Sam Mackey committed murder and a suicide after he was asked [if] he killed the victim. Sam Mackey's nephew gave

RECEIVED

JUN 29 2018

SC Court of Appeals

FINDINGS OF FACT AND CONCLUSIONS OF LAW

A mandamus will issue only to compel a public official to perform a mandatory duty. *State v. Ansel*, 76 S.C. 395, 414, 57 S.E. 185 (1907); *Lombard Iron Works v. Town of Allendale*, 187 S.C. 89, 196 S.E. 513 (1938). The primary purpose of a writ of mandamus is to enforce an established right and to enforce a corresponding imperative duty created or imposed by law. *Charleston County School District v. Charleston County Election Commission*, 336 S.C. 174, 519 S.E.2d 567 (1999). It is issued "only to enforce a clear legal right requiring the performance of only ministerial duties." Toal, et al, *Appellate Practice in South Carolina*, p. 281 (1999) (citing *Wiblen v. Long*, 262 S.C. 430, 205 S.E.2d 174 (1974)) (emphasis added). To obtain a writ of mandamus requiring performance of an act, a petitioner must show: (1) the opposing party has an indisputable and plainly defined duty to perform the act, (2) the ministerial nature of the act, (3) the opposing party's specific legal right for which discharge of the duty is necessary, and (4) the lack of other legal remedy. *Id.* at 282. The writ of mandamus lies solely within the discretion of the court of which it is requested. *In Interest of Lyde*, 284 S.C. 419, 327 S.E.2d 70 (1985). Moreover, mandamus is unavailable where the legal right is doubtful. *Id.*


In his Petition, Petitioner asserts he has satisfied the requirements for issuance of a writ of mandamus because:

- (1) S.C. Code § 14-9-210 imposes a duty upon all SC Solicitors to submit a bill of indictment to the grand jury (while it is in attendance upon general sessions court § 14-9-170) for prosecution of a criminal case;
- (2) the S.C. Constitution, Art. 1, § 11, mandates that an indictment is a prerequisite for all criminal prosecution;
- (3) the petitioner has a constitutional right to be prosecuted upon a presentment of indictment returned by a grand jury; and
- (4) the petitioner has exhausted his direct appeal, PCR, and habeas corpus remedies and has no other available remedy except a writ of mandamus.

General Sessions Court be convened for the Grand Jury to meet. This Court finds the indictment was sufficient to give Petitioner notice; and, therefore, he cannot show any reason why this Court should allow him to proceed with this extraordinary writ.

IT IS THEREFORE ORDERED that the Petition be DENIED AND DISMISSED. This Court hereby advises Petitioner that he must file and serve a Notice of Appeal within thirty (30) days of the service of this Order to secure appellate review. See Rule 203, SCACR.

AND IT IS SO ORDERED this 6th day of February, 2018.



J. CORBELL MADDOX, JR.
Presiding Judge
Tenth Judicial Circuit Court

_____, South Carolina.

FILED-CLERKS OFFICE
ANDERSON SC
2018 FEB -9 PM 4: 32
COMMON PLEAS AND
GENERAL SESSIONS
COURT

RECEIVED
JUN 29 2018
SC Court of Appeals

A TRUE COPY
FEB 12 2018
