

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenville County
Court of General Sessions
Chief Admin. Judge Hon.

Letitia H. Verdin
#2017-001353

RECEIVED

JUL 16 2018

SC Court of Appeals

the State

Respondent

VS

Jerome Williams

Appellant

APPELLANT'S FINAL BRIEF

other counsel of record

Alan McCrozy Wilson

John Benjamin Aplin

P.O. BOX 11549

Colg, SC 29211-1549

Jerome Williams

Tyger River Corr. Inst.

200 Prison Rd

U.3. 224

Enoree, SC 29335

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STATUS

S.C. Code Ann § 17-27-10-160 - 15

STATEMENT OF ISSUES ON APPEAL

- (1) WHETHER THE COURT WAS REQUIRED TO ADDRESS APPELLANT'S 60 (b) ACTION AS A CIVIL MATTER AND TRANSFER HIS ACTION TO THE COURT OF COMMON PLEAS

- (2) WHETHER THE COURT OF GENERAL SESSIONS LACK SUBJECT MATTER JURISDICTION TO RULE ON APPELLANT'S 60 (b) ACTION ITSELF

(3)

STATEMENT OF CASE

On June 19, 2002 in Greenville Co. Appellant, Jerome Williams pled guilty to first-degree burglary and received a sentence of 30 years imprisonment in the South Carolina Department of Corrections. On 10.13.14 Appellant moved to set aside the judgment of his criminal indictment thus his guilty plea pursuant to S.C.R. Civil P. - Rule 60(b)(3) and (5). This 60(b) action was mistakenly filed in the Court of General Sessions.

On May 12, 2017 Appellant appeared before Hon. Judge. Letitia H. Verdin

to address his action. On May 15, 2017 Judge Verdin denied Appellant's 60 (b) action. On June 14, 17 Appellant filed his notice of appeal
this appeal follows:

ARGUMENT (1)

The court was required to address Appellant's 60 (b) action as a civil matter and transfer his action to the court of common pleas. Where Appellant mistakenly filed his 60 (b) action in the the court of General Sessions SEE: Ex B arguing that his action involves Appellant's attempt to gain relief from the judgment and conviction and sentence entered against him on June 19, 2002. The rule 60 (b) (3) (5) S.C.R.C.P. motion raises claim of a fraud upon the

(6)

court, resulting from acts of gross misconduct and criminal violation of the law, as perpetrated by Lora A. Reese, the Greenville County Assistant Solicitor, in office on Feb. 19, 2002, at the time the violations herein alleged arose.

It was very clear that Appellant's action was made for relief from judgment under S.C.R. Civil P. Rule 60 (b) (3): Where Rule 1, S.C.R. Civil P. govern the procedure in all South Carolina courts in all suits of a civil nature, it's clear that Appellant action should have been heard in the court of Common pleas.

Here Appellant's 60 (b) action rest within the sound discretion of the trial

" " "
Court of common pleas SEE: Savo Investments
v Ocean Holiday Partnership 314 S.C. 116, 441
SE2d 835; Thomas v Hammond 382 SE2d
900. A motion asserting "Fraud upon the
Court concerns the integrity of the judicial
process itself and a judgment may be set
aside for fraud upon the court at any time
SEE: 12 Joseph T. McLaughlin, Morris Federal
Practice 60.21:4 (a) at 60-61. Also see
Chewing v Ford Motor Credit 579 SE2d 605
There is no statute of limitation when a
party seeks to set aside a judgment due
to fraud upon the court. Indeed, the very
language of rule 60(b)(3)(5) so provides.
This rule does not limit the power of the
court... to set aside a judgment for fraud
upon the court.

In this case, Williams bill of indictment prints that, at a Court of General Sessions, convened on Feb, 19, 2002, the Grand Jurors of Greenville Co. presented upon their oath SEE: Exhibit 1 "Indictment" and the title page prints that it was published at a court of General Sessions during its Feb term 2002.

Although, Deputy Solicitor Betty C. Strom submitted State's Exhibit A showing the Chief Administrative Judge for General Sessions in Greenville Co. order when they should have convene SEE: Exhibit A

Appellant argue that he presented clear evidence SEE: Exhibit 1 and Exhibit 2 that established that no court of General Sessions had in fact been open on the

indictment's February 19, 2002 date of return. SEE: Exhibit 2 certified true copy ct. term calendar and Exhibit 1 clearly shows that no General Sessions Ct. had been open on the date in question. And, although Deputy Solicitor Ms. Strom submitted Exhibit A, there is no proof that the court convened on the date in question. Also see Ex. 3 Therefore, Assistant Solicitor Reese's act can be said, subvert the integrity of the court in a way that was extrinsic fraud upon the court SEE: Evans v Gunter 366 SE2d 44

Here, Appellant met his burden of presenting evidence that proved the facts essential to entitled him to relief SEE: Bowers v Bowers 403 SE2d 127.

Wherefore, The court was required to address Appellant's 60(b) motion as a civil matter, and transfer Appellant's to the court of common pleas SEE:

S.C.R. Civil P. - Rule 82 (b) SEE:

Ex C; Ex D and Ex. E Tr. p 4 L 6 - p 6 - L 4. Which Appellant was not aware that his 60(b) motion was being heard in the court of General Sessions. Nor did the court let on that his 60(b) was in the court of General Sessions.

Here, The Respondent's argument (I) is unpersuasive. Because the judge's ruling, nor the hearing transcript showed where the judge appropriately construed Appellant's 60(b) motion to a post-trial motion.

When Appellant clearly argued his motion as a 60(b) motion at the out-set of the hearing SEE: Tr. Tpt-13 Therefore.

his 60 (b) motion was timely filed SEE:
Chewing v Ford Motor Credit Co. 579 SE2d
605. Where it states that there is
no statute of limitation for extrinsic
fraud, as Appellant was seeking in his
action.

Moreover, Appellant argues, that this is
not the first time, that he has
claimed, that he had filed, "Mistakenly
filed his 60 (b) motion in the wrong
court, as the Respondent has argued
SEE: Ex. D and Ex. C

Therefore, this is not Appellant's first time
bring this matter to the court and solicitor
Betty Strom attention.

And, as argued above, the Appellant was
not aware that his 60 (b) motion was
being heard in the court of General

Sessions. Nor did the court inform Appellant that his 60 (b) was in the court of General Sessions. to timely object. Appellant was not aware his 60 (b) motion was heard in the Court of General Sessions, until he received the judge's order showing heading of Ct. of General Sessions SEE: Ex. E But, at the same time acknowledging Appellant's fraud claim. with no factual conclusions of law - NO evidentiary support. therefore, this issue is preserved for appeal review.

Further, the Appellant argue, that the Respondent's argument is misplaced, where Appellant has never argued "after discovered evidence" therefore, the judge

Could not have properly / legally construed his 60 (b) motion into a Rule 29, post-trial motion SEE: Ex E Where the judge herself acknowledged Appellant's fraud claim in her own order, and during his hearing SEE: Tr p 1-13

Here, the Respondents second alternative argument is misplaced. Appellant argues, that he was entitled to have his meritorious and timely motion addressed by the court of common pleas, as he has argued, not by the court of general sessions as the order and transcript of record shows. SEE: Ex. E and Tr. p 1-13.

the Respondents finally alternative argument is also misplaced. Here, Appellant argues, that he was not required by law. Nor

(b); Also see S.C.R. Civil P. - Rules

1 and 2; Ex. C; Ex D; Ex. E

Regardless, of whether his action was taken by the judge while she specifically acted as presiding judge of the court of general Sessions.

Which the court and Deputy Solicitor, Stroum failed to bring up. And, the Appellant was not aware, that his 60 (b) motion was being heard in the Court of General Sessions, to object to it, until he read the judge's order SEE: Ex. E; Also Tr.

Appellant further argue, that although the judge while she may have specifically acted as presiding judge of the Ct. of Gen. Sessions. And, as explained above in argument 1 and 2. The Appellant, the Respondent nor this court knows

the variety of reasons, why Appellant's 60 (b) motion was heard in the Ct. of Gen. Sessions.

When the judge's order acknowledged Appellant's fraud claim. But with no factual conclusions of law - no evidentiary support. for her ruling.

Here, the Respondent's argument (III) is unpersuasive as well due to Appellant's arguments (1) and (2) above, Moreover, looking at the Respondent's Rule 60 argument, they can not argue what is not in the record. Here, the Respondent has argued many things and all has been misplaced... like the judge appropriately construed Appellant's motion as a post-trial motion. But here the

judge's order itself, acknowledged Appellant's fraud claim. But, the judge's order lack "any" bases on "any" factual conclusions of law. Nor was the judge's order supported by "any" evidentiary support. Thus, the judge's ruling/order is an abuse of discretion as well.

CONCLUSION

Based upon the foregoing arguments Appellant's case should be remanded back to the court of Common Pleas. And, or back to the court of General Session, to be transferred to the court of Common Pleas.

Date: 5/9/2018

Respectfully submitted
Genome Williams

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CERTIFICATE OF COUNSEL

The undersigned certified that this final brief
complies with Rule 211 (b) SCACR.

Date 5/9/2018

st Jerome Williams

Jerome Williams

Tyger River Corr. Inst.

200 Prison Rd.

U. 3. 224

Enoree, SC 29335