

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM ORANGEBURG COUNTY

Court of General Sessions

Honorable Edgar W. Dickson, Circuit Court Judge

APPELLATE CASE NO. 2017-000557

RECEIVED

JUL 27 2018

SC Court of Appeals

THE STATE RESPONDENT

v.

WILLIE YOUNG. APPELLANT

MOTION TO REMAND CASE TO
RECONSTRUCT THE RECORD; MOTION TO
HOLD FILING DEADLINES IN ABEYANCE

COMES NOW the Appellant Willie Young, by and through undersigned Counsel, and moves this Court to remand the above-referenced case to Orangeburg County so that Counsel can reconstruct the record. Counsel further moves the Court to hold the filing deadlines in this case in abeyance until this motion is resolved. In support of this motion, Counsel respectfully shows as follows:

1.

On June 28, 2002, Young was convicted of one count of armed robbery and sentenced to 30 years' incarceration. (Exhibit A). On July 26, 2016, Young filed a *pro-se* motion pursuant to Rule 29(b), requesting a new trial based on after-discovered evidence. (Exhibit B). That motion was

heard before Judge Dickson in Orangeburg County on October 24, 2016. (Exhibit C). Young appeared *pro-se* at that proceeding. (Exhibit C). On December 21, 2016, Judge Dickson denied Young's motion by written order. (Exhibit D). The Judge's written order was mailed to Young at Ridgeland Correctional Institution, and Young did not receive the order until February 13, 2017. (Exhibit E). Subsequently, Young filed a *pro-se* Notice of Appeal, which was received by this Court on February 23, 2017. (Exhibit E).

2.

After being retained to represent Young in this pending appeal, Counsel submitted a FOIA¹ request to the Orangeburg County Clerk of Court, seeking copies of all documents filed below. (Exhibit F). Counsel received the response on July 11, 2018. (Exhibits G and A).² None of the prior filings (Young's Rule 29 motion, or Judge Dickson's order denying same) were included in the documents provided by the Clerk. (Exhibit A).

3.

On or about July 11, 2018, Counsel contacted the Clerk's Office, inquiring why there were documents missing from the Clerk's file. The employee of the Clerk's Office confirmed that there were no additional documents in Young's case file (beyond what had already been provided to Counsel), and speculated that Young's missing filings may have been erroneously filed under a prior PCR case number (Young previously filed an unsuccessful PCR application in Orangeburg County). The employee urged Counsel to visit the Clerk's Office to review the file personally and locate any documents necessary to complete this appeal.

¹ Freedom of Information Act request pursuant to S.C. Code § 30-4-10 *et seq.*

² Exhibit A is the entire set of documents disclosed by the Clerk of Court for Orangeburg County.

4.

On July 17, 2018, Counsel visited the Clerk's Office in Orangeburg County, and requested the opportunity to review Young's prior PCR case files. Counsel then reviewed the files, and determined that the missing pleadings were not located in those files.

5.

Young has provided Counsel with copies of the pleadings in question, however the documents are incomplete: it appears that pages and attachments are missing from the pleadings in question, and they include erroneous case numbers and Clerk's Office stamps. (Exhibit B). Young has informed Counsel that he submitted the originals to the Clerk of Court, and is not currently in possession of complete and unmarked copies of his pleadings.

6.

Having reviewed Judge Dickson's order denying Young's Rule 29 motion, it appears that the document was stamped by the Clerk's Office in Orangeburg, but the original stamp is illegible. (Exhibit D).³

7.

Review of the transcript of Young's Rule 29 hearing makes it clear that the Judge and Solicitor were in possession of copies of Young's motion. (Exhibit C at p. 3, lines 12-18). Further, the copy of Judge Dickson's order now in Counsel's possession appears to be a true and accurate copy bearing the signature of the Judge, although Counsel is not able to verify its completeness or authenticity. Counsel also notes for the purposes of this motion that there is a handwritten case number on the Judge's order that is inconsistent with the General Sessions case number for Young's

³ Counsel notes that Exhibit D is a copy of the document that was later submitted as an attachment to Young's Notice of Appeal. As such, it bears a February 6, 2018 stamp from the Clerk's Office. The original stamp mark is visible directly above the February 2018 stamp, but it is completely illegible.

Rule 29 motion. (Exhibit D). Further, at the time of this filing, it is unclear to Counsel why these documents are not currently on file at the Clerk's Office.

8.

Counsel respectfully submits that he cannot attempt to litigate this case without a complete and unadulterated record. Counsel further submits that this Court has authority to remand this case to Orangeburg County with direction to re-open the record and allow Counsel to submit the missing/misfiled documents, and further to inquire into the completeness of the record. *See, e.g. State v. Ladson*, 373 S.C. 320, 644 S.E.2d 271 (2007).

9.

Counsel further submits that this Court has authority to hold the filing deadlines in the present case in abeyance until such time as the Court has had the opportunity to review and rule on this motion. Rule 240(b), SCACR.

WHEREFORE, Counsel respectfully requests the following relief:

- A. That this Court hold the filing deadlines in the present case in abeyance until such time as the Court has reviewed this motion and issued a ruling.
- B. That this Court enter an order remanding the present case to Orangeburg County with direction that the trial court conduct a hearing, at which time Counsel must be provided the opportunity to reconstruct the record, and make further inquiries into the completeness of the record, as needed.
- C. That this Court maintain the current case in its open/pending status until such time as the hearing to reconstruct the record is complete, so that Counsel will not be required to Notice an additional appeal at the conclusion of such hearing.



Christopher R. Geel
Attorney for Appellant
171 Church St., Suite 210
Charleston, SC 29401
(843) 817-2166

July 26, 2018

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

JUL 27 2018

APPEAL FROM ORANGEBURG COUNTY
Court of General Sessions

SC Court of Appeals

Honorable Edgar W. Dickson, Circuit Court Judge

APPELLATE CASE NO. 2017-000557

THE STATE RESPONDENT

v.

WILLIE YOUNG. APPELLANT

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the enclosed document has been served upon J. Benjamin Aplin at P.O. Box 11549, Columbia SC 29211-1549.



Christopher R. Geel
171 Church St., Suite 210
Charleston, SC 29401
Attorney for Appellant

July 26, 2018

EXHIBIT A

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Orangeburg
STATE VS.

INDICTMENT/CASE#:

Willie Young III

2001 -GS- 38 - 2492

AKA:

A/W#: G731578

Race: B Sex: M Age:

Date of Offense: 5-9-01

DOB: 1/21/80 SS#: 247-47-3271

S.C. Code §: 16-11-330

Address:

CDR Code #: 01139

DL# _____ SID#: _____

CASE RESTORED

SENTENCE

PLEA TRIAL

In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS

TO: Armed Robbery

in violation of § 16-11-330 of the S.C. Code of Laws, bearing CDR Code # 01139

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS 17-25-45

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury.

The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST:

[Signature]
Solicitor

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, for a determinate term of 30 days/months/years or under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

The Defendant is to be given credit for _____ days/months jail time.

CONCURRENT or CONSECUTIVE to sentence on: _____

SPECIAL CONDITIONS:

RESTITUTION: Heard, Waived, Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

set by SCDPPPS _____

Recipient: _____

*Fine:\$ _____

§14-1-206 (Assessments 100%)...\$ _____

§14-1-211(A)(1) (Surcharge).....\$ 100.00

§14-1-211(A)(2) (Surcharge).....\$ _____

§56-5-2995 (DUI Assessment).....\$ _____

3% to County (if paid in installments)...\$ 300

TOTAL.....\$ 10300

PTUP _____

_____ days/hours Public Service Employment

Obtain GED _____

Attend Voc Rehab. or Job Corps _____

May serve W/E beginning _____

Substance Abuse Counseling _____

Random Drug/Alcohol Testing _____

Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund.

Other: _____

PRESIDING JUDGE [Signature]

Judge Code: 011114

Sentence Date: 6/28/02

Court Reporter: [Signature]

White - Clerk

Green - Corrections

Canary - Probation

Pink - Defendant

WITNESSES

DOCKET NO. 2001GS38-2492

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

The State of South Carolina

Defendant

County of

ORANGEBURG

I hereby appear in my own proper person and plead guilty to the within indictment or to

DET. K. KINSEY/OCSD

COURT OF GENERAL SESSIONS

Arresting Agency:

February 11, 2002 TERM

Orangeburg Co. Sheriff Dept.

Defendant

ARREST WARRANT NUMBER

Witness:

G731578

THE STATE

Arrested: Sep 12, 2001

vs.

C.C.C. PLS. AND G.S.

ACTION OF GRAND JURY

Willie Young

Indictment for

ARMED ROBBERY

VERDICT

Guilty

SC Code: 16-11-0330

CDR Code: 0139

Class: FEL-A(V)

TRUE BILL

Hensel Da Hubbard

Foreperson of Grand Jury

Date: January 28, 2002

R.C. Dinsger 6/28/02

Foreperson of Petit Jury

Date:

STATE OF SOUTH CAROLINA)
)
COUNTY OF ORANGEBURG)

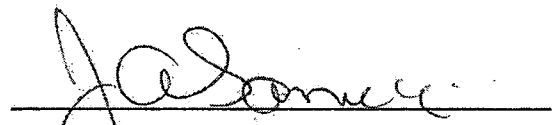
INDICTMENT

At a Court of General Sessions, convened on February 11, 2002 the Grand Jurors of Orangeburg County present upon their oath:

ARMED ROBBERY

That Willie Young, did in Orangeburg County, on or about May 9, 2001, feloniously take from the person or presence of the victim, Nathaniel Hubbard, by means of force or intimidation, while armed with a deadly weapon being a handgun, goods or monies of the said victim, being described as follows: cash monies. This offense being a violation of Section §16-11-330 of the South Carolina Code of laws, (1976 as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



J. Angela Garrick SOLICITOR

ARREST WARRANT

G-731577

21214

STATE OF SOUTH CAROLINA

County/ Municipality of ORANGEBURG COUNTY

THE STATE 2001011645 against

WILLIE YOUNG

Address: 894 CRESTLINE DRIVE CORDOVA SC 29039

Phone: 268-6908 SSN: 247-47-3271

Sex: M Race: B Height: 6 2 Weight: 220

DL State: DL #:

DOB: 1/21/79 Agency ORI#:

Prosecuting Agency: SHERIFF'S DEPARTMENT

Prosecuting Officer: DET. K. KINSEY

Offense: POINTING/PRESENTING

A FIREARM Offense Code: 122

Code/Ordinance Sec. 16-23-0410

This warrant is CERTIFIED FOR SERVICE in the County/ Municipality of

The accused is to be arrested and brought before me to be dealt with according to law.

Signature of Judge (L.S.)

Date:

RETURN

A copy of this arrest warrant was delivered to defendant WILLIE YOUNG

on 9-12-01

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO: ORANGEBURG MAGISTRATES 1 DAVIS P.O. BOX 9000 ORANGEBURG SC 29116

STATE OF SOUTH CAROLINA

County/ Municipality of ORANGEBURG COUNTY

AFFIDAVIT

Form Approved by S.C. Attorney General July 26, 1990 SCCA 518

Personally appeared before me the affiant DET. KENNY KINSEY who being duly sworn deposes and says that defendant WILLIE YOUNG did within this county and state on 5/09/01 violate the criminal laws of the State of South Carolina (or ordinance of County/ Municipality of) in the following particulars:

DESCRIPTION OF OFFENSE: POINTING/PRESENTING A FIREARM

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

BASED ON AN INVESTIGATION BY THE ORANGEBURG COUNTY SHERIFF'S OFFICE THAT ON MAY 9, 2001, AT APPROXIMATELY 1:00 P.M., THE DEFENDANT, WILLIE YOUNG, DID VIOLATE SECTION 16-23-410 OF THE SOUTH CAROLINA CODE OF LAWS "POINTING AND PRESENTING A FIREARM" IN THAT THE DEFENDANT DID POINT A SILVER HANDGUN AT THE HEAD OF NATHANIEL HUBBARD DURING THE COMMISSION OF AN ARMED ROBBERY. THIS INCIDENT TOOK PLACE AT 2424 OLD EDISTO DRIVE, IN THE COUNTY OF ORANGEBURG, STATE OF SOUTH CAROLINA.

Sworn to and subscribed before me on 5/11/01 Signature of Issuing Judge (L.S.)

Signature of Affiant: Kenny Kinsey Affiant's Address: P.O. BOX 9000 ORANGEBURG SC 29116 Affiant's Telephone: 803 531-4647

01 SEP 28 PM 2:55

STATE OF SOUTH CAROLINA

County/ Municipality of ORANGEBURG COUNTY

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that on 5/09/01 defendant WILLIE YOUNG did violate the criminal laws of the State of South Carolina (or ordinance of

County/ Municipality of) as set forth below:

DESCRIPTION OF OFFENSE: POINTING/PRESENTING A FIREARM

Now, therefore, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

Signature of Issuing Judge (L.S.) Judge Code: 721

Judge's Address: P.O. BOX 9000 ORANGEBURG SC 29116 Judge's Telephone: Issuing Court: [X] Magistrate [] Municipal [] Circuit

ORIGINAL

ARREST WARRANT

G-731578

STATE OF SOUTH CAROLINA

County/ Municipality of ORANGEBURG COUNTY

THE STATE 200111645 against

WILLIE YOUNG

Address: 894 CRESTLINE DRIVE CORDOVA SC 29039

Phone: 268 6908 SSK 247-47-3271

Sex: M Race: B Height: 6 2 Weight: 220

DL State: DL #:

DOB: 1/21/79 Agency ORI#:

Prosecuting Agency: SHERIFF'S DEPARTMENT

Prosecuting Officer: DET. K. KINSEY

Offense: ARMED ROBBERY

Offense Code: 139

Code/Ordinance Sec. 16-11-330 A

This warrant is CERTIFIED FOR SERVICE in the County/ Municipality of

The accused is to be arrested and brought before me to be dealt with according to law.

Signature of Judge (L.S.)

Date:

RETURN

A copy of this arrest warrant was delivered to defendant WILLIE YOUNG on 9-12-01

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO: ORANGEBURG MAGISTRATES 1 DAVIS P.O. BOX 9000 ORANGEBURG SC 29116

STATE OF SOUTH CAROLINA

County/ Municipality of ORANGEBURG COUNTY

AFFIDAVIT

Personally appeared before me the affiant DET. KENNY KINSEY who being duly sworn deposes and says that defendant WILLIE YOUNG did within this county and state on 5/09/01 violate the criminal laws of the State of South Carolina (or ordinance of County/ Municipality of) in the following particulars:

DESCRIPTION OF OFFENSE: ARMED ROBBERY

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

BASED ON AN INVESTIGATION BY THE ORANGEBURG COUNTY SHERIFF'S OFFICE, THAT ON MAY 9, 2001, AT APPROXIMATELY 1:00 P.M., THE DEFENDANT, WILLIE YOUNG, DID VIOLATE SECTION 16-11-330 OF THE SOUTH CAROLINA CODE OF LAWS "ARMED ROBBERY" IN THAT THE DEFENDANT DID ROB NATHANIEL HUBBARD OF \$200.00 WHILE ARMED WITH A SILVER HANDGUN. THIS INCIDENT TOOK PLACE AT DAWKIN'S LIQUOR STORE, 2424 OLD EDISTO DRIVE, COUNTY OF ORANGEBURG, STATE OF SOUTH CAROLINA.

Sworn to and subscribed before me on 5/11/01 Signature of Issuing Judge

Signature of Affiant: Kenny Kinsey Affiant's Address: P.O. BOX 1366 ORANGEBURG SC 29116 Affiant's Telephone: 803 531-4647

STATE OF SOUTH CAROLINA

County/ Municipality of ORANGEBURG COUNTY

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that on 5/09/01 defendant WILLIE YOUNG did violate the criminal laws of the State of South Carolina (or ordinance of

County/ Municipality of) as set forth below:

DESCRIPTION OF OFFENSE: ARMED ROBBERY

Now, therefore, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

Signature of Issuing Judge (L.S.) Judge Code: 721

Judge's Address: P.O. BOX 9000 ORANGEBURG SC 29116 Judge's Telephone: Issuing Court: [X] Magistrate [] Municipal [] Circuit

FILED FOR RECORD IN THE CLERK OF COURT'S OFFICE SEP 28 PM 3:54

STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

)
) IN THE COURT OF GENERAL SESSIONS
) G 731577 and G 731578
) and 2002-ORB-2

State of South Carolina,

vs.

Willie Young,

Defendant.

ORDER SETTING BOND

FILED FOR RECORD
154
CLERK OF COURT
ORANGEBURG COUNTY
02 FEB 15 PM 2:30

This matter came before the Court on February 15, 2002, at which time bond was sought on the charges of Armed Robbery and Pointing and Presenting a Firearm. He has also been charged with Possession of Firearm During Commission of a Certain Crime. while in the The Court was presented with the State's allegations against Defendant and the Court heard testimony from the victim. Bond is set at Five Hundred Thousand Dollars, (\$500,000) surety.

If defendant is released on bond, he shall report to the next General Sessions roll call on March 18, 2002. Upon his release on bond, Defendant is to have no contact with the victim and is not to be present within one-half mile of the liquor store where this incident occurred. Upon his release, he is responsible for reporting to any subsequent roll calls for any subsequent terms of General Sessions court.

AND IT IS SO ORDERED



Presiding Judge, Court of General Sessions
Orangeburg County

February 15, 2002

Orangeburg, South Carolina



**ORANGEBURG COUNTY SHERIFF'S OFFICE
CRIMINAL INVESTIGATIVE DIVISION
VICTIM/WITNESS AFFIDAVIT**

Family Court General Sessions Summary Court

Defendant's/Juvenile's Name: Willie Young
 Ticket/Arrest Warrant#: 01 SEP 28 PM 2:55 Date of Arrest: 9/15/01 OCA#: 2001011645
 Arresting Officer: [Signature] (If available) CLERK OF COURT Badge Number: 2310 Agency: OC31

INFORMATION ON VICTIM # 1

Name of Victim: Northwood Hubert
 Address: 1110 Hubbard St.
Orangeburg SC 29115
 Home Phone Number: _____ Work Phone Number: _____

IF VICTIM IS DECEASED, MENTALLY ILL OR A MINOR CHILD:

Name of Next of Kin: _____ Relationship: _____
 Address: _____
 Home Phone Number: _____ Work Phone Number: _____

This victim has been notified of Bond Hearing / Court Date. Wish to be present yes no.
 indicated they wish to be notified when an arrest is made.
 requested to be notified of Preliminary Hearing.
 indicated they do not wish to be notified.
 not been notified after reasonable attempts to contact them at the following dates and times.
 attempted by: _____

INFORMATION ON VICTIM # 2

Name of Victim: _____
 Address: _____
 Home Phone Number: _____ Work Phone Number: _____

IF VICTIM IS DECEASED, MENTALLY ILL OR A MINOR CHILD:

Name of Next of Kin: _____ Relationship: _____
 Address: _____
 Home Phone Number: _____ Work Phone Number: _____

This victim has been notified of Bond Hearing / Court Date. Wish to be present yes no.
 indicated they wish to be notified when an arrest is made.
 requested to be notified of Preliminary Hearing.
 indicated they do not wish to be notified.
 not been notified after reasonable attempts to contact them at the following dates and times.
 attempted by: _____

Comments: Victim not present

Officer Signature: [Signature] Victim Signature: N/A

Willie Young

Name of Defendant

G731577, G731578

Warrant/Ticket Nos.

County/Municipality of Orangeburg

Charges: Pointing/Presenting A Firearm, Armed Robbery

Trial Court:

General Sessions
 Magistrate
 Municipal Court

10-15-01 @ 8:00 AM

FILED FOR RECORD
CLERK OF COURT
ORANGEBURG, S.C.

CHECKLIST FOR MAGISTRATES AND MUNICIPAL JUDGES

Orangeburg County Courthouse

DIRECTIONS: Magistrates and municipal court judges must use this checklist for ALL GENERAL SESSIONS CASES and for ALL MAGISTRATE AND MUNICIPAL COURT CASES IN WHICH BOND HAS BEEN SET BY A JUDGE. The judge should attach this checklist to the charging document (arrest warrant or uniform traffic ticket) when the defendant first appears before a judge for a bond hearing or first appearance, and complete the appropriate sections.

BAIL PROCEEDING
 FIRST APPEARANCE (Non-Bailable Offenses)

Pop Sheet

Failure to appear Fla.
Pan of burglary tools Fla.

- 1. Form used at bail proceeding
 - X a. Bond Form I (personal recognizance)
 - X b. Bond Form II (surety, cash, percentage)
 - c. None (Non-Bailable Offense)

Married - Common Law
Children - 2 children
Lived here since '99
Born - Germany (Parents in service)

- 2. For cases in which bond is set, defendant was informed:
 - X a. Warrant for arrest will be issued for violation of any condition of bail bond order.
 - X b. His right and obligation to be present at trial and that trial will proceed in his absence if he fails to attend.
 - X c. Failure to appear in court as required will result in institution of additional criminal charges. For failure to appear in connection with a felony, additional charge has penalty of fine of not more than \$5,000 or imprisonment for not more than five (5) years, or both. For failure to appear in connection with a misdemeanor, additional charge has penalty of fine of not more than \$1,000 or imprisonment for not more than one (1) year, or both.

rather arrested on same charge as alleged driver of get aw vehicle.

- 3. For cases to be tried in Court of General Sessions, defendant was informed of right to preliminary hearing if requested within ten (10) days:

- X a. Orally
 - X b. In writing
- [NOTE: Defendant must be informed of right both orally and in writing]

- X 4. Defendant was informed of the right to trial by jury.

- 5. In all general sessions cases and in all magistrate or municipal cases in which a prison sentence is likely to be imposed, defendant was informed of the following:

- X a. Charges against defendant and nature of the charges.
- X b. Right to counsel and right to court-appointed counsel if financially unable to employ counsel
- X c. [(Optional: Local procedures may require judge to refer defendants to indigency screener. If so, note referral here) Required to appear before Clerk of Court on Within 2 Days for appointment of counsel.]

Appearance or Hearing Date: 9/13/01

Reta Brown (A.E.)
Judge's Signature

GENERAL SESSIONS DOCKET REPORT FOR ORANGEBURG COUNTY

REPORT RUN DATE - 07/09/2002

INDICTMENT NUMBER: 2002GS3800163 *24901*

DEFENDANT NAME: YOUNG, WILLIE AKA:

ADDRESS: 894 CRESTLINE DRIVE CITY: CORDOVA STATE: SC ZIP 29039

SOCIAL SECURITY NUMBER: 247-47-3271 SEX: 1 MALE RACE: 2 BLACK

DATE OF BIRTH: 01/21/1979 DRIVERS LICENSE STATE / NO.: SC / 999999999

MARITAL STATUS:

WARRANT OR TICKET NUMBER: G731577 COUNTS: 01 OFFENSE CODE: 0122

NO WARRANT? 0 NAME OF OFFENSE: WEAPONS / POINT

DATE OF ARREST: 05/09/2001 DATE RECD BY CLERK: 09/28/2001

SUMMARY JUDGE: 721

DISP DATE: 00/00/0000 DISP TYPE:

DISP TYPE EXPLANATION:

no per AR conviction - 305RS

JUDGE CODE/NAME:

COURT REPORTER:

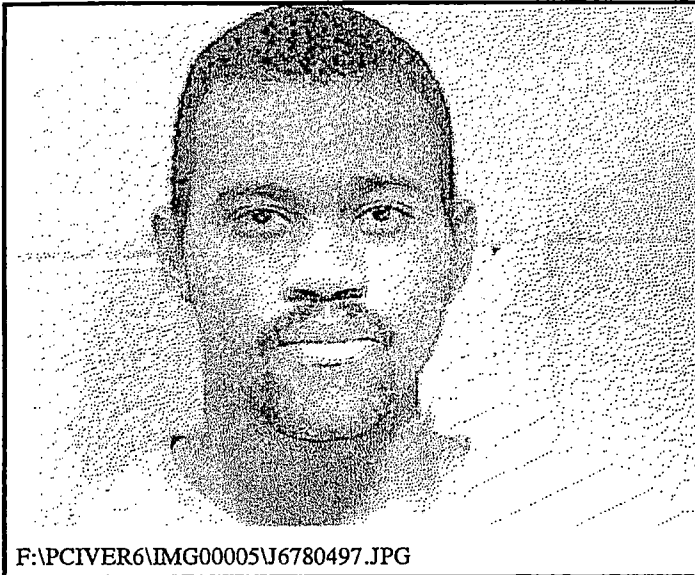
CONVICTION: CTS: 00 OFFENSE: 0000 *****

SENTENCE:

DEFENSE ATTORNEY:

PROSECUTING ATTORNEY:

[Handwritten signature]



F:\PCIVER6\IMG00005\J6780497.JPG

Name (Last, First Middle) YOUNG, WILLIE					
Race B	Sex M	Date Birth 01/21/1979	Place of Birth WEST GERMAY	Height 604	Weight 231
Eyes BLK	Hair BLK	Complexion LIGHT	Build LARGE	Scars, Marks, Tattoos T:ON NECK	
Social Security # 247-47-3273		Driver's Lic # State , 		Occupation UNEMPLOYED	
Fingerprints on File MCCLARY D			Agency Orangeburg-Calhoun Reg. Deten		
Address 894 CRESTLINE DR, CORDOVA, SC 29039		Date 09/12/2001			
Charges ARMED ROBBERY					
P&P FIREARM					

Alias NONE	
Alias	
Misc I.D./Type	
FBI Number	SBI Number

Next of Kin (Last, First Middle) JULIA GADSON/GRANDMOTHER		Address SAME AS ABOVE	Telephone 803-268-6908
Doctor (Last, First Middle)		Address	Telephone
Suicidal No	Heart No	Diabetic No	Epileptic No

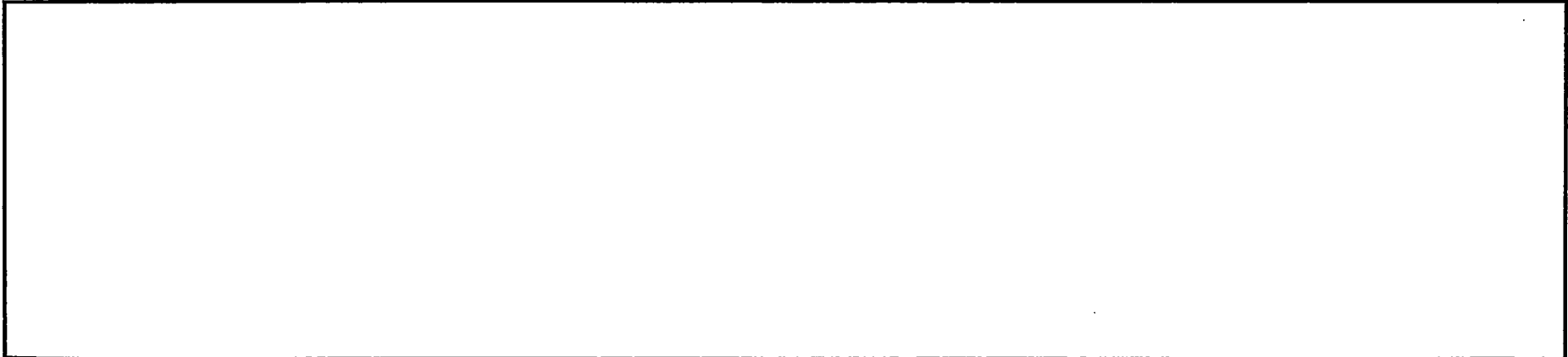


EXHIBIT B

STATE OF SOUTH CAROLINA
COUNTY ORANGEBURG

IN THE COURT OF
GENERAL SESSIONS
CASE NO.: 2001-GS-38-2492

STATE OF SOUTH CAROLINA

VS.

WILLIE YOUNG,

DEFENDANT,

MOTION FOR AFTER-NEWLY
DISCOVERED EVIDENCE
And
MOTION TO EXPAND RECORD

ATTORNEY "APPOINTMENT
REQUESTED

THIS MATTER COMES before the court on the pro Se Defendant's motion for After-Newly Discovered Evidence and motion to Expand record, pursuant to rule 29 (B), SCRCRIM.P. and Rule 60 (B)(3), SCRCP. There is no Statute of limitation when a party seek to set aside a judgment due to fraud upon the court. (Citing Aouda v. Mobil Oil Corperation, 862 F.2d 1115, 1118 (1st Cir. 1989); Catee v. State, Supra., Ther is no time limitation within such motion must be brought forth. See State v. Williams, 108 S.C. 295, 93 S.E.2d 106.

PROCEDURAL HISTORY

For purpose of the motion, Defendant discovered that the Solicitor unlawfully inpaneled its Grand Jury outside the Statute of S.C. Code Ann. § 14-5-620 (3) "The Forperson of the Grand Jury committed fraud upon the court by signing the indictment before a full panel was assembled of the grand Jury." And the Solicitor committed a (BRADY VIOLATION) by withholding exculpatory evidence

from the defense, also the solicitor manufactured their indictment for "Armed Robbery."

ALLEGATION

In his current motion The defendant alleges that he is being held in custody unlawfully for the following reasons:

Ground (A) "Did the Solicitor commit (sic) a procedural error" by unlawfully impaneling its Grand jury outside the statute of S.C. code Ann. § 14-5-620 (3)?

Supporting facts: The defendant humbly contends that the Solicitor committed (sic) a procedural error' by unlawfully impaneling its Grand jury outside the statute of S.C. code Ann. § 14-5-620 (3). Here, the general Assembly did not make a provision in sec. 14-5-620 (3), that set forth a [term of court] for the month of (February).

S.C. code Ann. § 14-5-620 (3) states generally:

The courts of judicial circuit shall be held as hereinafter provided.

However, the statute sets forth no exceptions, including:

sec. (3) Orangeburg County.--The Court of General Sessions for the county of Orangeburg shall be held in Orangeburg the second Monday in January, the first Monday in May, and second Monday in September. the term shall be for two weeks for the January and September sessions. The term shall be for three weeks for the May session. Nowhere, in S.C. code Ann. § 14-5-620 (3), did the legislature provide a (term of court) for the month of (February) within the court of General Sessions. As set forth the plain unambiguous language of §14-5-620 (3) plainly applies to the months in section (3) Anderson v. state farm Mut. Auto. Ins. co., 314 S.C. 140, 442 S.E.2d 179 (1994) (words of a statute should be accorded their plain and ordinary meaning without resorting to subtle or forced construction to limit or expand the statute's operation). There is simply no language in the statute which gives the solicitor authority to modify the month in 14-5-620 sec. (3). If the legislature had intended the month of (February) to apply in section (3), it could have included such language in the statute.

Estate of Guide v. Spooner, 318 S.C. 335, 447 S.E.2d 623 (Ct.App. 1995) (if the Legislature intended the statute to include the month of February, it could have done so by including February in section (3). In the case at hand, the indictment reads as follows: (At a court of General Session convened on February 11, 2002 the Grand jury of Orangeburg county present upon their oath) (exhibit B).

In this case, the South Carolina Supreme Court confirm the standard for the (term of court) that set fourth in the statutory Laws of this State and in Ex part Lilly, 7 S.C. 372, 1876 WL 5977 and State v. Henderson, 136 S.E. 363. These issues set forth in 1876 as well as the many rulings in other such cases like State v. Henderson Supra and still apply today ^{are} protected by the U.S. constitution and laws of the State.

However, here, evidence will establish that the (Foreperson of the Grand jury) signed the (true bill) dated January 28, 2002. As set forth, "The Foreperson of the Grand jury committed fraud upon the court by signing the indictment before full panel was assembled of the Grand jury." Here, the indictment states the Grand jurors convened on February 11, 2002. Also, see Gaithers v. United States, 413 F.2d 1061, rule 6 (f) of the federal rule of criminal procedure provides; "An indictment may be found only upon the concurrence of 12 or more jurors. "rule 6 (c) emphasizes the requirement also that 12 jurors shall "find" each indictment by its provision and that the foreperson "shall keep a record of the number of jurors concurring of the finding of every indictment. Further observing the specification Of the fifth Amendment's command that "no person shall be held to answer for a capital, or other infamous crime unless, on a presentment of indictment of a Grand jury."

Here the defendant insists that an indictment which is not physically returned in open court must be dismissed under "the leading case" of Reniger v. United States, 172 F 646 (4th cir. 1909). As a result, defendant alleges that because the statutory language is couched in mandatory terms. This Court has a duty to apply State law and Accordingly has no discretion to ignore the jurisdictional dictates of the door closing statute.

The Defendant attacks the indictment procedure followed here on the basis of the policies inherent in the constitutional guarantee of indictment by the Grand jury, and in the history underlying that guarantee. The Fifth Amendment guarantee that prosecution for serious crime may only be instituted by indictment. The indictment as a charging instrument has been recognized for having two chief purposes-first to apprise the accused of the charges against him, so that he may adequately prepare his defense, and second; to describe the crime with which he is charged with, with sufficient specificity to enable him to be protected against further jeopardy for the same offense. See also, Russell v. United States, 82 S.Ct. 1038, 8 L.Ed 2d 240 (1962). But these are not the only purpose of the indictment provisions of the Fifth Amendment. The Fifth Amendment requires that an indictment be brought by a Grand jury. The Grand jury is interposed "to afford a safeguard against oppressive actions of the prosecutor or a court. "the decision to hale a man into a court is a serious one, subject to official abuse. For this reason, 12 ordinary citizens must agree upon an indictment before a defendant is tried on a felony charge. The content of the charges as well as the decision to charge at all is entirely up to the Grand jury subject to popular veto, as it were. The Grand jury's decision not to indict at all, or not to charge the facts alleged by the prosecutorial officials, is not subject to review by any other body.

The matter presented above for review is not a challenge to the court's general grant of authority to hear and determine cases. That authority is rightfully granted by our constitution, State v. Gentry, 363 S.C. 93, 610 S.E. 2d 494 (2005), and will not be at issue here.

GROUND (B) LEGAL FRAMEWORK

SUPPORTING FACTS: The defendant alleges that the solicitors failure to request for a special term of the Court of General Sessions deprived him of his (procedure to due process). Here, one additional piece of evidence very clearly settles the matter of the State's **FALSE** condition. The information contained in Exhibit (A), also establishes that no special term of the Court of General Sessions was convened on (February 11, 2002) under the provision of either Section 14-5-410, Section 14-5-910, Section 14-5-920.

As establish above, what (competent Authority) can the solicitor produce to this Court, that they had approval from the Chief Justice to modify the (term of Court) that set forth in section 14-5-620 (3). When a Legislative enactment limits the manner in which something may be done, the enactment also evinces the intent that it shall not be done another way. Thus, since the Court utilized an lawful mode of procedure not allowed under Section 14-9-210 the State lacked the requisite jurisdiction to complete a return of its true-Billed indictment. Therefor, the legislative has set forth the procedure in the South Carolina rules of Civil procedure Rule 77. Cancelling or ordering term of Court.

Here, the indictments against the defendant were "manufactured" by the foreperson of the Grand jury by signing the indictment before the full panel was assembled of the grand jury. "as set forth, the foreperson of the Grand jury side steped the constitutional machinery provided in the constitution. Certainly the grand juror's bare the decision whether or not if the defendant should be indicted for (Armed Robbery) However it does not entail that or show 12 of them did agree, or even could have

agreed, to an indictment for that offense. Thus in our view the signature of the foreman cannot in itself convert the indictment, admittedly not seen by the full Grand jury, into one properly found by 12 jurors as required by Rule 6.

Consequently, the unlawful and illegal acts committed by the Solicitor requires this Court to hold Defendant's indictment null and invalidate all judicial proceedings taken in this case. Rule 77 (e). SCRCP, provides:

°Sec. (e) no term of Court shall be cancelled nor additional term scheduled without the prior approval of the Chief Justice, When the local bar requests that a week of General Sessions Court be not held the Clerk shall immediately notify the Court Administrator of this State.

The Statutory terms above are clear, unambiguous, and require the County Solicitor to requests that a week of General Sessions Court be not held. The Clerk shall then immediately notify the Court Administrator of the State. Here, the Solicitor failed to follow these procedures set forth in Rule 77 (e), SCRCP.

GROUND (C) The Solicitor committed (sic) a BRADY VIOLATION

SUPPORTING FACTS: The Defendant humbly contends that the Solicitor withheld exculpatory evidence from the defense. Here, exculpatory information of the Solicitor alleges that the Defendant committed (ARMED ROBBERY) with a hand gun, that weapon was never produced in open Court. As a result, the (petit jury) found the Defendant not guilty of the weapon charge.

Both due process and common sense dictate, without a weapon it cannot be a "ARMED ROBBERY" charge.

IN the present case, the foreperson of the grand jury has the same last name as the victim, which is (HUBBARD), with importance to the defense for purposes of the preparation of the case or for trial was not disclosed to defense. . . . If the

foreperson of the Grand jury was a family member of the victim it would have affected the proceedings in this case and the outcome of the trial entirely. This case, however, does involve deliberate prosecutorial misconduct by allowing a family member to sit on the grand jury.

GROUND (D) "Did the Solicitor commit obstruction of justice and conspire to commit official Misconduct and obstruct the due Administrative of justice"?

SUPPORTING FACTS: The Defendant humbly contends that the Solicitor conspired with the Foreperson of the Grand jury, to sign the indictment before full panel was assembled of the Grand jury. The case before this Court happened with evil intent and in the potential for a Solicitor to deliberately mislead the Court, jury and defense counsel is inherent in every phase of the trial, including offering evidence, questioning witnesses, making comments, and presenting arguments. Even non-willful misleading conduct is a serious breach, and when prejudice is demonstrated, a reversal usually follows. Misleading conduct may arise to the level of due process violation when it involves the knowing use of false evidence, or when the conduct renders the defendant's trial fundamentally unfair to have a foreperson of the Grand jury to sign the indictment before full panel was assembled of the Grand jury. Here, "Administration of justice" means performance of acts or duties required by law in discharge of duty.

Simply put, it should be noted that the code of judicial conduct canon (A) State: "A judge shall respect and comply with the law, and shall at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

CONCLUSION

For all of the foregoing reasons, the defendant, Willie Young, respectfully request this Court to reverse the trial decision and reverse the conviction and vacate the conviction and sentence as a matter of law

This ___ day of July 2016

Respectfully Submitted,

By: Willie Young
Willie Young

EXHIBIT C

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I N D E X

Motion Hearing

WITNESS/DESCRIPTION

PAGE NO.

EXHIBITS:

NO EXHIBITS WERE MARKED TO THIS PROCEEDING

Certificate of Court Reporter 18

1 THE COURT: Yes, ma'am.

2 MS. CORNWELL: The State calls Willie Young.

3 (Off the record discussion)

4 MS. CORNWELL: I have a photocopy of Mr. Young's
5 motion on the bench for Your Honor.

6 THE COURT: And I appreciate that.

7 (Off the record discussion)

8 MS. CORNWELL: May it please the Court, Your
9 Honor. Before you is Willie Young. Mr. Young was convicted
10 by in 2002 for armed robbery. He has since filed a motion
11 for after newly discovered evidence and a motion to expand
12 the record. I've given you a copy of that motion and I will
13 turn the floor over to Mr. Young.

14 THE COURT: And, Mr. Young, I've got your motion
15 -- Oh, you got it from her?

16 DEFENDANT YOUNG: Yes, sir. Yes, sir.

17 THE COURT: And Mr. Young, it looks like you wrote
18 this July 26th, 2016?

19 DEFENDANT YOUNG: Yes, sir.

20 THE COURT: All right. And Mr. Young, do you have
21 an attorney to represent you?

22 DEFENDANT YOUNG: No, sir. I do not.

23 THE COURT: Okay. Do you want to get one?

24 DEFENDANT YOUNG: Yes, sir. I would like to be
25 able to start with, you know, representation on this issue.

1 It's a very --

2 THE COURT: Okay. Now, you understand I don't
3 think there's anything that I can appoint one for you. Can
4 you hire one?

5 DEFENDANT YOUNG: That would probably be a
6 problem, sir. I've been incarcerated for a significant
7 amount at this time, sir.

8 THE COURT: What, fourteen, fifteen, years?

9 DEFENDANT YOUNG: Yes, sir. Fifteen years.

10 THE COURT: Okay. I don't know that there's any
11 requirement -- are you aware on a motion to reopen?

12 MS. CORNWELL: No, Your Honor, I believe --

13 THE COURT: Is he entitled to an attorney?

14 MS. CORNWELL: I believe once he exhaust his
15 appellate rights --

16 THE COURT: Ms. Hinds, do you have any idea?

17 MS. HINDS: I'm not but --

18 THE COURT: Can you hold a second where we can get
19 our walking encyclopedia.

20 MS. HINDS: Exactly.

21 THE COURT: If you'd bear with us, Mr. Young.

22 DEFENDANT YOUNG: Yes, sir.

23 THE COURT: We have a walking encyclopedia that we
24 call every now and then. I don't always agree with him, but
25 I like to hear from him.

1 MS. CORNWELL: I rarely agree with him.

2 THE COURT: Mr. Young, while we're waiting, where
3 are you from?

4 DEFENDANT YOUNG: I'm originally from Chicago,
5 Illinois.

6 MS. HINDS: Here he is. Breen, we need you.

7 THE COURT: Come here, Breen.

8 MR. STEVENS: Sir, how can I help you.

9 THE COURT: Well, Mr. Young has filed a motion for
10 after discovered evidence. He'd like to have an attorney.
11 I don't think I can appoint one for that.

12 MR. STEVENS: Ah, okay.

13 THE COURT: That's what I wanted to find out from
14 you. Is there any case law in South Carolina that you are
15 aware of.

16 MS. CORNWELL: He's already exhausted his appeal
17 --

18 THE COURT: Yeah. The appeal's gone. Well, he
19 was convicted in 2002, right?

20 DEFENDANT YOUNG: Yes, sir.

21 MR. STEVENS: There are, to my knowledge, two
22 paths to go forward with that. It's either 29(b) for after
23 discovered motion -- or motion for after discovered
24 evidence.

25 THE COURT: This is what he has.

1 MR. STEVENS: Or under the PCR act they could file
2 a subsequent PCR and if it's truly based upon after-
3 discovered evidence, it could be -- trip and applied through
4 that because there's a subsection, which does allow that.
5 The person would have to actually take action and file their
6 information, to my knowledge, anyway within a year of
7 obtaining that information or to properly act upon it. So
8 they can. If it happens then yes, it would deemed under
9 civil court to a PCR. And that's one of the ways to get a
10 subsequent PCR without it being deemed a second subsequent
11 PCR. To my knowledge.

12 THE COURT: Okay. Okay. So he should file the
13 subsequent PCR that we he can get somebody appointed to
14 represent him on that.

15 MR. STEVENS: That would be one path. Yes, sir.

16 THE COURT: He can't get with a 29(b) motion, can
17 he? Have an attorney -- is there any law that would require
18 me to appoint an attorney for him for --

19 MR. STEVENS: Required, not to my knowledge. I
20 mean, the court has inherent authority to do all things
21 reasonably necessary to achieve just results. But, you
22 know, aside from the court's inherent authority to make
23 appointments, you know, the PCR would be one avenue where it
24 would be -- he could apply and then it goes through that
25 process.

1 THE COURT: Okay. Okay. All right. Don't wander
2 off.

3 MR. STEVENS: Yes, sir.

4 THE COURT: We've got to talk to Mr. Young here
5 for a second.

6 Mr. Young, I don't know if you could -- whenever Mr.
7 Stevens represents somebody I always ask him did you
8 understand what the attorney said.

9 DEFENDANT YOUNG: Uh-huh. (Affirmative response.)

10 THE COURT: And they always, as a matter of form
11 say yes. And I always want to go and say really? Did you
12 understand that really? Okay, so I don't know whether you
13 did. Did you understand -- you'd filed a PCR on this years
14 ago, right?

15 DEFENDANT YOUNG: Yes, sir. I did.

16 THE COURT: And I don't want you to tell me how
17 long it's been since you discovered this evidence. I don't
18 want you to get into that right now because I believe you
19 heard him say that you have to file your request within --

20 DEFENDANT YOUNG: One year.

21 THE COURT: -- one year of discovering that.

22 DEFENDANT YOUNG: Yeah. Uh-huh. (Affirmative
23 response.)

24 THE COURT: Okay. But one path of you being able
25 to get this in front of a Circuit Court Judge with an

1 attorney to represent you would be filing a new PCR and
2 filing this with it would be one of doing that.

3 DEFENDANT YOUNG: Uh-huh. (Affirmative response.)

4 THE COURT: Now, you didn't file this with the
5 court, did you?

6 DEFENDANT YOUNG: No, sir. This was somebody --
7 It's filed, like you said, in July. I never got out. Yes,
8 sir.

9 THE COURT: You don't have a -- you didn't get a
10 filed copy did you?

11 MS. CORNWELL: No, Your Honor.

12 THE COURT: They just mailed it to you?

13 MS. CORNWELL: I got what Solicitor Pasco placed
14 on my desk, Your Honor.

15 THE COURT: Okay. I'm glad Solicitor Pasco is now
16 doing process serving. It makes our jobs easier.

17 MS. CORNWELL: I believe -- and actually I believe
18 it went from his to Mr. Scott's desk to my desk.

19 THE COURT: Oh, okay. All right.

20 MS. CORNWELL: But I think it was just mailed to
21 our office.

22 THE COURT: Okay. Okay. So you have the
23 original?

24 MS. CORNWELL: I do. I also have the PCR file for
25 -- I guess his final appeal was denied by the Supreme Court

1 October 21st of 2015.

2 THE COURT: October 21st of 2016?

3 MS. CORNWELL: '15, Your Honor.

4 THE COURT: Okay. Now, let me ask you a question,
5 Mr. Young. When you filed -- that was your PCR was appealed
6 that's denied here?

7 DEFENDANT YOUNG: Yes, sir. That was actually a
8 subsequent PCR that I filed under another newly discovered
9 evidence that I had discovered but not this per se. It was
10 a ruling that actually had been ruled upon by the courts, I
11 think about three or four years prior to that.

12 THE COURT: Okay.

13 DEFENDANT YOUNG: And that PCR was dismissed.
14 Yes, sir.

15 THE COURT: Okay. So this is evidence you have
16 learned since that time?

17 DEFENDANT YOUNG: Since. Since then. Yes, sir.

18 THE COURT: Okay. All right. Who represented you
19 at the PCR hearing, do you --

20 DEFENDANT YOUNG: I wasn't appointed counsel.

21 THE COURT: Huh?

22 DEFENDANT YOUNG: I was not able to overcome the
23 procedural barrier.

24 THE COURT: Okay.

25 DEFENDANT YOUNG: Yes, sir.

1 THE COURT: Okay. Well, I guess my question for
2 you right now is even though I have the authority possibly
3 to appoint an attorney under a 29(b) motion, I'm not
4 inclined to do that.

5 DEFENDANT YOUNG: Yes, sir.

6 THE COURT: Okay?

7 DEFENDANT YOUNG: Uh-huh. (Affirmative response.)

8 THE COURT: However, if you want to file a
9 subsequent PCR and use this as the basis of it --

10 DEFENDANT YOUNG: Uh-huh. (Affirmative response.)

11 THE COURT: -- I don't have any objection to you
12 doing that. And then if you can overcome a procedural
13 hearing, you'll be able to get an attorney with it. But you
14 tell me how you want to do it. I'm not trying to -- this is
15 your -- you know, Mr. Young, it's your life.

16 DEFENDANT YOUNG: Exactly. Yes, sir.

17 THE COURT: And I'm not going to make you do one
18 thing or the other. I'm just trying to tell you how I'm
19 willing to help you with this, okay?

20 DEFENDANT YOUNG: Well, I mean, Your Honor, I
21 would rather go the route and attempt to entertain this
22 motion now, you know.

23 THE COURT: Okay. All right.

24 DEFENDANT YOUNG: Yes, sir.

25 THE COURT: All right. Okay. Then Mr. Young, the

1 floor is yours. Tell me about it.

2 DEFENDANT YOUNG: Yes, sir. Your Honor, I have
3 discovered -- after new discovered evidence like you said
4 after my motion, my subsequent PCR motion had been dismissed
5 in October of last year. And discovered that the indictment
6 that was returned by the Orangeburg Solicitor's Office, Your
7 Honor, was returned out of turn. On the face of this
8 indictment, Your Honor, it shows the foreman of the grand
9 jury had signed this indictment two weeks prior to the
10 actual convening of the General Sessions Court. Therefore,
11 Your Honor, making this indictment null and void for this
12 armed robbery conviction, which I was sentenced thirty years
13 for. And this is the basis of this motion, Your Honor.
14 Most indictments, Your Honor, are returned within court
15 under the South Carolina Rules of Criminal Procedure. And
16 this is blatantly showing that the Orangeburg County
17 Solicitor Office violated that particular rule and mandate.

18 THE COURT: All right. And I believe you have --
19 I'm looking -- it looks like you attached a copy of your
20 armed robbery indictment and it was true-billed January 28,
21 2002?

22 DEFENDANT YOUNG: Yes, sir.

23 THE COURT: Is that what you're talking about?

24 DEFENDANT YOUNG: Yes, sir.

25 THE COURT: Okay. And you're saying that was

1 outside of the term?

2 DEFENDANT YOUNG: Yes, sir.

3 THE COURT: When was the term, to your knowledge?

4 DEFENDANT YOUNG: On the face of the indictment,
5 Your Honor, it said February 11th, 2002.

6 THE COURT: Okay. Oh, I see. February. Okay.
7 All right, sir. Anything else you want to tell me?

8 DEFENDANT YOUNG: Your Honor, further, you know,
9 Your Honor, as well, you know, Your Honor, the convening of
10 this indictment -- I mean on that particular date -- again,
11 this establishes that this is void and also is malicious
12 prosecution. As well as in the body of my indictment, Your
13 Honor, it states that I automatically -- the allegation
14 states that I was armed with a deadly weapon. As we know
15 that, I went through a jury trial right here in the County
16 of Orangeburg and I was acquitted of the weapon that was
17 alleged to be in the body of this indictment. And I was
18 still, Your Honor, some type a way convicted and sentenced
19 under the armed robbery statute. According to 6-11-330,
20 Your Honor, the requirement of a weapon is used is necessary
21 to validate this particular charges.

22 THE COURT: Okay. So they found you not guilty of
23 --

24 DEFENDANT YOUNG: Of possession of deadly -- the
25 weapon that was alleged to have been used in the armed

1 robbery, according to the body.

2 THE COURT: Okay.

3 DEFENDANT YOUNG: Yes, Your Honor.

4 THE COURT: But the jury still convicted you of
5 armed robbery?

6 DEFENDANT YOUNG: And still was convicted of armed
7 robbery.

8 THE COURT: Now, you didn't have -- you did not
9 attach a copy of the verdict form or anything like that, did
10 you?

11 DEFENDANT YOUNG: No, sir. I never had a verdict
12 form. No verdict form was given to me in my motion for
13 discovery or --

14 THE COURT: Okay. All right. All right. What
15 else, Mr. Young.

16 DEFENDANT YOUNG: Your Honor, that's the basis of
17 my motion. I mean, all my proceedings would basically -- I
18 mean, it would be null at this point because of the
19 indictments, Your Honor, at the initiation of this
20 prosecution. I mean, there would be no -- there would be no
21 hearing for this if it had not been for this, this error.
22 This is a grave injustice. I've been incarcerated fifteen
23 years behind this particular procedure, you know, and it
24 doesn't show any type of faith in the judicial system if I
25 can be incarcerated and be sentenced to something of this

1 magnitude with no basis.

2 THE COURT: And, Mr. Young, what was your
3 sentence?

4 DEFENDANT YOUNG: Thirty years.

5 THE COURT: Thirty years?

6 MS. CORNWELL: If I may, Your Honor.

7 THE COURT: Oh, You've got it. You have never
8 seen a copy of your sentencing sheet?

9 DEFENDANT YOUNG: I've never had it myself, Your
10 Honor.

11 THE COURT: All right. We'll make a copy.

12 DEFENDANT YOUNG: Okay, sir.

13 THE COURT: Okay. All right. Judge Williamson --

14 DEFENDANT YOUNG: yes, sir.

15 THE COURT: All right. Anything else?

16 DEFENDANT YOUNG: No, sir.

17 THE COURT: Okay. All right. And Ms. Cornwell,
18 anything from the State?

19 MS. CORNWELL: No, Your Honor. I mean, just
20 simply in response to the arguments, obviously a grand jury
21 is convened prior to the term of court and this particular
22 grand jury was convened in January prior to the February
23 term of court. That's why the indictment says February term
24 and is signed on January. We always have our grand juries
25 convene prior to the term of court. That way we can handle

1 any of those indictments during court, as Your Honor knows.

2 As far as the guilty on armed robbery, not guilty on
3 the possession of a weapon, this trial was in 2002. I was
4 not present for that trial. However, knowing Judge Williams
5 I'm sure that he explained the elements of each charge
6 thoroughly to the jury. Obviously, the Court knows that
7 there are many ways that somebody can be found guilty of
8 armed robbery and not guilty of a possession charge. So we
9 believe that given the appeals that he's gone through,
10 including the appeal of the trial verdicts, that that motion
11 should be denied as well.

12 THE COURT: Okay.

13 And Mr. Young, I don't know, do we have your -- in your
14 motion -- do you have his address?

15 MS. CORNWELL: He's in Allendale right now, Your
16 Honor.

17 THE COURT: You're in Allendale?

18 DEFENDANT YOUNG: Yes, sir.

19 THE COURT: And what's your address in Allendale?

20 DEFENDANT YOUNG: 1057 Revolutionary Trail,
21 Fairfax, South Carolina, 29827.

22 THE COURT: All right. And what's your Department
23 of Corrections Number?

24 DEFENDANT YOUNG: 285487.

25 THE COURT: 2854 --

1 DEFENDANT YOUNG: 87.

2 THE COURT: --87. Okay. All right. All right.

3 Anything in response?

4 DEFENDANT YOUNG: Yes, Your Honor. Your Honor,
5 according to South Carolina Code -- according to criminal
6 law, Your Honor, it states that Orangeburg County, Your
7 Honor, only meets in the month of January, May and
8 September, Your Honor. And this is going back again to the
9 indictment alleging that this General Session term was held
10 in February. And the only way this could happen, Your
11 Honor, is if a special term had been requested by the
12 Solicitor's officer. There's nothing in the record, Your
13 Honor, that can validate or even show that Orangeburg County
14 Solicitor Office even requested a special term for this
15 indictment to be returned.

16 THE COURT: Okay. And I'll have to look up that,
17 Mr. Young. I don't know what it was like in 2002.

18 DEFENDANT YOUNG: Yes, sir.

19 THE COURT: We've got criminal court going two
20 weeks a month every month of the year.

21 DEFENDANT YOUNG: Yes, sir.

22 THE COURT: Now.

23 DEFENDANT YOUNG: Now.

24 THE COURT: But I don't know what it was like in
25 2002. Okay. Anything else?

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DEFENDANT YOUNG: No, sir.

THE COURT: Okay. Mr. Young, what I'll do is --
let me make a copy of this.

DEFENDANT YOUNG: Yes, sir.

THE COURT: And we'll send it back to you. I'll
read over this --

DEFENDANT YOUNG: Yes, sir.

THE COURT: -- and pull the verdict form. And
I'll get back to you with my decision.

DEFENDANT YOUNG: Thank you, sir.

THE COURT: Now, do you understand -- well, you've
already been through this. You understand the way to file
for appeal and things like that?

DEFENDANT YOUNG: Yes, sir. Yes, sir, I do.

THE COURT: Okay. All right. Good luck to you.

DEFENDANT YOUNG: Thank you, sir. Thank you.

MS. CORNWELL: Thank you, Your Honor.

THE COURT: Yes, sir.

(This proceeding was concluded.)

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C-E-R-T-I-F-I-C-A-T-E

I, THE UNDERSIGNED HILDA M. JORDAN, CVR-M, OFFICIAL COURT REPORTER FOR THE FIRST JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF THE PROCEEDING IN THE CAPTIONED CAUSE, IN THE COURT OF GENERAL SESSIONS FOR ORANGEBURG COUNTY, SOUTH CAROLINA, ON THE 24 DAY OF OCTOBER, 2016.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL, NOR INTEREST IN ANY PARTY HERETO.

Hilda M. Jordan, CVR-M

July, 2, 2018

EXHIBIT D

STATE OF SOUTH CAROLINA)
COUNTY OF ORANGEBURG)

IN THE COURT OF GENERAL SESSIONS
FOR THE FIRST JUDICIAL CIRCUIT

State of South Carolina)

2013-CP38-00757

CASE NO.: 2001-GS-38-2492

vs.)

**ORDER DENYING DEFENDANT'S
MOTION FOR NEW TRIAL**

Willie Young III,)

Defendant.)

This matter is before the court on Defendant Willie Young III's ("Defendant") motion for a new trial based on after-discovered evidence pursuant to Rule 29(b) of the South Carolina Rules of Criminal Procedure. After due deliberation, review of the motions and supporting documents and hearing arguments on behalf each party, for the reasons stated below, this court denies Defendant's motion.

FACTS

Defendant was indicted for the offense of armed robbery under Indictment No. 2001-38-2492. Defendant proceeded to trial by jury, and was convicted of the aforementioned offense on June 28, 2002. The Honorable James C. Williams thereafter ordered Defendant to be committed to the State Department of Corrections for a period of thirty (30) years.

By motion dated July 26, 2016, Defendant asserts that he is entitled to a new trial based on his discovery of new evidence. Specifically, Defendant argues that S.C. Code Ann. § 14-5-620(3)¹ does not provide for a general sessions term of court in Orangeburg for the month of February, the

¹ S.C. Code Ann. § 14-5-620(3) states, in pertinent part, the following:

The Court of general sessions for the county of Orangeburg shall be held at Orangeburg the second Monday in January, the first Monday in May, and the second Monday in September. The term shall be three weeks for the May session.

Id.

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2016 FEB - 6 A.M.

month Defendant was indicted. Defendant argues that "[t]here is simply no language in the statute which gives the solicitor authority to modify the month in [S.C. Code Ann. §] 14-5-620(3)," and that "[i]f the legislature had intended the month of February to apply in subsection (3), it could have included such language in the statute." Because Defendant was indicted on February 11, 2002, Defendant contends that the indictment and subsequent conviction are null and void.

In his motion, Defendant also claims that the Solicitor committed a Brady violation. He states:

The Defendant humbly contends that the Solicitor withheld exculpatory evidence from the defense. Here, exculpatory information of the Solicitor alleges that the defendant committed (ARMED ROBBERY) with a hand gun, that weapon was never produced in open Court. As a result, the (petit jury) found the Defendant not guilty of the weapon charge. Both due process and common sense dictate, without a weapon it cannot be a "Armed Robbery" charge.

Defendant also makes an unsubstantiated claim that the grand jury foreperson is related to the victim because they have the same last name. Lastly, Defendant claims that the Solicitor committed "obstruction of justice and conspire[d] to commit official Misconduct and obstruct the due Administrative of justice" because the indictment was true billed out of term.

A hearing was held before this court on October 26, 2016 in Orangeburg County, in which Defendant appeared pro se. Assistant Solicitor Ashley Cornwell appeared on behalf of the State. This court heard arguments from both parties, and the matter was taken under advisement.

DISCUSSION

A. S.C. Code Ann. § 14-5-620 provides for the minimum terms of court scheduled for each county, and does not limit the ability of the Chief Justice of the Supreme Court to schedule terms of court as is necessary.

The judicial power is vested under Article V of the South Carolina Constitution, in the unified judicial system. Article V, Section 1, provides for the following: "The judicial power shall

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be vested in a unified judicial system, which shall include a Supreme Court, a Circuit Court, and such other courts of uniform jurisdiction as may be provided for by general law." With regard to setting terms of court, this power remains with the Chief Justice of the Supreme Court, who is the administrative head of the unified judicial system. See S.C. Const. Art. V, § 4 ("The Chief Justice shall set the terms of any court and shall have the power to assign any judge to sit in any court within the unified judicial system."). The provision further states, in pertinent part:

[E]ach county shall be entitled to four weeks of court each year and such terms therefor shall be provided by the General Assembly. Provided, further, that the Chief Justice shall set a term of at least one week in any court of original jurisdiction in any county within sixty days after receipt by him of a resolution of the county bar requesting it. The Supreme Court shall make rules governing the administration of all the courts of the State.

Id.

The above statute merely provides for a minimum amount of terms of court that are to be scheduled in each county, which is the responsibility of the General Assembly. However, the statute does not limit the ability of the Chief Justice of the Supreme Court to schedule additional terms of court pursuant to its constitutional power delineated in Article V, § 4. As stated above, the Chief Justice has the power to set the terms of any court and shall have the power to assign any judge to sit in any court within the unified judicial system. See also S.C. Const. Art. V, § 4 (The Chief Justice also has the power to "appoint an administrator of the courts and such assistants as he deems necessary to aid in the administration of the courts of the State."). Although S.C. Code Ann. § 14-5-620(3) does not provide for Orangeburg general sessions terms of court at the time Defendant was indicted and ultimately convicted, the South Carolina Court Administration specifically scheduled general sessions terms of court during those weeks and it acted within their constitutional authority in doing so.

Accordingly, Defendant's argument that he was indicted and convicted out of term is without merit.

B. Defendant's other grounds for relief are successive and untimely.

S.C. Code Ann. § 17-27-90 provides that:

All grounds for relief available to an application under this chapter must be raised in his original, supplemental or amended Application. Any ground finally adjudicated or not so raised, knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence or in any other proceeding Applicant has taken to secure relief, may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which for sufficient reason was not asserted or was inadequately raised in the original, supplemental or amended Application.

Successive applications are disfavored and the burden is on the applicant to establish that any new ground raised in a subsequent application could not have been raised by him in a previous application. Aice v. State, 305 S.C. 448 (1991); see also Foxworth v. State, 275 S.C. 615 (1981).

This court finds that the current allegations were or could have been raised in the proceedings based on Defendant's prior applications for post-conviction relief² and, thus, the current application is successive. Applicant has failed to establish sufficient reason why he could not have raised his current allegations in his previous application for post-conviction relief.

² Defendant filed an application for post-conviction relief on December 23, 2003, raising ineffective assistance of counsel and lack of subject matter jurisdiction, which was dismissed with prejudice. Defendant appealed to the South Carolina Court of Appeals, and the appeal was denied by Order dated April 20, 2007. Defendant thereafter filed a petition under 28 U.S.C. § 2254 for Writ of Habeas Corpus by a Person in State Custody on August 21, 2007. The petition was dismissed with prejudice. Applicant appealed to the Fourth Circuit Court of Appeals, and the Court dismissed the appeal in an unpublished opinion on June 16, 2009. Defendant then filed another application for post-conviction relief on December 13, 2010. That application was barred as successive by Order dated September 9, 2011. Defendant filed yet another application for post-conviction relief on June 28, 2013, which was denied by Order dated September 24, 2013.

This court finds, further, that this motion should be dismissed as untimely. Although Defendant couches his grounds for relief as a Rule 29(b) after-discovered evidence motion, it is nonetheless another application for post-conviction relief. S.C. Code Ann. § 17-27-45(a) states:

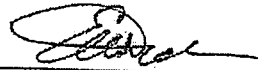
An application for relief filed pursuant to this chapter must be filed within one year after the entry of judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468 (1996). Therefore, this court finds that Defendant's application is denied for failure to file within the time mandated by statute.

CONCLUSION

Therefore, for the reasons stated above, IT IS ORDERED that Defendant's motion for a new trial pursuant to Rule 29(b) of the South Carolina Rules of Criminal Procedure be, and hereby is, denied.

IT IS SO ORDERED.



Edgar W. Dickson
Presiding Judge, First Judicial Circuit

December 21, 2016
Orangeburg, South Carolina

EXHIBIT E

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal From Orangeburg County
COURT of General Sessions
EDGAR W. DICKSON, Circuit Judge

CASE NO: 2001-GS-38-2492

STATE OF South Carolina

Respondant

v.

Willie Young

Appellant

NOTICE OF APPEAL

Willie Young Appeals the order of Judge EDGAR W. Dickson
DATED Dec, 21, 2013. Appellant received written notice of
order on February 13, 2017.

Signature Willie Young
1057 Revolutionary Trail
Aiofax S.C. 29827

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FEB 23 2017

SC Court of Appeals

proof of service.

THE STATE OF SOUTH CAROLINA

IN THE COURT OF Appeals

Appeal From Orangeburg County
Court of General Sessions
EDGAR W. DICKSON Circuit Judge

I Willie Young certify that a proof of
Service has been served upon All parties involved
in the Above referenced matter.

February 20, 2017

Signature Willie Young

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EXHIBIT F

THE LAW OFFICE OF
Christopher W. Adams
A PROFESSIONAL CORPORATION

June 6, 2018

ATTN: FOIA REQUEST
Orangeburg County Clerk of Court
General Sessions
P.O. Box 9000
Orangeburg S.C., 29116

RE: Freedom of Information Act Request: State v. Willie Young

Dear Custodian of Records:

Under the South Carolina Freedom of Information Act, S.C. Code §30-4-10 *et seq.*, I am requesting an opportunity to obtain copies of the following public records:

State v. Willie Young, General Sessions Indictment No. 2001GS3802492
We request copies of all documents in the Clerk's possession associated with this case, excluding trial transcripts and/or trial exhibits.

If there are any fees for searching or copying these records, please inform me at your next convenience and I will provide prompt payment. This information is not being sought for commercial purposes. As you are aware, the South Carolina Freedom of Information Act requires a response time within 15 business days.

Thank you in advance for your time and consideration in this matter. I will await your response.

Sincerely,



Christopher R. Geel
Attorney at Law

EXHIBIT G

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Date: July 11, 2018 at 4:13 PM
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Per your request.



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THE LAW OFFICE OF
Christopher W. Adams
A PROFESSIONAL CORPORATION

July 26, 2018

Ms. Jenny A. Kitchings
South Carolina Court of Appeals
PO Box 11629
Columbia, SC 29211

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SC Court of Appeals

**RE: Motion to Remand; Motion to Hold Deadlines in Abeyance
State v. Willie Young, Appellate Case No. 2017-000557**

Dear Ms. Kitchings:

Enclosed please find my motion to remand and motion to hold filing deadlines in abeyance in the above-referenced matter.

Sincerely,



Christopher R. Geel
Attorney at Law

cc: *J. Benjamin Aplin, Esq., Counsel for Respondent
Willie Young, Appellant*

Attorney Christopher Geel

171 Church St., Suite 210

Charleston, SC 29401

TO:

MS. JENNY A. KITCHINGS
SC COURT OF APPEALS
1220 SENATE ST.
COLUMBIA SC 29201

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SC Court of Appeals

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