STATE OF SOUTH CAROLINA
IN THE COURTS OF APPEAL

APPEAL FROM BAMBERG COUNTY
COURT OF GENERAL SESSION

Honorable Doyet A. Early,III, Circuit Court Judge

Case No: 2007-GS-05-00168,169
Appellate Case No: 2017-002619

Johnnie Lee Jones, SCDC #340271, Appellant,

V.

The State of South Carolina, Respondant,

[INITIAL] BRIEF OF APPELLANT

Johnnie Lee Jones,
Johnnie Lee Jones, SCDC #340271.
Acting Pro-Se Attorney:
Allendale Coerection Institution
Post-office Box 1151 F-3-B-23
Fairfax, South carolina 29827

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TABLE OF AUTHORITY

STATEMENT OF ISSUE OF APPEAL

(1). Did circuit courts error in denying of Petition/Motion for Newly discovered evidence on claims of Extrinsic fraud, Where apposing party Solicictor and Clerk of court fail to produce supportive evidence from the Clerks records that rebutted the claim of Fraudulent actions by the Solicitor and Grand jury foreperson of signing and processing of such documents (Indictment) of this action out-side the convening of courts Grand Jury?

STATEMENT OF CASE

Appellant is currently incarserated in the South Carolina Department of Corrections pursuant to orders of commitment of the Bamberg Counties Clerk of court. The appellant was indicted during the May/June of 2007, term of Bamberg County Grand Jury for Assualt and Battery with intent to kill, (2007-GB-05-0168) and Attempted Kidnapping, (2007-GS-05-0169), During trial proceedings he was represented by Dan Luginbill, Esquire, and was found guilty by juror's of Attempted kidnapping and Assault and Battery of a high and aggravating nature. On April 19,2010, the Honor - able Judge Doyet A. Early, III. past judgement to a period of eighteen years confinment on Attempted Kidnapping and ten yeass on the assault and Battery of a high and aggravating nature.

Defendant filed a Notice of Appeal and the Appeal was perfected, On January 25,2012, the South Carolina Courts of Appeals affirmed the con- viction and sentencing and dismissed the appeal, (see): State v. Jones)Op. No: 2012-up-0341), Thereafter on April 30,2012 Defendant file the Pro-Se Petition for Post-Conviction Relief abd was presented before the Honorable Judge R. Ferrell Cothran, Who dismissed the action by orders dated August 19,2013...

Defendant subsequently file a Motion captioned, "Motion for Newly Dis- covered Evidence" and "Motion to Expand the Record" and subsequentlt to that file the "Petition for Writ of Mandamus", Which was presented and denied by the Honorable Judge Doyet A. Early,III. On August 24,2017, The defendant filed a Notice of Appeal and this is as follows:

STATEMENT OF FACTS

Appellant arbues circuit courts violated his Fifth and Fourteenth - Constitutional Amendments of the United States and Article I,§3 and 11, of South Carolina Constitution Amendments by the errored judgement of denying his Motion for Newly Discovered Evidence, Where during Courts proceedings apposing parties (Solicitor and/or Clerk of Courts) Failed to provide or present rebuttal evidence from Courts records that would substantially support petitioner's claim of extrinsic Fraud and courts lack of jurisdiction to process a fraudulent indictment under a unlawful and illegally impanelment and/or a signed order to do such actions by the Supreme courts Chief Justice to be with-out merit. Here, Appellant should be granted the relief eequested in the original application as a matter of law. This arguement is as follows:

ARGUMENT:

Appellant humbly contends, Courts errored in the denial of his Motion for Newly Discovered Evidence dated August 24,2018, Therby, Violating the Appellants Fifth and Fourteeanh Constitutional Amendments of Due process and equal protection of Law. Appellant appeals the Coutts ruling on this Motion and only raises one collateral claim in support of all issue's of this legal matter..

Appellant states courts made error judgement in denying his Motion of Newly Discovered Evidence Claiming "Extrinsic Fraud" Where the Solicitor of the second judicial circuit did commit a "Procedural error" and "Contempt of the proceedings" (Fraud) pursuant to SCRCP: rule: 60-(b)-(3),By unlawfully and illegally processing the indictment of this case out-side the proper convening of a Grand Jury. Then willfully printing and publishing the false and misleading information of the document to the Clerk of courts office for a trial proceeding to deep secret its violation and/or illegal process of statutory Law. (see): Designation of Matter; Exhibit: #A. Pg. (4). (i Due Peocess)., Exhibit: #C, (Indictments).

Appellant further claims the trial court was with-out jurisdiction of the trial proceedings, Where the indictment was Fraudulently signed and processed out-side the convening of a Grand Jury, Making such Documents Null and Void. This issue was expressed in the original Motion and fully discussed in the court hearing. (see): Exhibit: #B. Pg. (2-3). Where the

courts agreed with appellants argument that S.C. code ann: §14-5-630-(A). provides for the scheduling of terms of General Session and Common Pleas courts in the second Judicial circuit, Although courts further claim such to be in direct contravening to the subsequent enactment of the South - Carolina Constitution Article V, section §4. "Quoting" 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. (see): The S.C. Const. Amend. Art. V, section: §4., S.C. code ann: §14-5-630-(A)., Exhibit: #B. Pg. (2-3)..

Here, appellant respectfully agree's to the South Carolina Constitutional Law that establish the Unified Judicial System and supports rules set up by Legislature panel of opporations. Art. V, section: §4. Quotes, The unified Judicial System provides: Each county shall be entitled to four weeks of court each year and such terms thereafter shall be provided for 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 of the county within sixty day's after reciept by him of a resolution of the county bar requesting it; "More specific a special term of court" Here, Appellant states the indictment, as set forth, will establish courts without juriddiction of court proceedings, Where the [Foreperson of Grand Jury] signed the [True Bill] dated May 31,2007, Thereby, committing [Constructive Fraud] upon the coutt by signing such Documents before a full panel was assemble by the General Session on June 4,2007. and violating the strict mandated provisions set up by the Legislatures opporation manual for the unified judicial system. Furthermore, Courts actions violated appellants constitutional rights to due process and/or equal protection of Law. (see): Exhibit: #C. Fifth and Fourteenth Constitutional Amendments of the United States and Article I, §3 and 11, of the South Carolina Constitutional Amendments., (see): Gathers V. United States 413 F.2d 1061, 134 US 154 (App. DC 1969)..

The terms of General Session court are constitutionally set by the Chief justice of the Supreme Court and notice of such terms are thereafter published by the South Carolina courts of Administrations. (see); State Ex.rel Riley V. Martin 274 SC 106, 262 SE2d 404 (1980). Here, all other modes taken by the Solicitoe's office or courts out-side of these provisions would be Null and Void and constitutes a fraudulent act. The standards of SCRCP: rule: 60-(b)-(3), [Fraud, misrepresentation or other misconduct by an adverse party], is supported through Supreme courts in

rulings of law that there is no limitation when a party seeks to set a judgement aside due to fraud or other misconduct of an adverse party who commits a unlawful act upon the courts. (see): Aoudi V Mobil Oil Corp. , 862 F2d 890 (1rst cir 1988)., Infurtherance, For the edit of the courts "Fraud" is a hidden agenda and a unlawful act that can only be discovered through relentless investigations or intrusive study of materials and documents implicated under a format of secrety, to which such application are cosistently construed as truthful and authenic in nature by all of averring of courts. (see): State V. Grim 341 SC 63, 533 SE2d 329 (2000)., State V. Beachum 288 SC 325, 342 SE2d 597 (1986)..

Appellant contends in this concept the unlawful signing of the Foreperson of the True Bill is construed as truthfully authenic and done under a clarity of secrecy that most courts controvertly find as unapproachable. S.C. Const. Amend. Art. I, section: §11, and the Fifth Amendment of the United States Constitution, "Quotes", No person shall be held to anwser for a capital or otherwise infamous crime unless on a presentment or indictment of a Grand jury. FRCP: rule: 6-(F), provides: Indictments may be Found only upon the concurring of 12 or more Juror's. The rule: 6-(C), It empasizes the requirement that 12 juror's "Shall Find", each indictment by its provisions and foreperson shall keep the records of the number of juror's concurring in the finding of every indictment or a signed log of each indictment processed through each term for that year. This is consistent with S.C. code ann: §14-7-1700, That establishes rules that each indictment be "Found" by at least 12 Juror's and such findings be placed on record with the Clerk of courts office pursuant to S.C. code ann: §14-7-540. (see): State V. Funderburk 259 SC 256, 191 SE2d 520 (1972) State V, Bultron 318 Sc 328, 457 SE2d 616 (ct. App. 1996)..

The case at hand, during the proceeding hearing the adverse perties Solicitor, Clerk of courts fail to offer rebuttal evidence from courts records pursuant to the codes of laws presented above. Clearly, Procedures set up by the legislature mandates records of such actions be kept in records with the Clerk of courts, Here, Court should provided signed documents such as rosters by the Grand Jury and Foreperson of the dates and times of all such actions and/or signed documents or orders by Chief Justice allowing a court proceeding of this nature along with specific reasoning for a signature of authenticy out-side a Grand Jury term. The Failure to provide such reasoning is supportive Prima Facie evidence of Extrinsic Fraud by the adverse parties upon the court. The Lack of any

court records to stabilize a legal court proceeding is clear evidence in that signifies a hidden agenda of a secret fraudulent act in support of appellants claim of fraud by courts. Thereby, Circuit Courts made errored judgement in denying of the Motion where evidence fail to exist in support of adverse parties responce to appellants claim of fraudulent action by the Solicitor office and Grand Jury Foreperson of unlawfully and illegally processing the indictment out-side the provisions of Law... (see): Exhibit: #D. [Transcript of proceedings], State V Butron, Supra., Zugar V. State 194 Sc 285, 21 SE2d 647 (1942)., Anderson V. State 338 SC 629 , 527 SE2d 398 (2000).. and many more...

IN CONCLUSION

Appellant contends, For all reasons stated herein above, The Honorable Circuit Judge errored in denying his Motion for Newly Discovered Evidence and claims of Extrinsic Fraud by the Solicitor and Grand Jury Foreperson, Where all evidence shown above provides presumptive Prima Facie evidence that validates fraudulent guilt...

Appellant would respectfully request this Honorable Court please find merit in this appeal and grant the appellant the relief requested in the application to vacate the conviction and sentencing of this action as a matter of Law...

Respectfully Submitted,

Johnnie Lee Jones,

Johnnie Lee Jones, SCDC #340271
Acting Pro-Se Attorney:
Allendale Correction Institution
Post-office Box 1151 F-3-B-23
Fairfax, South Carolina 29827

Exhibit: # A: Pg: (1-7):

STATE OF SOUTH CAROLINA	,	IN THE COURT OF GENREAL SESSIONS
	,	SECOND JUDICIAL CIRCUIT
COUNTY OF BAMBERG	,	CASE NO.: 2007-GS-05-168-169

FILED
BAMBERG COUNTY
2016 APR 26 AM 10:24
JAMES B. HIERS
CLERK OF COURT
BAMBERG, SC

State of South Carolina	,	
vs.	,	MOTION FOR AFTER-NEWLY DISCOVERED EVIDENCE and MOTION TO EXPAND RECORD
Johnie L. Jones, #340271	,	
Defendant.	,	"Evidentiarty Hearing Requested"

This matter comes before the Court by way of an Motion to filed a Motion for After-Newly Discovered Evidence and Motion to Expand the Record to be filed pursuant to Rule 29 (B), SCRCRIM.P. and Rule 60 (B)(3), SCRCP. There is no st-- atute of limitation when a party seek to set aside a judgment due to fraud upon the Court. (Citing Aeuda v. Mobil Oil Coopuration, 862 F.2d 1115,1118 (1st Cir. 1989);; Catoe v. State, Supra., there is no time limitation within such motion must be brought forth. See State v. Williams, 100 S.C. 295,93 S.E.2d 106.

PROCEDURAL HISTORY

For purpose of the Motion, Defendant discovered that the Solicitor unlawfully impaneling its Grand Jury outside the Statute of S.C.Code Ann.§ 14-5- 630 (2);; the Solicitor committed a BRADY VIOLATION by withholding exculpatory evidence from the defense and the Solicitor manufactured a indictment for [Attempt Kidnapping].

ALLEGATIONS

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

Exhib.1 #A

GROUND A. "Did the Solicitor committed (sic) a 'procedural error' by unlawfully impaneling its Grand Jury outside the Statute of S.C.Code Ann.§ 14-5-630 (2)

SUPPORTING FACTS: The Defendant humbly contends that the Solicitor committed (sic) a 'procedural error' by unlawfully impaneling its Grand Jury outside Statute of S.C.Code Ann.§ 14-5-630 (2). Here, the General Assembly did not made a-provision in Sec. 14-5-630 (2), that set forth, a [Term of Court] for the Month of [June].

S.C.Code Ann. 14-5-630 (2), which provides:

- Section (2) Bamberg County.- The Court of General Sessions for Bamberg County shall be held at Bamberg on the third Monday in February for a term of one week and on the second Monday in September for a term of one week.

Nowhere, in S.C.Code Ann. 14-5-630 (2) the legislature provided a [Term of Court] for Month of [June] within the Court of General Sessions.

In the case, at hand, the indictment read as follows:

- At a Court of General Sessions, convened on June 4,2007, the Grand Jurors of Bamberg County present upon their oath;

In this case, the South Carolina Supreme Court confirm the standard for the [Term of Court] that set forth 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 the Supreme Court Ruling in other such cases like State v.-Henderson, Supra, and still apply today and protected by the United States Constitution and laws of the State and United States.

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.

Exhibit "A"

GROUND B. Legal Framework

SUPPORTING FACTS: The Defendant alleges that the Solicitor failure to request for a special term of the Court of General Sessions, it deprived the Defendant of his [Procedural due process]. As set forth, one additional piece of evidence very clearly settles the matter of State's FALSE condition. The information contained in Chamber Exhibit [A], also establishes that no special term of the Court of General Sessions was not convened on June 4,2007 under the provisions of either Section 14-5-410, Section 14-5-910, or Section 14-5-920.

As established above, what [Competent Authority] the Solicitor can produce to this Court, that give them authority to alter the [Term of Court] that set forth in Section 14-5-630 (2). When a legislative enactment limits the manner in which something may bw 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, State lacked the requisite jurisdiction to complete return of its true-billed indictment. Therefore, the legislative has set forth the Procedure in South Carolina Rules of Civil Procedure Rule 77. Cancelling or Ordering Term of Court.
The rule 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 Common Pleas Court be not held or the Solicitor requests that a week of Gereral 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 immediately notify the Court Administrator of this State. Here, the solicitor in contempt of court by failure to comply with the requirements of this rule.

Exhibit #A

i. Due Process

However, her, evidence will establish that the [Foreperson of Grand Jury] signed the [True-Bill] dated May 31,2007. As set forth, the foreperson of the grand jury committed [Constructive Fraud] upon the Court by signing the indictment before full panel was assembled of the Grand Jury." See gaither v.—— United States, 413 F.2d 1061, under Rule 6 (f) of the Federal Rules of Criminal Procedure provides: "An indictment may be found only upon the concurrence of 12 or more jurors. And Rule 6 (c) empasizes the requirement that 12 jurors shall "find" each indictment by its provision that the foreperson "shall keep a record of the number of jurors concurring in the finding of every indictment must be "found" by at least 12 grand jurors is a further specification - of the Fifth Amendment's command that "no person shall be held to answer for- a capital or otherwise infamous crime, unless on a presentment or indictment- of a Grand Jury."

GROUND C. Did the Court lack subject matter jurisdiction to tried the Defendant on attempted kidnapping?

SUPPORTING FACTS: The Defendant contends that the Legislature did not ..... enacted a Statute for (attempted kidnapping] and there was no provision place in **S.C.Code Ann.§ 16-3-910 for attempted kidnapping. See also, Keith v. Stevenson,** 210 WL 3786122 (2010), to do a thing unlawfully is to do it willfully against the law. Knowingly means knowledge, consciously, not accidentally,... seize means to take hold or suddenly or forecefully, confine means to limit,- restrict or enclose within bounds, imprison or shut or keep in. Inveigle..... means to lure, entice or astray... or lead astray by false representations,.. promises or other deceitful means. Decoy means to lure or as if by decoy. A. decoy is... decoy is something to entice a person into a trap. The definition

Exhibit "A"

of decoy is to lure successfully. As provided in Section 16-3-910, kidnapping occurs when one unlawfully seize, confines, inveigles, decoys, kidnaps,abducts or carries away any other person by any means whatsoever without authority of law.

The plain and unambiguous language of § 16-3-910,As set forth, element of.... kindnapping (words of a statute should be accorded their plain and ordinary meaning without resorting to subtle or forced construction to limit or expand statute's operation). There is simply no language in the statute which implies it excludes a provision for (attempted kidnapping). If the Legistature.. had intended to add attempted kidnapping in the Statute, it could have..... included such language in the Statute (if Legislature intended Statute to attempted kidnapping, it could have done so by including such language).

Lastly, the Solicitor simply did deprived Defendant's of his due process or equal protection, by convicting the Defendant of a Statutory Law that was not enacted by Legislature.

GROUND D. **The Solicitor committed a BRANDY VIOLATION by withholding exculpatory evidence.**

SUPPORTING FACTS: The Defendant contends that the Solicitor withheld exculpatory evidence, such as misidentification because the highly suggestive out-of-court identification procedure used by police where only one photograph was displayed in the photographic layout and shown to the accuser resulted in an unreliable identification and the Solicitor withheld the one photograph from the defense and the Solicitor wihheld the medical report from the ..... defense to substantiate the victim was every injury and the Solicitor failed to met all the prongs set forth in S.C.Code Ann.§ 16-3-910. Here, the Solicitor was not faithful to the Law.

Exhibit #A

CONCLUSION

For all of the foregoing reasons, the Defendant, Johnnie L.Jones, respectfully requests this Court to grant the Motion and reverse the trial court decision and remand this case for an Evidentiarty... Hearing to vacate Jones's conviction and sentence as matter of law.

This __ day of April, 2016.

Respectfully submitted,

By: Johnnie L Jones

Johnie L. Jones

Exhibit #A

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he has caused the **Motion for After-Newly Discovered Evidence and Motion to Expand Record** filed in the above-captioned case, to be served via United States Mail, first class, postage-paid, on the parties listed below on April 11,2016.

Alan Wilson, Attorney General
Office of Attorney General
P.O.Box 11549
Columbia, S.C. 29211

Johnie L Jones

Johnie L. Jones

Exhibit #B: Pg: (1-7):

FILED
BAMBERG COUNTY
2017 AUG 25 AM 9:11
JAMES B. NIERS
CLERK OF COURT
BAMBERG, SC

STATE OF SOUTH CAROLINA	IN THE GENERAL SESSIONS COURT
COUNTY OF BAMBERG	SECOND JUDICIAL CIRCUIT
STATE OF SOUTH CAROLINA v. JOHNNIE L. JONES, Defendant.	**ORDER DENYING MOTION FOR NEW TRIAL AND PETITION FOR WRIT OF MANDAMUS** 2007-GS-05-0168 and 2007-GS-05-0169

A TRUE COPY
Attest: [signature]
CLERK OF COURT
BAMBERG COUNTY, SC

This matter came before the Court for hearing on Defendant's motion captioned "Motion for After-Newly [*sic*] Discovered Evidence and Motion to Expand Record" filed on April 26, 2016, and Defendant's subsequent "Petition for Writ of Mandamus" filed May 11, 2017. A hearing on the motions was conducted at the Barnwell County courthouse on July 25, 2017. The State was represented at the hearing by Deputy Solicitor David W. Miller. The Defendant was present for the hearing and appeared *Pro Se*. After hearing from the parties, I hereby find and rule that the Defendant's Motion and Petition for Writ of Mandamus should be dismissed for the reasons outlined below.

PROCEDURAL HISTORY

The Defendant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Bamberg County Clerk of Court. The Defendant was indicted during the June 2007 term of the Bamberg County Grand Jury for assault and battery with intent to kill (2007-GS-05-0168) and attempted kidnapping (2007-GS-05-0169). He was represented by Dan Luginbill, Esquire. Defendant proceeded to a jury trial and was convicted of attempted kidnapping and assault and battery of a high and aggravated nature, a lesser included offense of assault and battery with intent to kill. On April 19, 2010, I sentenced the Defendant to a period of eighteen years confinement attempted kidnapping and ten years for assault and battery of a high and aggravated nature, with the sentences to be served concurrently.

The Defendant subsequently filed a Notice of Appeal and an appeal was perfected. On January 25, 2012, the South Carolina Court of Appeals affirmed the sentences and convictions and dismissed the Appeal. State v. Jones, (Op. Np. 2012-UP-034). Thereafter,

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Exhibit #B

on April 30, 2012, the Defendant filed a *Pro Se* Petition for Post-Conviction Relief. Counsel was appointed to represent the Defendant and the matter proceeded to hearing ~~on~~ before the Honorable R. Ferrell Cothran. Following the hearing, Judge Cothran dismissed the Petition by order dated August 19, 2013.

The Defendant subsequently filed this motion captioned "Motion for After-Newly [*sic*] Discovered Evidence and Motion to Expand Record" and, subsequent to that filing, the "Petition for Writ of Mandamus".

DEFENDANT'S ALLEGATIONS

The Defendant alleges in his motion that he is being held unlawfully on three grounds. First, he claims the Bamberg County Grand Jury and the General Sessions Court were convened unlawfully, in contravention of S.C. Code §14-5-630, which purports to establish, by statute, the terms of General Sessions and Common Pleas court in the Second Judicial Circuit. Defendant claims that because he was not tried during the week beginning the third Monday in February or the second Monday in September, the Grand Jury and his trial Court were unlawfully convened and lacked jurisdiction to adjudicate his case. S.C. Code Ann. § 14-5-630(2).

Next, the Defendant alleges the Circuit Court lacked jurisdiction to conduct a trial on the charge of "attempted kidnapping" because the legislature did not enact a statute outlawing attempted kidnapping and there is no provision within the kidnapping statute (S.C. Code §16-3-910) defining attempted kidnapping.

Finally, the Defendant alleges the Solicitor withheld certain exculpatory information in violation of Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963).

DISCUSSION

I. WERE THE 2007 GRAND JURY AND 2010 GENERAL SESSIONS TERMS OF COURT LAWFULLY CONVENED?

Defendant claims the June 2007 Grand Jury and the April 2010 General Sessions terms were convened unlawfully and therefore had no jurisdiction to consider his case. While Defendant is correct that S.C. Code §14-5-630 provides for the scheduling of terms of General Sessions and Common Pleas courts in the Second Judicial Circuit, the statute is in direct contravention to the subsequent enactment of the South Carolina Constitution,

Exhibit #B

which vests exclusive control of the Courts of this State in the Supreme Court of South Carolina. The Circuit Court is part of the unified judicial system as set forth in Article V, Section 1, of the Constitution. This constitutional provision states, "The judicial power shall 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."

Article V, Section 4 of the South Carolina Constitution provides, in relevant part,

> The Chief Justice of the Supreme Court shall be the administrative head of the unified judicial system. ***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.*** Provided, each county shall be entitled to four weeks of court each year and such terms therefor shall be provided for 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... [emphasis added] S.C. CONST Art. V, § 4 (1985).

The terms of General Sessions Court are constitutionally set by the Chief Justice of the Supreme Court and notice of the terms of Court are thereafter published by South Carolina Court Administration. *See* State ex rel. Riley v. Martin, 274 S.C. 106, 262 S.E.2d 404 (1980) (The statutory vesting of the power to set terms [in the legislature] of the Court of Appeals, therefore, infringes upon the constitutional authority of the Chief Justice to set the terms of any court within the unified system, and violates the provisions of Article 5, Section 4, of the Constitution.)

Accordingly, the June 2007 Grand Jury that considered the Defendant's indictments and the subsequent April 2010 General Sessions term when the Defendant was tried were lawfully convened pursuant to the authority vested in the Chief Justice of the South Carolina by the South Carolina Constitution.

II. DID THE COURT HAVE JURISDICTION TO TRY THE DEFENDANT FOR THE OFFENSE OF ATTEMPTED KIDNAPPING?

The Defendant has alleged the Circuit Court had no jurisdiction to try him for the offense of attempted kidnapping. S.C. Code §16-1-80 provides, "A person who commits the common law offense of attempt, upon conviction, must be punished as for the principal

ME 3

Exhibit #B

offense." The common law offense of attempt requires (1) an overt act, (2) by the defendant, (3) to commit a specified felony. The Defendant is correct that the legislature has made no statutory provision for attempted kidnapping, however that simply means an attempt to commit a kidnapping is punished under the common law as though the kidnapping was completed pursuant to S.C. Code §16-1-80. *Cf.* S.C. Code §16-3-0029 (attempted murder)(A person who violates this section is guilty of a felony, and, upon conviction, must be imprisoned for not more than thirty years) and S.C. Code §16-3-10 (murder) (murder must be punished by death, or by a mandatory minimum term of imprisonment for thirty years to life), S.C. Code §16-11-330(B) (attempted armed robbery)(A person who commits attempted robbery while armed...is guilty of a felony and, upon conviction, must be imprisoned not more than twenty years) and S.C. Code §16-11-330(A)(armed robbery)(A person who commits robbery while armed... is guilty of a felony and, upon conviction, must be imprisoned for a mandatory minimum term of not less than ten years or more than thirty years, no part of which may be suspended or probation granted).

SUFFICIENCY OF THE INDICTMENT

The Defendant alleges the trial court lacked subject matter jurisdiction over the charge of attempted kidnapping. At the hearing and in his motion, the Defendant appears to claim the court lacked subject matter jurisdiction because the indictment in his case was defective, arguing there is no language in S.C. Code 16-3-910 "which implies it [includes] (*sic*) a provision for attempted kidnapping".

The United States Supreme Court, in United States v. Cotton, 535 U.S. 625, 122 S.Ct. 1781, 152 L.Ed.2d 860 (2002), held that a defective indictment does not deprive a court of jurisdiction. The South Carolina Supreme Court has held that subject matter jurisdiction is the power of a court to hear and determine cases of the general class to which the proceedings in question belong, Pierce v. State, 338 S.C. 139, 526 S.E.2d 222 (2000); and that issues related to subject matter jurisdiction may be raised at any time. Brown v. State, 343 S.C. 342, 540 S.E.2d 846 (2001). In State v. Munn, 292 S.C. 497, 357 S.E.2d 461 (1987) our Supreme Court concluded that, subject to certain minor exceptions, the trial court lacks subject matter jurisdiction to convict a defendant for an offense when there is no indictment charging him with that offense when the jury was sworn. Thereafter, in State

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Exhibit #B

v. Gentry; the South Carolina Supreme Court clarified "the confusion created by Munn" by adopting the holdings of the United States Supreme Court in Cotton and the Missouri Supreme Court in State v. Parkhurst, 845 S.W.2d 31 (Mo.1992), finding subject matter jurisdiction of the circuit court and the sufficiency of the indictment are two distinct concepts and the blending of these concepts serves only to confuse the issue. Circuit courts obviously have subject matter jurisdiction to try criminal matters. State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005)

The indictment for attempted kidnapping in this matter alleges: "That JOHNNIE LEE JONES did in Bamberg County on or about January 9, 2007 unlawfully ***attempt*** to seize, confine, inveigle, decoy, kidnap, abduct or carry away the victim Donald Hiers without authority of law, all in violation of §16-3-910 of the *Code of Laws of South Carolina*, (1976), as amended." (emphasis added) As stated by our Supreme Court in State v. Faile, 43 S.C. 52, 59–60, 20 S.E. 798, 801 (1895), *overruled on other grounds by* State v. Torrence, 305 S.C. 45, 406 S.E.2d 315 (1991) (citations omitted):

> The indictment is the charge of the state against the defendant, the pleading by which he is informed of the fact, and the nature and scope of the accusation. When that indictment is presented, that accusation made, that pleading filed, the accused has two courses of procedure open to him. He may question the propriety of the accusation, the manner in which it has been presented, the source from which it proceeds, and have these matters promptly and properly determined; or, waiving them, he may put in issue the truth of the accusation, and demand the judgment of his peers on the merits of the charge. If he omits the former, and chooses the latter, he ought not, when defeated on the latter,—when found guilty of the crime charged,—to be permitted to go back to the former, and inquire as to the manner and means by which the charge was presented.

The indictment is a notice document. A challenge to the indictment on the ground of insufficiency must be made before the jury is sworn as provided by S.C. Code §17–19–90. If the objection is timely made, the circuit court should judge the sufficiency of the indictment by determining whether (1) the offense is stated with sufficient certainty and particularity to enable the court to know what judgment to pronounce, and the defendant to know what he is called upon to answer and whether he may plead an acquittal or conviction thereon; and (2) whether it apprises the defendant of the elements of the offense that is intended to be charged. *State v. Wilkes,* 353 S.C. 462, 578 S.E.2d 717 (2003); *see*

Exhibit #B

also S.C. Code § 17–19–20 (2003) (sufficiency of indictment). In determining whether an indictment meets the sufficiency standard, the court must look at the indictment with a practical eye in view of all the surrounding circumstances. *State v. Adams,* 277 S.C. 115, 283 S.E.2d 582 (1981).

It is clear from the indictment that the Defendant was accused of attempting to kidnap Donald Hiers. To the extent the indictment fails to cite to the common law of attempts or S.C. Code §16-1-80, and instead refers to the statutory offense of kidnapping, any alleged deficiency was waived when not brought to the attention of the Court prior to the swearing of the jury. Applying Faile to the facts here, the Defendant chose to "put in issue the truth of the accusation, and demand the judgment of his peers on the merits of the charge." Having made that choice, he is not now "permitted to go back to the former, and inquire as to the manner and means by which the charge was presented".

III. ALLEGED MISCONDUCT BY THE SOLICITOR

In his Motion, the Defendant alleges the Solicitor withheld certain exculpatory information in violation of Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963). When offered an opportunity to explain and argue this allegation at the hearing, the Defendant withdrew this claim for relief.

IV. OTHER ALLEGATIONS OR CLAIMS NOT RAISED

As to any allegations that were raised in the motion or at the hearing in this matter and specifically not addressed in this Order, this Court finds the Defendant failed to present any testimony, argument, or evidence at the hearing regarding such allegations. Accordingly, this Court finds the Defendant has abandoned any such allegations.

V. ADDITIONAL BASIS OF DENIAL OF RELIEF

In addition to the prior discussion of the Defendant's allegations herein, the Defendant filed an application for post-conviction relief that was dismissed on August 19, 2013. While this matter was not captioned as an application for post-conviction relief, the claims raised in the "motion" are collateral challenges to his convictions and sentences. Successive applications for post-conviction relief are disfavored. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980). S.C. Code Ann. § 17-27-90 (1976) states:

> All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental or amended application. Any ground

#6

Exhibit #3

finally adjudicated or not so raised, or knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence, or in any other proceeding the 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.

Under this statute, successive post-conviction relief applications are forbidden unless an applicant can point to a "sufficient reason" why new grounds for relief were not raised or were not properly raised in previous applications. Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991). Any new ground raised in a subsequent application is limited to those grounds that "could not have been raised . . . in the previous application." Id., 305 S.C. at 450, 409 S.E.2d at 394. Because the Defendant could have raised these allegations in his previous application, the Defendant may not raise these grounds in successive applications. Id. The Defendant has not met his burden of showing that the allegations could not have been raised previously. Land, 274 S.C. 243, 262 S.E.2d 735 (1980).

The Defendant could have raised these grounds for relief in his prior post-conviction relief application. He has failed to present any reasons why he could not have raised the current allegations in his previous post-conviction relief applications. Accordingly, summary dismissal of this motion is appropriate because it is successive.

VI. DEFENDANT'S PETITION FOR WRIT OF MANDAMUS

The Defendant filed a Petition for Writ of Mandamus on May 11, 2017. In his Petition, Defendant requested that this motion be scheduled for hearing. Because the motion has now been heard, the Petition for Writ of Mandamus is moot. Therefore, the Petition is dismissed.

CONCLUSION

Based on the foregoing, the Defendant's motion for new trial should be, and hereby is, DENIED.

IT IS SO ORDERED.

Doyet A. Early, III
Resident Judge,
Second Judicial Circuit

August 24, 2017
Aiken, South Carolina

Exhibit #C: Pg: (1)

414

STATE OF SOUTH CAROLINA)
) INDICTMENT
COUNTY OF BAMBERG)

At a Court of General Sessions, convened on June 4, 2007 the Grand Jurors of Bamberg County present upon their oath:

ATTEMPTED KIDNAPPING

That JOHNNIE LEE JONES did in Bamberg County on or about January 9, 2007 unlawfully attempt to seize, confine, inveigle, decoy, kidnap, abduct or carry away the victim Donald Hiers without authority of law, all in violation of §16-03-910 of the *Code of Laws of South Carolina*, (1976), as amended.

A TRUE COPY
Attest
CLERK OF COURT
BAMBERG COUNTY, SC

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

BARBARA R. MORGAN, SOLICITOR
For

11:53 AM

Exhibit #D: Pg: (1-15):

STATE OF SOUTH CAROLINA

COUNTY OF BAMBERG

CIRCUIT COURT
2007-GS-05-00168-69

STATE OF SOUTH CAROLINA,

-vs-

TRANSCRIPT OF RECORD

JOHNNIE L. JONES,
Defendant.

Heard on Tuesday, July 25, 2017

Bamberg, South Carolina

BEFORE:

THE HONORABLE DOYET A. EARLY, III

APPEARANCES:

Counsel on Behalf of the State:
David W. Miller, Esq.

Counsel on Behalf of the Defendant:
Appearing pro se

Cheri L. Young, RPR
Circuit Court Reporter
516 Palm Drive S
Aiken, SC 29803

Exhibit #D

ON TUESDAY, JULY 25, 2017 AT 1:57 P.M.:

MR. MILLER: Let's get Johnnie Jones.

(Defendant placed under oath.)

THE COURT: Good afternoon, sir. Good afternoon, sir.

THE DEFENDANT: Good afternoon.

MR. MILLER: Your Honor, before the Court is Johnnie L. Jones. Mr. Jones is currently an inmate at the Allendale Correctional Institution.

He is there pursuant to orders of commitment following a trial where he was found guilty back in 2010. Your Honor, he was found guilty of assault and battery of a high and aggravated nature, received a sentence of 10 years, concurrent with the sentence on a charge of attempted kidnapping for which he received a sentence of 18 years.

Mr. Jones has filed a motion --

THE COURT: Are they concurrent? Consecutive?

MR. MILLER: Concurrent, Your Honor.

Mr. Jones has filed a motion wherein he has alleged that he has discovered new evidence, after-discovered evidence and is asking this Court in his motion to expand the record to be filed

Exhibit #D

pursuant to Rule 29.

THE COURT: What kind of Rule 29?

MR. MILLER: That's cited as South Carolina Rule of Criminal Procedure. And he's asking that the judgment be set aside due to fraud upon the Court. And he bases that request -- well, he cites in that request that there's no statute of limitations for that type of motion.

Your Honor, in his motion, a copy of which I have here, he alleges three grounds for relief. The first ground for relief alleged is that the solicitor unlawfully impaneled its grand jury outside of the statute found at 14-5-630; and that the solicitor committed a Brady violation by withholding exculpatory evidence from the defense that relates to a claim regarding an identification, out-of-court identification; and finally that the solicitor manufactured an indictment -- this is quoting from the motion -- manufactured an indictment for attempted kidnapping when no such statute exists passed by the legislature.

THE COURT: Do you have a copy?

MR. MILLER: I do have a copy of the motion. It was filed April 26, 2016, in Bamberg.

Exhibit # D

This is a Bamberg County case, Your Honor.

THE COURT: Who was the judge at his hearing or his trial? Was it me?

THE DEFENDANT: You.

MR. MILLER: Yes, sir. You were the judge. The trial was April the 14th of 2010.

THE COURT: Who represented Mr. Jones at that time?

MR. MILLER: Dan Luginbill. And that's based on the public index, Your Honor.

THE COURT: All right. Mr. Jones, you filed your motion and this is a scheduled hearing. We're going to do it now. So I'll be glad to hear from you, sir, as to anything you'd like to tell me.

THE DEFENDANT: Judge, I got the terms of court that they had that the grand jury came upon when they ruled on the indictment.

THE COURT: Yes, sir.

THE DEFENDANT: The grand jury came upon it in May 31st and June 4th at which there was no terms of court. I got the chief justice here says there was no terms of court, no terms of general sessions was during any of that second. The grand jury only comes a term of general session and

Exhibit #D

those out of terms because also as during the trial in April there is no -- I got the paper right here from the chief justice, no terms of court.

THE COURT: Will you give him a hand if he wants to find something?

THE DEFENDANT: No such thing as no special terms of court. General session, the indictment of the grand jury, and this is the sentencing sheet.

(Documents and handed to the Court.)

THE DEFENDANT: And the chief justice. I got the paper from the chief justice.

THE COURT: All right, sir. Let me see what you got here. This is Section 14-5-630 terms of court in the second circuit. Mr. Miller, are you aware of that?

MR. BRADLEY: Yes, sir, Your Honor.

THE COURT: It says the court general sessions for Bamberg County shall be held at Bamberg on the third Monday in February for a term of one week.

Is that what you're talking about?

THE DEFENDANT: Yes, sir.

THE COURT: And this was -- this case was

Exhibit "D"

tried --

THE DEFENDANT: In April.

THE COURT: -- April --

THE DEFENDANT: April 14th.

THE COURT: -- April 14th, 20 --

THE DEFENDANT: 10.

THE COURT: -- 10. All right.

THE DEFENDANT: And also, Judge, I got the indictment. You see it's got a 10th on it.

THE COURT: I do.

THE DEFENDANT: And then you got the statute 16-2-910. That's kidnapping.

THE COURT: Correct.

THE DEFENDANT: The jury found me guilty of intent. That's what the grand jury handed the indictment up for, intent. They -- you can't upgrade indictments. You can lesser include it but you can't upgrade it. So now they got me in the computer as kidnapping. I mean, they didn't find me guilty of kidnapping. Now, I got 18-year sentence for attempt. It's no attempt don't carry 18 years. Zero to 10.

THE COURT: All right, sir. What else?

THE DEFENDANT: That's it.

THE COURT: All right. Mr. Miller,

Exhibit "D"

anything you want to respond to?

MR. MILLER: Your Honor, as to actually all of these matters, the Defendant filed on April the 30th of 2012, a PCR application in Bamberg County. That PCR application, I don't have any indication that it wasn't timely filed but it was disposed of on August the 19th of 2013, a little bit more -- well, a year and four months later.

Judge Cothran was the judge for the PCR action. Your Honor, I note that section 14-5-630 which sets forth the terms of Court in the second circuit was last amended in 1975. Clearly any issue as to the terms of court should have been raised in the PCR action that was filed.

THE COURT: Hasn't that 1975 statute been gone to the --

MR. MILLER: The unified court system.

THE COURT: Unified court system, and the terms of court are set by court administration now?

MR. MILLER: That is correct, Your Honor.

THE COURT: On an annual basis?

MR. MILLER: That is -- they are. And that is kind of the overriding -- individually, yes, that is the case. The terms the court are set by

Exhibit #D

court administration and we do have court whenever court administration sets the terms. But as far as the entire, the entire motion, all of it would be barred by successiveness and statute of limitations as it relates to the PCR action.

Anything that he was going to raise relative to the charge, relative to the terms of court, relative to the Brady violation that he alleges that he didn't get into today, about the out-of-court identification, all of that would have needed to be raised in his initial PCR filing and we do not have a copy of that PCR filing but if it didn't get raised it should have been raised. If it did get raised it was raised and ruled upon in favor of the State.

Your Honor, the Court is obviously aware as to the attempted kidnapping, the law in South Carolina is that when a person attempts to commit a criminal offense that is a felony, then it is treated for sentencing purposes as though the offense was completed unless the statutory -- there has been a statutory provision from the legislature specifically outlining the attempt provision.

For example, there is an attempted armed

Exhibit #D

robbery that carries zero to 20 years versus an armed robbery that is 10 to 30 years.

THE COURT: Now an attempted murder.

MR. MILLER: Now there is an attempted murder as opposed to a murder. Attempted murder would be three to 30 and murder would be 30 to life.

So, Your Honor, in this instance the indictment is clear. The indictment alleges, and this is the indictment that he was found guilty of, attempted kidnapping, that Johnnie Lee Jones did in Bamberg County on or about January 9th, 2007, unlawfully attempt to seize, confine inveigle, decoy, kidnap or abduct or carry away, the victim, Donald Heirs, without the authority of law all in violation of 16-3-910. I understand the confusion because I can confirm because I have the printout from the Department of Corrections here at, the Department of Corrections his offense is listed as kidnapping as opposed to attempted kidnapping but attempted kidnapping is what he was found guilty of and attempted kidnapping is what he was sentenced for. Because the legislature has made no statutory provision for a separate offense of attempted kidnapping it falls under the common

Exhibit #D

law rule which is an attempt is counted for sentencing purposes as though the offense itself was completed.

THE COURT: That's a zero to 30 on the kidnapping?

MR. MILLER: That is correct, Your Honor.

So procedurally everything is barred and individually. The move to the unified court system wherein court administration sets the terms addresses the first argument made. And the last argument would be based on the common law rule of attempts and how those attempts are to be charged and prosecuted.

THE COURT: Anything else, sir?

MR. MILLER: No, sir.

THE COURT: Any response, sir?

THE DEFENDANT: Yes, sir. On that attempt.

THE COURT: Yes, sir.

THE DEFENDANT: A failure, you know, rules and regulation I read of State of South Carolina, there's no such thing as attempt. And if you -- and if it don't carry the statute you have to go back so all attempt statutes where they would go. 17-25-20 which carries them attempt statute. That's where all your attempts fall back up under

Exhibit "D

that statute, 17-25-20 which is zero to 10, not 18.

And that new term of -- with the court intervening and didn't intervene at no time that could be barred. That could be granted at any time.

THE COURT: 17-25-20?

THE DEFENDANT: Yes, sir.

THE COURT: 17-25-20 with no special punishment is provided for a felony it shall at the discretion of the court be by one or more of the following modes for a period of not less than three months not more than 10 years. But there's a statute on attempts; is there not, Mr. Miller?

MR. MILLER: There is, Your Honor.

THE COURT: Do you know what that statute is?

MR. MILLER: I'm looking it up now, Your Honor. It's in Title 16.

(Pause.)

THE COURT: Find it?

MR. MILLER: Mr. Cooper has gone to get the book that's got the specific language in it.

THE COURT: The specific statute talks about attempts.

Exhibit #D

MR. MILLER: There is.

THE COURT: Yes, sir.

THE DEFENDANT: Judge, I don't know what statute you're looking for but attempt, the jury found me guilty of attempt. It should have been attempt. Should have been in there. Should be no 16-3-910. That's attempt. It's attempt. It's attempt. Case is not -- whatever it was was not accomplished. It was attempted. You can't take attempt and make it out an action of crime.

THE COURT: I'm going to study all of that as soon as I look at the statute.

(Pause.)

MR. MILLER: Your Honor, in South Carolina an attempted --

THE COURT: Where are you reading from? The statute?

MR. MILLER: It's common law. The statute is -- it's common law attempted felony. The penalty is the same as for the principal offense in the absence of a specific statute. And the case on it is State versus Storgee, S-T-O-R-G-E-E. That is 277 SC 412 288 SC 2D 397. It is a 1982 case. And under 16-1-80, of the South Carolina Code, 16-1-80 provides: A person who commits the

Exhibit #D

common law offense of attempt upon conviction must be punished as for the principal offense which is the basis of the indictment as well as the conviction and sentencing.

THE COURT: 16-1-80?

MR. MILLER: Yes, sir.

THE COURT: All right. Mr. Jones, I'll take it under advisement. I will issue a written order here shortly for you. I will take it under advisement and I'll issue a written order which will be sent to you.

Do you have his address, Mr. Miller?

MR. MILLER: I do, Your Honor. It's on his filing.

THE COURT: PO 1151 Allendale. I assume that's what it is.

MR. MILLER: If that address is still current then I can --

THE DEFENDANT: Can I get that, that statute you just did?

MR. MILLER: 16-1-80. We can get a copy of it printed.

THE COURT: Give him the cite of that case, too, Mr. Miller. David, he's having a hard -- he's confined. Write that statute.

Exhibit #D

MR. MILLER: We're going to go print it out, Judge.

THE COURT: All right. Before you leave to go back they'll print out the statute and the case for you but I'll get a written order out to you.

THE DEFENDANT: (Nods head.)

THE COURT: Thank you. Did this take place in Ehrhardt? I can't remember.

THE DEFENDANT: Yes, sir.

THE COURT: Store owner, allegedly?

THE DEFENDANT: Yes, sir.

THE COURT: Are you from Ehrhardt?

THE DEFENDANT: Well, I was staying up in Bamberg County -- well, Denmark for a while, but I'm from Colleton County.

THE COURT: Everything going well for you down where you are? Fairly well?

THE DEFENDANT: I ain't been in no trouble. I've been, like I said, in a wheelchair. I can't get my knees --

THE COURT: I understand.

THE DEFENDANT: Wish I could get surgery.

THE COURT: All right, sir. Good luck to you.

END OF CASE: 2:15 P.M.

Exhibit #5

CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)

COUNTY OF AIKEN)

I, Cheri L. Young, Registered Professional Reporter and Official Court Reporter for the State of South Carolina, Second Circuit-At Large, do hereby certify that the foregoing proceedings were written stenographically by me using computer-aided translation; further, that the foregoing is a true, accurate and complete record, to the best of my skill and ability, of all the proceedings had and evidence introduced in the hearing of the captioned case, relative to appeal, in the Court of General Sessions for Bamberg County, on the 25th day of July, 2017.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

I have hereunder set my hand this Monday, the *16th* day of July, 2018.

Cheri L. Young, ~~RPR~~
Official Court Reporter