IN THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

IN THE SUPREME COURT

Larry Antion Fridie
Appellant,

STATE OF SOUTH CAROLINA
Respondent,

Case No: 2018-001748

MOTION UNDER RULE 243 (C), SCACR, TO SHOW WHY THE DETERMINATION OF THE CIRCUIT COURT WAS IMPROPER

COMES NOW, the Appellant Larry Antion Fridie acting here in pro-se cherein after rettered to as ("Appellant"). and prepasing Haines V. Kerner, 404 U.S. 519, 520, 30 L.Ed 2d 652, 92 S.Ct. 549 (1972), and Estelle V. Gamble, 429 U.S. 97 (1976) (same), in the above reference matter, and respectfully submitts this motion.

In support of this Motion, Appellant shows as follows:

JUDICIAL NOTICE

Appellant was indicted on a three-Count indictment on January 22nd 2001. Count one charged Appellant with assault with intent to kill. Count two charged Appellant with Burglary 2nd degree. Count three charged Appellant with Grand Larceny. Appellant only challenge's Count one of the indictment which charge's Appellant with Assault with intent to kill, Under the Lack of subject Matter Jurisdiction. Appellant conceeds to Count two of the indictment which charged Appellant with Burglary 2nd degree, and Count three of the indictment which charged Appellant with Grand Larceny.

STATEMENT OF THE CASE

Appellant was arrested and charged with assault

With intent to kill on October 6th 2000, and indicted on January 22nd 2001 for the same offense of assault with intent to kill. Appellant was sixteen years old at the time of his arrest, and when he was indicted for the charged offense of assault with intent to kill. The Circuit Court did not transfer the case to the family Court of Competent Jurisdiction as instructed by the state of South Carolina Law. Appellants indictment did not charge the offense of assault with intent to kill, because the Grand Jury did not find the elements of the charged offense of assault with intent to kill be present when it indicted him. Therefore Appellant contends that the Circuit Court did not have Jurisdiction to Convict and sentence him for the charged crime

Of assault with intent to kill.

GROUND 1

Why the Application should not be untimely Under the statute of limitations

A

The application should not be untimely under the statute of limitations for failure to comply with with the filing procedures of the Uniform post-Conviction procedure Act. S.C. Code Ann 17-27-10 to-160. which requires that:

An application for relief filed pursuant to this Chapter must be filed within one year after the sending of the remittitur to the lower Court from an appeal or the filing of the final decision on appeal, whichever is later.

Do to the Fact that Subject Matter Jurisdiction can be raised at any time should in Fact toll the time to file the Uniform Post-Conviction Procedure.

A Courts Jurisdiction over the subject matter of a proceeding before it is fundamental. A party may raise lack of Subject Matter Jurisdiction at any time, including on appeal for the first time. Further, the court may raise the issue sua sponte. Lack of subject Matter Jurisdiction may not be waived by the parties. Brown V. State, 343 S.C. 342, 540 S.E. 2d 846 (S.C. 2001). The acts of a court which lacks Subject Matter Jurisdiction are void. See State V. Funderburk, 59 S.C. 256, 191 S.E. 2d 520 (S.C. 1972).

Subject Matter Jurisdiction Concerns a Court's very power to hear a case, and because "a courts

power to hear a case can never be waived, "the lack of Subject Matter Jurisdiction can be raised at any time." Consequently, defects in Subject Matter Jurisdiction require Correction regardless of whether the error was raised in the district Court. Cotton, 535 U.S. at 630. Without Jurisdiction the Court Cannot proceed at all in any case [except to] announce [a] the fact and dismiss [] the Cause "Ex parte McCardle, 74 U.S. (7 Wall.) 506, 514, 19 L. Ed. 264 (1869).

The Criminal Jurisdiction of the Circuit Courts in South Carolina is established by Article V, 11 of the South Carolina Constitution. ("The Circuit Court shall be a general trial Court with original Jurisdiction in... Criminal Cases"). Subject

Matter Jurisdiction is the authority of a court to hear and determine cases of general class to which the proceeding in question belong. Dove V. Gold Kist, Inc. 314 S.C. 235, 442 S.E. 2d 598 (S.C. 1994) and State V. Gentry, 363 S.C. 93. 610 S.E. 2d 494, 498 (S.C. 2005).

B

WHY Respondent's Arguement that the Court of General Sessions had Jurisdiction over Appellants case is an error of Law and must fail.

Appellant Challenges only Count one "Assault with intent to kill" of the three-count indictment Under the Lack of Subject Matter Jurisdiction.

Appellant Conceeds to Count two of the indictment which Charged Appellant with Burglary 2nd degree,

and Count three of the indictment which charged Appellant with Grand Larceny.

Respondent Argues that pursuant to S.C. Code Ann 20-7-6605 a "preson sixteen years of age or older who is charged with a class A, B, C, or D felony as defined in Section 16-1-20 or a felony which provides a maximum term of imprisonment of fifteen years or more may be remanded to the family court for disposition of the charge at the discretion of the solicitor." (emphasis added). This is a discretionary determination.

As Appellant stated he only challenges count one of the three count indictment the charge of Assault with intent to kill, which in the state of South Carolina is clearly a Misdemeanor and

not a class A, B, C, or D felony as defined in Section 16-1-120 nor is the crime of assault with intent to kill a felony which provides a maximum term of imprisonment of fifteen years or more. "Assault with intent to kill is a violation under the statute 17-25-30 which provides a maximum term of imprisonment of 10 years." "See Exhibits." Therefore the Family court "should" have had exclusive Jurisdiction over count one of Appellants indictment which charged Appellant with Assault with intent to kill, at the age of sixteen years old. Which is clearly not a discretionary determination. Jurisdiction over count one "Assault with intent to kill" belongs only to the family Court. SC Code 20-7-7605 states in part that an additional or accompanying

Charge associated with the charges contained in this item must be heard by the Court with Jurisdiction over the offenses contained in this item.

Appellant cites to the law at the time of the offenses, S.C. Code 20-7-1605 (1). Which provided that for a Criminal Charge against a "Child" who was under the age of seventeen years of the time of committing the alleged offense," the circuit court is to transfer the case to the family court of competent Jurisdiction, with certain exceptions. The family court can thereafter determine whether to transfer the case to the circuit court for disposition. The term "Child" was defined under then-applicable S.C. Code 20-7-1605 (1)6 (now codified under 63-19-20. Appellant Contends that he never appeared before a family

Court Judge to determine whether to transfer the case to Circuit Court for disposition. In the state of South Carolina a person less than seventeen years of age who commits a crime is generally considered a child or Juvenile and is under the Jurisdiction of the family Court. See S.C Code Ann 63-19-20(1) Only Certain Juvenile crimes are eligible for transfer to a Court of General Sessions. Austin V. State, 352 S.C. 473 575 S.E. 2d 547 (2003)

GROUND 2

Appellant Contends that the Circuit Court did not have Jurisdiction to Convict and Sentence Appellant for the Charged Offense of Assault with intent to kill, because the Grand Jury did not find the elements of the Charged offense to be present

When it indicted him.

The Appellant Provides this Honorable court with evidence of fact Exhibit-A "The Indictment" to show this court that the Grand Jurors of Dorchester county "Did not find the elements of the charged Offense of Assault with intent to kill to be present when it indicted Appellant" See Exhibit-A.

Exhibit-A "The Indictment" provides the court with evidence of fact that on January 22, 2001 the Grand Jurors of Dorchester County presented upon there oath that Harry Anton Fridie Jr, did in Dorchester County, on or about October 6, 2000, with Malice Aforethought commit an assault upon the Victim, James k Kenard, with the Expressed or Implied intent to kill the said Victim by

Shooting at the Victim with a gun. which are clearly the elements of "ABWIK" Assault and Battery with intent to kill," and not the elements of the Charged offense of Assault with intent to kill. See Exhibit-A

Assault and battery with intent to kill "ABWIK" is an unlawful act of violent nature to the person of another with "Malice Aforethought" either Expressed or Implied." "ABWIK" is commonly described as the following: if the victim had died from the injury, the defendant would have been guilty of murder. See State V. Sutton, 340 S.C. 393. 396, 532 S.E. 2d 283, 285 (2000).

In Comparison, the elements of AWIK, "Assault with intent to kill" are "(1) an unlawful attempt; (2) to commit a violent injury, (3) to the person of another, (4) with malicious intent; and (5) accompained by

the present ability to complete the act. See Suber v. State, 640 S.E 2d 884, 886 (S.C. 2007) Citation Omitted). Which are clearly not the Elements the Grand Jury Found to be present to be present when it indicted Appellant. See Exhibit-A "The Indictment."

To Sum it up the "Indictment" charged Appellant with "AWIK" Assault with intent to kill, but the Grand Jury found the elements of "ABWIK" Assault and Battery with intent to kill to be present when it indicted Appellant. See Exhibit-A

The State of South Carolina recognizes "AWIK" Assault with Intent to kill as a separate offense from "ABWIK" Assault and Battery with intent to kill State V. Sutton, 532 S.E. 2d 283, 286 (S.C. 2000). Do to the Fact that the indictment charged Appellant

With "AWIK" Assault with intent to kill, but the grand Jury found the elements of "ABWIK" Assault and Battery with intent to kill to be present when it indicted him, creates a major "infirmity" in the Conviction for the crime of Assault with intent to kill.

The United States Constitution expressly probhits such a result. The Constitution guarantees all of us the right to have each element of a crime presented to, and found by, a grand Jury prior to being tried, Convicted, or sentenced for that crime. Indeed, the Fifth Amendment promises that "no person shall be held to answer for a Capital, or other wise infamous crime, unless on a presentment or indictment of a Grand Jury." U.S. Const amend V. and the Sixth Amendment ensures that the indictment shall inform

the accused "of the nature and cause of the accusation" against him. U.S. Const. Amend. VI.

Appellant Contends that because an indictment setting forth all the essential elements of an offense, is both mandatory and Jurisdictional, and a defendant cannot be "held to answer" for any offense not Charged in an indictment returned by a grand Jury. "a court is without Jurisdiction to... impose a sentence for an offense not Charged in the indictment." United States V. Cotton. 261 F.3d 397 (4th Cir. 2001), Cert. granted, 151 L. Ed. 2d 689, 122 S. Ct. 803, 2002 WL 10623, 70 U.S.L.W. 3426 (U.S. 2002) at 404-05. (internal quotations marks and citations omitted).

And Because the indictment returned by the Grand Jury did not find the elements of the charged offense

of Assault with intent to kill to be present the indictment failed to charge the offense of Assault with intent to kill, and therefore the Court was without Jurisdiction to Convict or sentence Appellant for the offense of Assault with intent to kill.

Because of the grand Jury requirement, before the United States can prosecute anyone for a serious crime, an independent body of the citizenry must "declare, upon careful deliberation, under the solemnity of an oath, that there is good reason for his accusation and trial, Ex parte, 121 U.S. at 11. This evidentiary function protects all of us "from an open and public accusation of crime, and from the trouble, expense, and anxiety of a public trial before probable cause is established." Id at 12 (internal quotations marks

omitted). See Also Ex parte Bain, 121 U.S. at 12 ("[The Grand Jury] is justly regarded as one of the securities to the innocent against hasty, malicious, and oppressive public prosecutions.)(internal quotation marks omitted). The requirement that a man be indicted by a Grand Jury is limited to his jeopardy to "offenses charged by a group of his fellow citizens acting independently of either prosecuting attorney or Judge." Stirone, 361 U.S. at 218.

The General Sessions Court in this case simply "cannot know whether the Grand Jury would have found "(1) an unlawful attempt; (2) to commit violent injury; (3) to the person of another; (4) with malicious intent; (5) accompanied by the present ability to complete the act." to be present when it indicted Appellant.

In Stirone, 361 U.S. at 219, the Court held that the assessment of the evidence presented at trial provides no reliable assurance as to what facts were presented to, or found by the Grand Jury.

To attempt to Judge the fairness of a sentence based on an indictment that failed to charge the offense is to have this Court "make a subsequent guess as to what was in the minds of the Grand Jurors." Russel V. United States, 369 U.S. 749, 770, 8 L. E. d 2d 240 82 S. Ct. 1038 (1962). The Supreme court has outlawed such post hoc Judicial guess work, precisely because it would allow a defendant to "be convicted on the basis of facts, not found by, and perhaps not even presented to, the Grand Jury which indicted him." Id.

The Fifth Amendment provides that "[n]o person shall

be held to answer for a capital, or other wise infamous crime, unless on presentment or indictment of a Grand Jury... "U.S. Const. Amend. V. After the indictment is "returned [,] its charges may not be broadened through amendment except by grand Jury itself." Stirone V. United States, 361 U.S. 212, 216. 80 S.Ct. 270, 41. Ed. 2d 252 (1960). Thus, the "Court cannot permit a defendant to be tried on charges that are not made in the indictment against him. "id. at 217. United States V. Lentz, 524 F. 3d 501, 511 (4th Cir. 2008). Thus,

the court is left with a document that did not contain any elements of the charged offense, and thus did not satisfy the Fifth Amendment requirement that all elements of the offense have been considered and found by the Grand Jury. United States V. Hooker, 841 F. 2d.

at 1230 (citing Stirone v. United States, 361 U.S. 212, 80 S.Ct. 270. 4L. Ed. 2d 252 (1960)).

The very purpose of the requirement that a man be indicted by a grand jury is to limit his jeopardy to limit his jeopardy to offenses charged by a group of his fellow citizens acting independently of either prosecuting attorney or judge. Thus the basic protection the grand jury was designed to afford, is defeated by a device or method which subjects the defendants to prosecution for [an element] which "the grand jury did not charge. Stirone, 361 U.S. at 218 (footnote omitted)(emphasis added). [A]n indictment must contain the elements of the offense charged, fairly inform a defendant of the charge, and enable the defendant to plead

double Jeopardy as a defense in a future prosecution for the same offense. United States V. Daniles, 973 F.2d 272, 274 (4th Cir. 1992)(Citing Russel V. United States, 369 U.S. 749, 763-64, 82 S. Ct. 1038, 8 L.Ed. 2d 240 (1962)), Cert. denied, 506 U.S. 1086, 113 S.Ct. 1064, 122 L. Ed 2d 369 (1993)). S.Ct. 1064. Moreover, the indictment must include every essential element of an offense, or else the indictment is invalid; and mere reference to the applicable statute does not cure the defect. id at 247; Hooker, 841 F.2d at 1228; United States V. Pupo, 841 F.2d 1235, 1239 (4th Cir.) (en banc). cert. denied, 488 U.S. 842, 109 S.Ct. 113, 102 L. Ed. 2d 87 (1988). Darby, 37 F.3d at 1063 (emphasis added).

The Grand Jury not only serves to inform a defendant

of the charge against him, but that possibly the "most valuable function of the grand jury is "to stand between prosecutor and the accused" to protect a defendant against charges "dictated by malice or personal ill will. "Hale v. Henkel, 201 U.S. at 59. Declining to notice this error allows the prosecution and the court to circumvent the grand jury and punish a man on the basis of the evidence that they not the grand jury, deem sufficient, like in this case. Accordingly post-indictment notice does nothing to preserve the integrity of the grand jury process or protect our grand jury right, which are so "essential to liberty in a government dedicated to Justice under law." Cole v. Arkansas, 333 U.S. at 202.

A Court cannot rely on it own view of what

indictment a grand jury could or would have issued if the grand jury was never presented with a charge. "It is utterly meaningless to posit that any rational grand jury could or would have indicted [the defendant]..., because it is plain that the grand jury did not, and absent waiver a constitutional conviction or sentence cannot be had on an unindicted offense." United States v. Floresca, 38 F.3d at 712 (internal quotation marks omitted). In sum, whether the grand jury would have indicted Appellant on the available evidence is irrelevant.

Appellant Contends that this error prejudice him because he was held to answer for the elements of a crime that was not found by the grand jury when it indicted him, and therefore Appellant's Fifth

Amendment right which requires that all elements of the offense be present in the indictment, and that the grand jury have considered and found all elements to be present was violated by the General sessions court.

Appellant also contends that because the indictment charged him with "AWIK" Assault with intent to kill, but the grand jury found the elements of "ABWIK" Assault and Battery with intent to kill to be present when it indicted him "prejudice" the Appellant because he was not able to prepare a defense as to every element of the indicted crime, nor did he knowingly decide whether to plead guilty or face trial.

Because the Sixth Amendment demands that an accused "be informed of the nature and the cause of the accusation" against him, the indictment must set forth... every

ingredient of which the offense is composed. "United States V. Cruikshank, 92 U.S. 542, 558, 23 L. Ed. 588 (1875) (internal quotations marks omitted). This notification allows the accused to prepare a defense as to every element of the indicted crime, or after considering the charged elements and the maximum penalty permitted under the indictment, allows him to forego trial and plead guilty. Cole, 333 U.S. at 201. Without this notification through indictment, one accused of criminal activity cannot knowingly decide whether to plead guilty or face trial., or adequately defend himself at trial against every element necessary to convict and punish him for a particular crime.

Appellant has shown that the indictment

the General Sessions Court used to Convict and sentence him Violated his sixth Amendment right to be informed of the nature and Cause of the accusation, which "Prejudice" him because the indictment did not inform him of the proper elements of the crime in which he was charged, and therefore denied him the right to present a defense against the elements the General Sessions Court used to convict and sentence him.

Appellant raises Ground Two for the first time on this appeal, Under the Lack of Subject matter Jurisdiction. which can be raised at any time including on appeal for the first time. See Brown V. State, 343 S.C 342, 540 S.E. 2d 846 (S.C. 2001).

Appellant also contends that the indictment violated

his right to Due process of Law by not informing him of the charges against him.

Due process requires that an accused be informed of the charges against him. See Cole V. Arkansas, 333 U.S. 196, 201, 68 S. Ct. 514, 92 L. Ed. 644 (1948); see also In re Oliver, 333 U.S. 257, 273, 68 S. Ct. 499, 92 L. Ed. 682 (1948).

GROUND 3

Why this Application Should Not be Barred by the Doctrine of Laches

Whether a claim is barred by laches is to be determined in light of the facts each case, taking into consideration whether the delay has worked injury, prejudice, or disadvantage to the other party, delay alone in assertion of right does not constitute laches.

Whitehead V. State, 352 S.C. 215, 219, 574, S.E. 2d 200, 202, (2002).

In the present case applicant provides this Honorable Court with the physical evidence Exhibit-A ("The complete Record of the proceeding") that was provided by the clerk of Court for Dorchester County "Mrs. Cheryl Graham, which is all the evidence that is needed for the court to review the applicants claim. The record provided by Mrs. Graham provides this Honorable Court with evidence of fact that the records did not contain any evidence of the Courts conducting a proper waiver hearing which was required by Law at the time of Appellants conviction. No witness memories are needed for this claim. The record provides this court with all the Documentary evidence, that is needed. Therefore, the delay cannot.

Work injury, prejudice or disadvantage to the state, All the evidence that is needed for the court to review Appellant's claim is present "see Exhibits".

Accordingly, Appellant shows why the determination of the Circuit Court was improper.

Conclusion

Because Subject Matter Jurisdiction can be raised at any time the claim "should" in fact toll the time for the Appellant to file the claim under the South Carolina's Uniform post-conviction procedure. And because Appellant was sixteen years of age at the time of the offense, and do to the fact that the charged offense of assault with intent to kill is not a class A, B, C, or D felony as defined in section 16-1-20 or a felony which provides a maximum term of imprisonment of fifteen years

or more. Nor did the grand Jury find the elements of the Charged Offense of assault with intent to kill to be present when it indicted him. Appellant contends that it is clear that the Court of General Sessions did not have Jurisdiction over Appellants case.

Dated October 11, 2018

Respectfully submitted

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PROOF OF SERVICE

I Larry Anthon Fridie, do here by Certify under the penalty of perjury that I have this same day served the opposing party, and filed with the appropriate Court, the (attached application). Motion Under Rule 243(c) SCACR, in response to why the determination of the Circuit Court was improper.) by depositing in the legal prision legal mail system with First class prepaid postage affixed there to and addressed to as follows:

Office of the Attorney General "Alan wilson"

Christian Saville

Po Box 11549

Columbia SC 29211

The Supreme Court of South Carolina

Daniel E. Shearouse, clerk of court

post office Box 11330

Columbia. SC 29211

Dated October 11, 2018

Respectfully Submitted

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