

Kevin E. Herriott, 313862
Kershaw Correctional Institution
4848 Goldmind HWY
Kershaw, SC 29067

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DEC 14 2018

S.C. SUPREME COURT

December 02, 2018

South Carolina Commission of Indigent Defense

Post Office Box 11433

Columbia, South Carolina 29211

Re: Kevin E. Herriott v. The State

Appellate Case No.: 2018-001966

Response in accordance to (SCACR) Rule 243(c)
2nd Notice

Dear Supreme Court Clerk:

The Appellant is in receipt of letter dated November 07th, 2018 on the 20th day of November, 2018 that was sent first to Broad River Correctional Institution stamp dated received on the 09th day of November, 2018 which was then forwarded to Kershaw Correctional Institution stamp dated received on the 16th day of November, 2018 where appellant signed for its contents on Tuesday, November 20th, 2018.

The Appellant finds that the order of the Ninth Judicial Circuit, Charleston County had determined that this action is barred as being successive and/or as being untimely under the statute of limitations, S.C. Code Annotations §17-27-45(a) & Section 17-27-90 of the South Carolina Code; however, Rule 243(c) of the South Carolina Appellate Court Rules requires Appellant to provide a(i) written explanation as to why this determination by the lower court was improper. The Appellant was advised that the explanation must contain sufficient facts, arguments and citation to legal authority showing that there is an arguable basis for asserting that the determination by the Lower Court was improper.

The Appellant asserts that The South Carolina Administrative Procedures Act,

SC Code Ann. Section 1-23-310, et, seq. establishes the "substantial evidence" rule as the standard for judicial review of a decision of an administrative agency. Also, a court may reverse or modify an agency's decision "if substantial rights of the Appellant have been prejudiced because the administrative findings, inferences, conclusions or decisions are... affected by other error of law. Lyles v. Quantum Chemical Co. (Emery) Court of Appeals of South Carolina, July 12, 1993, 315 S.C. 440, 434 S.E.2d 292 see Also, Cordon v. Kohler Co. 351 S.C. 613, 571 S.E.2d 92 It is well settled that a judge is not bound by a prior oral ruling and may issue a written order which is in conflict with the oral ruling." Badeaux v. Davis, 337 S.C. 193, 204, 522 S.E.2d 835, 839 (Ct. App. 1999) Accord Owens v. Magill, 308 S.C. 556, 449 S.E.2d 786 (1992) (ruling judge was not bound by prior oral ruling and could issue written order which conflicted with prior oral ruling). "To the extent the written order may conflict with prior oral ruling, the written order controls." Parag v. Baby Boy Lavin, 333 S.C. 221, 226, 508 S.E.2d 590, 592 (Ct. App. 1998)

On or before February 25, 2013, (2013-CP-10-1084) Appellant filed his first application for post-conviction relief from September 05, 2012 conviction by plea of guilty to Alford. The Appellant alleged that counsel Mary A. Ford, Esquire failed to advise him of the right to appeal and ineffective assistance claim¹. The Appellant explained in this action, 2013-CP-10-1084, amending grounds asserting there was no factual basis for the plea, Counsel Mary Ford misrepresented factual evidence, raising the question(s) did the defendant acted in self-defense prior to the fatal shot of the shooting? Did the defendant shot and Kill Joyce Ann Dupree? The defense had failed to have called forth expert-witness, testimonies of medical examiners' to testify to their findings that would have prevented Counsel Mary Ford and assistant solicitor Benjamin Simpson of their useless charade of the alleged victims Brian Williams' and Joyce Ann Dupree's wounds. Testimony would have reflect that the male victim was not grazed with a bullet nor was he hit over the head with the butt of defendant's firearm; the female victim was shot before the defendant firearm had discharged a live round firing once. Counsel Mary Ford did not disclose the interview(s) which were material, the information was favorable, exculpatory and for impeaching purposes. Counsel Mary Ford did not challenge the "adversarial testing" after defendant asked for trial by jury

¹ The Appellant alleged ineffective assistance of counsel and failed to be informed of (a) right to appeal.

submitting a(n) timely motion Directed Verdict of Dismissal that questioned the propriety of the accusation, the manner in which it has been presented, and the source from which it proceeds in Accord to SCRCP Rule 12(b)(1)(3) and FRCP Rule 12(i) Hearing before Trial. If a party so moves, any defense listed in Rule 12(b)(1)-(7) -- whether made in a pleading or by motion -- and a motion under Rule (c) must be heard and decided before trial unless the court orders a deferral until trial. During the pre-trial stages the defendant challenged indictments No.(s): 2011-GS-10-0043, murder; 2011-GS-10-0044, attempted murder; and 2011-GS-10-0045, use of deadly weapon of whether the indictment is sufficient and/or whether the trial court has the power to hear a case. Pursuant to Rule 50 (SCRCP) "... The order of the court granting a motion for a directed verdict is effective without any assent of the jury." The motion went unopposed and the lower court did not issued order(s) of a(n) deferral until trial. The trial Counsel of Record Mary A Ford, Esquire did not inform the appellant of the development of the prosecution's case with-holding discovery that led to an unintelligently, involuntarily, and unknowingly plead guilty to Alford.

Nonetheless, the Appellant had moved before the court asking to grant leave to conduct an thorough investigation and discovery requesting Brady Material; pursuant to Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194, L.Ed. 2d 215, "The undisclosed information was favorable, the discovery was exculpatory or impeaching, and the information was material, The prosecution knew about the evidence and failed to disclose it." After the order of Honorable Roger Henderson upon becoming a(n) pro se litigant requesting case file by motion in accordance to In the Matter of Haddeck, 283 S.C. 116, 321 S.E. 2d 601 where the Appellant did not have his case file which belongs to the Appellant, he realized that several documented items was not given in the initial Rule 5, Accord Cole vs. The State, were missing and among the missing documented item(s) that's material listed as follows:

- 1) List of documented evidence the state was planning to introduce at trial;
- 2) Dr. Helms interview -- notes and transcript;
- 3) alleged male victim first initial statement;
- 4) Private Investigator's Art De Givion's File; and
- 5) Copy of Motion Directed Verdict of Dismissal stamp clocked-dated by Charleston and Berkeley Counties Clerk Julie J. Armstrong; also
- 6) CD's of Gadsden Green Project(s) Camera(s) video.

Furthermore, The intent of the motion Directed Verdict of Dismissal was not only filed to have

quashed the illegal and invalid indictments, but to make aware of its existence that the Appellant was being held to answer for an alleged crime in the Ninth Judicial Circuit without being indicted by the grand jury. Pursuant to S.C. Code Annotation Section §17-19-10, see also, S.C. Code Ann. Statute §14-5-740(2) Charleston County.² The Established Test for vagueness is whether the statute provides "fair notice to those whom the law applies." Main v. Thomason, 342 S.C. 79, 92, 535 S.E.2d 918, 925 (2000). As Justice Toal noted in Curtis v. State, 345 S.C. 557, 549 S.E.2d 591 (2001), "[a] law is unconstitutionally vague if it forbid(s) or require(s) the doing of an act in terms so vague that a person of common intelligence must necessarily guess as to its meaning and differ as to its application...." A statute is not unconstitutionally vague if a person of ordinary intelligence seeking to obey the law will know, and is sufficiently warned of the conduct the statute makes criminal. Johnson v. Collins Entertainment Co. Inc. 349 S.C. 613, 564 S.E.2d 653 (2002). However, due to the non-disclosure of the motion Directed Verdict of Dismissal the appellant did not assert its ground of lack of Subject Matter Jurisdiction for at the moment in time of the hearing (PCR) 2013-CP-10-1084, that was held on the 16th day of January, 2016 appearing in PCR Court without certain of discovery mentioned on the previous page the appellant could not have raised its grounds expecting to have an successful result when the materials of discovery were not in his possession. The Appellant later filed a Motion to Reconsider Pursuant to Rule 59(e) and/or 60(b), this course of action was denied followed by an Untimely appeal. The appellant do not recall receiving a(n) issuance of Remittitur being separated from his case file since May 10th 2018, April 06, 2017 - August 06 2017.

Nevertheless, The Appellant filed a second PCR Application ^(2018-CP-10-600) asserting that the Appellant is being held and confined illegally in the South Carolina Department of Corrections (S.C.D.C.) Pursuant to orders of commitment of the Charleston County Clerk of Court, raising the ground that the Ninth Judicial Circuit Court, General Sessions did not have the subject matter jurisdiction to accept plea of guilty to indictment(s) charging violation of S.C. Code Ann. §16-3-10, murder; §16-3-29, attempted murder; and §16-5-490, use of deadly weapon, whereas the State of South Carolina failed to produce evidence supporting both the affidavit and indictment(s). A defendant is entitled to a directed verdict when

² see current 2018 PCR Application Memorandum in Support

the state fails to produce evidence of the offense charged. State v. Curtis, 356 S.C. 622, 591 S.E.2d 600 (2004) Turning to South Carolina Jurisprudence, Pursuant to 5 S.C. Jur. Abatement, Revival, etc. §5, South Carolina Jurisprudence, March 2018 Update, Abatement Revival, and Survival of Actions, the Appellant asserts this 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 proceeding in question belong, Perce 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. For the Supreme Court has held that lack of subject matter jurisdiction cannot be waived and has no statute of limitations when asserting this ground. Thompson v. Warden Perry Correctional Institution, 2007 WL 2579570 (S.C.)

Moreover, A Circuit Court has subject matter jurisdiction which is established by Article V §11 of the South Carolina Constitution, however, in order for the circuit to gain subject matter jurisdiction to convict a defendant of a(n) offense(s) if there is an indictment that sufficiently states, the offense, the defendant waives presentment, or the offense is a lesser included offense of the crime charged in the indictment. John Gentry v. State, 363 S.C. 93, 610 S.E.2d 494 (2005). Being that the convened dates of the convening of the grand jury on the said indictments three in total were outside the statute of S.C. Code Ann. Section §14-5-740(2) Charleston County, and outside the scope of the legislature's intent the indictments on their face is illegal and invalid. Appellant did not waive presentment in writing nor verbally, although he pled guilty to the lesser included offense of murder from which it stemmed was thus illegal and invalid. The indictment charging violation of S.C. Code Ann. §16-3-29, attempted murder was done away with at defendant's first initial trial appearance appearing before Honorable Dedrie Jefferson, Ninth Judicial Circuit, General Sessions Court confirming the state failed to have produce supporting evidence of the affidavit and indictment(s). The indictment charging violation of S.C. Code Ann. §16-5-490 indicated the defendant shot at two people causing fatal injuries as a(n) result of the suffering of the individual wounds Joyce Dupree died and Brian Williams suffered a(n) head injury. The Appellant asserts that he never received a notice of an extension nor was there any filing for a(n) re submittance of the said indictments going before a grand jury when the language inside the indictments were changed the Appellant pled to.

In this case Kevin E. Herriott v. The State, supp, the indictments were not legal binding documents wherefore the Ninth Judicial Circuit, General Sessions Court did not have the authority to accept the Appellant's plea of guilty causing their act to be void and in any proceeding that had derived from the said indictments is too invalid as well illegal when they were faulty on their face.

3 their presentment of indictments)

Yours, Very Truly

K. Bennett

Kevin Bennett, 313862

Rose Litigant

Sworn and subscribed before
me on the 4th of December 2016

Cathrine A. Pinesq

My commission expires
December 22, 2018

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DEC 14 2016

S.C. SUPREME COURT

Kevin E. Herritt, #313862
Hershaw Correctional Institution
4848 Coldwind Hwy
Hershaw, South Carolina 29067

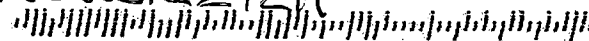
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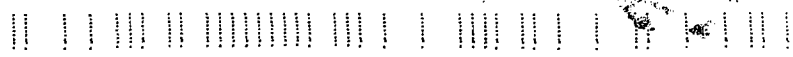
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MAIL ROOM

The Supreme Court of South Carolina
Daniel E. Shearouse, Clerk of Court
Post Office Box 11330
Columbia, South Carolina 29211

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SWOLGEMUND TO HEWITT
NOBLELLIS TWA LOEBUOO
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AIRMAIL

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