

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

The Honorable Robert E. Hood, Circuit Court Judge

Appellate Case No. 2016-002367

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DEC 19 2018
SC Court of Appeals

Cedric L. Woods#265789,.....Appellant.

v.

State of South Carolina,.....Respondent.

FINAL BRIEF OF APPELLANT

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Citation of Authorities

Anderson v. St.,	527 SE2d 398 (ct of App. 2000)
Brown v St.,	570 SE2d 559 (2002)
Dove v. Gold Kist Inc.,	442 SE2d 598 (1994)
O'Laughlin v Windham,	498 SE2d 689 (ct App 1998)
St v Beacham,	342 SE2d 597 (1986)
St v Hann,	12 SE2d 720 (1940)
St v Johnson,	489 SE2d 228 (1997)
St v Means,	626 SE2d 348 (2006)
St v McClure,	289 SE2d 158 (1982)

46 Am. Jur. 2d, Judges § 82

§ 14-5-630 (1). Terms of court for the 2nd circuit

The Appellant concedes that this appeal stems from the denial of his Motion for Declaratory Judgment case in 2014. He also concedes that the trial court was vested with jurisdiction to try his case. Also, he is not challenging the sufficiency of the indictments against him, but is challenging that the indictments were fraudulent and that the grand jury that returned them was without jurisdiction and as such, an illegal body and was void and a nullity as were the indictments it returned, which failed to give the required notice demanded by due process of law.

Prima facie evidence right on the faces of the indictments* complained of shows that not only were they fraudulent, as the dates signed by the foreperson were four and ten days prior to the terms of court stated on the face and the terms are themselves in conflict with State law. See § 14-5-630(1)

There was no term of general sessions for Aiken County on these dates, however, as mandated by the Legislature, there were terms of court for the Aiken County Court of Common Pleas on each of those dates. Since both general sessions and common pleas courts cannot convene at the same time in the same county, this is evidence of fraud and a lack of jurisdiction of the grand juries.

The court of common pleas is vested with no authority to take any actions on matters pertaining to return of true bill indictments. Thus there is no grant of concurrent jurisdiction and therefore no true bill criminal indictments can be lawfully issued through grand jury proceedings held before a court of common pleas. See *Dove v. Gold Kist Inc.*, 442 SE2d 598, @600, (1994).

St. v. McClure, 289 SE2d 158, (1998). "No indictment may be true billed when the circuit court lacks jurisdiction since the grand

jury is co-extensive with the criminal jurisdiction of the court it is impaneled and for which it is to make inquiry"

"The law requires presentment of a grand jury as a condition precedent to the trial of a crime..., St. v. Beachem, 342 SE2d 597, (1986) - A conviction obtained without presentment of a grand jury will be voided on appeal." St. v. Hann, 12 SE2d 720 (1940) See also S.C. Const. art I, § 11.

Hann, went on to say, "[t]he same principle, ... applies to an attempted conviction without the verdict of a petit jury. As we apprehend, it is the application of this principle that the courts hold... that those who acted as either grand jurors or petit jurors, are so contrary to the law that either jury cannot be said to have any legal existence, the conviction is a nullity."

Post-Gentry, indictments are viewed as "notice documents," and while they do not confer jurisdiction upon the trial court, they have not been dispensed with. In St. v. Means 626 SE2d 348, (2006) the Court held that post-Gentry "analysis remains largely the same as it did under pre-Gentry law, although it is now driven by concepts of notice and due process. A defendant has a constitutional and statutory right to demand a properly constituted grand jury consider his case...."

This Appellant asserts that the two grand juries were impaneled during a court of common pleas, not a court of general sessions, therefore they had no legal jurisdiction as pointed out in Dove, supra, and as the Appellant comprehends Hann, supra, legally, these grand juries did not exist and thereby he was tried for crimes without presentment of grand juries and his sentences and convictions should be voided.

This Appellant has a very limited amount of time to do research in a very inadequate law library at Allendale Correctional, but has found a legal term that might apply to this case. The term "excess of jurisdiction" might well apply here.

"Excess of jurisdiction, as distinguished from the entire absence of jurisdiction, means that the act, although within the general power of the judge, is not authorized, and therefore void with respect to the particular case, because the conditions which alone authorize the exercise of his general power in that particular case are wanting, and hence the judicial power is not in fact lawfully invoked." - O'Laughlin v Windham, 498 SE2d 689 (Ct.App. 1998) citing 46 Am. Jur. 2d, Judges § 82 and Stv Johnson, 489 SE2d 228, (Ct.App. 1997).

Even though the trial court had jurisdiction in general, the fact that no legal presentment to a legal grand jury existed as a condition precedent to trial, therefore the trial and verdict, as well as the sentence and conviction are voidable.

The State has argued that the Appellant's issue is not preserved for appeal or appellate review. Because jurisdictional claims may be raised at anytime, even for the first time on appeal, or "can be raised sua sponte by [this Court]," the Appellant asserts that this Court is allowed by precedent to hear and decide his claim. See Brown v. St. 570 SE2d 559 (2002) and Anderson v. St. 527 SE2d 398 (Ct. App. 2000)

Similarly to this case, Anderson was appealing the denial of a writ of mandamus asking to compell the clerk of court to provide him "copies of grand jury transcripts, list of jurors who considered his indictment, and documentary proof that the grand jury was qualified by a circuit court judge in open court...." This Court

denied the mandamus, but Anderson had also raised the issue of jurisdiction by requesting a hearing to determine if the trial court that tried him for murder was vested with jurisdiction.

Anderson cited the absence of the term "true bill" on the face of the indictment against him as grounds for the hearing. Like Anderson, this Appellant has had no success in obtaining access to his grand jury documents. This Court remanded Anderson's case for a hearing to determine if his trial court was vested with jurisdiction, and held that "the State shall bear the burden of proving subject matter jurisdiction."

While as stated above, this Appellant concedes that while his trial court had jurisdiction, the grand jury that issued his indictments did not have jurisdiction and were a nullity as were the indictments and as such he was denied his constitutional and his statutory right to demand a properly constituted grand jury and presentment as a condition precedent to trial and the State should as in Anderson, bear the burden of proving otherwise.

Conclusion

For the foregoing reasons, this Appellant respectfully asks that this Court remand his case for an "Anderson hearing" and that he be appointed counsel for the hearing and that the State be required to prove the legality of his grand jury with sufficient evidence and should it be unable to do so, or if it concedes, that this Court vacate his sentences and convictions and any other such relief as this Court should deem just and fair.

References to the Record on Appeal

Any reference to indictments in this brief are to those already submitted to this Court and listed in the Record on Appeal; see item number (2).

Also they are noted by * on page one of this brief.

Respectfully submitted
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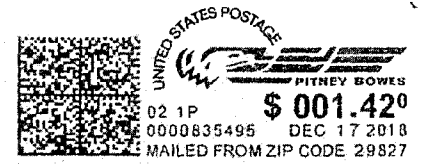
PROOF OF SERVICE

I hereby certify that I have placed copies of my Final Brief, Amended Record on Appeal, Motion to Amend Record on Appeal, Motion to Limit Copies, Bindings and Covers, and this Proof of Service, in the USPS Mail and addressed to the S.C. Court of Appeals and to the S.C. Office of the Attorney General, on this the 17th day of December, 2018.

Respectfully Submitted
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