

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ORANGEBURG COUNTY

Court of General Sessions

Honorable Edgar W. Dickson, Circuit Court Judge

Appellate Case No. 2017-000557

THE STATE..... Respondent,

v.

WILLIE YOUNG Appellant.

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

- I. DID THE LOWER COURT ERR BY DENYING YOUNG’S REQUEST FOR APPOINTED COUNSEL?

- II. DID THE LOWER COURT ERR BY DENYING YOUNG’S RULE 29 MOTION BASED ON NEWLY-DISCOVERED EVIDENCE?

STATEMENT OF THE CASE

Willie Young was convicted on June 28, 2002, for one count of Armed Robbery, and sentenced to 30 years’ imprisonment. (R-8). On July 26, 2016, Young filed a *pro se* motion pursuant to SCRCrimP Rule 29, alleging numerous grounds for relief, and requesting counsel. (R-9). A hearing was held on Young’s motion on October 26, 2016. (R-32). At that hearing, the lower court denied Young’s request for appointed counsel, and Young was forced to argue his motion *pro se*. (R-41). After hearing argument from Young and the State, the lower court denied Young’s motion by written order on December 21, 2016. (R-1). This appeal followed.¹

¹ Young’s Notice of Appeal, dated February 13, 2017, states: “Willie Young appeals the order of Judge Edgar W. Dickson dated December 21, 2016. Appellant received written notice of order (sic) on February 13, 2017.” (R-17).

FACTS

In this case, Young appeals from the denial of his Rule 29 Motion for New Trial based on newly-discovered evidence. Young's motion was filed on July 26, 2016. (R-9). In his *pro se* motion, Young alleged four grounds, as follows: (1) that the Solicitor, when it obtained an indictment against Young, did so by unlawfully impaneling a grand jury outside of a term of court authorized by law; (2) that the indictment returned against Young was signed by the foreperson prior to the actual convening of the grand jury; (3) that the State committed a *Brady* violation when it failed to disclose to the defense that the foreperson of the grand jury had the same last name as the alleged victim in Young's case; and lastly, (4) that the Solicitor colluded with the grand jury foreperson to return an indictment without a lawfully impaneled grand jury. (R-9). Furthermore, Young's motion specifically requested counsel. (R-9).

Motion Hearing

On October 24, 2016, a hearing was held in Orangeburg County before the Honorable Edgar W. Dickson. Initially, the court took up the issue of whether Young would be appointed counsel. (R-34). Young was initially asked whether he had an attorney. (R-34). Young responded that he did not. (R-34). The court then asked Young whether he wanted an attorney, and Young responded affirmatively. (R-34). The court informed Young that it could not appoint him counsel, and asked

if Young could afford to hire an attorney. (R-35). Young stated that he could not afford to hire counsel. (R-35). The court then engaged in a colloquy with court personnel, asking whether the court had the authority to appoint Young counsel. (R-36). At one point during this exchange, the court stated that “[Young would] like to have an attorney. I don’t think I can appoint one for that.” (R-36). The court then informed Young that if he filed a PCR alleging the same grounds in his Rule 29 motion, he would be appointed counsel. (R-38-39). Finally, the court informed Young that, “even though I have the authority possibly to appoint an attorney under a 29(b) motion, I’m not inclined to do that.” (R-41). The court then invited Young to forego his Rule 29 motion and re-file a PCR alleging the same grounds, but Young declined to do so. (R-41). Young stated that he would proceed with the motion *pro se* at that time. (R-41).

Young alleged that his indictment was returned by the Orangeburg County Solicitor’s Office “out of turn.” (R-42). Young clarified that the face of the indictment shows that the grand jury foreperson signed the indictment two weeks prior to the term of general sessions court. (R-42). Young alleged that this defect rendered the indictment null and void. (R-42). Young argued that the indictment must be returned during a term of court, pursuant to the rules governing criminal procedure in South Carolina. (R-42). The court reviewed Young’s indictment, and acknowledged that the face of the indictment showed a true-bill date of January 28,

2002. (R-42). Young confirmed his position that this date was outside of the term of general sessions court in Orangeburg County. (R-42-43). Young noted that the face of the indictment indicates that the indictment was returned during the February 11, 2002 term of general sessions in Orangeburg County, which is inconsistent with the true-bill date in late January. (R-43).

In response, the Solicitor acknowledged that the grand jury was convened prior to the authorized term of court – in the present case, it appears that the grand jury was convened in late-January, prior to the February term of general sessions. (R-45). The Solicitor stated that this was the standard procedure. (R-45). Young replied to this by arguing that the Solicitor had failed to offer proof that such a term of court had been authorized. (R-47). The court then concluded the hearing, and informed Young that it would take the motion under advisement at that time. (R-47-48).

Order Denying Rule 29 Motion

On December 21, 2016, the lower court issued an order denying Young's motion. (R-1). Regarding Young's claim that his indictment was returned out-of-term, the court stated as follows:

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

...

Although S.C. Code Ann. § 14-5-620(3) does not provide for Orangeburg general sessions terms of court at the time the Defendant was indicted and ultimately convicted, the South Carolina Court Administration specifically scheduled general sessions terms of court during those weeks and it acted within their constitutional authority in doing so.

(R-2-3). The court additionally ruled that the remainder of Young's claims were successive and untimely, pursuant to S.C. Code Ann. § 17-27-90, because "[a]lthough Defendant couches his grounds for relief as a Rule 29(b) after-discovered evidence motion, it is nonetheless another application for post-conviction relief." (R-5).

ARGUMENT

I. The lower court erred by failing to appoint Young counsel during his Rule 29 hearing. Young specifically requested counsel, and the court denied his request, forcing Young to present his motion *pro se*.

Standard of Review: "In the criminal context, the United States Supreme Court has held the Due Process Clause of the United States Constitution provides criminal defendants with an absolute right to counsel where their liberty is at stake." *Broom v. Jennifer J.*, 403 S.C. 96, 106, 742 S.E.2d 382 (2013)(citing *Argersinger v. Hamlin*, 407 U.S. 25, 37-38 (1972)). "In light of the serious consequences of a criminal conviction, the Court concluded that 'in our adversary system of criminal justice, any person haled into court, who is too poor to hire a

lawyer, cannot be assured a fair trial unless counsel is provided for him.”” *Id.* (quoting *Gideon v. Wainwright*, 372 U.S. 335, 344, 83 S. Ct. 792 (1963)).

Here, the lower court erred by failing to appoint Young counsel during his hearing. His pleading clearly stated that he wanted an attorney appointed, and during the colloquy with the lower court, he again stated that he could not afford an attorney due to his incarceration, and that he wanted the assistance of competent counsel in order to properly litigate these issues. South Carolina has recognized the right of individuals to self-representation, but this must be the litigant’s choice, and the court is required to ensure the individual has knowingly elected to represent himself, and waived his right to counsel. *See State v. Brewer*, 328 S.C. 117 (1997). In fact, South Carolina has recognized the right of a defendant to have appointed standby counsel even when the defendant chooses to represent himself. *State v. Sanders*, 269 S.C. 215, 237 S.E.2d 53 (1977).

The face of Young’s motion raises meritorious legal issues, and it cites numerous statutes and cases in support of Young’s arguments. Although Young made admirable efforts to summarize and verbally argue these issues, he cannot be expected to navigate the complexities of post-conviction procedure and present his evidence and arguments without the advice of competent counsel. Accordingly, it

was error for the lower court to deny his unambiguous requests for counsel,² and this case should be remanded to the lower court with direction to hold a second hearing. Further, this court should require the lower court to appoint Young counsel at the second hearing, so that these issues can be fully explored by the lower court.

II. The lower court erred by denying Young’s motion for new trial, which alleged that his indictment was true-billed during a time period when Orangeburg County lacked general sessions jurisdiction.

Standard of Review: “A motion for a new trial based on after-discovered evidence is addressed to the sound discretion of the trial judge.” *State v. Irvin*, 270 S.C. 539, 545, 243 S.E.2d 195, 197 (1978). A lower court’s ruling on a defendant’s Rule 29 motion for new trial based on after-discovered evidence is reviewed on appeal for abuse of discretion. *State v. Harris*, 391 S.C. 539, 243 S.E.2d 195 (2011).

“No person may be held to answer for any crime the jurisdiction over which is not within the magistrate's court, unless on a presentment or indictment of a

² At one point during the colloquy, the court informed Young that it lacked authority to appoint counsel. (R-35). Young respectfully submits that this is an abuse of discretion; a failure to exercise discretion amounts to an abuse of that discretion. *Fontaine v. Peitz*, 291 S.C. 536, 538, 354 S.E.2d 565, 566 (1987)(“When the trial judge is vested with discretion, but his ruling reveals no discretion was, in fact, exercised, an error of law has occurred.”); *Balloon Plantation v. Head Balloons*, 303 S.C. 152, 155, 399 S.E.2d 439, 441 (1990)(quoting *State v. Smith*, 276 S.C. 494, 498, 280 S.E.2d 200, 202 (1981)(“It is an equal abuse of discretion to refuse to exercise discretionary authority when it is warranted as it is to exercise the discretion improperly.”)).

grand jury.” S.C. CONST., ART. 1, § 11; S.C. Code Ann. § 17-19-10 (1976); *State v. Beachum*, 288 S.C. 325, 342 S.E.2d 597 (1986). At the hearing on Young’s Rule 29 motion, his primary argument was that the indictment in his case was returned during a time when Orangeburg County lacked the authority to convene a grand jury for the purposes of returning general sessions indictments. Specifically, Young noted that his indictment was true-billed on January 28, 2002, and was labeled as being presented during the “Court of General Sessions February 11, 2002 Term,” and that the county lacked general sessions jurisdiction during the January period where the indictment was true-billed. The solicitor who argued against Young’s motion indicated that it was that jurisdiction’s common practice to convene grand juries and return indictments outside of the term of general sessions court.

After hearing argument from both parties, the lower court indicated that it would take these issues under advisement, and the subsequent order indicated that the court may have consulted with Court Administration to determine when Orangeburg County had general sessions jurisdiction in early 2002,³ though it is unclear. In any event, the State did not offer evidence of when Orangeburg County had jurisdiction in early 2002, and the Judge’s finding to the contrary must be

³ The order denying Young’s motion stated as follows regarding the time period when Young’s case was true-billed: “...South Carolina Court Administration specifically scheduled general sessions terms of court during those weeks...” (R-3).

discarded by this court, even under the deferential standard of review employed here.⁴ What we are left with for the purposes of this court's review is an admission by the State that Young's indictment was true-billed during a time period (late January, 2002) when Orangeburg County lacked authorization to hold general sessions court. The prosecution conceded that this was actually the common practice in that jurisdiction.

Young respectfully submits that he was entitled to be indicted by a lawfully-impaneled grand jury with proper authority to return indictments. Because this procedure was not properly employed in this case, Young submits that the indictment in his case is null-and-void, and he is entitled to a new trial. Because the record before the lower court clearly demonstrates that Orangeburg County lacked proper authority to impanel a grand jury in January 2002, the lower court abused its discretion by finding to the contrary and denying Young's motion. Consequently, Young respectfully urges this court to reverse the lower court's denial of his Rule 29 motion for new trial.

⁴ "On review [from denial of a motion for new trial], we may not make our own findings of fact. The deferential standard of review constrains us to affirm the trial court *if reasonably supported by the evidence.*" *State v. Mercer*, 381 S.C. 149, 167, 672 S.E.2d 556 (2009)(emphasis added).

CONCLUSION

For the reasons stated, this Court should reverse the judgment of the circuit court, and vacate Young's conviction and sentence, and remand the case to Orangeburg County for a new trial. Alternatively, Young respectfully urges this court to remand the case to Orangeburg County with direction to appoint counsel and conduct a re-hearing on these issues.

Respectfully submitted,



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