

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM NEWBERRY COUNTY
Court of General Sessions

Frank R. Addy, Jr., Chief Circuit Court Judge

Appellate Case No. 2013-000196

The State of South Carolina,Respondent.

VS.

James E. Wise, #250411,Appellant.

[FINAL] BRIEF OF APPELLANT

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Appellant Pro Se

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STATEMENT OF ISSUE ON APPEAL

1.) Whether the Court erred by denying Appellant's Motion to arrest Judgment due to the sentence was in violation of Double Jeopardy, and the United States Constitution Article I, Section 12 of the South Carolina Constitution?

2.) Whether the Court erred by denying Appellant's Motion to arrest Judgment Due to the Court of General Sessions did not have Jurisdiction to impose Sentence in the begin with?

3.) Whether the Court erred by denying Appellant's Motion to arrest Judgment which was an Abuse of Discretion, a Denial of Due Process & Equal Protection which resulted in an Error of Law which Prejudiced Appellant because he is being held in Custody unlawful?

STATEMENT OF THE CASE

The Appellant was arrested in Newberry County, South Carolina on July 15, 1997 and Charged with, Burglary 1st Degree, Assault and Battery High and aggravated nature (ABHAN), and Escape. The Grand Jury indicted as Charged (97-GS-36-479), and the Appellant entered Plead Guilty in Magistrate's Court to the Lesser included offense of Assault & Battery (Simple) on the (ABHAN) Charge, and on the Burglary 1st Degree the Appellant plead Guilty to Malicious Injury To Real Property. The State then seeks a Re-indictment for 1st Degree Burglary (98-GS-36-402) of the Original indictment (97-GS-36-479). The Appellant herein went to Trial for 1st Degree Burglary on October 8, 1998 Pursuant to the above indictment, where a Jury found the Appellant Guilty as charged and he recieved a Life sentence without the possibility of parole. The Appellant's Trial Attorney filed a timely Motion to Quash the indictment, but failed to inform the Court that the Appellant had already Plead Guilty in Magistrate's Couert for Malicious injury to peal property, therefore it would Constitutionally Constitute a Double Jeopardy because now Appellant was tricked to believe that the Burglary 1st was taken care of by pleading to the lesser included charge in Magistrate Court. The Appellant filed a properly Notice of Motion and Motion to Arrest the Judgment in the Court of General Sessions on November 2, 2012, the Court filed an ORDER dismissing Motion to Arrest Judgment on January 7, 2012. The Appellant then filed a properly NOTICE OF APPEAL on January 25, 2013, along with a Motion for Counsel, Appellant recieved written Notice on January 17, 2013, so Notice of Appeal is proper. This Appeal Follows, after he recieved Notice that no Counsel for Appeal.

ARGUMENT

The Appellant argued in the Arrest of Judgment that he is being held in a Violation of United States Constitution under the 5th Amendment to Double Jeopardy Clause as well as the South Carolina Constitution Article I, Section 12, therefore the Court Abused it's discretion which amounted to an error of Law and a Violation of the Treaties of the United States as well as South Carolina and the Court should have Granted Arrest of Judgment in this instant matter, and ORDERED the release of Appellant.

The Appellant argued on Notice of Motion and Motion to Arrest of Judgment See: (Record on Appeal P.3-10), State V. Brown, 23 S.E. 2d 301 (1942).

The General Sessions Court had Jurisdiction to ARREST OF THE JUDGMENT ,but was without JURISDICTION to impose a sentence that the Appellant had already disposed of in Magistrate Court to take a Plead to two lesser included offenses, in exchange of the greater offenses being Nolle Prosed, therefore the arrest of the Judgment was proper and the denial is an abuse of discretion as well as the Sentence in a Violation of the United States Constitution under 5th Amendment to Double Jeopardy and the South Carolina Constitution Article I, Section 12, the denial amounted to an error of Law.

See: United States Constitution 5th Amendment

See: South Carolina Constitution Article I, Section 12

See: Brown V. Ohio, 432 U.S. 161 (1977)

See: Yeager V. U.S., 129 S.Ct. 2360 (2009).

See: Benton V. M.D., 395 U.S. 784 (1969).

See:Riley V. South Carolina,82 F. Supp. 2d 474;225 F.3d 655.

See:State V. Lawson,305 S.E. 2d 249 (S.C.1983).

See:State V. Kimbrough,46 S.E. 2d 273 (S.C. 1943).

When the Court reviews an Appeal as this one Abuse of Discretion comes into play and Appeal and error as well as Prejudice to the moving party which resulted in an error of Law as well as a Violation of the United States Constitution 5th Amendment & the South Carolina Constitution Article I,Section 12,therefore this Court does have Jurisdiction to Grant this Appeal and ORDER the release of the Appellant as a matter of Law because to hold him would Violate Clearly Established State and Federal Law.

See:Abate V. Abate,660 S.E. 2d 515,377 S.C. 548 (App. 2008).

See:Bettis V. Busbee,283 S.C. 502,323 S.E. 2d 536 (Ct. App.1984).

See:Criminal Law Ann 1

See:Appeal and Error Ann 946

The Appellant has shown reasons for the Grant of relief requested in the Conclusion of this Appeal and respectfully ask the Court to take serious consideration of the argument into dispute further more the Respondents have failed to argue anything therefore they have abandoned any such rights.,Futhermore its a miscarriage of Justice See:Butler V. State,397 S.E. 2d 87,88 (1990).; Matthews V. State,122 S. Ct. 1928,535 U.S. 1062,152 L.Ed 2d 834.

CONCLUSION

WHEREFORE, based on the foregoing this Court should Grant Appellants Motion To Arrest Judgment and ORDER the release of the Appellant or Remand the Case back to General Sessions Court for Oral Arguments, or Grant a Resentencing Hearing in this instant matter.

Respectfully Submitted,

151 James E. Wise, #250411

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Appellant Pro Se

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SC Court of Appeals

CERTIFICATE OF SERVICE

I do hereby Certify that I have served the below named and Addressed with a True and Correct Copy of 1'Designation of Matter to be included in Appeal;2.Final Brief of Appellant;3. Certificate of Service;4.Record on Appeal On This 22nd Day of May, 2013 By placing it in the United States Postal Mail

Postage Prepaid, and it's within the Rules 210(b);211(a)S.C.A.C.R.

5.) Motion for leave to file 15 copies / Indigent Inmate

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