

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM HORRY COUNTY
COURTS OF GENERAL SESSION

Benjamin H. Culbertson, Circuit Court Judge

RECEIVED

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SC Court of Appeals

Appellante Case No: 2015-002107

Arnold Lea Ward,

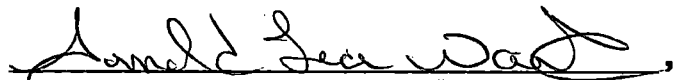
Appellant,

V.

State of South Carolina,

Respondant,

FINAL BRIEF OF APPELLANT



Arnold Lea Ward, SCDC #109169...
Acting Pro- Se Attorneys...
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STATEMENT OF ISSUE ON APPEAL

(1). Did courts error in denying of petition/motion for Newly Discovered Evidence, Where opposing parties (Attorney/Solicitor) and/or Horry Clerk office failed to produce supportive evidence to rebut the claim of fraud against the State, Where Solicitor did commit (sic) a " Procedure error " and "contempt of the proceedings" by unlawfully and/or illegally process- ing the indictment outside the statute of S.C. code ann: § 14-5-810, and without a signed order by the Supreme Court Chief Justice and/or a presid- in Associate Justice for a special term of court in pursuant to S.C. code ann: § 14-5-910...

(2). Did courts error in denying of petition/motion for Newly Discovered Evidence, Where in reconizing The Jurisdictional requirements set forth in S.C. code ann: §14-9-210 & 14-5-810, Courts would lack the requisite Jurisdiction to process a fraudulent indictment through a trial proceed- ing under a unlawful and illegal indictment out-side of the mandatoried provisions set up by statutory Law and/or with-out a affirmed/approved signed order from the South Carolina Supreme Court Chief Justice and/or the presiding Associate Justice...

" STATEMENT OF CASE "

On June 15, 2015, I Arnold Lea Ward, Acting Pro-Se Attorney, Petitioner, filed a petition/motion for Newly Discovered Evidence in the Horry Clerks office, alledging trial courts with-out jurisdiction of petitioner over a trial proceeding, Where Solicitors office committed fraud acts (sic): The " procedure error " and " contempt of the proceedings " by unlawfully and illegally processing a indictment outside of its grand jury pursuant to South Carolina codes of Laws and without South Carolina Supreme Court's Chief Justice affirmed and/or approvement of a signed order to due such a procedure..

On September 1, 2015, Petitioner appeared before the Honorable Judge Benjamin H. Culbertson with oral arguement, Where such petition/motion was denied... A written notice of entry of this order was recieved by mail on September 15, 2015...

Petitioner filed a timely petition/motion for reconsideration on the application and recieved a final order of denial on September 28, 2015, by the Honorable Judge Benjamin H. Culbertson...

Petitioner file a timely Notice of Appeal on September 30, 2015..Then [Initial Brief], Designation of matter followed, Petitioner filed the Record on Appeal and now this Final Brief of Appellant follows:

" STATEMENT OF FACTS "

Petitioner argues courts error violated his Fourteenth Amendment of due process rights by denying the motion for Newly Discovered Evidence, Where during hearing procedures opposing parties (Attorney/Solicitors), and/or Clerk of court office failed to present any rebuttall supportive evidence that was substantially sufficient to show courts vested jurisdiction over a trial court to convict accused. Here the processing of a fraudulent indictment under a unlawful and illegally procedure and/or a signed order to do such action by the Supreme court Chief Justice left such document (indictment) Null and Void. Thereby Courts lack Subject Matter Jurisdiction over the accused for trial proceedings...

SUPPORTIVE FACTS AND LAWS:
ARGUMENTS OF ISSUE:

Appellant first objects and addresses respondents contention that the alligation of the motion for Newly Discovered Evidence and/or the Initial brief of appellant was posed in pursuant to rule: 29-(b) SCR crim. P. for motion requesting a new trial. Respondant submits appellant arguments in this regard are both untimely and without merit under this relevant rule, carrying a explanation within the context of the rule of a one (1)- years limitation and quoting a application of merit under a five (5) factor requirement of obtaining a new trial. (see): Respondants Initial and Final Brief, Arguments #1,2. Pg. (4-7).

Appellant contends, The argument is a erroneous assessment in several seperate issue's. "First", The motion was based specifically on a claim of "Extrinsic Fraud" by the Horry county Solicitors office on a " Procedural error " and " Contempt of the proceedings " by " unlawfully and illegally" processing the indictment of this case outside of a grand jury term, pursuant to rule: 60-(b)-(3), SCRCP. Then willfully printing and publishing the false and misleading information of the document for a court proceeding to deep secrete its violation of statutory Law.(see): Record of Appeal; Exhibit #B, Pg. (5-9), Initial Brief of Appellant, Pg. (1), Statements of the issue's, sections: (1)-(2)..

The standards of rule 60-(b)-(3), SCRCP. [Fraud, Misrepresentation, or other misconduct by an adverse party], is supported by courts, That there are no statute of limitations when a party seeks to set aside a judgement due to fraud or other misconduct of an adverse party who commits a unlawful act upon the courts. (see): Aoude V. Mobil oil corp. 862 F.2d 890 (1-rst cir. 1988) and many more. Infurtherence, This rule does not request a five (5) factor requirement reported by the respondent. the challenge is not one of guilt and/or innocence or a presentation of evidence to change the logic of a theory. Although, appellant claims actual innocence of the charge offense, the question posed through the application on the motion for Newly Discovered Evidence is one based on due process and equal protection of Law. (see): Record on Appeal, Exhibit #B, Pg. (5-9), Initial Brief of Appellant, Pg. (1)-standard of issue, section: (1)-(2), U.S.C.A. section:§V., S.C. Const. Amend. Art.I,§11. [Presentment of Indictment], State V. Beachum 288 SC 325, 342 SE2d 597 (1986) and many more.

Appellant claims the adverse party (Solicitor) committed " Procedural error " fabricating and falsifying a legal document (Indictment)outside a grand jury term of court and by a mode courts have no authority adopt-

ing and " Contempt of the proceedings " unlawfully and illegally processing the indictment through a court procedure. In this sense of preception, Appellant challenges the legality of the indictment and questions courts authority over jurisdiction to obtain a conviction without a presentment or wavier of the indictment to confer courts to try the accused..(see): State V. Mann 196 SC 211, 12 SE2d 720 (1940), State V. Grim 341 SC 63, 533 SE2d 329 (2000), Pringle V. State 287 SC 409, 339 SE2d 127 (1986), State V. Evans 363 SC 495, 611 SE2d 510 (2005) and many more..

Furthermore, For the edit of the courts "Fraud" is a hidden agenda and can only be discovered through relentless investigation or intrusive study of materials and documents implicated under a format of secrecy, to which such applications are construed as true and authentic by the avering of the courts. Thereby, to find such would consist of patience, extensive time and due diligence... (see): State V. Grim, Supre., State V. Beachum Supra...

The fundamental requirements of the courts procedural due process of a indictment is established through the holdings of the United States Constitution Amendment, § V. and S.C. Const. Amend. Art. I. §11. [Presentment of Indictment], Quoting: "No person may be held to answer for a capital or otherwise infamous crime, unless on a presentment of the indictment of a Grand Jury"; This intends not merely an indictments in form, but a valid indictment found and presented according to the settle usage and establish mode of procedure. (see): U.S.C.A. § V., S.C. Const. Amend. Art. I, §11., Pringle V. State, Supra., State V. Rector 158 SC 212, 155 SE2d 385 (1930)., State V. Bultron 318 SC 328, 457 SE2d 616 (ct. App. 1995). and many more.

Therefore, Reconizing the jurisdiction requirements set forth in the S.C. code ann: §14-9-210, with strict compliances in its provisions and mandate that the grand jury must be impanel under the jurisdiction of a court of General Sessions and must comply to S.C. code ann: §14-5-810., regulating the only process allowed for impaneling of a grand jury before a lawful return of a true bill indictment can take place, Any and/or all other modes or procedures outside those statutory restrictions without a signed order by the Supreme Court Chief Justice would by necessity be a document (indictment) made Null and Void.(see): State V. Edward 68 SC 318, 47 SE 394 (1904)., State V. Henderson 136 SC 363, 34 SE 364 (SC August 16, 1962)., State V. McClure 277 SC 432, 289 SE2d 158 (1982)., State V. Thunderburk 259 SC 256, 191 SE2d 520 (1972)., State V. Wheeler 259 SC 57, 193 SE2d 515 (1972)., and many more...

In the context of these rules and codes of Laws to constitute a valid indictment in a court procedure, it must have been publicly presented in open court, stating all presumed alligations with sufficiency, presenting evidence, testimony, Ect. with all grand juror's present and answering to thier names, noting the process and voting on the indictment, Then being signed and delivered by the foreman to the Clerk of court for publishing, All such actions and facts presented being recorded and entered into the Clerk of courts records for further proceedings.(see): Zugar V. State 194 GA. 285, 21 SE2d 647 (1942)., U.S. V. Jensen 76 Fed. Appx. 507. 2003: WL: 22244896. and many more...

A paper purporting to be an indictment, indorse as a true bill outside of a grand jury court procedure and delivered to the Clerk of court in a courtroom when court was not in session, is not an indictment and cofers no jurisdiction on the court to try the accused...(see): Raniger V. U.S. 172 Fed. 646, 26 L.R.A.N.S. 683, 97 C.C.A. 172 (1909). A substantial body of South Carolina Law holds that failure to comply with statutory Law, of Jurisdiction in nature, Deprives the court of Subject Matter Jurisdiction. (see): State V. Loftin 275 SC 575, (SC 1981)., Gray V. State 276 SC 634, 281 SE2d 226 (SC 1981)., State V. Ervin 333 SC 351, 510 SE2d 220 (ct. App. 1998)., and many more...

This brings us to the "Second" contention of the respondant claiming the appellant Motion for Newly Discovered Evidence was untimely because the alledge evidence does not implicate the Subject Matter Jurisdiction of the trial court and the motion was without merit because appellant's arguement fail to carry his burden of proving the grand jury was not properly impaneled in pursuant to the relevent statutes.(see): Respondants Final Brief..

An indictment is a critical document in a criminal defense preperation that is grounded in Constitutional and stautory principles: (see): South Carolina Const. Amend. Art/ I, §11. [Presentment of Indictment], and South Carolina code ann: § 17-19-10-(2014), Quoting: **[No person shall be held to answer in any court for an alledge crime of offense, unless upon indictment by a grand jury]**. As explained in State V. Gentry 363 SC 93, 610 SE 2d 494 (2005). If the Validity and/or sufficiency standards of the indictment are challenged, it must do more than recite just basic elements of a offense charged, The indictment must contain truthful sufficient alledged alligations and evidence before a court of competent jurisdiction that is processing the document through a procedure of authority to permit accuse

a fair and just opportunity to be able to prepare a defense for a trial. (Per Judge Beatty; Quoting; With one Justice concurring and one justice concurring in result). State V. Baker 411 SC 538, 769 SE2d 860 (2015).

S.C. Const. Amend. Art. I, §3. [Privileges and immunities], Quote: The privileges and immunities of citizens under this constitution shall not be abridge, Nor shall any person be deprived of life, liberty or property without due process of Law, Nor shall any person be denied the equal protection of the Law. South Carolina Law requires presentment of a indictment to the grand jury as a condition precedent to the trial of a crime.. The accused demanding a trial, has a right to be tried only upon indictment presented to and ruled by a legal grand jury. **Here**, Adverse Parties intrigue act of illegally and unlawfully processing, Where such document is required, deprives accused of life, liberty and property without due process and equal protection of law.(see): State V. Beachum, Supra, State V. Rector, Supra., State V. Grim, Supra..and many more...

The jurisdiction of a court over (Subject Matter) of a proceeding is fundamental.(see): Brown V. State 343 SC 342, 540 SE2d 846 (2001), **Jurisdiction**:(Being the power to exercise authority over all persons and/or things within a territory).**Subject Matter**:(Being the [issue] allegations presented for consideration, The thing in dispute).(see): Blacks Law Dictionary, eighth edition: Thereby, Subject Matter Jurisdiction of the court and the sufficiency of an indictment are two distinct concepts.(see): Evans V. State 363 SC 495, 611 SE2d 510 (2005)., Courts acquire Subject Matter Jurisdiction to hear particular cases by way of a valid indictment through the presentment of a grand jury:(see): State V. Dudley 354 SC 514, 581 SE2d 171 (2003)., State V. Funderburk, Supra., and many more..

The case at review, The respondent quotes; The indictment itself demonstrates the charged offense was presented to, and true bill by, the Horry county grand jury on January 25, 2007, due to the language of the body and information presented on its face. Respondant further claims, Appellant - does not dispute the existence of the indictment which put him on notice of what charge he was called upon to answer, Stating appellants challenge before the lower court and in this appeal goes to the statutory procedure employed to empanel the grand jury that does not implicate Subject Matter jurisdiction . (see): Initial Brief and Final Brief of Respondant, Pg. 8, 2nd par.).,

Here, to **Indict**:(is to charge [a person] with a crime by formal legal process; Esp, by grand jury proceedings)., **Indictment**:(is a formal legal

written accusation of a crime, made by a grand jury and presented to the court for prosecution). (see): Black Law Dictionary, 8th eighth edition,, Subject Matter Jurisdiction is the power of a court to hear and determine cases of general class to which the proceedings is in question belongs to. (see): State V. Dudley, Supra. Thereby, The quote stated above is puristically misguided, The lack of evidence to support a document (indictment), purported to be authentic within itself does not support the validity of such in nature, failure of proper procedure makes such Null and Void. In this concept the regularity of proceedings in a general jurisdiction of a court, " Will be assumed " absent of evidence to the contrary...(see): State V. Grim, Supra., Anderson V. State 338 SC 629, 527 SE2d 398 (2000). Pringle V. State, Supra., and many more...

Furthermore, Appellant contends during the hearing proceedings on the motion for newly Discovered Evidence, opposing parties, [Solicitor, Clerk of Horry county Court, and/or Supreme court Chief Justice Clerk], fail to provide or present any supportive documents of value that the Horry court grand jury acted in conformity of compliance with rules and regulations of the procedure to true bill the indictment on January 25, 2007. (see): The Record on Appeal; Exhibit #D. Pg. (13-18). Nor does either of the adverse parties within this legal action matter provide rebuttal supportive documents that establish a legal action of order to allow a court procedure of this nature on January 25, 2007 to support respondents contentions and claims that appellant is without merit. (see): Respondants Initial and/or Final Brief and arguments. Bultron V. State, Supra..

Consequently, and keeping with the mandatory provisions setup for the processing of a indictment. The state had No Jurisdiction to issue the return of a true billed indictment except during a time when the General Session court is lawfully convened to oversee a grand jury process. Any acts of the courts that is taken outside of those statutory restrictions would clearly by necessity be null and Void. Thereby, without supportive evidence on record by the Clerk of court in pursuant to S.C. code ann:§ 14-17-540-(2) [Books, Calendars and records that are to be kept by Clerk] Questions the moral Law requirements if the court was vested with jurisdiction and authority to present the [Defendant] to a trial proceedings. (see): State V. Grim, Supra., Anderson V. State, Supra., State V. Bultron, Supra., Gray V. State 276 SC 634, 281 SE2d 226 (SC 1981) and many more..

On the other hand, Through intrinsic request of questioning by appellant to each department of the adverse parties (Attorney Generals office,

Solicitors office, Clerk of Horry county court, Clerk of Supreme courts Chief Justice and the presiding associate justice Clerk), There has not been any response notifying of any applicable supportive documents showing relative information to establish a legally action order to allow a procedure of this nature and/or a signed court order providing courts a one-day " special term " of court and specific reasoning of public interest that satisfies such specific special session of court under the provisions of S.C. code ann: §14-5-410 and/or S.C. code ann: §14-5-910, 920, 930, 940, 950. (see); State V. Gossett 117 SC 76, 108 SE 290 (SC 1921).., State V. Sanders 251 SC 431, 163 SE2d 220 (1968). and many more..

Although, Appellant has established through relentless investigations and intrusive study, presumptive evidence of rebuttal that conclusively settles the matter of a states fraudulent action. The information that's contain in the indictment will show the courts allowed a procedure mode by Solicitors office that was not authorized to be utilized. The indictment specifically quotes: **At a court of General Sessions, Convened the January 25, 2007, The Grand Jury presented upon thier Oath:**(see): Record on Appeal, Exhibit #A, [Indictment of proceeding], Infurtherence, Appellant provides supportive prima facie evidence from the Horry county Clerk of courts office in pursuant to S.C. code ann: §14-5-540-(2), [Books, Calendars and records that is to be kept by Clerk], That substancially Justifies through the Grand Jury reports on actions for the year 2007, That there was **No Grand Jury action taken in January of that year.** (see): The Initial Brief of Appellant, Designation of matter, to be included on the Record of Appeal, Exhibit #A. [In-Re signatures and reports of the Horry county Grand Jury for the year of 2007], Record on Appeal, Exhibit #E., and all contents thereof...

In contrast, The courts of Appeals reasoned in Bultron and Anderson, Where issue's are virtually identical to the case exhibitted here, The actions of a grand jury and/or evidence did not exist within the record of the Clerk of courts to indicate the active proceeding of the courts grand jury procedure on a specific date and time, Nor where there signed documents by Supreme courts to indicate a special term. Thereby, Courts lack jurisdiction to try the case. This in question Appellante courts if circuit courts was properly vested with Subject Matter Jurisdiction in the present case and is persuasive enough to remand for a hearing as to determine whether the indictment at issue was processed through a proper procedure to true bill the indictment. When confronted with issue's like

the present case here, a trial court has several alternations. The courts must conduct a evidentiary hearing to determine whether it should resubmit the indictment to the grand jury on consideration for a trial procedures, or to effect a wavier of presentment of the indictment to the grand jury by way of offer of plea-agreement with [defendant] and/or simply submit to vacate the conviction and sentence in whole as a matter of Law...The trial courts must establish Subject Matter Jurisdiction over the proceedings of the conviction... (see): Anderson V. State, Supra., State V. Grim, Supra., State V. Bultron, Supra., and many more...

" IN CONCLUSION "

Appellant contends, The respondents claims of presumptive discursively conclusions of rules and Law to support the denial of this appeal, Where opposing parties including him-self fail to present supportive evidence of rebuttal of the alledge fraudulent act by the Solicitors office has No supportive value to the issue at hand and are only obstacles to attempt to divert the attention of Appellate courts from the specific reasoning of the claim and deeper secrete the deceptive fraudulent act hidden within the illegally and unlawfully proceedings of the document...

THEREBY, For all the reasons stated herein above, The Appellant would respectfully request this Honorable court to please find a conclusion of trial courts error in the ruling of denial on the motion for newly Discovered Evidence and find merit in appellants claim granting a order for Evidentiary Hearing and/or vacating the conviction and sentencing as a matter of Law...

Respectfully Submitted,


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