THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM BAMBERG COUNTY
COURT OF GENERAL SESSION

Doyet A. Early, III. Circuit Court Judge

Appellate Case No: 2019-002619

State of South Carolina, Respondant,

V.

JOHNNIE L. JONES Appellant,

RECORD ON APPEAL

ALAN WILSON
Attorney General

JOHN BENJAMIN APLIN
Senior Assistant Attorney General

P.O. Box 11549
Columbia, SC 29211

J. STROM THURMOND
Solicitor, Second Judicial Circuit

P.O Drawer 3368
Aiken, SC 29802

Attorneys for Respondent

Johnnie Lee Jones,

Johnnie Lee Jones, SCDC # 340271.
Acting Pro-Se Attorney:
Allendale Correction Institution
Post-office Box 1151 F-3-B-23
Fairfax, South Carolina 29827

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FILED
BAMBERG COUNTY
2016 APR 26 AM 10: 24
JAMES B. HIERS
CLERK OF COURT
BAMBERG, SC

April 11,2016

Johnie L. Jones, #340271
Allendale C.I.
P.O.Box 1151
Fairfax, SC 29827

HAND DELIVERY

Clerk of Court
Bamberg Court, Clerk of Court
P.O.Box 150
Bamberg, SC 29003-015,

TO: Clerk

Enclosed please find orgiginal Motion for After-Newly Discovered Evidence and Motion to Expand Record and Counsel respectfully request in the above-referenced matter.

Please file the originals of record and return the clocked copies to my courier.

In addition, this subject matter is a criminal matter and filing fee is not require. Please forward a copy to the Solicitor's Office.

By copy of this letter, I am serving the Attorney General Wilson with the same.

Sincerely,

Johnie L Jones

Johnie L. Jones

cc: Alan Wilson, Attorney General

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STATE OF SOUTH CAROLINA	,	IN THE COURT OF GENREAL SESSIONS
	,	SECOND JUDICIAL CIRCUIT
COUNTY OF BAMBERG	,	CASE NO.: 2007-GS-05-168-169

State of South Carolina	,	
vs.	,	MOTION FOR AFTER-NEWLY DISCOVERED EVIDENCE and MOTION TO EXPAND RECORD
Johnie L. Jones, #340271	,	
Defendant.	,	"Evidentiarty Hearing Requested"

This matter comes before the Court by way of an Motion to filed a Motion for After-Newly Discovered Evidence and Motion to Expand the Record to be filed pursuant to Rule 29 (B), SCRCRIM.P. and Rule 60 (B)(3), SCRCP. There is no st-- atute of limitation when a party seek to set aside a judgment due to fraud upon the Court. (Citing Aeuda v. Mobil Oil Coepuration, 862 F.2d 1115,1118 (1st Cir. 1989); Catoe v. State, Supra., there is no time limitation within such motion must be brought forth. See State v. Williams, 106 S.C. 295,93 S.E.2d 106.

PROCEDURAL HISTORY

For purpose of the Motion, Defendant discovered that the Solicitor unlawfully impaneling its Grand Jury outside the Statute of S.C.Code Ann.§ 14-5- 630 (2); the Solicitor committed a BRADY VIOLATION by withholding exculpatory evidence from the defense and the Solicitor manufactured a indictment for [Attempt Kidnapping].

ALLEGATIONS

In his current Motion alleges that he is being held in custody unlawfully for the following reasons:

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GROUND A. "Did the Solicitor committed (sic) a 'procedural error' by unlawfully impaneling its Grand Jury outside the Statute of S.C.Code Ann.§ 14-5-630 (2)

SUPPORTING FACTS: The Defendant humbly contends that the Solicitor committed (sic) a 'procedural error' by unlawfully impaneling its Grand Jury outside Statute of S.C.Code Ann.§ 14-5-630 (2). Here, the General Assembly did not made a-provision in Sec. 14-5-630 (2), that set forth, a [Term of Court] for the Month of [June].

S.C.Code Ann. 14-5-630 (2), which provides:

- Section (2) Bamberg County.- The Court of General Sessions for Bamberg County shall be held at Bamberg on the third Monday in February for a term of one week and on the second Monday in September for a term of one week.

Nowhere, in S.C.Code Ann. 14-5-630 (2) the legislature provided a [Term of Court] for Month of [June] within the Court of General Sessions.

In the case, at hand, the indictment read as follows:

- At a Court of General Sessions, convened on June 4,2007 the Grand Jurors of Bamberg County present upon their oath;

In this case, the South Carolina Supreme Court confirm the standard for the [Term of Court] that set forth in the Statutory Laws of this State and in Ex-Part Lilly, 7 S.C. 372, 1876 WL 5977 and State v. Henderson, 136 S.E. 363. These issues set forth in the Supreme Court Ruling in other such cases like State v.-Henderson, Supra, and still apply today and protected by the United States Constitution and laws of the State and United States.

The matter presented above for review is not a challenge to the Court's General grant of authority to hear and determine cases. That authority is rightfully granted by our constitution, State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005), and will not be at issue.

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GROUND B. Legal Framework

SUPPORTING FACTS: The Defendant alleges that the Solicitor failure to request for a special term of the Court of General Sessions, it deprived the Defendant of his [Procedural due process]. As set forth, one additional piece of evidence very clearly settles the matter of State's FALSE condition. The information contained in Chamber Exhibit [A], also establishes that no special term of the Court of General Sessions was not convened on June 4,2007 under the provisions of either Section 14-5-410, Section 14-5-910, or Section 14-5-920.

As established above, what [Competent Authority] the Solicitor can produce to this Court, that give them authority to alter the [Term of Court] that set forth in Section 14-5-630 (2). When a legislative enactment limits the manner in which something may bw done, the enactment also evinces the intent that it shall not be done another way. Thus, since the Court utilized an lawful mode of procedure not allowed under Section 14-9-210, State lacked the requisite jurisdiction to complete return of its true-billed indictment. Therefore, the legislative has set forth the Procedure in South Carolina Rules of Civil Procedure Rule 77. Cancelling or Ordering Term of Court.

The rule provides:

> ° Sec. (E) No term of court shall be cancelled nor additional term scheduled without the prior approval of the Chief Justice. When the local bar requests that a week of Common Pleas Court be not held or the Solicitor requests that a week of Gereral Sessions Court be not held the Clerk SHALL immediately notify the Court Administrator of this State.

The Statutory terms above are clear, unambiguous, and require the County Solicitor to requests that a week of general sessions court be not held the Clerk SHALL immediately notify the Court Administrator of this State. Here, the solicitor in contempt of court by failure to comply with the requirements of this rule.

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i. Due Process

However, her, evidence will establish that the [Foreperson of Grand Jury] signed the [True-Bill] dated May 31,2007. As set forth, the foreperson of the grand jury committed [Constructive Fraud] upon the Court by signing the indictment before full panel was assembled of the Grand Jury." See gaither v.--- United States, 413 F.2d 1061, under Rule 6 (f) of the Federal Rules of Criminal Procedure provides: "An indictment may be found only upon the concurrence of 12 or more jurors. And Rule 6 (c) empasizes the requirement that 12 jurors shall "find" each indictment by its provision that the foreperson "shall keep a record of the number of jurors concurring in the finding of every indictment must be "found" by at least 12 grand jurors is a further specification - of the Fifth Amendment's command that "no person shall be held to answer for- a capital or otherwise infamous crime, unless on a presentment or indictment- of a Grand Jury."

GROUND C. Did the Court lack subject matter jurisdiction to tried the Defendant on attempted kidnapping?

SUPPORTING FACTS: The Defendant contends that the Legislature did not ..... enacted a Statute for (attempted kidnapping] and there was no provision place in **S.C.Code Ann.§ 16-3-910 for attempted kidnapping. See also, Keith v. Stevenson,** 210 WL 3786122 (2010), to do a thing unlawfully is to do it willfully against the law. Knowingly means knowledge, consciously, not accidentally,... seize means to take hold or suddenly or forecefully, confine means to limit,- restrict or enclose within bounds, imprison or shut or keep in. Inveigle..... means to lure, entice or astray... or lead astray by false representations,.. promises or other deceitful means. Decoy means to lure or as if by decoy. A. decoy is... decoy is something to entice a person into a trap. The definition

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of decoy is to lure successfully. As provided in Section 16-3-910, kidnapping occurs when one unlawfully seize, confines, inveigles, decoys, kidnaps,abducts or carries away any other person by any means whatsoever without authority of law.

The plain and unambiguous language of § 16-3-910,As set forth, element of.... kindnapping (words of a statute should be accorded their plain and ordinary meaning without resorting to subtle or forced construction to limit or expand statute's operation). There is simply no language in the statute which implies it excludes a provision for (attempted kidnapping). If the Legistature.. had intended to add attempted kidnapping in the Statute, it could have..... included such language in the Statute (if Legislature intended Statute to attempted kidnapping, it could have done so by including such language).

Lastly, the Solicitor simply did deprived Defendant's of his due process or equal protection, by convicting the Defendant of a Statutory Law that was not enacted by Legislature.

GROUND D. **The Solicitor committed a BRANDY VIOLATION by withholding exculpatory evidence.**

SUPPORTING FACTS: The Defendant contends that the Solicitor withheld exculpatory evidence, such as misidentification because the highly suggestive out-of-court identification procedure used by police where only one photograph was displayed in the photographic layout and shown to the accuser resulted in an unreliable identification and the Solicitor withheld the one photograph from the defense and the Solicitor wihheld the medical report from the ..... defense to substantiate the victim was every injury and the Solicitor failed to met all the prongs set forth in S.C.Code Ann.§ 16-3-910. Here, the Solicitor was not faithful to the Law.

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CONCLUSION

For all of the foregoing reasons, the Defendant, Johnnie L. Jones, respectfully requests this Court to grant the Motion and reverse the trial court decision and remand this case for an Evidentiarty... Hearing to vacate Jones's conviction and sentence as matter of law.

This day of April, 2016.

Respectfully submitted,

By: Johnnie L Jones

Johnie L. Jones

Exhibit: (B): pg: 18

FILED
BAMBERG COUNTY
2017 AUG 25 AM 9:11
JAMES D. HIERS
CLERK OF COURT
BAMBERG, SC

STATE OF SOUTH CAROLINA	IN THE GENERAL SESSIONS COURT
COUNTY OF BAMBERG	SECOND JUDICIAL CIRCUIT
STATE OF SOUTH CAROLINA,	**ORDER DENYING MOTION FOR NEW TRIAL AND PETITION FOR WRIT OF MANDAMUS**
v.	
JOHNNIE L. JONES,	2007-GS-05-0168 and 2007-GS-05-0169
Defendant.	

A TRUE COPY
Attest: B. [illegible]
CLERK OF COURT
BAMBERG COUNTY, SC

This matter came before the Court for hearing on Defendant's motion captioned "Motion for After-Newly [*sic*] Discovered Evidence and Motion to Expand Record" filed on April 26, 2016, and Defendant's subsequent "Petition for Writ of Mandamus" filed May 11, 2017. A hearing on the motions was conducted at the Barnwell County courthouse on July 25, 2017. The State was represented at the hearing by Deputy Solicitor David W. Miller. The Defendant was present for the hearing and appeared *Pro Se*. After hearing from the parties, I hereby find and rule that the Defendant's Motion and Petition for Writ of Mandamus should be dismissed for the reasons outlined below.

PROCEDURAL HISTORY

The Defendant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Bamberg County Clerk of Court. The Defendant was indicted during the June 2007 term of the Bamberg County Grand Jury for assault and battery with intent to kill (2007-GS-05-0168) and attempted kidnapping (2007-GS-05-0169). He was represented by Dan Luginbill, Esquire. Defendant proceeded to a jury trial and was convicted of attempted kidnapping and assault and battery of a high and aggravated nature, a lesser included offense of assault and battery with intent to kill. On April 19, 2010, I sentenced the Defendant to a period of eighteen years confinement attempted kidnapping and ten years for assault and battery of a high and aggravated nature, with the sentences to be served concurrently.

The Defendant subsequently filed a Notice of Appeal and an appeal was perfected. On January 25, 2012, the South Carolina Court of Appeals affirmed the sentences and convictions and dismissed the Appeal. State v. Jones, (Op. Np. 2012-UP-034). Thereafter,

#1

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on April 30, 2012, the Defendant filed a *Pro Se* Petition for Post-Conviction Relief. Counsel was appointed to represent the Defendant and the matter proceeded to hearing ~~on~~ before the Honorable R. Ferrell Cothran. Following the hearing, Judge Cothran dismissed the Petition by order dated August 19, 2013.

The Defendant subsequently filed this motion captioned "Motion for After-Newly [*sic*] Discovered Evidence and Motion to Expand Record" and, subsequent to that filing, the "Petition for Writ of Mandamus".

DEFENDANT'S ALLEGATIONS

The Defendant alleges in his motion that he is being held unlawfully on three grounds. First, he claims the Bamberg County Grand Jury and the General Sessions Court were convened unlawfully, in contravention of S.C. Code §14-5-630, which purports to establish, by statute, the terms of General Sessions and Common Pleas court in the Second Judicial Circuit. Defendant claims that because he was not tried during the week beginning the third Monday in February or the second Monday in September, the Grand Jury and his trial Court were unlawfully convened and lacked jurisdiction to adjudicate his case. S.C. Code Ann. § 14-5-630(2).

Next, the Defendant alleges the Circuit Court lacked jurisdiction to conduct a trial on the charge of "attempted kidnapping" because the legislature did not enact a statute outlawing attempted kidnapping and there is no provision within the kidnapping statute (S.C. Code §16-3-910) defining attempted kidnapping.

Finally, the Defendant alleges the Solicitor withheld certain exculpatory information in violation of Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963).

DISCUSSION

I. WERE THE 2007 GRAND JURY AND 2010 GENERAL SESSIONS TERMS OF COURT LAWFULLY CONVENED?

Defendant claims the June 2007 Grand Jury and the April 2010 General Sessions terms were convened unlawfully and therefore had no jurisdiction to consider his case. While Defendant is correct that S.C. Code §14-5-630 provides for the scheduling of terms of General Sessions and Common Pleas courts in the Second Judicial Circuit, the statute is in direct contravention to the subsequent enactment of the South Carolina Constitution,

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which vests exclusive control of the Courts of this State in the Supreme Court of South Carolina. The Circuit Court is part of the unified judicial system as set forth in Article V, Section 1, of the Constitution. This constitutional provision states, "The judicial power shall be vested in a unified judicial system, which shall include a Supreme Court, a Circuit Court, and such other courts of uniform jurisdiction as may be provided for by general law."

Article V, Section 4 of the South Carolina Constitution provides, in relevant part,

> The Chief Justice of the Supreme Court shall be the administrative head of the unified judicial system... ***The Chief Justice shall set the terms of any court and shall have the power to assign any judge to sit in any court within the unified judicial system.*** Provided, each county shall be entitled to four weeks of court each year and such terms therefor shall be provided for by the General Assembly. Provided, further, that the Chief Justice shall set a term of at least one week in any court of original jurisdiction in any county within sixty days after receipt by him of a resolution of the county bar requesting it. The Supreme Court shall make rules governing the administration of all the courts of the State... [emphasis added] S.C. CONST Art. V, § 4 (1985).

The terms of General Sessions Court are constitutionally set by the Chief Justice of the Supreme Court and notice of the terms of Court are thereafter published by South Carolina Court Administration. *See* State ex rel. Riley v. Martin, 274 S.C. 106, 262 S.E.2d 404 (1980) (The statutory vesting of the power to set terms [in the legislature] of the Court of Appeals, therefore, infringes upon the constitutional authority of the Chief Justice to set the terms of any court within the unified system, and violates the provisions of Article 5, Section 4, of the Constitution.)

Accordingly, the June 2007 Grand Jury that considered the Defendant's indictments and the subsequent April 2010 General Sessions term when the Defendant was tried were lawfully convened pursuant to the authority vested in the Chief Justice of the South Carolina by the South Carolina Constitution.

II. DID THE COURT HAVE JURISDICTION TO TRY THE DEFENDANT FOR THE OFFENSE OF ATTEMPTED KIDNAPPING?

The Defendant has alleged the Circuit Court had no jurisdiction to try him for the offense of attempted kidnapping. S.C. Code §16-1-80 provides, "A person who commits the common law offense of attempt, upon conviction, must be punished as for the principal

MME
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offense." The common law offense of attempt requires (1) an overt act, (2) by the defendant, (3) to commit a specified felony. The Defendant is correct that the legislature has made no statutory provision for attempted kidnapping, however that simply means an attempt to commit a kidnapping is punished under the common law as though the kidnapping was completed pursuant to S.C. Code §16-1-80. *Cf.* S.C. Code §16-3-0029 (attempted murder)(A person who violates this section is guilty of a felony, and, upon conviction, must be imprisoned for not more than thirty years) and S.C. Code §16-3-10 (murder) (murder must be punished by death, or by a mandatory minimum term of imprisonment for thirty years to life), S.C. Code §16-11-330(B) (attempted armed robbery)(A person who commits attempted robbery while armed...is guilty of a felony and, upon conviction, must be imprisoned not more than twenty years) and S.C. Code §16-11-330(A)(armed robbery)(A person who commits robbery while armed... is guilty of a felony and, upon conviction, must be imprisoned for a mandatory minimum term of not less than ten years or more than thirty years, no part of which may be suspended or probation granted).

SUFFICIENCY OF THE INDICTMENT

The Defendant alleges the trial court lacked subject matter jurisdiction over the charge of attempted kidnapping. At the hearing and in his motion, the Defendant appears to claim the court lacked subject matter jurisdiction because the indictment in his case was defective, arguing there is no language in S.C. Code 16-3-910 "which implies it [includes] (*sic*) a provision for attempted kidnapping".

The United States Supreme Court, in United States v. Cotton, 535 U.S. 625, 122 S.Ct. 1781, 152 L.Ed.2d 860 (2002), held that a defective indictment does not deprive a court of jurisdiction. The South Carolina Supreme 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 proceedings in question belong, Pierce 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. Brown v. State, 343 S.C. 342, 540 S.E.2d 846 (2001). In State v. Munn, 292 S.C. 497, 357 S.E.2d 461 (1987) our Supreme Court concluded that, subject to certain minor exceptions, the trial court lacks subject matter jurisdiction to convict a defendant for an offense when there is no indictment charging him with that offense when the jury was sworn. Thereafter, in State

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v. Gentry, the South Carolina Supreme Court clarified "the confusion created by Munn" by adopting the holdings of the United States Supreme Court in Cotton and the Missouri Supreme Court in State v. Parkhurst, 845 S.W.2d 31 (Mo.1992), finding subject matter jurisdiction of the circuit court and the sufficiency of the indictment are two distinct concepts and the blending of these concepts serves only to confuse the issue. Circuit courts obviously have subject matter jurisdiction to try criminal matters. State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005)

The indictment for attempted kidnapping in this matter alleges: "That JOHNNIE LEE JONES did in Bamberg County on or about January 9, 2007 unlawfully ***attempt*** to seize, confine, inveigle, decoy, kidnap, abduct or carry away the victim Donald Hiers without authority of law, all in violation of §16-3-910 of the *Code of Laws of South Carolina*, (1976), as amended." (emphasis added) As stated by our Supreme Court in State v. Faile, 43 S.C. 52, 59–60, 20 S.E. 798, 801 (1895), *overruled on other grounds by* State v. Torrence, 305 S.C. 45, 406 S.E.2d 315 (1991) (citations omitted):

> The indictment is the charge of the state against the defendant, the pleading by which he is informed of the fact, and the nature and scope of the accusation. When that indictment is presented, that accusation made, that pleading filed, the accused has two courses of procedure open to him. He may question the propriety of the accusation, the manner in which it has been presented, the source from which it proceeds, and have these matters promptly and properly determined; or, waiving them, he may put in issue the truth of the accusation, and demand the judgment of his peers on the merits of the charge. If he omits the former, and chooses the latter, he ought not, when defeated on the latter,—when found guilty of the crime charged,—to be permitted to go back to the former, and inquire as to the manner and means by which the charge was presented.

The indictment is a notice document. A challenge to the indictment on the ground of insufficiency must be made before the jury is sworn as provided by S.C. Code §17–19–90. If the objection is timely made, the circuit court should judge the sufficiency of the indictment by determining whether (1) the offense is stated with sufficient certainty and particularity to enable the court to know what judgment to pronounce, and the defendant to know what he is called upon to answer and whether he may plead an acquittal or conviction thereon; and (2) whether it apprises the defendant of the elements of the offense that is intended to be charged. *State v. Wilkes,* 353 S.C. 462, 578 S.E.2d 717 (2003); *see*

also S.C. Code § 17–19–20 (2003) (sufficiency of indictment). In determining whether an indictment meets the sufficiency standard, the court must look at the indictment with a practical eye in view of all the surrounding circumstances. *State v. Adams,* 277 S.C. 115, 283 S.E.2d 582 (1981).

It is clear from the indictment that the Defendant was accused of attempting to kidnap Donald Hiers. To the extent the indictment fails to cite to the common law of attempts or S.C. Code §16-1-80, and instead refers to the statutory offense of kidnapping, any alleged deficiency was waived when not brought to the attention of the Court prior to the swearing of the jury. Applying Faile to the facts here, the Defendant chose to "put in issue the truth of the accusation, and demand the judgment of his peers on the merits of the charge." Having made that choice, he is not now "permitted to go back to the former, and inquire as to the manner and means by which the charge was presented".

III. ALLEGED MISCONDUCT BY THE SOLICITOR

In his Motion, the Defendant alleges the Solicitor withheld certain exculpatory information in violation of Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963). When offered an opportunity to explain and argue this allegation at the hearing, the Defendant withdrew this claim for relief.

IV. OTHER ALLEGATIONS OR CLAIMS NOT RAISED

As to any allegations that were raised in the motion or at the hearing in this matter and specifically not addressed in this Order, this Court finds the Defendant failed to present any testimony, argument, or evidence at the hearing regarding such allegations. Accordingly, this Court finds the Defendant has abandoned any such allegations.

V. ADDITIONAL BASIS OF DENIAL OF RELIEF

In addition to the prior discussion of the Defendant's allegations herein, the Defendant filed an application for post-conviction relief that was dismissed on August 19, 2013. While this matter was not captioned as an application for post-conviction relief, the claims raised in the "motion" are collateral challenges to his convictions and sentences. Successive applications for post-conviction relief are disfavored. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980). S.C. Code Ann. § 17-27-90 (1976) states:

> All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental or amended application. Any ground

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> finally adjudicated or not so raised, or knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence, or in any other proceeding the applicant has taken to secure relief, may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which, for sufficient reason, was not asserted or was inadequately raised in the original, supplemental or amended application.

Under this statute, successive post-conviction relief applications are forbidden unless an applicant can point to a "sufficient reason" why new grounds for relief were not raised or were not properly raised in previous applications. Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991). Any new ground raised in a subsequent application is limited to those grounds that "could not have been raised . . . in the previous application." Id., 305 S.C. at 450, 409 S.E.2d at 394. Because the Defendant could have raised these allegations in his previous application, the Defendant may not raise these grounds in successive applications. Id. The Defendant has not met his burden of showing that the allegations could not have been raised previously. Land, 274 S.C. 243, 262 S.E.2d 735 (1980).

The Defendant could have raised these grounds for relief in his prior post-conviction relief application. He has failed to present any reasons why he could not have raised the current allegations in his previous post-conviction relief applications. Accordingly, summary dismissal of this motion is appropriate because it is successive.

VI. DEFENDANT'S PETITION FOR WRIT OF MANDAMUS

The Defendant filed a Petition for Writ of Mandamus on May 11, 2017. In his Petition, Defendant requested that this motion be scheduled for hearing. Because the motion has now been heard, the Petition for Writ of Mandamus is moot. Therefore, the Petition is dismissed.

CONCLUSION

Based on the foregoing, the Defendant's motion for new trial should be, and hereby is, DENIED.

IT IS SO ORDERED.

Doyet A. Early, III
Resident Judge,
Second Judicial Circuit

August 24, 2017
Aiken, South Carolina

Exhibit: (B): pg-25

Johnnie Lee Jones, SCDC #340271.
Allendale Correction Institution
Post-office Box 1151 F-3-B-23
Fairfax, South Carolina 29827

July 11,2018

South Carolina Supreme Court
The Honorable Clerk of Court:
Post-office Box 11330
Columbia, South Carolina 29211

RE: State of South Carolina V. Johnnie Jones:
Case No: 2007-GS-05-0168
2007-GS-05-0169

Dear Honorable Clerk,

Please find enclosed for filing in this respectful Court, a copy of the " Petition for Habeas Corpus " with a supportive " Certificate of Service " filed on the Attorney General office...

Petitioner file this action under indigent status with application to proceed without payment of cost and affidavit in support, There of, challenging the conviction and confinement of case noted herein above, and would respectfully request this Honorable Court to please forward a clock stamped copy and/or notification of such filing to the address listed above for personal files and/or notification/copies to all other parties of the record...

Petitioner would like to take a moment to thank you and your office in advance for any or all assistance that may be provided in helping to procure the legal matter noted herein...

S/ Johnnie Jones ,
Johnnie Lee Jones, SCDC #340271.
Acting Pro-Se Attorney...

CC: South Carolina Supreme Court:
Honorable Daniel Shearouse,Clerk.

Office of Attorney General:
Alan Wilson, Attorney General.

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THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT
ORIGINAL JURISDICTION

Petition for Habeas Corpus from Bamberg County
Court of General Session

Doyet A. Early, Circuit Court Judge

Case No: 2007-GS-05-0168
2007-GS-05-0169

Johnnie Lee Jones, SCDC #340271, Petitioner,

V.

The State of South Carolina, John Pate, warden
Allendale Correction Institution, Respondant,

PETITION FOR WRIT OF HABEAS CORPUS

I, Johnnie Jones, petitions the Court of Original Jurisdiction, The South Carolina Supreme Court, pursuant to Article V, section:5. of the South Carolina Constitution, for violation of Constitutional rights, in the conviction and sentence of Case No: 2007-GS-05-0168, 169... Heard by the Honorable, Doyet A. Early, Circuit Court Judge, before a jury on April 19.2010 in the Bamberg General Session court.

S/ Johnnie Jones,

Johnnie Lee Jones, SCDC #340271.
Acting Pro-Se Attorney...
Allendale Correction Institution
Post-office Box 1151 F-3-B-23
Fairfax, South Carolina 29827

79-27

" CASE HISTORY "

The petitioner is currently confine in the South Carolina Department of Corrections (Allendale Correction Institution), pursuant to orders of comment of the Bamberg County Clerk of Court. Records will reflect petitioner was indicted during the June 2007 term of Bamberg County Grand Jury of (Assualt and Battery with intent to kill), (2007-GS-05-0168) and (Attempted Kidnapping),(2007-GS-05-0169). (see): Exhibits #A. (indictment)...

Petitioner was represented by Dan Luginbill, Esquire; and proceeded to a Jury trial anf was found guilty by jurors of Attempt kidnapping and Assualt of a high and aggravating nature, a lesser included offense of Assault and Battery with intent to kill, Thereafter, on April 19,2010 the Honorable judge Doyet A. Early, III. rendered judgement of (18) eighteen years confinement on attempt kidnapping and (10) ten years for assualt and battery of a high and aggravating nature, with both sentences to be served concurrently. (see): Exhibit #B. (sentencing/commitment sheet)...

" STATEMENT OF ISSUE "

(1). Did erred judgement of (18) eighteen years rendered under the greater offense, after conviction of the lesser included offense; violate the doctrine of double jeopardy and exceed a maximum sentenc allowed by statute and Laws?

" STANDARD OF REVIEW "

Petitioner only argue's the confimement of Attempt Kidnapping and claims the judgement of (18) eighteen years rendered under the unconstitutional an greater offense, after conviction of a lesser included offense to be in violation of the Fifth, Eighth and Fourteenth Amendments of the United States Constitution and Article I, section:§3,12 and 15 of the South Carolina Constitution...

Petitioner challenges the constitutionality of the statute, under the doctrine of double jeopardy and attacks the legalality of sentence under the doctrine of State decisis, claiming such to be excessive,illegal and exceeding statutery maximum... Petitioner contends courts erred in passing judgement under the greater offense were verdict of the jury and indictment only presented a charge for a lesser included offense...

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LAW/ANALYSIS:
AND ARGUMENT:

SUPPORTIVE FACTS, LAWS AND RULINGS:

The case at review, The petitioner was charged, indicted and found by jurors guilty of a (Attempt) to commit the criminal offense of kidnapping. When analyzing the charge offense, We find South Carolina Supreme Courts reconize attempt as an indictable offense. (see): State V. Puckett 95 SC 114, 78 SE2d 737 (1913). Furthermore, The Supreme Courts reconize, Where a attempt crime exist, it is properly construed a lesser included offense of the greater, Because incompletion of the offense is in itself a seperate and distinct element of the charge. (see): State V. Hiott 276 SC 72, 276 SE2d 168 (1989)., and many more...

First and foremost, We review the simplication provisional rules of the indictment and all important aspect's Thereof, "Obviously", The indictment must alledge an offense reconized by the Laws of this State. It must setforth all the neccessary elements of the offense and contain specification of acts and circumstances, Soas to fix and determine the identy of the offense to enable the accuse to know what has to be meet to give a fair opportunity to prepare a defense. It must enable the accuse to avail himself of conviction or aquittal as a bar to further prosecution that may arise out of the same set of facts and enable Courts looking at the indictment and a verdict alone to impose the punishment proscribed by Laws..(see): S.C.code Ann: §17-19-20-(Law co-op 1976), and Federal Procedures of Criminal Laws: Title #28, §7-(c)-(1)...

When analyzing the sufficiency of a charge in a indictment, under this provisional rule it is important to follow the basic rule of the statutory construction, Which is applicable to criminal and civil statutes alike, is that courts must acertain and give effect to legislatures intention as expressed in the statute. In the context of a statute, courts cannot read into the statute something not within the manifest and/or reinstruct the intention of legislature. The jurisdiction of a court over subject matter of a proceeding is fundamental and validity of the indictment is supported by a structured defined statute with legislatures intention of Laws. (see): State V. Zulfer 345 SC 358, 547 SE2d 885 (2001)., U.S. V. Lockhart 328 F. 3d 947, (2004)....

Petitioner contends under this provisional rule, Courts erred in rendering judgement under the greater offense after conviction of the lesser

included offense. The doctrine of double ieopardy forebids successive prosection and cummulative punishment for a greater and a lesser include offense, An offense, in order to be a lesser included offense, must be less - serious crime interms of its classification and degree. No offense may be deemed a lesser offense if it carries the same penalty as the crime under consideration. (see): Corpus Juris Secundum: Title #42, section: § 218., State V. LaCosta 347 SC 153, 553 SE2d 464 (SC App. 2001)...

Furthermore, The lesser included offense cannot have a mental state of greater than or different from that which is requiered for a more greater offense, Nor can it require any proof beyond that which is required for a conviction of the greater offense. The greater offense must include all the neccessary elements of the lesser. (see): U.S.C.A. Const. Amend.§§5,8, and 14., S.C. Const. Art. I, §3,12,15., State V. Cribb 310 SC 518, 426 - SE2d 306 (1992)., Brown V. Ohio 97 S.ct. 2221, 432 US 161 (1977)...

These established general rules in the doctrine, Clearly clarifies if the greater of the two offenses include all the legal and factual elements of the lesser, The greater includes the lesser. But if the lesser offense requires the inclusion of some neccessary element not so included in the greater offense, then the lesser is not neccessarily included in the greater. (see): American Juris Prudence (2nd), Title #41,1074, section: §318, [indictment and information]., State V.s. Fenell 263 SC 216, 209 SE2d 433 (1974)...

The case under review, The language presented through the body of the indictment, specifically stated accused "Attempted to kidnap" Here, The inclusion of incompletion of the greater offense is the neccessary element that distinguishes the difference between the seperate offenses and providing proof beyomd a reasonable dout the lesser is not neccessaily included in the greater, Logically, These Laws and rulings prevail,that ¼Attempt Kidnapping" should be considered as a seperate and distinct offense of its own nature from the completed greater offense. (see): Pelzer V. State 381 SC 217, 672 SE2d 790 (2009)., Missouri V. Hunter 459 US 359, 103 S.ct. 673 (1983)., State V. Surles 230 NC 272, 52 SE2d 880 (1949)..

Thereby, The charged offense of the indictment [Attempt Kidnapping], is presumptively a constitutional structural erro of Law, that legislature has failed to implament with-in the South Carolina code of Laws, any valid statutes with a strutured define definition, specifying in term's how a person charged with the crime attempt kidnapping is to be interpretated or a specific sentencing guide-line to provide punishment for the

unnamed offense after conviction, (see): State V. Rivera 402 SC 225, 741 SE2d 694 (2013)., U,S. V. Davila 569 US 597, 133 S.ct. 2139 (2013)...

However, South Carolina rules and Laws quote; Since a function of the Law of Criminal Attempt is to permit courts to adjust the penalty in case of such nature, An attempt to commit a crime is, as a general rule, is a indictable offense, Which is seperate and distinct from the crime itself, Although, it must have an underlined offense as its subject.(see): State V. Puckett, Supra. Where no special punishment is provided for a felony, A statute making it a crime to attempt to commit an offense may be of a general nature, punishing all attempts to commit any crime. But such an statute has been held to apply only where there is no other specific provisions of Law punishing such attempts. (see): Corpus Juris Secundum:#22, section §14., State V. Hill 254 SC 321, 175 SE2d 227 (1970)...

There are no South Carolina statutes stating specific terms how a person convicted of attempt kidnapping is to be punished. For this reason, recource must be had where Laws prevail, The maximum sentence which may be imposed in excess of courts discretion, where no other specific punishment is proscribed is controlled by provision's of the South Carolinas code Ann: §17-25-20-[punishment for a felony when not provided], Limiting Courts to a maximum punishment for a felony falling within its provisions to a period of not less than three (3) months and no more than ten (10), years imprisonment. (see): State V. Surles, Supra., State V. Fogle 256 SC 149, 181 SE2d 483 (1971)., State V. Fowler 277 SC 472, 289 SE2d 412 (1982)., and many more...

The case at hand, Petitioner supports his claim of excessive sentencing under the doctrine of Stare decisis, Through Supreme Courts precedent ruling in State V. Storgee. In Storgee, The defendant was convicted in a General Session Court of Greenville South Carolina, before the Honorable, William H. Bellenger Jr. on a guilty plea for Attempt burglary and was - sentenced to thirteen (13) years imprisonment and he Appealed, claiming the sentenc to be excessive. The Supreme Courts held that sentence imposed exceeded statutory maximum, affirming defendants conviction and remanding the case for resentencing in accordance with section: § 17-25-20, (see): State V. Storgee 277 SC 412, 288 SE2d 397 (ct. App. 1982)., State V. Surles, Supra., and many more...

The South Carolina rule of adherence to judicial precedents, finds its expression in the doctrine of Stare decisis. The doctrine is simple that, When a point or princple of Law has been once officially noted and decid-

P9-31

ed or setteled by the ruling of a competant court in a case. The courts must follow its earlier judicial decision in which it was directly and neceessarily involved, it will no longer be considered as open to examination or to new ruling by the same tribunal or those inwhich are so bound to follow its juriddiction. (see): Columbia Law Review: Title #88.section: §723,[State decisis and Constitutional adjudication], , Layton V. Fowler, 243 SC 421, 134 SE2d 247 (1969)...

The supportive facts,Laws and rules of the doctrine of double jeopardy and Stare decisis quoted herein this petition, in [conjunction], with the Supreme Court rulings in Storgee are intrinsic to the argument of the petitioners case, Here, The judgement of (18) eighteen years imposed under a unconstitutional and greater statute is invalid, both in respect to place of the punishment designated and the extent of punishment applied.. (see): State V. Storgee, Supra., State V. Surles, Supra., State V. Johnson 333 SC 459, 510 SE2d 423 (1999)., State V. Mims 286 SC 553, 335 SE2d 237 (1985)., U.S. V. Cunningham 2008-WL-6049940., and many more...

" IN CONCLUSION "

The argument stated herein above leaves in question the fundamentally fairness of the judgement rendered in this case and judges authority of imposing the illegal and excessive punishment. Petitioner contends reviewing of the prevailing rules and Laws, the trial judge abused his discretion and violated the Fifth, Eighth and Fourteenth Amendments of the United States Constitution and Article I, section:§3,12 and 15., of the South Carolina Constitution...

Petitioner would respectfully request this Honorable Court to follow the precedent rulings and Laws of this State and the Supreme Court and vacate the sentence, remanding the case to the lower courts for resentencing in comformity with the applicable statute, South Carolina code Ann: § 17-25-20, (Supp. 1976)...

S/ Johnnie Jones,

Johnnie Lee Jones, SCDC #340271.
Acting Pro-Se Attorney...
Allendale Correction Institution
Post-office Box 1151 F-3-B-23
Fairfax, South Carolina 29827

Exhibit: (C-1) - pg: 32

STATE OF SOUTH CAROLINA)
)
COUNTY OF BAMBERG)

INDICTMENT

At a Court of General Sessions, convened on June 4, 2007 the Grand Jurors of Bamberg County present upon their oath:

ASSAULT AND BATTERY WITH INTENT TO KILL

That JOHNNIE LEE JONES did, in Bamberg County, on or about January 9, 2007, with malice aforethought commit an assault and battery upon one Donald Hiers with intent to kill the said victim. All in violation of §16-03-620 of the *Code of Laws of South Carolina,* (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

BARBARA R. MORGAN, SOLICITOR
For

WITNESSES

Bearden-E.P.D.

ARREST WARRANT NUMBER

J400446

ACTION OF GRAND JURY

True Bill

Foreperson of Grand Jury
Date: May 31, 2007

VERDICT

Guilty of ABHAN

Myrtis D. Williams
Foreperson of Petit Jury
Date:

DOCKET NO. 2007-GS-05-168

The State of South Carolina

County of Bamberg

COURT OF GENERAL SESSIONS

JUNE 4, TERM 2007

THE STATE
vs.

JOHNNIE LEE JONES

Indictment for

ASSAULT AND BATTERY WITH INTENT TO KILL

SC Code: **16-3-620**
CDR Code: **014**
Class **FEL-C(V)**

Exhibit (C-2) - pg: 33

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STATE OF SOUTH CAROLINA)
) INDICTMENT
COUNTY OF BAMBERG)

At a Court of General Sessions, convened on June 4, 2007 the Grand Jurors of Bamberg County present upon their oath:

ATTEMPTED KIDNAPPING

That JOHNNIE LEE JONES did in Bamberg County on or about January 9, 2007 unlawfully attempt to seize, confine, inveigle, decoy, kidnap, abduct or carry away the victim Donald Hiers without authority of law, all in violation of §16-03-910 of the *Code of Laws of South Caroline*, (1976), as amended.

A TRUE COPY
Attest, B. Morgan
CLERK OF COURT
BAMBERG COUNTY, SC

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

Barbara R. Morgan
BARBARA R. MORGAN, SOLICITOR
For

16W
16-53 GT

Exhibit (D) - 29-34

STATE OF SOUTH CAROLINA)
COUNTY OF Bamberg)
STATE)
VS.)
Johnnie Lee Jones)
AKA:)
Race: 2 Sex: M Age: 52)
DOB: 06-07-1957 SS#: [redacted])
Address: 20889 Heritage Hwy)
City, State, Zip: DENMARK, SC 29042)
DL# * SID#)
*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2007GS05169
A/W#: J400447
Date of Offense: 1/9/2007
S.C. Code §: 16-03-0910
CDR Code #: 0095

SENTENCE SHEET

0 - 30 yrs.

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS
TO: ATTEMPTED KIDNAPPING
In violation of § 16-03-0910 of the S.C. Code of Laws, bearing CDR Code # 0095
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS (CSC w/minor 1st or Lewd Act) ☐ §17-25-45

The charge is: ☒ As indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. _____ (defendant's initials)
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: _____ Solicitor _____ SC Bar # _____ Defendant _____ Attorney for Defendant _____ SC Bar # 68525

WHEREFORE, the Defendant is committed to the ☒ **State Department of Corrections** ☐ **County Detention Center**, for a determinate term of 18 ~~days/months~~/years or ☐ under the **Youthful Offender Act** not to exceed _____ years and/or to pay a fine of $ _____ ; provided that upon the service of _____ days/months/years and or payment of $ _____ ; plus costs and assessments as applicable*; the balance is suspended with **probation** for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____

☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.

☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ **Deferred** ☐ **Def. Waives Hearing** ☐ **Ordered** **PTUP** _____

Total: $ _____ plus 20% fee: _____ $ _____ _____ days/hours Public Service Employment

Payment Terms: _____ Obtain GED ☐

☐ Set by SCDPPPS _____ Attend Voc. Rehab. Or Job Corp. _____

Recipient: _____ May serve W/E beginning _____

~~Submit~~ Drug/Alcohol Testing ☐

*Fine:		$
§14-1-206 (Assessments 107.5%)		$
§14-1-211 (A)(1)(Conv. Surcharge)	$100	$ 100.00
§14-1-211 (A)(2)(DUI Surcharge)	$100	$
§56-5-2995 (DUI Assessment)	$12	$
§56-1-286 (DUI Breath Test)	$25	$
§47.12 (Public Def/Prob)	$500	$
§14-1-212 (Law Enforce. Funding)	$25	$ 25.00
§14-1-213 (Drug Court Surcharge)	$100	$
§50-21-114 (BUI Breath Test Fee)	$50	$
§56-5-2942(J) (Vehide Assessment)	$40/ea	$
§90.7 (SCCJA Surcharge)	$5	$ 5.00
3% to County (if paid in installments)		$ 3.90
TOTAL		$ 133.90

Fine may be pd. in equal, consecutive weekly/monthly pmts. of $ _____ . Beginning _____
$ _____ Paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, §47.12 requires $500 be paid to Clerk during probation.

~~Clerk of Court~~/Deputy Clerk Patricia K. Thomas A TRUE COPY
Court Reporter: Lisa H. Davenport

Presiding Judge _____
Judge Code: 0156
Sentence Date April 14 2010

SCCA/217 (11/2009)

Attest _____
CLERK OF COURT
BAMBERG COUNTY, SC