STATE OF SOUTH CAROLINA

In the Court of Appeals

Appeal from Anderson County

Court of Common Pleas

Cordell Maddox, Jr., Circuit Court Judge

Case No. 2012-CP-04-0861

Appellate Case No. 2018-001099

Gavin V. Jones.....Appellant

v.

State of South Carolina.....Respondent

REPLY BRIEF

Other Counsel of Record

Taylor Z. Smith

Assistant Attorney General

Post Office Box 11549

Columbia, SC 29211

Gavin V. Jones

Perry Correctional Institution

430 Oaklawn Road – Q1B-112

Pelzer, SC 29669

TABLE OF CONTENTS

TABLE OF AUTHORITIES

REPLY TO ARGUMENT

Respondent contends that the procedures followed when Appellant was indicted did not deviate from the procedures provided in S.C. Code Ann § 14-9-210, therefore the indictment is not void. And the Circuit Court did not err in denying the Applicant's petition for a Writ of Mandamus to compel the Solicitor and Court, to use a lawfully obtained indictment.

It seems that the only way the Respondent could reply to the Appellant's brief is to twist his words. Twice the Respondent claims in the first paragraph that Appellant disregards something.

"They Quote"

(1) Appellant disregards language in the order that indicate that the judicial circuits still had discretion to conduct their own affairs as they deemed necessary.

Appellant does not know what affairs the Respondent is speaking of, but the Solicitor and the Court do not have discretion when it comes to **PRESENTATION OF A LAWFUL INDICTMENT**. (Emphasis added)

(2) Appellant disregards an order of the Chief Judge for Administrative Purposes convening the Grand Jury on the date on which Applicant's indictment was, true-billed, and ignores the practice in this state of allowing the judicial circuits to convene the Grand Jury outside of terms of the Court of General Sessions.

Let me please point out to the Court that the Order that the Respondent is speaking of is asking that the "Grand Jury convene for the next 6-month Term of General Sessions Court". **Yet, the date the Solicitor uses is not during General Sessions Court, but Common Pleas.**

(Emphasis added) The next sentence the Respondent claims that Appellant ignores the **"PRACTICE IN THIS STATE"** of convening the Grand Jury outside of Terms of General Sessions Court.

Please tell me why the Solicitor's Office had an Order signed asking that the Grand Jury Convene for the next 6-month Term of Court of General Sessions, but disregards the Order, and readily admits that is has been a **"Practice"** in South Carolina to do so. What truly amazes the Appellant is that the Respondent has so much confidence in the integrity of this Court that they would readily admit on record. Yes we violated Appellant's Due Process Rights, yes we committed Perjury and yes we committed a "sham legal process" to get this conviction. Appellant humbly submits regardless of how the Respondent tries to smooth it over. It is a flat out denial of my 14th Amendment Procedure Due Process Rights. For if it's been a practice for that long, they should have made it a law because in the state of South Carolina, a practice does not overrule Statutory Law.

It is Appellant's position that the Solicitor's Office and the Court had a ministerial duty to bring Appellant to trial with a lawfully obtained indictment. The lower court has admitted that they did not follow the law when seeking an indictment on Appellant **(See Transcript Pages 9, lines 17-25 and 10, lines 1-19)**. Also in the very first paragraph of the Respondent's Initial Brief, they have also admitted that they also know Appellant's indictment wasn't obtained lawfully **(See Initial Brief Page 4)**.

Respondent speaks of this violation of Appellant's procedure due process rights and total miscarriage of justice as if it wasn't prejudicial to Appellant's life. This unlawful act allowed the Solicitor to go unchecked in his pursuit of a conviction. The victim was a man that was well

known by the upper class in Anderson. It would be a feather in the hat of the Solicitor who obtained the conviction.

There was NO DNA, Eye Witness, NO Fingerprints, NO Forensics, NO Hair or fibers, NO confession, and NO weapon linking Appellant to the scene.

The state presented NO time of death, nor was any procedure done to estimate time of death. (Emphasis added)

Innocence means nothing when you are fighting against a state who had unlimited resources. This was no slam dunk case, and because the state was seeking the life and liberty of Appellant, he had a 14th Amendment Due Process Right to have the laws followed.

Before the Appellant goes any further in this Reply, Appellant will share with the Court what a Supreme Court Justice wrote to the judges, prosecutors, and aiding law enforcement.

"CHIEF OF THE UNITED STATES SUPREME COURT JUDGES RULED AND STATED TO ITS LOWER COURTS PROSECUTORS AND AIDING LAW ENFORCEMENTS, BUT MOST OF ALL, THE WILL AND FOR THE WILL OF OUR GOD:

HAVE WE THE RIGHT TO WORK CRAFTINESS TOGETHER AGAINST CONSTITIONAL RIGHTS TO GAIN OUR CONVICTIONS, BY USING THE IGNORANCE OF OUR OWN CITIZENS VIOLATING THEIR RIGHT – TO DUE PROCESS OF THE LAW;

WHEN WE AS THE JUDGES OF WHAT IS RIGHT AND THE STANDARD OF LIGHT OUT OF VIOLENCE FOR GENERATIONS TO COME, GAIN OUR

CONVICTIONS THROUGH ILLEGAL MEANS, ARE WE NOT THE WORSE CRIMINALS, AND THE STIRRING OF ANGER TO SO MANY NEEDING HELP?"

OPPOSING ARGUMENTS TO CONSIDER

Pages 7-9 of Respondent's Brief:

- Petitioner had not discovered that his indictment was obtained illegally until after his initial PCR process was complete. Furthermore, since Petitioner's complaint involved the Solicitor's deliberate act of circumventing statutory laws which governs the indictment process, Petitioner had no other remedy except "extraordinary writ".
- Respondent is mistaken on the claim that Petitioner had previously raised the issue of his indictment being "True Bill" when there was **no General Sessions Court in attendance**. Therefore, the doctrine of **res judicata** cannot apply because the issue of the **illegally** obtained indictment has never been adjudicated on the merits.
- To Respondent's claim that Petitioner could have challenged the indictment prior to jury being sworn, as according to **Gentry**, Petitioner can only point out that **Gentry** had not become precedent when he was unlawfully indicted.

Pages 10-11 of Respondent's Brief:

- Regarding the cite referencing **State v. James, 472 S.E. 2d 38@40 (Ct. App. 1996)**, Petitioner does not challenge the "**regularity**...of proceedings before a grand jury..." because the "regularity" of **ex parte**, grand jury indictment proceedings is common knowledge. However, through clear and convincing "evidence to the contrary,..." Petitioner challenges the **"legality"** of the **ex parte**, grand jury indictment proceeding, wherein his indictment was allegedly heard, deliberated, and rendered True Bill. The issue at hand cannot be made any more clear than this. The Assistant Attorney General is only trying to confuse the courts on the exact matter being challenged.
- Furthermore, regarding **State v. James**, it is precisely this "presumed legality" of grand jury proceedings which has caused and prevented people, especially trial counsel, from ever

challenging the "legality of proceedings" in the first place. As a matter of fact, it appears that, historically, grand juries have been convening, with "regularity", outside the Courts of General Sessions, as prescribed by statutory law, to process indictments illegally; hence, "Sham Legal Process" – the elephant in the room.

Pages 11-12 of Respondent's Brief:

- The Assistant Attorney General argues that Petitioner "is fixated on a technicality" [of the law]. In response, Petitioner asserts that he was tried, convicted, and sentenced through the "technicalities" of the law. Why should any county solicitor, therefore, be allowed to circumvent the law which mandates that **ex parte** grand jury indictment proceedings be held and conducted "while in attendance upon the Court of General Sessions?" Is he not to be held to the same standard of law as Petitioner? Moreover, it is a matter of Professional Conduct that solicitors ensure that convictions, which would certainly include the manner in which **ex parte** indictment proceedings are conducted, take place "in strict conformity of the law".
- **State v. Funderburk**, also concerned the "acts of a court with respect to a matter as to which it has no jurisdiction are void". Because the very next sentence in the opinion precisely addresses the issue challenged by Petitioner, the matter at hand; "The jurisdiction of a grand jury is co-extensive with the criminal jurisdiction of the court in which it is impaneled", the indictment upon which Petitioner was tried and convicted would be null and void. The grand jury did not indict Petitioner "while in attendance upon a Court of General Sessions", as prescribed by law. **S.C. Code § 14.9.210**. Like Petitioner's challenge, **Funderburk** was not premised on the subject matter or sufficiency of an indictment either. It is premised on the court's **lack** of jurisdiction, **in personam**; the power to bring the person into its adjudicative process. Because of the unlawful manner in which the indictment was obtained, the court was deprived of its power, regardless of the indictment's sufficiency in subject matter or its ability

to place a defendant – the Petitioner – on notice. In some jurisdictions, this has been referred to as "fatal defect".

- And, once again, the **Gentry** precedent did not exist when Petitioner was indicted. But, even if it had, it would not apply because the challenge is against the process by which indictments are presented and made True Bill, not about subject matter or sufficiency of notification.
- Whether it is to allow "judicial circuits to tend to their own administrative affairs" or for "public interest", when the Supreme Court "recently ordered" the "Chief Judge for Administrative Purposes..." to convene the grand jury at other times, the Court certainly did not intend for this to mean that grand juries could convene somewhere other than upon courts of General Sessions, contrary to statutory law. After all, the Court did state that this is permitted only "where feasible".

Back to Page 4 of Respondent's Brief:

- It is interesting to note that the Assistant Attorney General accuses the Petitioner of "ignor[ing] the **PRACTICE** in this state of allowing the judicial circuits to convene the grand jury **outside** of terms of the Court of General Sessions". Even Taylor Z. Smith admits this is unlawfulness. Just because it's been a long-standing, historical practice, does not make it right, does not make it legal. It only accentuates the magnitude of the problem! (Emphasis added)

CONCLUSION

Can (we) Applicant and this Appeal Court be honest? The law is clear, the **PRACTICE** of **DENYING** Appellant's **PROCEDURE DUE PROCESS RIGHTS** is clear.

1. The Solicitor and Lower Court used a phony order asking that the Grand Jury convene for the next (6) month Term of General Session, when it was a Court of Common Pleas date that was used.

2. The Solicitor then printed a lie, false information on Appellant's indictment, committing Perjury 16-9-10 A-2; this voided the indictment.

3. The Solicitor then took that illegal document and used it to illegally bring Appellant to trial; this was a sham legal process.

"No local rule of Court, Administration Order, Policy or other Procedure can take precedent over statutory law, which is always controlling. See **Constitution Article I, Section 14** and **State v. Cottingham**, 77 S.E. 2d 897, 224 S.C. 181 (1953) (Statute overrides rules of court in conflict), **State v. Duncan**, 264 S.E. 2d 421 (S.C. 1980) (Circuit Court rule promulgated individual and void).

This Court should grant relief that shows the Appellant's Procedure Due Process Rights were upheld and that the Court never had **in personam** jurisdiction over Appellant.

Respectfully Submitted,

Gavin V. Jones, 259726

Q1B-112 PCI

430 Oaklawn Road

Pelzer, SC 29669

STATE OF SOUTH CAROLINA

In the Court of Appeals

Appeal from Anderson County

Court of Common Pleas

Cordell Maddox, Jr., Circuit Court Judge

Case No. 2018-001099

Gavin V. Jones.....Appellant

v.

State of South Carolina.....Respondent

PROOF OF SERVICE

I hereby certify that, on this day, I have served/filed a Reply Brief, upon the following individuals by depositing a copy of the same into the U.S. Mail, postage prepaid, addressed as follows:

Taylor Z. Smith
Assistant Attorney General
Post Office Box 11549
Columbia, SC 29211

Jenny A. Kitchings
Clerk of Court
Post Office Box 11629
Columbia, SC 29211

Sworn to and Subscribed before me this

30 day of October, 2019

Tamara Caldwell Notary of SC

My Commission Expires: My Commission Expires September 25, 2023

Gavin V. Jones, 259726

430 Oaklawn Road Q1B-112

Pelzer, SC 29669

Mr. Gavin V. Jones #259726
Q-1 B-112 PCF
430 Oak Lawn Rd
Pelzer S.C 29669

Inter Agency

S.C Court of Appeals

Jenny A. Kitchings

Clerk of Court

Post Office Box 11629

Columbia, S.C 29211