

|                          |   |                       |
|--------------------------|---|-----------------------|
| STATE OF SOUTH CAROLINA  | ) |                       |
|                          | ) | COURT OF COMMON PLEAS |
| COUNTY OF ANDERSON       | ) |                       |
| Gavin V. Jones,          | ) |                       |
|                          | ) |                       |
| Plaintiff,               | ) |                       |
| v.                       | ) | Case No.              |
|                          | ) | 2012-CP-04-00861      |
| State of South Carolina. | ) |                       |
|                          | ) |                       |
| Defendants               | ) |                       |

**COPY  
TRANSCRIPT OF HEARING**

The within Hearing in the above-captioned matter was held on February 20, 2014, before The Honorable J. Cordell Maddox, Anderson County Courthouse, 100 South Main Street, Anderson, SC 29622; attended by counsel as follows:

**APPEARANCES:**

Rodney Wade Richey, Esq.,  
Appearing for The Applicant.

John Walter Whitmire, Esq.,  
Appearing for The State.

**RECEIVED**

NOV 05 2019

**SC Court of Appeals**

Vivian H. Cross  
Circuit Court Reporter – 10<sup>th</sup> Judicial Circuit  
P O Box 704  
Belton, South Carolina 29627  
[vcross@sccourts.org](mailto:vcross@sccourts.org)

I-N-D-E-X

GAVIN V. JONES v. STATE OF SOUTH CAROLINA  
CASE NO. 2012-CP-04-00861  
FEBRUARY 20, 2014

|                              | <u>PAGE NO.</u> |
|------------------------------|-----------------|
| COLLOQUY                     | 3               |
| COURT REPORTER'S CERTIFICATE | 13              |

E-X-H-I-B-I-T-S

IDENTIFICATION ENTERED

\*\*\*\*\*NO EXHIBITS OFFERED\*\*\*\*\*

**P R O C E E D I N G S**

**10:34 A.M.**

1  
2  
3 **THE COURT:** And then on Jones, we've got a  
4 Motion, is that right?

5 **MR. WHITMIRE:** May it please The Court; the  
6 second matter before this Court today is *Gavin*  
7 *Jones v. State of South Carolina*, 2012-CP-04-0861.

8 Mr. Jones filed a writ of mandamus to compel  
9 my office to, uh, vacate his sentence due to  
10 allegedly a defect in subject matter jurisdiction  
11 from, um, the date that his Grand Jury was  
12 convened.

13 Your Honor, um, Judge Macaulay appointed  
14 Rodney Richie on this case about a year ago. I  
15 believe a Motion hearing was convened on the  
16 matter. Judge McIntosh recused himself due to  
17 his, uh, familiarity with the victims. Therefore,  
18 we are here again today on Respondent's Motion to  
19 Dismiss pursuant to Rule 12(b). Uh, it's a three-  
20 part Motion, Your Honor. Relief would be invalid  
21 pursuant to the four part test required for a writ  
22 of mandamus. Under *Edwards v. State*, 383 S.C. 82,  
23 um, Applicant must show a duty of the Respondent  
24 to perform the act; (2) the ministerial nature of  
25 the act; (3) the Petitioner's specific legal right

1 for which discharge of the duty is necessary; (4)  
2 lack of any other legal remedy.

3 Uh, Your Honor, Respondent has no control  
4 over nullifying somebody's conviction. We're not  
5 the proper party.

6 Regardless, on the merits, uh, pursuant to  
7 Statute 14-5-410 and 420, uh, the claim itself is  
8 completely invalid. There -- the Respondent  
9 believes that it's, um, argument for latches.  
10 Mr. Jones was convicted nearly twenty years ago  
11 and has exhausted every possible, uh, avenue  
12 to challenge his conviction. Multiple federal  
13 habeases, multiple PCR's, direct appeal.

14 At this time, I turn matters over to  
15 Mr. Richey.

16 **THE COURT:** All right; yes, sir.

17 **MR. RICHEY:** Thank you, Your Honor, may it  
18 please The Court. Your Honor, my client -- I'll  
19 just tell The Court -- he has sent me a Motion to  
20 have me relieved in this case. Um, I discussed  
21 those issues with him. Um, he has a different  
22 opinion of what the law is than -- than I do, and  
23 he -- he's asked that I be relieved and he argue  
24 this Motion himself.

25 Um, he's made numerous filings and he has

1 numerous -- he has documents and all. Essentially  
2 what it is, is -- it's his position that the Grand  
3 Jury was not convened at the time that he was  
4 indicted. Um, that it was illegal to convene it.  
5 Justice Finney had issued an Order saying that  
6 there was no term of Court this particular time.  
7 And, if he was indicted during that particular  
8 time, it -- it's his position that that Grand Jury  
9 illegally met and indicted him. Therefore, the  
10 indictment is defective. That's -- that's  
11 essentially what his argument is. Um, but he  
12 feels like that he should present this argument to  
13 The Court.

14 **THE COURT:** All right. I -- I'll be happy to  
15 hear from you briefly. I -- I've got your Motion  
16 and basically this is a legal issue I'll just have  
17 to look at and look at the, uh, Court history.  
18 But, anything you want to tell me briefly I'll be  
19 happy to hear from you.

20 **MR. JONES:** Uh, I just recently received this  
21 right here, the 14-5-410. Uh, the Attorney  
22 General had time to respond; I -- I give him a  
23 Summons. And if he was gonna respond to it in any  
24 kind of way as he just did he could-a did so  
25 during that time, uh, because he -- like I said,

1 I -- he was given a Summons and for him to come in  
2 today with, uh, with his argument now is  
3 totally...

4 Also, uh, the issue is that they gave a Order  
5 for, uh, the Grand Jury to convene, a Order that  
6 wasn't supported by a Motion, uh, signed by Judge  
7 H. Dean Hall. Uh, this Order said, uh, upon  
8 Motion of George M. Duckworth for the Grand Jury  
9 to convene for the next six months' term for the  
10 General Sessions Court. Okay, well, Chief  
11 Justice Finney cancelled Court, uh, for that term  
12 and had Court -- General Sessions Court get  
13 started January the 11<sup>th</sup>, okay? Uh, there was no  
14 January -- no General Sessions Court on January,  
15 uh, January the 5<sup>th</sup>. And, uh---

16 **THE COURT:** But now, the Grand Jury met on  
17 the 5<sup>th</sup>, right?

18 **MR. JONES:** Well, they're saying the Grand  
19 Jury met on the 5<sup>th</sup>. And, uh, according to, uh,  
20 16-9-10, that's clearly in subordination of  
21 perjury to put false information on a document.  
22 That's what, uh, State law says. And that's what  
23 they did; they said that the Grand Jury met for  
24 the term of General Sessions Court on January the  
25 5<sup>th</sup> when Chief Justice Finney cancelled Court on

1 January the 5<sup>th</sup> and had it to start on the 11<sup>th</sup>.  
2 And I have his Order in the...

3 The Circuit Court can't overrule a Chief  
4 Justice Order.

5 **THE COURT:** Okay.

6 **MR. JONES:** The Chief Justice signed his  
7 Order on the 1<sup>st</sup>. His Order---

8 **THE COURT:** Well, the -- the question is  
9 gonna be whether or not the Grand Jury can meet  
10 apart from the General Sessions term. I mean,  
11 there's no requirement that they meet during a  
12 General Sessions term; they have their own  
13 schedule.

14 But, um, Mr. Richey, did you prepare this?  
15 The Notice of Motion and Motion to Dismiss?

16 **MR. RICHEY:** No, I didn't prepare that.

17 **THE COURT:** That was -- you-all prepared it?

18 **MR. WHITMIRE:** I believe, uh, my predecessor,  
19 uh---

20 **THE COURT:** Okay.

21 **MR. WHITMIRE:** ---prepare the Motion to  
22 Dismiss pursuant to---

23 **THE COURT:** And -- and you may have this;  
24 this has all the facts in it. You don't have it?

25 **MR. JONES:** I've never received that.

1           **THE COURT:** You didn't?

2           **MR. WHITMIRE:** I -- I believe at that time it  
3 was filed and sent. It was around the same time  
4 Judge Macaulay appointed, uh, Mr. Richey on the  
5 case.

6           (WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR  
7 A CONFERENCE, OFF THE RECORD.)

8           (WHEREUPON, PROCEEDINGS CONTINUED.)

9           **THE COURT:** It's the Notice of Motion and  
10 Motion to Dismiss.

11          **MR. JONES:** Oh, I'm sorry.

12          **THE COURT:** Here -- hold on, we'll make a  
13 copy of it. I want you to take it back. I'll --  
14 I will take this matter under advisement and look  
15 through everything, see what I can find; okay?

16           I mean, that's -- that's about all I can do  
17 at this point because I'll have to go back and  
18 look at the schedule. What year was that?

19          **MR. JONES:** That was, uh, 1999. The law is  
20 clear with that, you know -- I mean, if -- like I  
21 said, if the Attorney General had 14-5-420 or  
22 whatever, I mean, what was the purpose of being  
23 hauled into Court? He -- he wouldn't have did an  
24 Order for them to meet, uh, based on a Motion that  
25 this -- the Attorney General has not brought

1 forth. And the other---

2       **THE COURT:** Well, what happens is, every  
3 year, at the beginning of the year, we -- a  
4 Judge -- Circuit Court Judge signs an order  
5 setting the dates for, uh, the Grand Jury and you  
6 set 'em for the whole year. They don't have any  
7 real connection to when Court is held. I  
8 understand how that misunderstanding happened.  
9 Um, so just because there's not a General Sessions  
10 term of Court doesn't mean that the Grand Jury  
11 can't meet. In fact, the Grand Jury met yesterday  
12 and we don't have General Session this week. So  
13 that may be the confusion. But, I'm gonna give  
14 you a copy of his Motion, because it has, I think,  
15 most of the facts in it that you've stated. And  
16 then I'll look at it; okay.

17       **MR. JONES:** All right. Can I ask one more  
18 question?

19       **THE COURT:** Yeah.

20       **MR. JONES:** 14-5 -- I mean, 14-9-210, is it  
21 repealed?

22       **THE COURT:** I have no idea to be honest. And  
23 to be honest with you, I don't know. What does it  
24 say.

25       **MR. JONES:** It says that, The county

1 solicitor shall prepare and, through the presiding  
2 judge of the court of general sessions, submit to  
3 the grand jury, while in attendance upon the court  
4 of General Sessions, bills of indictment in all  
5 cases pending in the county court in which the  
6 punishment, may exceed a fine of one hundred  
7 dollars---

8 **COURT REPORTER:** I'm sorry, Your Honor, I'm  
9 not---

10 **THE COURT:** Yeah, hold on. You -- you got to  
11 slow down. I -- I think that what -- no, it has  
12 not been repealed. What that says is that the  
13 Solicitor presents to the Grand Jury the  
14 allegations that they're supposed to. But, that  
15 doesn't mean that there has to be a General  
16 Sessions term of Court for the Grand Jury to meet.  
17 In other words, the Grand Jury can meet -- and as  
18 I said, it met yesterday; we only have Civil Court  
19 this week. So, that may be the confusion.

20 But, like I said, you've got a copy of this  
21 and I think you'll see in here that he's put forth  
22 the dates and your allegations. And I'll look at  
23 'em. I mean, I'm not gonna just -- I mean, I'm  
24 going to look at 'em, which is what I do on these  
25 things. I take these seriously, so give me about

1 a week. It's gonna take me a week. I'm doing  
2 these back to back to back. And then we'll let  
3 you know something in an Order. Okay?

4 **MR. JONES:** All right; can I respond to that?

5 **THE COURT:** Yeah.

6 **MR. JONES:** Before you make your decision?

7 **THE COURT:** Yeah, ten days.

8 **MR. JONES:** Okay.

9 **THE COURT:** Okay. All right, now, uh, do you  
10 need to be relieved?

11 **MR. RICHEY:** Yes, Your Honor.

12 **THE COURT:** Do you want him to be relieved as  
13 your Counsel?

14 **MR. JONES:** Yes, sir.

15 **THE COURT:** All right; you're going to act as  
16 your own Counsel?

17 **MR. JONES:** Yes, sir.

18 **THE COURT:** All right; I'll grant your Motion  
19 to be relieved. Make sure that you send a copy of  
20 that -- whatever -- whatever your response is to  
21 the Attorney General and to me.

22 **MR. JONES:** All right.

23 **THE COURT:** Okay? All right; thank you, man.

24 **MR. WHITMIRE:** Your -- Your Honor, just -- I  
25 would just request you take Judicial notice of,

1 uh, of Common Pleas, uh, PCR Order entered on  
2 2010-CP-04-0678. I've provided, I believe, a copy  
3 of it to your chambers from Judge Macaulay citing  
4 *Bell v. State*, page twelve to fifteen in which he  
5 squarely addresses this issue. I only ask that  
6 you to do such because, due to the recent  
7 proliferation of this issue within the Department  
8 of Corrections, uh, just to add a little more  
9 clarity.

10 **THE COURT:** Yeah; no, I will and I've got  
11 everything right here. I'll look at it. But make  
12 sure you respond within ten days, okay?

13 **MR. JONES:** All right; thank you.

14 **THE COURT:** Now, uh, what was your sentence?

15 **MR. JONES:** (No response.)

16 **THE COURT:** Yeah, what was your sentence?

17 **MR. JONES:** Oh, life without parole.

18 **THE COURT:** Life without parole?

19 **MR. JONES:** Yes.

20 **THE COURT:** Okay. Okay; I'll look at it.

21 **MR. JONES:** All right.

22 **THE COURT:** I won't -- I won't just throw it  
23 aside.

24 (WHEREUPON, HEARING ENDED AT 10:45 A.M.)

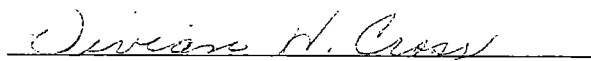
25 \*\*\*\*\*END OF REQUESTED TRANSCRIPT\*\*\*\*\*

1 STATE OF SOUTH CAROLINA )  
2 ) CERTIFICATE OF REPORTER  
3 COUNTY OF ANDERSON )  
4

5 I, THE UNDERSIGNED VIVIAN H. CROSS, OFFICIAL COURT  
6 REPORTER FOR THE TENTH JUDICIAL CIRCUIT OF THE STATE OF  
7 SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS  
8 A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF THOSE  
9 PROCEEDINGS REQUESTED AND EVIDENCE INTRODUCED IN THE  
10 TRIAL OF THE CAPTIONED CASE, RELATIVE TO APPEAL, IN THE  
11 COURT OF COMMON PLEAS FOR ANDERSON COUNTY, SOUTH  
12 CAROLINA, ON THE 20<sup>TH</sup> DAY OF FEBRUARY 2014.

13 I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN,  
14 COUNSEL NOR INTEREST TO ANY PARTY HERETO.

15  
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VIVIAN H. CROSS, COURT REPORTER  
TENTH CIRCUIT AT LARGE  
JUNE 12, 2017

# The Supreme Court of South Carolina

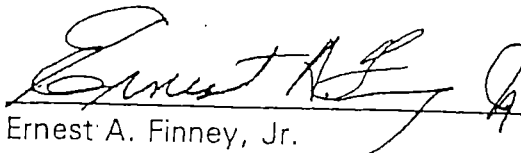
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ORDER

---

Pursuant to the provisions of S. C. CONST. art. V, Section 4, the statutory terms of circuit court set forth in §14-5-620 through §14-5-820, 1976 Code of Laws of South Carolina, as amended, for the period commencing January 4, 1999 and ending July 2, 1999, are hereby canceled.

IT IS ORDERED that the terms of circuit court for the period commencing January 4, 1999 and ending July 2, 1999, shall be as set forth on the attached schedule of terms of circuit court, which schedule is incorporated herein and made a part hereof by reference and attachment. Additional terms of court may be scheduled during this period by subsequent orders depending upon the availability of judicial resources and caseload information. Where a circuit-wide nonjury term is indicated, the Chief Circuit Judge for Administrative Purposes for the circuit shall designate the time and location of the term among the counties within the circuit. A term designated as a circuit wide administrative week (AW) shall also be held at such times and locations within the circuit as designated by the Chief Circuit Judge for Administrative Purposes assigned to that term.

  
Ernest A. Finney, Jr.  
Chief Justice

December 1, 1998  
Columbia, South Carolina

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF ANDERSON )

INDICTMENT FOR MURDER  
16-03-0010[0116]

At a Court of General Sessions, convened on JANUARY 5, 1999  
the Grand Jurors of ANDERSON County present upon their oath

COUNT ONE — MURDER

That GAVIN VACHON JONES  
did in ANDERSON County on or about JUNE 19, 1998  
feloniously, wilfully and with malice aforethought, kill one LARRY STANLEY

by means of SEVERE BEATING AND FRACTURING THE VICTIM'S NECK  
and that the said victim died as a proximate result thereof.

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

*George M. Duworth*

SOLICITOR

TRUE COPY

JUL 10 2002

DOCKET NO. 99-CS-04-59

**The State of South Carolina,**

County of ANDERSON

Clerk of Court  
C. M. Anderson

COURT OF GENERAL SESSIONS

JANUARY TERM 1999

DDW THE STATE

vs.  
GAVIN VACHON JONES

WITNESSES

ZAMBERLIN/APD

ARREST WARRANT NO. F-894165

ACTION OF GRAND JURY

TRUE BILL

DATE 1-5-99

*Martha A. Cromer*

Foreman of Grand Jury

VERDICT

**Indictment for Murder**

16-03-0010[0116]

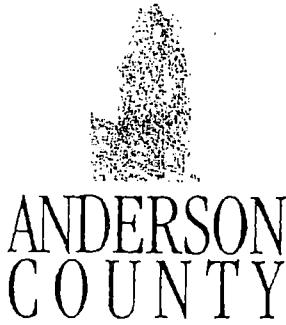
*Comm.  
7-15-99*

*(Exhibit B)*

Foreman of Petit Jury

Date:

GEORGE M. DISBROW, CLERK



# Anderson County Clerk of Court

P.O. Box 8002  
Anderson, SC 29622  
(864) 260-4053  
Fax: (864) 260-4715

September 29, 2014

Mr. Gavin V. Jones #259726  
F1-A-165  
386 Redemption Way  
McCormick, South Carolina 29899

**Re: Letter received September 29, 2014**

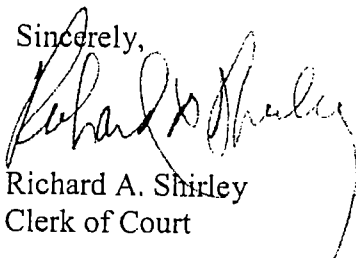
Dear Mr. Jones:

Thank you for your follow-up letter concerning the Anderson County Grand Jury. As I stated earlier, every six months, the Solicitor's Office prepares an order for the judge to sign setting the dates for the convening of the jury. **At the beginning of a new year, the first gathering is an organizational meeting where we draw names and seat the new Grand Jury according to state law.** I am enclosing a copy of the order which convened this year's Grand Jury on January 6, 2014 for this purpose.

As I stated in my previous two letters, this order is the ONLY "impanelment document" of which I am aware. My reply in regards to the Freedom of Information Act and the secrecy of the Grand Jury members and their deliberations remains the same.

As for your motion asking Judge J. Cordell Maddox to recuse himself, this motion has been clocked and placed in your file. If and/or when your Post Conviction Relief Hearing is held, I would assume this motion would be heard if Judge Maddox is assigned to preside over that hearing.

Sincerely,



Richard A. Shirley  
Clerk of Court

RAS/rs  
enclosure

STATE OF SOUTH CAROLINA ) IN THE COURT OF GENERAL SESSIONS  
 )  
COUNTY OF ANDERSON ) O R D E R

THIS MATTER comes before me upon motion of Chrissy T. Adams, Solicitor of the Tenth Judicial Circuit, requesting that the Anderson County Grand Jury convene for the next six (6) months terms of General Sessions Court for the year 2014, to dispose of a number of pending cases.

NOW THEREFORE, upon motion of Chrissy T. Adams, Solicitor of the Tenth Judicial Circuit, it is

ORDERED, ADJUDGED AND DECREED that the Anderson County Grand Jury report to the Anderson County Court Room at 9:00 A.M. on the following dates:

January 6, 2014 Organizational

January 21, 2014

February 18, 2014

March 18, 2014

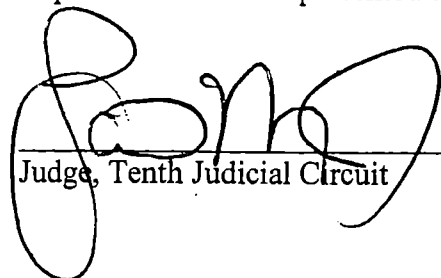
April 22, 2014

May 20, 2014

June 17, 2014

to consider those matters to be presented to them by the Solicitor's Office at that time.

IT IS FURTHER ORDERED that Richard A. Shirley, Clerk of Court for Anderson County, convene the Grand Jury and publish all matters presented to the Court by the Grand Jury.

  
\_\_\_\_\_  
Judge, Tenth Judicial Circuit

Anderson, South Carolina  
December 2, 2013

FILED-CLERK'S OFFICE  
ANDERSON SC  
2013 DEC -2 A 9:21  
FILED AND  
GENERAL SESSIONS

|                          |  |  |   |  |  |
|--------------------------|--|--|---|--|--|
| 10 <sup>th</sup> CIRCUIT | 10th Cir. CPNJ<br>Johnson                | 10 <sup>th</sup> Cir. CPNJ<br><i>Edwards</i><br>(10 <sup>th</sup> Cir. CPNJ 15cc)<br>Anderson GS<br>Johnson<br>Anderson GS<br>Pyle | Anderson GS<br>Johnson<br>Anderson CF<br>Pyle | Exhibit C-2  |  |
|                          | Anderson CP<br>Pyle                      |  |   | Oconee GS<br>Pyle  |  |
|                          | Anderson<br>Knobel<br>Anderson<br>Landis | Anderson<br>Edwards<br>Anderson<br>Knobel  | Anderson<br>Edwards<br>Anderson<br>Knobel     | Anderson<br>Cureton<br>Anderson<br>Riddle<br>Anderson<br>Wylie |  |
|                          | Oconee<br>Cureton                        |  | Oconee<br>Mobley                              | Oconee<br>Edwards  |  |

↑  
-4

↑  
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↑  
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↑  
-25

JANUARY 1999

"AW" indicates administrative week  
 "CPNJ/PCR" indicates a term that may include post-conviction relief matters and/or non-jury matters

CERTIFIED TRUE COPY,  
 By *[Signature]*  
 South Carolina Court Administration

GS - means General Sessions Court, there was  
 NO General Sessions Court till January 11 1999

10/KO

STATE OF SOUTH CAROLINA )  
COUNTY OF ANDERSON )

IN THE COURT OF COMMON PLEAS )  
FOR THE TENTH JUDICIAL CIRCUIT )

Gavin V. Jones, #259726, )  
Petitioner, )

2012-CP-04-0861

v. )

**ORDER OF DISMISSAL**

State of South Carolina, )

Respondent. )

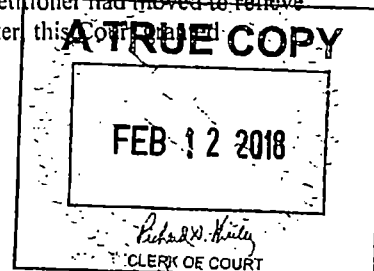
FILED-CLERKS OFFICE  
ANDERSON SC  
2018 FEB -9 PM 4:21  
COMMON PLEAS AND  
GENERAL SESSIONS  
COURT

This matter comes before the Court pursuant to a document captioned "Petition for Writ of Mandamus" and filed March 14, 2012. In its Return and Motion to Dismiss, Respondent requested that the Petition be summarily dismissed because it fails to support the requested relief. Subsequently, a motions hearing was held on February 20, 2014, before the Honorable J. Cordell Maddox, Jr. Applicant was present at the hearing and represented by Rodney W. Richey, Esquire<sup>1</sup>. Assistant Attorney General J. Walter Whitmire of the South Carolina Attorney General's Office represented the State.

**PROCEDURAL HISTORY**

The records before this Court indicate that Petitioner is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Anderson County Clerk of Court. During its January 1999 term, the Anderson County Grand Jury indicted Petitioner for Murder (1999-GS-04-59). David Stoddard, Esquire, represented him. On July 12-15, 1999,

<sup>1</sup> At the onset of Petitioner's motions hearing, Mr. Richey informed this Court that Petitioner had moved to relieve counsel, and this Court permitted Petitioner to present his argument *pro se*. Thereafter, this Court granted Petitioner's motion to relieve his counsel.



Petitioner proceeded to trial before the Honorable H. Dean Hall and a jury, where he was convicted as indicted. Judge Hall sentenced Petitioner to a term of life imprisonment without the possibility of parole.

Petitioner filed a timely notice of appeal. Assistant Appellate Defender Tara S. Taggart of the South Carolina Office of Appellate Defense represented Petitioner and perfected an *Anders*<sup>2</sup> brief on his behalf. Thereafter, the South Carolina Court of Appeals dismissed the appeal. *State v. Jones*, Op. No. 2001-UP-55 (S.C. Ct. App. Filed July 11, 2001). Thereafter, Petitioner filed a Petition for Rehearing, which was denied on August 23, 2001. Subsequently, Petitioner filed a *pro se* Petition for Writ of Certiorari in the Supreme Court of South Carolina, which was denied on January 24, 2002.

#### 2002-CP-04-1817

Petitioner then filed an application for post-conviction relief on July 6, 2002. In his application, Petitioner set forth the following allegations:

1. Counsel was ineffective for presenting and failing to object to evidence of the Applicant's use of drugs;
2. Counsel was ineffective for failing to present evidence that the crime was committed by someone else; and
3. Ineffective assistance of appellate counsel.

Thereafter, Petitioner filed a *pro se* document entitled "Applicant's Additional Supplemental to Original Post-Conviction Relief Application" on August 6, 2002. In this amended application, Petitioner raised the following allegations:

1. Counsel was ineffective for failing to properly and thoroughly impeach State witnesses Joshua Stewart and Shirley Rainey with their out-of-court statements;

---

<sup>2</sup> *Anders v. California*, 386 U.S. 738 (1967).

2. Counsel was ineffective for failing to object to the trial court's circumstantial evidence instruction to the jury;
3. Counsel was ineffective for failing to object to the Solicitor's improper hypothetical questions to the medical examiner;
4. Counsel was ineffective for failing to present favorable witnesses and evidence in the Applicant's defense;
5. Counsel was ineffective for failing to object to the admission of irrelevant evidence;
6. Counsel was ineffective for failing to adequately cross-examine State witnesses; and
7. Appellate counsel was ineffective for failing to raise in a merits brief that the trial court erred in allowing the State to bolster testimony of Jackie Sanders with her consistent out-of-court statement.

Petitioner again amended his application in a document captioned "Applicant's Supplement to Original Post-Conviction Relief Application" on September 13, 2002. In this amendment, he raised the following additional ground for relief:

1. Because the Solicitor failed to comply with the procedures that are laid down by the courts, the trial court did not have jurisdiction to entertain the Applicant's case and convict him.

---

Respondent made its Return on June 9, 2004, requesting an evidentiary hearing be held. An evidentiary hearing into the matter was convened on December 15, 2004, at the Anderson County Courthouse. Petitioner was present at the hearing and proceeded *pro se*. Assistant Attorney General Christopher L. Newton of the South Carolina Attorney General's Office represented Respondent. By Order dated February 9, 2005, the Honorable J. Cordell Maddox, Jr., denied and dismissed the application with prejudice. Thereafter, Petitioner filed a Motion to Alter or Amend pursuant to Rule 59(e), SCRCP, which Judge Maddox denied on March 5, 2005.

Petitioner filed a timely notice of appeal. Assistant Appellate Defender Aileen P. Clare of the South Carolina Office of Appellate Defense represented Petitioner and perfected an appeal on his

behalf. On November 16, 2005, the Supreme Court of South Carolina denied Petitioner's Petition for Writ of Certiorari. The Remittitur was issued on December 2, 2005.

Thereafter, Petitioner filed a *pro se* document in the Circuit Court entitled "Motion for New Trial Based on After Discovered Evidence of Unconstitutional Grand Jury Proceedings" on November 5, 2008. On October 7, 2009, Judge Maddox denied Petitioner's Motion for New Trial and again dismissed Petitioner's post-conviction relief action.

Petitioner appealed from this Order on October 9, 2009, and filed a *pro se* Petition for Writ of Certiorari on February 16, 2010. By Order dated May 13, 2011, the Supreme Court of South Carolina denied Petitioner's Petition for Writ of Certiorari. The Remittitur was issued on June 1, 2011.

### 3:06-788-TLW-JRM

Petitioner filed a Petition for Writ of Habeas Corpus on March 24, 2006, in the United States District Court for the District of South Carolina. In his Petition, Petitioner alleged the following grounds:

- Ground One:** Lower Court erred in failing to grant a directed verdict were [sic] evidence was constitutionally insufficient.
- Supporting Facts:** States case was wholly circumstantial, there was no DNA, no forensics, no eyewitness, no fingerprints to place Petitioner at the scene. Coroner did nothing scientific to determine time of death thus giving the State a 6 hr window. State used testimony Petitioner had money days after crime to say he robbed the victim.
- Ground Two:** Counsel was constitutionally ineffective for failing to bring fourth [sic] evidence of third party guilt.
- Supporting Facts:** Counsel admitted during PCR that he only perused the evidence concerning third party guilt the day before trial. Sam Mackey committed murder and a suicide after he was asked [if] he killed the victim. Sam Mackey's nephew gave

Statement that Mackey said it was a hit and he was paid . . . to kill victim.

**Ground Three:** Counsel was constitutionally ineffective for failing to ask for an alibi charge.

**Supporting Facts:** Before trial counsel sent a notice of alibi to the State no State witness place Petitioner at the scene during the time period victim was killed. Counsel's defense was to show his client was not at the scene and Petitioner told counsel [sic] from the beginning as counsel . . . at PCR that I was innocent and wasn't there.

**Ground Four:** Counsel was constitutionally ineffective for not pointing out to jury that unseemingly [sic] stain was not blood.

**Supporting Facts:** All of Petitioner[']s clothing was tested by SLED lab and his shirt the State reported no blood identified. However the shirt had two stains that appeared to have dried blood circled with a permanent marker this shirt went back to the jury. Detective testified when he 1<sup>st</sup> received shirt there were no stains on shirt.

On June 15, 2006, Respondent filed a Return and Motion for Summary Judgment. By Order dated March 23, 2007, the District Court granted Respondent's Motion for Summary Judgment and dismissed the Petition with prejudice.

On April 26, 2007, Petitioner filed a Notice of Appeal and Request for Certificate of Appealability to the United States Court of Appeals for the Fourth Circuit. The United States Court of Appeals for the Fourth Circuit subsequently denied the certificate of appealability and dismissed the appeal on July 31, 2007. Petitioner subsequently petitioned for rehearing *en banc*, which was denied on September 24, 2007.

In his current Petition, Petitioner argues "The State Tried and Convicted the Petitioner for an Unindicted Murder Offense." Petitioner contends the indictment charging him with murder, dated January 5, 1999, is in direct violation of an Order from the South Carolina Supreme Court cancelling the Anderson County General Sessions Court for that day.

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

A mandamus will issue only to compel a public official to perform a mandatory duty. *State v. Ansel*, 76 S.C. 395, 414, 57 S.E. 185 (1907); *Lombard Iron Works v. Town of Allendale*, 187 S.C. 89, 196 S.E. 513 (1938). The primary purpose of a writ of mandamus is to enforce an established right and to enforce a corresponding imperative duty created or imposed by law. *Charleston County School District v. Charleston County Election Commission*, 336 S.C. 174, 519 S.E.2d 567 (1999). It is issued “only to **enforce** a clear legal right requiring the performance of only ministerial duties.” Toal, et al, *Appellate Practice in South Carolina*, p. 281 (1999) (citing *Wiblen v. Long*, 262 S.C. 430, 205 S.E.2d 174 (1974)) (emphasis added). To obtain a writ of mandamus requiring performance of an act, a petitioner must show: (1) the opposing party has an indisputable and plainly defined duty to perform the act, (2) the ministerial nature of the act, (3) the opposing party’s specific legal right for which discharge of the duty is necessary, and (4) the lack of other legal remedy. *Id.* at 282. The writ of mandamus lies solely within the discretion of the court of which it is requested. *In Interest of Lyde*, 284 S.C. 419, 327 S.E.2d 70 (1985). Moreover, mandamus is unavailable where the legal right is doubtful. *Id.*

In his Petition, Petitioner asserts he has satisfied the requirements for issuance of a writ of mandamus because:

(1) S.C. Code § 14-9-210 imposes a duty upon all SC Solicitors to submit a bill of indictment to the grand jury (while it is in attendance upon general sessions court § 14-9-170) for prosecution of a criminal case; (2) the S.C. Constitution, Art. I, § 11, mandates that an indictment is a prerequisite for all criminal prosecution; (3) the petitioner has a constitutional right to be prosecuted upon a presentment of indictment returned by a grand jury; and (4) the petitioner has exhausted his direct appeal, PCR, and habeas corpus remedies and has no other available remedy except a writ of mandamus.

Petitioner contends because the South Carolina Supreme Court issued an Order cancelling the General Sessions term of court for January 5, 1999, the Grand Jury could not have legally met and, therefore, could not have obtained an indictment against him. Indictments are not jurisdictional in nature but are merely notice documents. *State v. Gentry*, 363 S.C. 93, 610 S.E.2d 494 (2005). When judging the sufficiency of an indictment, the court must determine “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.” *Id.* at 102-03, 610 S.E.2d at 500 (citing *State v. Wilkes*, 353 S.C. 462, 578 S.E.2d 717 (2003)). “An indictment passes legal muster if it ‘charges the crime substantially in the language of the . . . statute prohibiting the crime or so plainly that the nature of the offense charged may


be easily understood.’” *State v. Reddick*, 348 S.C. 631, 635, 560 S.E.2d 441, 443 (Ct. App. 2002) (quoting S.C. Code Ann. § 17-19-20 (1985)). Moreover, “whether the indictment could be more definite or certain is irrelevant.” *Id.* at 103, 610 S.E.2d at 500.

Here, Petitioner wholly fails to set forth any reason as to why his indictment for murder was insufficient in providing him with notice that he was, in fact, charged with murder. The indictment clearly sets forth the date upon which the murder occurred, the victim, and the manner in which the crime was committed. Furthermore, the indictment uses the very language used in the statute defining the crime of murder. *See* S.C. Code Ann. § 16-3-10 (1976). In addition, Petitioner’s contention that the indictment is invalid is wholly without merit. This Court noted during the hearing that there is no requirement that a term of

General Sessions Court be convened for the Grand Jury to meet. This Court finds the indictment was sufficient to give Petitioner notice; and, therefore, he cannot show any reason why this Court should allow him to proceed with this extraordinary writ.

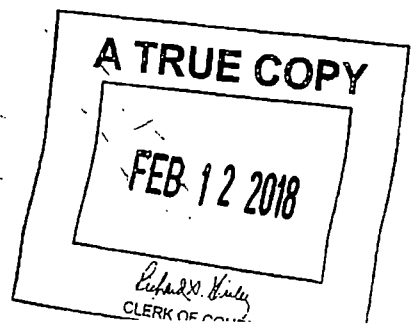
IT IS THEREFORE ORDERED that the Petition be DENIED AND DISMISSED. This Court hereby advises Petitioner that he must file and serve a Notice of Appeal within thirty (30) days of the service of this Order to secure appellate review. See Rule 203, SCACR.

AND IT IS SO ORDERED this 6<sup>th</sup> day of February, 2018.

  
\_\_\_\_\_  
J. CORDELL MADDOX, JR.  
Presiding Judge  
Tenth Judicial Circuit Court

\_\_\_\_\_, South Carolina.

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COMMON PLEAS AND  
GENERAL SESSIONS



STATE OF SOUTH CAROLINA )  
 COUNTY OF ANDERSON )  
 )  
 )  
 Gavin V. Jones, #259726 )  
 Petitioner, )  
 )  
 V. )  
 )  
 State of South Carolina )  
 Respondent. )

IN THE COURT OF COMMON PLEAS  
 FOR THE TENTH JUDICIAL CIRCUIT  
 2012-CP-04-0861

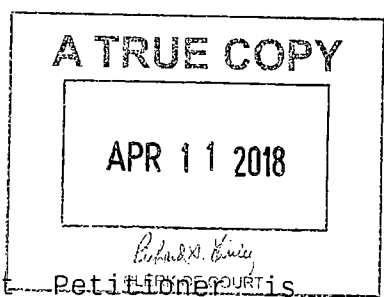
**MOTION TO ALTER AND  
 AMEND JUDGMENT  
 RULE 59(E)**

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 ANDERSON, SC  
 2018 APR 11 PM 2:09  
 COMMON PLEAS AND  
 TENTH JUDICIAL CIRCUIT

This matter comes before the Court pursuant to a "Petition for Writ of Mandamus" filed March 14, 2012. In its Return and Motion to Dismiss, Respondent requested that the Petition be summarily dismissed because it fails to support the requested relief. Subsequently, a motions hearing was held on February 20, 2014, before the Honorable J. Cordell Maddox, Jr. Applicant was present at the hearing and represented by Rodney W. Richey, Esquire. Attorney General J. Walter Whitmire of the South Carolina Attorney General's Office represented the State. On February 6, 2018, Judge Cordell Maddox Jr. signed a order of Dismissal proposed by the State, On February 21, 2018 Petitioner received the order of Dismissal from the Attorney Generals office. Petitioner has now filed this **Motion to Alter and Amend Judgment** for there are very important Facts and law that has been overlooked, as well as the State never addressed amended portion of Mandamus filed 2013.

**PROCEDURAL HISTORY**

The records before this Court indicate that ~~Petitioner is~~ presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Anderson County Clerk of Court. During its January 1999 term, the Anderson County Grand Jury indicted Petitioner for Murder (1999-GS-04-59). David Stoddard,



Esquire, represented him. On July 12-15, 1999, Petitioner proceeded to trial before the Honorable H. Dean Hall and a jury, where he was convicted as indicted. Judge Hall sentenced Petitioner to a term of life imprisonment without the possibility of parole.

Petitioner filed a timely notice of appeal. Appellate Defender Tara S. Taggart of the South Carolina Office of Appellate Defense represented Petitioner and perfected an *Anders* brief on his behalf. Thereafter, the South Carolina Court of Appeals dismissed the appeal. *State vs. Jones*, Op. No. 2001-UP-55 (S.C. Ct. App. Filed July 11, 2001). Thereafter, Petitioner filed a Petition for Rehearing, which was denied on August 23, 2001. Subsequently, Petitioner filed a pro se Petition for Writ of Certiorari in the Supreme Court of South Carolina, which was denied on January 24, 2002.

#### STANDARD OF REVIEW

To obtain a Writ of Mandamus requiring performance of an act, a petitioner must show:

(1). *The opposing party has an indisputable and plainly defined duty to perform the act.. the Solicitor in the present case had a Lawful duty to provide Mr. Jones with a Lawfully obtained Indictment.*

(2). *The ministerial nature of the act: Solicitors and Court clerks have The "ministerial duty" to ensure that Exparte Grand jury Indictment proceedings are convened and conducted in strict conformity of law.*

(3). *The opposing party's specific legal right for which discharge of duty is necessary: Petitioner had a 14 Amendment Due process right to be provided with a indictment from a legally Constituted Grand jury.*

(4). *A lack of any other legal remedy: Petitioner had no other legal avenue to pursue this issue, for there is no remedy to pursue this type of violation. Id. @ Appellate practice in South Carolina p. 281 (1999) (citing Wiblen v. Long, 205 S.E.2d 174 (1974).*

What the State has over looked is a violation of this magnitude strikes at the heart of the Integrity of South Carolina Court System.

This violation branches off and crosses way over the line with what is considered lawful for a agency of the judicial system who job is to uphold the constitutional laws and Statutory laws as well as rules of criminal procedure in the state of South Carolina. The very act of knowingly using a indictment that was not lawfully obtained embraces criminal conduct in and of itself, such as Fraud upon the court and Perjury and Subornation of Perjury 16-9-10 A-2 of the South Carolina Code of laws.

### ARGUMENT

A. Jones asserts and argues, inter alia that although subject matter contained in the charging instrument upon which he was tried and convicted appears to be correct, he was nevertheless tried and convicted without a **PROPER** and/or lawfully **VALID** INDICTMENT, in violation of his right to due process of law pursuant to U.S Const. Amend(s) V & XIV., 1 AND S.C Const., {fn.1} That is to say, Jones was tried and convicted with an indictment, consequently void of power; a nullity, and technically, non-existent in violation of S.C.C.A., 17-19-10 INFRA. SEE: State v Funderburk, 259 S.c 256 191 S.E.2d 520 (1972) (Where the defendant was tried and convicted upon a indictment which was a nullity, it follows that he was convicted in violation of this section.)

Moreover, Jones asserts and argues, that the indictment returned January 5, 1999 by the Anderson County Grand Jury, upon which he stands convicted, first of all, was **not "lawfully issued" as defined by statutory criminal law.** And secondly, the **Ex Parte procedure** upon which said indictment was obtained was **fraudulent**, and had by **"Sham Legal Process"** as defined by the same criminal statue, S.C.C.A. 16-17-735, ET SEQ, consequently, in violation of additional procedure/criminal statues as will be shown, infra. S.C.C.A., 16-17-735 states in pertinent part:

(B) It is unlawful for a person falsely to assert authority of state law in connection with a sham legal process. A person violating the provision of this subsection is guilty of a misdemeanor.

(E)(3) "For purposes of this section: **Sham legal Process** means the **ISSUANCE**, Display, **DELIVERY**, distribution, **RELIANCE** on as lawful authority, or other use of an **INSTRUMENT** that is NOT **LAWFULLY ISSUED**, whether or not the instrument is produced for inspection or actually, exists, which purports to:

(b) assert **JURISDICTION** or **AUTHORITY OVER** or determine or **ADJUDICATE THE LEGAL, EQUITABLE STATUS**, rights, duties, powers or privileges **OF A PERSON** or property; or

(c) require or authorize the search seizure, **INDICTMENT**, arrest, trial, or sentencing of a person or property. (Emphasis added)

Facts stated above and other violation of law, which will be proven herein, in all fairness, would render Jones indictment fatally defective or a nullity altogether! See Evans v. State, 363 S.C. 495 611 S.E 2d 510 (2005)". . {A}n indictment or "notice document" issued by a grand jury which is established or constituted illegally is deemed a nullity. An indictment, which is a nullity, would be insufficient as a matter of law, to give the required notice to a defendant.

B. It is fundamentally and well established that citizen accused of felonious, of an otherwise infamous crimes, may only be tried upon indictments returned ["True Billed"] by a grand jury. Essentially, this mandate originates from the U.S. and S.C. Constitutions, and state statute, S.C.C.A. 17-19-10, which states:

*No person shall be held to answer in any court for an alleged crime or offense unless upon indictment by a grand jury, except in the following cases:*

- (1). Prosecution by information is expressly authorized by statute;
- (2). In proceedings before a police court or magistrate; and
- (3). In proceedings before court martial.

Logically therefore, it stands to reason that any such indictment(s), in order to be valid, must be obtained through **LAWFUL PROCESS**. In other words, without a **PROPERLY** obtained indictment, the

court- this case, the Court of General Sessions - is deprived the power to try the accused; it simply does not have, 'in personam jurisdiction', as distinguished from 'subject matter jurisdiction', See, U.S. Const., Amend V S.C. Const., Art. I 11.. {Fn.2}

Published for our leaning and understanding, is black's Law Dictionary, in which, are defined several types of jurisdiction as follows:

Jurisdiction-- 1. A governments general power to exercise authority.. 2. A courts

Power to decide a case

In Personam Jurisdiction-- A courts power to bring a person into its adjudicative

process; jurisdiction over a defendants personal rights; and

Subject Matter Jurisdiction-- Jurisdiction over the nature of the case and the type

Of relief sought. (emphasis added)

[T]he burden is on the defendant too prove facts upon which a challenge to the legality of the grand jury or its proceedings is predicated. E.G State v. Jackson, 240 S.C. 238, 243, 125 S.E 2d 474, 477 (1962). EVANS V. STATE, 363 S.C. 495, 611 S.E. 2d 510 (2005).

Now therefore , Jones would carry his burden in proving the facts supporting his challenge and the distinct jurisdictional differences to which one may argue and make reference.. See State v Funderburk, 191 S.E. 2d 520 (1972)

In the Amendment filed by petitioner in 2013 to this Mandamus; Petitioner contends that the Anderson Solicitor had a ministerial duty to provide Petitioner any documents pertaining to any irregular process in the indictment procedure. Also petitioner requested a hearing to determine whether the Court which tried him could use a void instrument to convey any jurisdiction over him in a Court of law. Anderson v. State, 527 S.E.2d 398 (SC App 2000) Subject Matter Jurisdiction, may be raised at anytime if it deals with ill regularities in how the document was presented. If the Laws of procedure is not followed in obtaining a indictment it becomes a void instrument and can not convey jurisdiction of any kind over any citizens. Gentry is not applicable when dealing with a indictment if

it was not lawfully presented. Gentry deals with the substance of a indictment not the presentment.

## DISCUSSION ON FACTS & LAW

### I. Fraud Upon the Court

A. For reasons of jurisprudence and fairness in keeping with due process protections, the ordained policy makers of our court system recognized matters pertaining to fraud upon the courts of this state. Exercising their keen foresight, they saw fit by the S.C. Rules of Civil Procedure (SCRCP) to create and implement provisions to set-aside and/or vacate judgments due to fraud upon the court. [fn.3]

In general, extrinsic fraud upon the court can be defined as "... [A] fraud perpetrated by officers of the court so that the judicial machinery cannot perform in the usual manner, it's impartial task of adjudging cases that are presented for adjudication." See Evans v. Gunter, 294 S.C. 525, 529, 366 S.E.2d 44, 46 (1988) (Quoting H. Lightwey, J. Flanagan, S.C. Civil Procedure, 408 (2nd Ed. 1985))

B. Solicitor Duckworth was able to perpetrate "extrinsic" fraud upon the court in two ways: First, by giving the ex parte grand jury process an appearance of being legally and properly conducted; and secondly, the false indictment information operated in such a manner as to improperly mislead Jones and the trial court wherein the criminal matter was ultimately heard, causing both to falsely believe that the ex parte grand jury process whereby the indictment was obtained, was conducted and supervised by the proper court, in compliance with statutory law when it was not. Consequently, this unlawful action deprived Jones the opportunity to make an informed, contemporaneous objection as required by S.C. Code of Law, SS 17-19-90 [fn.4] because there were no apparent defects in the indictment or the proceeding. See State v. Richardson, 149 S.C. 121, 146, S.E. 676

(1928) "This section applies only where the defect appears on the face of the indictment."

C. In fact, because grand jury proceedings, wherein jurors receive and deliberate probable cause evidence and process indictments, are secretly held as ex parte hearings, the very reliance of those proceedings to be held in a lawful and ethical manner can only be presumed. Neither defendant nor his attorney are allowed ni attendance to ensure this, and therefore, are not made privy to what goes on within. Accordingly, this type of "extrinsic" fraud causes further harm to Jones and the integrity of our judicial process because it is conducted behind the scenes, quite possibly without a presiding judge, which would obviously allow the Solicitor unchecked influence over grand jurors.

## II. Sham Legal Process

A. It must first be noted that the "True Bill" indictment returned against Jones charging him with murder within its body, prints in pertinent part that:

*"At a Court of General Sessions, convened on January 5, 1999, the Grand Jurors of Anderson County present upon their oath..."*

The body of the grand jury's sworn presentment also bears the signature of the Anderson County Solicitor, Duckworth Duckworth. Moreover, a "True Bill" stamp is affixed to the face, [title page] of the indictment bearing the signature of the grand jury foreman. See Exhibits A (Indictment)

Secondly, the statutory and/or court sanctioned calendar schedule for the Tenth Judicial Circuit terms, published by the S.C. Supreme Court / Administration, irrefutably demonstrates that **NO** Court of General Sessions had been scheduled or open on January 5, 1999 as printed in Jones' indictment. (Cf. Exhibits B with C (Court Order & Calendar with Indictment))

Therefore, prima facie evidence shown therein conclusively proves that, contrary to the information printed by Solicitor Duckworth in Jones' indictment, the Anderson County Grand Jury **DID NOT** convene at a Court of General Sessions, in violation of procedural, statutory law because none were open on January 5, 1999. S.C. Code of Law, SS 14-9-210 states in pertinent part:

*"The county solicitor shall prepare and, through the presiding judge of the court of general sessions, submit to the grand jury, while in attendance upon the court of general sessions, bills of indictment in all cases pending in the county court in which the punishment may exceed a fine or one hundred dollars or imprisonment for thirty days.... The grand jury shall act thereon and report its actions to the presiding judge of the court of general sessions.... All cases in which bills of indictment are so found shall stand for trial...."*

Demonstrated therefore, is the fact that false information is contained within the State's sworn indictment returned against Jones not only in violation of statutory laws such as S.C. Code of Law, SS 16-17-735 & 16-9-10, "Sham Legal Process" and "Perjury", but also, in violation of Jones due process rights protected by the U.S. and S.C. Constitutions. [fn.1]

B. Further noted, is the fact, that pursuant to S.C. Code of Law, SS 14-9-210, supra, Ms. White acting on behalf of the elected county solicitor, Mr. George Duckworth, was the one, responsible for the preparation, processing, and presentment of Jones' indictment to the grand jury at a qualified Court of General Sessions. Presumably, it is this ex parte proceeding whereby criminal jurisdiction is legally established, and therefore, concomitant with the trial court to which Jones was bound over. "The jurisdiction of a grand jury is co-extensive with the criminal jurisdiction of the court in which it is impaneled and for which it is to make inquiry." Id. Funderburk, supra.

The facts, therefore, are clear and cannot be disputed; false court term information is contained in Jones' state/federal required indictment, which was knowingly presented somewhere other than a Court

of General Sessions as required by law. Solicitor Duckworth, knowingly perpetrated these acts possibly in collusion with the clerk's office, whose responsibility it is to PROPERLY convene ex parte grand jury proceedings.

C. This illegally obtained indictment was then transferred to the trial court, supposedly conferring jurisdiction to it. But instead thereof, it rendered both, the ex parte grand jury proceeding and the criminal court whereupon the matter was tried, as "sham legal process" by acting on the illegally obtained indictment, again, in violation of S.C. Code of Law, SS 16-17-735, supra. "[T]he court must strike down the indictment when a defendant demonstrates the grand jury which indictment him is a nullity...." Evans, supra.

Finally, where ever, and by whatever means, the grand jurors did convene with Solicitor Duckworth for process, presentment, and issuance of Jones' indictment as "True Bill", it was an illegal assembly as a matter of law, pursuant to S.C. Code of Law, SS 14-9-210. And as such, the indictment itself **WAS NOT** A "lawfully issued", state required indictment, causing the document itself to become a nullity, pursuant to S.C. Code of Law, SS 16-17-735(E)(4), which states:

*(E)(4) "Lawfully issued" means adopted, ISSUED or rendered IN ACCORDANCE with the applicable statutes, rules, regulations, and ordinances of the United States, a state, an agency, or a political subdivision of a state.*

### III. Perjury and Subornation

A. Jones asserts and argues that facts and evidence presented herein demonstrate, that by subscribing his name to Jones' State indictment, Solicitor Duckworth violated his oath of office, committing perjury, because he signed the indictment used to convict Jones knowing it contained false court term information and was obtained by an unlawful process.

B. Furthermore, Solicitor Duckworth, consequently, committed subornation of perjury, in that he caused grand jurors to present upon their oath the same false court term information contained within Jones' indictment; unwittingly participating in the sham legal process from which the indictment was obtained.

By his conduct, a prima facie case is shown against Solicitor Duckworth in violating a criminal statute, to suborn the Anderson County grand jurors to unwittingly commit perjury, S.C. Code of Law, SS 16-9-10, "Perjury Against Public Justice". [fn.5] Importantly, our Supreme Court in Chewing, infra, held that, "[T]he subornation of perjury by an attorney and/or the intentional concealment of documents by an attorney are actions which constitute extrinsic fraud." Chewing v. Ford Motor Co., 354 S.C. 72, 579 S.E.2d 605 (2003). Accordingly, Jones has demonstrated further harm done to his case and the judicial process thereupon.

#### IV. Prosecutorial Misconduct

A. Fundamentally, it should be understood that Solicitor Duckworth, while acting on behalf of the People, was required to know and abide by the laws and rules of this State, having special responsibilities to see that justice was done, pursuant to SCACR, Rule 407 Rules of Professional Conduct, Rule 3.8 (comments). "... he [prosecutor] must see that no conviction takes place except in strict conformity with the law, and that the accused is not deprived of any constitutional right or privilege." (insert in original) State v. King, 222 S.C. 108, 71 S.E.2d 798 (1952); see also State v. Quattlebaum, 338 S.C. 441, 527 S.E.2d 105 (2000); and State v. Durden, 264 S.C. 86, 212 S.E.2d 581 (1975).

Obviously, Solicitor Duckworth knew he was participating in an ex parte grand jury proceeding which was not being held at a Court of General Sessions in accordance with law, and in violation of several other state procedural and criminal statutes. Consequently, his behavior must be viewed as "willful" and "deliberate". Therefore, his actions were indicative of gross misconduct, which contributed to

Jones being deprived fair and impartial criminal judicial proceedings, beginning with this critical stage of the adversarial process. SCACR, Rule 407, Rules 8.4(b) & (d) state:

**Rule 8.4** - It is professional misconduct for a lawyer to:

(b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects;

(d) engage in dishonesty, fraud, deceit, or misrepresentation;

B. It may further be shown that similar problems have existed in both the recent and distant past regarding questionable and/or unlawful ex parte grand jury indictment proceedings. This has not been a new or unique problem. For example, the Solicitors' offices in Spartanburg and Greenville counties or South Carolina have been under investigation and shown in the news regarding their "assembly-line style" practice of processing indictments, wherein, only a few scant seconds were allowed to review and/or consider evidence before returning indictments as "True Bill". In fact, these proceedings have even been referred to as "rubber stamp" sessions. (See Exhibits D )

Further noteworthy is the fact, that in Kentucky, whose statutory laws governing ex parte grand jury proceedings are very similar to ours here in South Carolina, their courts have experienced the very same problems of grand juries being convened unlawfully and in violation of statutory terms of court. "An indictment returned by grand jury when no court was in session was void." See, U.S.C.A., Const. Amend. 14, Ss 1; and "Failure of defendant to move to have indictment set aside, because returned when no court was in session, was immaterial, since the indictment being void, there could be no waiver." Beach v. Lady, 262 S.W.2d 837 (Ky. 1953).

## CONCLUSION

In the Order of Dismissal, the State has demonstrated nothing that shows that laws and rules governing presentment of a lawful indictment were followed.

On the contrary, Jones has presented attachments and law that clearly show that the indictment used in the present case is no better than a blank sheet of paper.

In South Carolina, there is NO jurisdiction that may be obtained with a blank sheet of paper. A void indictment is no better than a blank sheet of paper. The 14 Amendment, due process clause, protects Jones from being indicted with a void document. Jones was entitled to be brought to trial with a lawfully obtained indictment. Solicitor George Duckworth had a ministerial duty to see that the indictment used in this case was lawfully presented. The State has failed to show how a document in which statutory law has been ignored, that has false information printed on it, is lawful. The petitioner in this case was brought to trial illegally, because the document used in this case was a void document.

For the State to use the defense that the "Court noted during the hearing that there is no requirement that a term of General Sessions Court be convened for the Grand Jury to meet;" is a misrepresentation of fact and law; 14-9-210 has not been repealed. In as much the Grand Jury gave an oath that they convened at a Court of General Sessions, January 5, 1999.

"No local rule of court, administration order, policy, or other procedure can take precedent over statutory law, which is always controlling. See, S.C. 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 in conflict.); State v. Duncan, 264 S.E.2d 421 (S.C. 1980) (Circuit Court rule promulgated by individual and void).

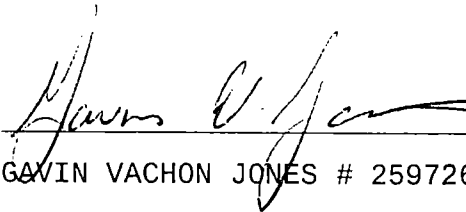
In so far the issue of whether or not a local rule, order, policy, or procedure was utilized for process and return of Mr. Jones' indictment is irrelevant because by State law, it would still have to be in agreement with provisions of section 14-9-210 for it to be constitutional, as well as provisions of sections 14-9-90, 14-5-210,

14-5-910, and 14-5-920. Moreover, Article V, Section 4 of our Constitution provides in pertinent part:

"The Supreme Court shall make rules governing the administration of all courts of this State. SUBJECT TO THE STATUTORY LAW the Supreme Court shall make rules governing the practice and procedures in all such courts." (Emphasis added)

Truly it would be a gross miscarriage of justice for the Court to arbitrarily ignore all the evidence that has been brought to light that clearly show that the Indictment procedure in this case was wholly flawed. It is to say, that it is okay to print false information on document (**indictment**) required by the Laws of this state. The Statutory Laws are safe guards that protect citizens; it keeps the powers that be honest. When statutory laws are ignored, lines are blurred and conspiracies develop to cover misconduct that put Integrity in the back seat. It would seem that the State has conveniently over looked the Amendment filed 2013 to the Mandamus in which petitioner clarifies that because the Indictment is clearly against statutory laws, the Solicitor has a ministerial duty to provide any information that would justify the false information printed on his indictment

THEREFORE, based upon the demonstration of facts and law shown and argued herein, the State's Order of Dismissal should be overturned and Jones' Petition for Writ of Mandamus should be granted with relief sought.

  
GAVIN VACHON JONES # 259726  
Q-2 A-201  
430 OAKLAWN ROAD  
PELZER SC 29669

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COMMISSIONER AND  
GENERAL COUNSEL

CC; ATTORNEY GENERAL  
LEGAL ADVISORS

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PC.I. MAILROOM  
Richard M. Bailey  
CLERK OF COURT

# Grand jury races through docket

TOM LANGHORNE

Published: Thursday, November 23, 2000 at 3:15 a.m.

Twenty-two seconds. Actually, slightly less than 22 seconds.

That's how much time, on average, that Spartanburg County grand jurors had to devote to each of the 1,404 cases presented to them by 7th Circuit prosecutors over eight and a half hours on Tuesday.

The mass indictments come six weeks after a two-day grand jury session during which Solicitor Holman Gossett's office presented slightly fewer than 1,800 cases for indictment, drawing strong criticism from Gossett's successor and a leading legal ethics expert. Before that session, the highest number of charges Gossett's office had presented for indictment at any one time in the past two years had been 968. Gossett did not return telephone messages seeking comment, as has been the case since his June loss to Trey Gowdy in the Republican primary. Attempts to reach South Carolina Attorney General Charlie Condon were unsuccessful. A spokesman for Gossett said last month that mass indictments were necessary in light of Circuit Judge John Kittredge's recent decision to fine 13th Circuit Solicitor Bob Ariail for not complying with South Carolina Rules of Criminal Procedure. Ariail didn't comply with Rule 3(c), which states that prosecutors must take action on a given arrest warrant within 90 days after receiving the warrant from the clerk of court. The fine was eventually dropped. Indicting thousands of old and new cases en masse does not add to the statistical backlog that Gowdy will face when he takes office in January. Unindicted cases are already counted in the backlog as South Carolina Court Administration reports it. But Gossett's mass indictment strategy does create a large pool of indicted cases that Gowdy can't be sure have been scrutinized first. "It looks to me like the policy we used to have of reviewing cases to see if they have a basic degree of merit before sending them for indictment has been abandoned," said Spartanburg attorney Andy Johnston, who worked as an assistant solicitor under Gossett from 1988 to 1990. "All of a sudden they double the number of cases they send normally (in October), and then they do it again within a short time," Johnston said. "It sounds like they took all the cases that have been lying around and just sent them to the grand jury instead of reviewing them and making decisions about them." Spartanburg Public Safety Director Tony Fisher, who supported Gowdy in this year's campaign, accused Gossett of trying to sabotage Gowdy when his office sought about 1,800 indictments last month. On Wednesday, Fisher said "there is no way the system can handle that many cases in a reasonable amount of time." "We need to be honest with the public," he said. "We need to handle cases as quickly as we can, and deal with those where there is some reason to question prosecutorial merit within 60 days, instead of waiting this period of time and then doing this. "We owe that to victims and the public." Sheriff Bill Coffey, who supported Gossett in this year's campaign, declined to answer questions about Gossett's decision to seek thousands of indictments in a matter of weeks. Coffey did say through a

spokesman that such questions should be addressed to the grand jury and the court system. Gowdy, who will take office on Jan. 10, said the time to decide whether a case is prosecutable is before indictment. "I don't know what level of scrutiny was given these cases before they were submitted to the grand jury," he said. "I know it would be difficult for me to adequately scrutinize 1,400 cases in the period since the last grand jury met, which was about six weeks ago. "We're going to do a better job of getting with law enforcement and screening cases on the front end," Gowdy vowed. "If you can't move cases in a timely fashion, you're contributing to a backlog that adversely affects victims past, present and future." Eldon D. Wedlock Jr., a criminal law professor and legal ethics expert at the University of South Carolina's School of Law, reiterated his earlier criticism that seeking a large number of indictments at one time defeats the investigative purpose of grand juries. But Wedlock said grand jurors themselves should share the blame with Gossett. "Their duty is to listen to evidence of criminal allegations presented by prosecutors and witnesses, and to act as a screen against vindictive prosecutions or unfounded charges," Wedlock said. "They're not taking that duty as seriously as they should." Wedlock said the grand jury's foreman or a grand juror "should have objected and said 'Wait a minute, I want to hear some specific evidence why the state thinks this person has committed a crime.'" Wedlock did not spare Gossett's office from criticism. "They're allowing it to go on," he said. "They have an ethical obligation to do justice." Wedlock said he understands that Gossett has to be mindful of Judge Kittredge's action against Ariail, but Gossett wouldn't be in this position if he had been evaluating his cases promptly all along.

Tom Langhorne can be reached at [tom.langhorne@shj.com](mailto:tom.langhorne@shj.com) or 582-4511, Ext. 7221.

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Exhibit D

LexisNexis Total Research System

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> SC - South Carolina Code of Laws Annotated by LexisNexis  
> § 14-9-210 Indictments for county court cases by grand jury of

court of general sessions.  
§ 14-9-210

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SC Code Ann § 14-9-210

SOUTH CAROLINA CODE OF LAWS ANNOTATED BY LEXISNEXIS(R)

\*\*\* THIS DOCUMENT IS CURRENT THROUGH THE 2007 REGULAR SESSION \*\*\*  
\*\*\* THE MOST CURRENT ANNOTATION IS DATED DECEMBER 15 2008 \*\*\*

Practitioner's Toolbox

Use Notes

History

TITLE 14 COURTS  
CHAPTER 9 COUNTY COURTS

TITLE 14 COURTS  
CHAPTER 9 COUNTY COURTS

SC Code Ann § 14-9-210 (2007)

§ 14-9-210. Indictments for county court cases by grand jury of court of general sessions

The county solicitor shall prepare and, through the presiding judge of the court of general sessions, submit to the grand jury, while in attendance upon the court of general sessions, bills of indictment in all cases pending in the county court in which the punishment may exceed a fine of one hundred dollars or imprisonment for thirty days, when such cases have not been previously acted on by the grand jury. The grand jury shall act thereon and report its action to the presiding judge of the court of general sessions and said judge shall direct the clerk of the court of general sessions to report the same to the presiding judge of the county court at its next ensuing term. All cases in which bills of indictment are so found shall stand for trial by the county court as though found by the grand jury while in attendance upon the county court.

History:

1962 Code § 15-621, 1952 Code § 15-621, 1942 Code § 89, 1932 Code § 89; Civ. P. 22 § 86, Civ. C. 2 § 861, Civ. C. 02 § 2764, 1900 (23) 322.

NOTES:

LexisNexis (R) Notes:

Case Notes:

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1. Defendant, who successfully appealed two municipal court charges, failed to prove that her conviction in general sessions court of pointing a weapon, a violation of ... stemming from the same conduct as the municipal court charges, was vindictive prosecution in violation of her ... due process rights, because under ... It is the solicitor's duty to prosecute ... the pointing offense had been charged at the same time as the municipal court offenses, and in ... defendant for assault with intent to kill the solicitor had been unaware of the disposition of the municipal court charges.

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ANDERSON SC

STATE OF SOUTH CAROLINA ) IN THE COURT OF GENERAL SESSIONS  
COUNTY OF ANDERSON ) O R D E R

THIS MATTER comes before me upon motion of Chrissy T. Adams, Solicitor of the Tenth Judicial Circuit, requesting that the Anderson County Grand Jury convene for the next six (6) months terms of General Sessions Court for the year 2011, to dispose of a number of pending cases.

NOW THEREFORE, upon motion of Chrissy T. Adams, Solicitor of the Tenth Judicial Circuit, it is

ORDERED, ADJUDGED AND DECREED that the Anderson County Grand Jury report to the Anderson County Court Room at 9:00 A.M. on the following dates:

January 6, 2014 Organizational

January 21, 2014

February 18, 2014

March 18, 2014

April 22, 2014

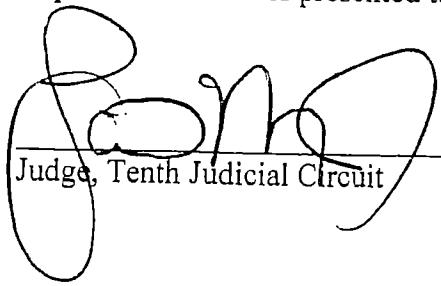
May 20, 2014

June 17, 2014

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ANDERSON SC  
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GENERAL SESSIONS

to consider those matters to be presented to them by the Solicitor's Office at that time.

IT IS FURTHER ORDERED that Richard A. Shirley, Clerk of Court for Anderson County, convene the Grand Jury and publish all matters presented to the Court by the Grand Jury.

  
\_\_\_\_\_  
Judge, Tenth Judicial Circuit

Anderson, South Carolina  
December 2, 2013

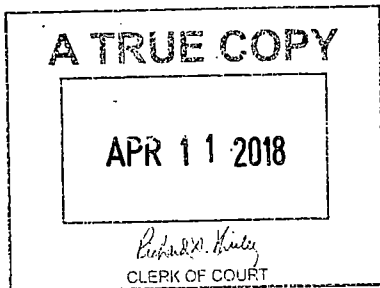
# Grand jury pace draws criticism

Panel typically weighs 900 indictments per day; questions raised over its effectiveness

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ANDERSON SC

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COMMON PLEAS AND  
GENERAL JUDICIAL



## JURY FROM PAGE 1A

tions on what it wants to know, Ariail said. Solicitors have communicated those instructions to law enforcement officers who present cases to the grand jury, he said.

In DUI cases, for example, the jury may want to hear only about "where the stop took place, what the bad driving was and what the Breathalyzer is," Ariail said.

"Bam, bam, bam — you're talking three seconds to present these cases," he said.

The U.S. Constitution guar

antees defendants a grand jury hearing in federal cases, but the U.S. Supreme Court has said that states can use a different system, said Andrew Siegel, assistant law professor at the University of South Carolina.

Even with the option, there often is little support for eliminating grand juries at the state level, he said.

Solicitors like them because they are friendly to the prosecution, Siegel said. Defense attorneys see grand juries as a check on prosecutorial power, at least in some cases, and there is no guarantee they would be replaced with anything better, he said.

you treat the grand jury as archaic and do away with it," Siegel said, "or take steps to reinvigorate the grand jury."

State Sen. Ralph Anderson, D-Greenville, pledged in an interview with *The Greenville News* to learn more about the grand jury and consider legislation before the Legislature reconvenes in January.

Until he was contacted by *The News*, he didn't know about the grand jury's workload or the high percentage of indictments it returns.

"It can't be fair," said Anderson, a member of the Senate Judiciary Committee.

Paul Alongi can be reached at 298-

STAFF WRITER  
p.alongi@greenville.com

Each time the Greenville County grand jury meets, it considers about 900 indictments in a single day.

The group of 18 citizens went through 7,321 charges from Jan. 1 to Aug. 31 and returned indictments on all but one, according to the Greenville County Clerk of Court's Office.

The grand jury system was set up as a check against prosecutorial vendettas and hasty indictments. But with the grand jury blazing through so many cases, some have raised questions about how effective the panel can be.

Furman University political science professor Don Alesi called the grand jury a "rubber stamp" for the Solicitor's Office. "The system isn't working," he said. "It has not functioned effectively as any kind of buffer."

Thirteenth Circuit Solicitor Bob Ariail said the grand jury hears about two-thirds of the cases that pass through his office. The panel rarely refuses to indict because solicitors weed out the weak cases and dismiss them, he said.

"We don't take junk to the grand jury," Ariail said.

The grand jury's job is to hear the state's evidence and decide if there is probable cause to hold a trial. Unlike most hearings in the criminal justice system, the defendant has no right to be present, have counsel or introduce evidence.

The Solicitor's Office doesn't oversee the grand



"We don't take junk to the grand jury."

— Bob Ariail  
13th Circuit Solicitor

jury. The panel reports to Chief Administrative Judge Gary Hill, who declined comment, citing judicial ethics.

Defense attorney Stephen Henry said he has been arguing in some cases that indictments should be quashed because of how many cases are run through the system. But the grand jury is a secret process, he said, making his argument tough to prove.

"If I could bring in one grand jury foreman to testify under oath, I think all this would be over," Henry said.

The county's grand jury meets once a month. Panel members start hearing cases at 9 a.m. and usually finish by 6 p.m., although they wrapped up at about 3:45 p.m. last month, Ariail said.

The grand jury has given solicitors specific instruc-

See JURY on page 3A


STATE OF SOUTH CAROLINA  
COUNTY OF ANDERSON

IN THE COURT OF COMMON PLEAS  
Civil Action No.: 2012-CP-04-0861

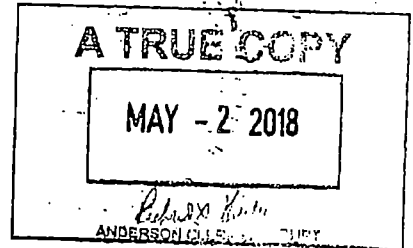
Gavin Jones, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 State of South Carolina, )  
 )  
 Defendants. )  
\_\_\_\_\_ )

**ORDER DENYING PLAINTIFF  
GAVIN JONES' MOTION TO ALTER  
AND AMEND**

This matter comes before the Court on Plaintiff Gavin Jones's Motion to Alter or Amend pursuant to Rule 59(e), South Carolina Rules of Civil Procedure. This Motion for Reconsideration is hereby denied.

  
\_\_\_\_\_  
The Honorable J. Cordell Maddox, Jr.  
South Carolina Circuit Court Judge

This 26 day of April 2018



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ANDERSON SC  
MAY 10 2018  
COMMON PLEAS AND  
GENERAL SESSIONS

THE 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

**RECEIVED**  
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Gavin V. Jones, ..... Appellant,

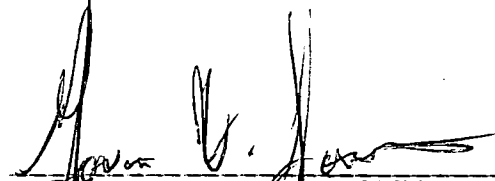
v.

State of South Carolina, ..... Respondent.

**PROOF OF SERVICE**

I certify that I have served the INITIAL BRIEF OF APPELLANT & DESIGNATION OF MATTER upon Kelly Oppenheimer, Esq. by depositing a copy of it in the U.S. Mail, postage prepaid, on January 11, 2019 addressed to the S.C. Office of Attorney General; Post Office Box 11549; Columbia, SC 29211-1549.

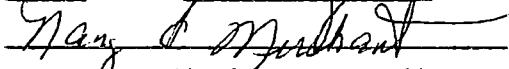
January 25, 2019

  
Gavin V. Jones, #259720  
Perry Correctional Institute  
450 Oaklawn Rd./Q1B-112  
Pelzer, SC 29669

CC: Hon. Jenny Kitchens  
SC Court of Appeals

SWORN TO AND SUBSCRIBED before me, this

29<sup>th</sup> day of January, 2019

  
Nancy P. Merchant  
Notary Public for South Carolina

My Commission Expires: 1-23-2023

Mr. GAVIN V. JONES # 259726

Q-1 B-112 PCI

430 OAKHURST RD

Pelzer S.C. 29665

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S.C. Court OF APPEALS

Jenny A Kitchings

Clerk of Court

P.O. Box 11629

Columbia S.C. 29211