

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM LAURENS COUNTY

Honorable Letitis H. Verdin, circuit court Judge

Frederick Calvin Jones

Appellant,

VS.

THE STATE OF SOUTH CAROLINA

Respondent.

APPELLATE CASE NO. 2018-002232

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SC Court of Appeals

Pro Se Brief Response

This is before the South Carolina court of Appeals, which counsel filed a brief indicating that this appeal is without merit and moves to be relieved as my counsel. Anders v. California, 386 U.S. 738, 87 S.Ct. 1396, 18 L.E. 2d 493 (1967). The records in this case reflect counsel has served applicant with a copy of the brief and record on appeal.

I have forty-five (45) days of the date of this letter, to file with this court a pro se brief addressing any issues I believe the court should consider in this appeal. Upon receipt of my pro se brief or the expiration of forty-five(45) days, this appeal will be submitted to the court for its consideration.

Sincerely,

S/ _____,

Frederick C. Jones, # 321866

Applicant have suffered a miscarriage of justice and his conviction only stands due to severe denial of due process and equal protection in the state court in multiple and gross violation of the United States supreme court precedents and the United States constitution, that constitutes an outrage of mockery of justice that the federal courts who sworn to uphold the United States constitution should not tolerats.

The applicant suffered prejudice at the hands of trial counsel and the trial court, and the applicant's plead of guilty under North-Carolina-v.-Alford, was entered Involuntarily, Unknowingly, Unwillingly, and Unintelligently, Hill-v.-Lockhart, 106 S.Ct. 366 (1985). See also Jodan-v.-State, 374 S.E. 2d 683 (1988).

Applicant's trial counsel's deficiencies prejudiced the applicant in that applicant would have otherwise proceeded to a jury trial as original insisted upon and under no circumstances would not have plea guilty under Alford otherwise had it not been for trial counsel's advise. Nevertheless, the allegation of the applicant not having pled guilty knowingly, voluntarily and intelligently probably raises questions of fact which may not be conclusively refuted by the record presently before this court.

INEFFECTIVE ASSISTANCE OF COUNSEL AND INVOLUNTARY PLEA

Applicant alleges his plea was rendered involuntary by ineffective assistance of counsel. The burden of proof is on the applicant in a PCR proceeding to prove the allegations in his application. Bell-v.-State, 321 S.C. 238, 467 S.E. 2d 926 (1991); Rule 71, 1 (e), SCRCP.

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both; (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel ineffective performance. Strickland-v.-Washington, 466 U.S.

668, 104 S.Ct. 2052, 80 L.Ed. 2d 674 (1984); Judge v. State, 321 S.C. 554, 471 S.E. 2d 146 (1996). In order to prove prejudice, an applicant must show that but for counsel's errors, there is a reasonable probability the result at trial would have been different. Johnson v. State, 325 S.C. 182, 480 S.E. 2d 733 (1997). with respect to guilty plea counsel, an applicant must show a reasonable probability that but for counsel's alleged errors, he would not have pled guilty and would insist on going to trial Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985); Stalk v. State, 383 S.C. 559, 681 S.E. 2d 592 (2009); Roscoe v. State, 345 S.C. 16, 546 S.E. 2d 417 (2001).

To be knowing and voluntary, a plea must be entered with a full understanding of the plea. Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709, 23 L. Ed. 2d 274 (1969); Dover v. State, 304 S.C. 433, 405 S.E. 2d 391 (1991). In determining guilty plea issues, the PCR court should consider the guilty plea transcript as well as evidence at the PCR hearing. Harris v. Leeke, 282 S.C. 131, 318 S.E. 2d 360 (1984). Applicant alleges that he pled guilty under the belief there would be a recommendation for a Eighteen to Twenty years prison term.

A guilty plea must be an informed and intelligent decision. State v. Lopez, 352 S.C. 373, 574 S.E. 2d 210 (2002). To be valid, a guilty plea must represent an intelligent choice among the alternatives available to a defendant. Id.

In the case sub-judice, the colloquy amounted to nothing more than a pro forma answers to pro forma questions.

State v. Gardner, 570 S.E. 2d 184, 187 (2002). The judge never informed petitioner that the state must obtain a Lawful true bill indictment according to the state statutes and state constitution and that they have failed to do so - this depriving the court of subject matter jurisdiction. And that the only way petitioner can be Lawfully convicted is if he pleads guilty and gives the court subject matter jurisdiction that it otherwise does not have. Had petitioner been informed of this he would never have plead guilty but would have demanded that the state first obtain subject matter jurisdiction by obtaining a Lawful

indictment. Petitioner acted reasonably in believing that the solicitor was trustworthy and had obtained a lawful indictment. Petitioner had no prior reason for doubting the indictment was lawfully obtained and could not have known about the indictment at the time of the plea because of the solicitors fraud, perjury, and conspiracy designed to keep this bogus indictment hidden from petitioner.

A defendant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pleaded and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 546 S.E. 2d 417 (2001). A defendant alleging that his guilty plea was induced by ineffective assistance of counsel and defendant will prove that counsel's advice was not within the competence demanded of attorney in criminal cases. Because a guilty plea is more than an admission it is a conviction trial Judge must discharge the function of ensuring an accused has a full understanding of what the plea connotes and of its consequence. Boykin v. Alabama, 395 U.S. 242, 242-43 (1969); Pittman v. State, 337 S.C. 597, involuntary); State v. Lambert, 266 S.C. 574, 225 S.E. 2d 340 (1976).

The trial counsel coerced applicant into entering a guilty plea through deceptive tactics when applicant wished to stand trial by jury. When counsel employs an unreasonable trial strategy and make that decision without a full assessment of the facts and evidence at issue; counsel's performance is considered ineffective. Cave v. Singletary, 971 F. 2d 1513 (11th cir. 1992). Based on the aforementioned matter, counsel has provided ineffective assistance. Petitioner's guilty plea failed to comply with the mandates set forth in Boykin v. Alabama. Due process of Law requires that before a guilty plea can be entered voluntarily and intelligently, a defendant must be advised of his privilege against compulsory self-incrimination, the right to trial by jury and the right to confront one's accusers.

Applicant contends due to his illiteracy to the Law he was entitled to rely upon his counsel to make reasonable decision. Pursuant to U.S.-v.-Dewalt, 92 F. 30 1209 without some authoritative guidance, the defendant cannot know whether he understood any thing correctly at his plea trial.

The applicant suffered prejudice at the hands of trial counsel and the trial court, and the applicant's plead of guilty under North-Carolina-v.-Alford, was entered involuntarily, unknowingly, Unwillingly, and unintelligently, Hill-v.-Lockhart, 106 S.Ct. 366 (1985). See also Jordan-v.-State, 374 S.E. 2d 683 (1988).

NEGOTIATED PLEA

The applicant received ineffective assistance of counsel prior to and at the time of entry of his plea of guilt in that trial counsel failed to (1) timely object to the trial court imposed sentence which exceeded the duration of sentence of the plea negotiated sentence of 18 to 20 years to which the applicant had agreed (2) timely seek leave of court to withdraw applicant's guilty plea on the basis that the court imposed sentence exceeded the duration of sentence of a plea bargain to which the applicant had agreed. In support thereof, applicant submits that at the time of entering into a guilty plea he was advised by trial counsel that a plea bargain had been "worked out" whereby applicant would receive a concurrent sentence on the indicted charges not to exceed (twenty years) in duration. Based on this understanding applicant proceeded to plead guilty when the court imposed a sentence of twenty-five years for the lesser-included offense of voluntary manslaughter from his murder charge. Applicant's trial counsel provided ineffective assistance of counsel by failing to timely object to the sentence as not comporting with the requirement of applicant's promised plea bargain and trial counsel further exacerbated his ineffective assistance of counsel when he failed to timely seek leave of court to withdraw applicant's plea of guilt as not being conformity with the substance of applicant's plea bargain.

The U.S. supreme court in Santobello v. New York, 404 U.S. 257, 92 S.Ct. 495, 30 L.Ed. 2d 427 (1971). Hold that where a guilty plea rests on a promise or agreement which can be said to be a part of the indictments or consideration, then the agreement must be fulfilled. United States v. Ringling, 986 F. 2d 504 (4th cir. 1993), the court held that a plea bargain rests on contractual principles and that each party should receive the benefit. Id. The court further stated that a plea agreement analysis must be more stringent than a contract because the rights involved are fundamental and constitutionally based. Id. The court also noted that the government had to be held to a higher degree or responsibility than the defendant for imprecision or ambiguities. Id. Another important holding in ringling is that where one district attorney states that

the government will not prosecute, it encumbers all other districts. Id. At 507. The court also stated; (1) is the government at large not specific United States Attorney or United States Districts that are bound by plea agreements negotiated by agents of the government when a defendant's fundamental right are at stake the right hand should know what the left is doing Id. At 507 criminal Law. 982, 3 (3), 1280, 2 1210 (2) D.C.S.C. 1984. When government has entered into a plea agreement, Federal courts, must enforce the agreement and not allow the government to retract it's promise and when defendant has relied on government representation and has upheld his obligations under an agreement the government will also be required to honor it's promises U.S. v. CFU const. Co. Inc. 583 F. Supp. 197 affirmed 749 F. 2d 33. When accused pleas guilty upon a promise of proscuter agreement must be fulfilled. State v. Thompson, 292 S.E. 2d 581 278 S.C. ceritorari denied 102 S.Ct. (1996).

The counsel's deficiencies prejudiced the applicant in that applicant would otherwise have proceeded to trial and not have entered into any plea of guilty if he had known the sentence would or could have exceeded the eighteen to twenty years cap that was promised as part of his plea bargain. As a result of the deficiencies of trial counsel as set out in November 30th 2017, Dale Scott, sent me an e-mail that says: "Fred Jones can plead to voluntary, but I would be looing for something closer to the 18- to 20- year range. I have a number of Newberry charges I will roll into that plea. See page 14, lines 17-21.

The indicted charges was involuntary as that plea of guilty was induced by an unfulfilled plea bargain promise that the applicant would not be sentence concurrently to more than 18-20 years imprisonment. Judge Verdin sentence applicant to twenty-five years, which was seven more years than appelliant hoped to receive. Appellant then filed a motion to reconsider asking the judge for a hearing to address, among other things pending charges that were dismissed by the state. Judge Verdin summarily denied the motion in a one paragraph written order.

The allegation of the applicant not having plea guilty knowingly, voluntarily, and intelligently probably raises questions of fact which may not be conclusively refuted by the record presently before this court, there really is no material difference between not having counsel and having one appointed who does not present the claims and issues at all, or fails to substantially present them. If appointed counsel does not interview and ascertain grounds for relief from applicant, investigate, review the records research applicable Law or refuses to raise grounds at then an applicant has not been provided with counsel. The South Carolina supreme court established Rule 71. 1 (d) (former S.C. sup. Ct. Rule 50. 5) to effective the purpose of the uniform (PCR) Act. such mandates that appointed counsel ascertain all grounds available for relief and present them not that the applicant do so, to mandate counsel to do so, and then excuse counsel for not doing so makes the rule friction. Especially, when the unskilled applicant is held liable for such and when raising claim of ineffective assistance of counsel an array of constitutional right are denied the applicant, because trial counsel first failed to be effective and ensure the trial was fair.

PRIOR BAD ACT ARGUMENT

A defendant who pleads guilty on the advise of counsel may only attack the voluntary and intelligent character of the plea by showing (1) counsel's representation fell below an objective standard of reasonable and (2) there is a reasonable probability that, but for counsel's errors the defendant would not have plead guilty, but would have gone to trial. Turning first to evidence of prior bad acts, the South Carolina Rules of Evidence and case Law preclude the introduction of evidence of a defendant other criminal, wrongs, or acts to prove the defendant's guilt for the crime charged except to establish (1) motive, (2) identity, (3) a common scheme or plan (4) the absence of mistake or accident, or (5) intent, Rule 404 (b), SCRE;

State-v.-Lyle, 125 S.C. 406, 118 S.E. 803 (1923). In fact "[e]vidence of other crime is never admissible unless necessary to establish a material fact or element of the crime charged.

State-v.-Johnson, 293 S.C. 321, 324, 360 S.E. 2d 317, 319 (1987). As explained by the court in State-v.-Wesley-Smith, 391 S.C. 353, 361, 705 S.E. 2d 491, 495 (2011), in order to introduce evidence of some other act by the defendant under one of the exceptions, the prosecutor must lay a proper foundation. At the outset the prosecutor must prove by clear and convincing evidence that defendant committed the other act; if the defendant was not convicted of the act Id. (citing State-v.-Fletcher, 379 S.C. 17, 23, 664 S.E. 2d 480, 483 (2008)). Next, the prosecutor must articulate the logical connection between the other act and one of the five exceptions listed in Rule 404 (b) SCRE. Id. (citing State-v.-Pagan, 369 S.C. 201, 211 631 S.E. 2d 262, 267 (2006)). This requires a showing of how the evidence of the other act will assist the fact-finder in understanding a material issue in the case related to one of the Rule 404 (b), SCRE, exceptions. Id. If the trial judge determines the prosecutor has satisfied both requirements. Then the judge must determine whether the probative value outweighs the prejudicial effect pursuant to Rule 403, SCRE. Id. (citing State-v.-Stokes, 387 S.C. 390, 404, 673 S.E. 2d 434, 441 (2009)).

Neither the judge nor the prosecutor explained how the evidence of this alleged prior bad act was admissible against appellant under one of the exceptions in Rule 404 (b), SCRE or that the act had been proven by clear and convincing evidence.

SUBJECT MATTER JURISDICTION

When an offense has not been presented to the grand jury, a written waiver of indictment is required prior to the entry of the guilty plea. S.C. code §§ 17-23-130, 17-23-140. The South Carolina supreme court strictly construes the requirement of a signed, written waiver of indictment prior to the entry of a guilty plea. Summerall-v.-State, 278 S.C. 255, 294 S.E. 2d 344 (1982). An oral waiver of indictment which fails to comply with the statutory requirement of a signed written waiver renders a circuit court without jurisdiction to hear a guilty plea. State-v.-Clarkson, 337 S.C. 518, 520, 523 S.E. 2d 817, 818.

A defendant who pleads guilty on the advise of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial Roscoe-v.-State, 345 S.C. 16, 546, 2d 417 (2001).

Tr. P. 12, lines 10-25. THE COURT: All right. All right. yes. Ms. McNeill: Thank you, Your Honor. First, I would -- I -- you know, obviously, these are tough cases. you've seen that I've been pleading some really tough cases this week, along with Mr. Scott. They really are never easy to do.

Fred has -- he's 36 years of age. And we have been trying to resolve this case for quite some time. He has 1,080 total jail credit. Before I was appointed to represent Mr. Jones, he was also -- he had Tom Adducci as his lawyer before Tom went to the Greenville Public Defender's office. And the same kind of thing happened where Tom Adducci and I met with Fred Jones, at the same time in the Newberry county jail, which is where he was housed the majority of this time for that transition period.

Tr. P. 13, lines 1-25. After I -- after that meeting happened I went back and spoke to Fred. And I had his discovery with me. And his -- I said to him, "okay, Fred. I know that you've been over your discovery with Tom Addcci, but I want to start fresh.

And he said, "There's no need. I know what's in the discovery. Can you please go and tell the solicitor that I'm willing to plead to voluntary manslaughter for 15 years? If I can do that then I can see my daughter graduate high school.

And I said, "okay. well, you know, I think that's reasonable from what I had heard through the grapevine about the case and the problems connecting who was the shooter."

So I started an e-mail communication with Mr. Scott. I said "How about we plead him 20 years, suspended to 15 years active and 5 years probation?"

Initially Mr Scott said he felt like that was reasonable but had to take it to the victim's family. well, then we kept talking -- kept talking. Fred was always willing to cooperate against Malcolm Jones, who is the codefendant who got 15 years.

And we talked a lot about some of the defenses in his case. And honestly, he had a lot of defenses. The only problem is is that the cell phone was found with him, even though he claimed to have given it to somebody else, which was his sister's boy friend at the time. But ultimately, what it came down to was Fred was worried that under "hand of one/hand of all" in this state -- and when we looked at it that way --he would've been convicted, no matter what kind of defenses that we could raise. Then Mr. Scott -- I kept trying to communicate with him. And I've -- kept apologizing in my e-mails to Mr. Scott about being annoying on how aggressive I was trying to resolve this plea.

And then I said -- or Dale Scott, said to me on Wednesday, February 14, 2018, "well, I think he wants 18 years. I can't do that, I had a very sad meeting with the victim's girl friend, mother, aunt, and grandmother yesterday. I felt very unhappy after the meeting. And that feeling stayed with me for the rest of the day.

Tr. P. 14, lines 16 - 25. Well, that was on Wednesday, February 14, 2018, prior to that, on Thursday, November 30, 2017, Dale Scott sent me an e-mail that says Fred Jones can plead to voluntary, but I would be looking for something closer to the 18-to 20 years range. I have a number of Newberry charges I will roll into that plea. Applicant alleges that he pled guilty under the belief there would be a recommendation for the twenty years prison term.

PLEAD AGREEMENTS

The state may withdraw from a plea bargain arrangement at any time prior to, but not after the actual entry of the guilty plea. State-v.-Thrift, 440 S.E. 2d 341. Each party should receive the benefit of the plea bargain, once a defendant enters a guilty plea and the plea is accepted by the court due process requires the plea bargain be honored U.S.C.A. Amend. 14. State v.-Miller, 652 S.E. 2d 444. Guilty plea that is based on plea bargain that is not fulfilled or is unlawful cannot stand. State-v.-Thrift, 440 S.E. 2d 341, State-v.-Rhinehart, 430 S.E. 2d 536.

A plea bargain agreement is governed by contract principles. All plea agreements must be on the record and must recite scope, offense and individuals involved in the agreements supreme court will limit its review of the plea agreement only to those terms which are fully set forth in the record and neither the state nor the defendant may enforce the plea agreement terms which do not appear on the record before the trial judge who accepts the plea, Rollison-v.-State, 522 S.E. 2d 290.

Prosecutors are obligated to fulfill the promises they make to defendants when those promises they make to defendants when promises serve as inducement to defendants to plead guilty. Sprouse v. State, 585 S.E. 2d 278.

SUBJECT MATTER JURISDICTION VIOLATION

Did the trial court have subject matter jurisdiction to enter a conviction or impose a sentence upon indictment number (16-GS-30-0227), murder is an element in the indictment which the Legislative intent is clearly written into Law. Was there a variance between to essential elements alleged in the indictment (16-GS-30-0227), murder and the state's failure to establish those elements at trial by the evidence presented?

Without a proper indictment, the court lack subject matter jurisdiction to enter conviction or impose sentence for a crime. S.C. code of Laws Ann. § 17-19-10, S.C. const. Art. I § 11, An indictment is proper if it is sufficient in charging the elements of the offense and is returned true billed by the grand jury, or presentment is waived. State v. Beachum, 342 S.E. 2d 597 (1966). An indictment is sufficient in the charge if it contains the necessary elements of the offense, and gives notice to the defendant of what he must be prepared to meet, State v. Smalls, 519 S.E. 2d 793 91999). Hence, if the indictment fails to allege the necessary elements of the offense charged.

Prior to Munn, the rule was that any objection to the sufficiency of the indictment, i.e. that the indictment was defective, had to be made before the jury was sworn. See state v. Young, 243 S.C. 187, 133 S.E. 2d 210 (1963) n3 (challenge directed to the sufficiency of the indictment rather than to the jurisdiction of the court to try the offense charged needed to be raised by a motion to quash before the jury was sworn. The rule was effectively altered by the Munn decision.

Defendant contends that on the face of his indictment there no foreperson signature, are judge signature. When an offense has not been presented to the Grand jury a written waiver of indictment is required prior to the entry of the guilty plea. S.C. code §§ 17-23-130, 17-23-140. The South Carolina supreme court strictly construes the requirement of a signed, written waiver of indictment prior to the entry of a guilty plea. Summerall-v.-State, 278 S.C. 255 294 S.E. 2d 344 (1982).

SUBJECT MATTER JURISDICTION

Here, defendant will show that state knowingly employed the use of unlawful procedures for the return and publication of its true-billed indictments. That state unlawfully impaneled its grand jury outside the jurisdiction of the court of General sessions and then willfully caused raise and misleading information to be printed in its indictments, consequently, the unlawful and illegal acts committed by state require this court to hold petitioner's indictment null and invalidate all judicial proceedings taken in this case.

A. Invalid Proceedings as void Indictment

The matter presented below for review is not a challenge to the court's general grand 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 484 (2003) and will not be at issue here. In stead defendant contents that the court of General sessions failed to comply with statutory Law jurisdictional in nature, specifying the manner and means for Lawful return of true-billed indictments.

"The jurisdiction of a court over the subject matter of a proceeding is determined by the constitutions.

The Laws of the state, and is fundamental. State v. Heyward, 564 S.E. 2d 379 (s.c. App. 2003) (citing Anderson v. Anderson, 299 S.C. 110, 115, 382 S.E. 2d 897, 900 (1989) (emphasis added). subject matter jurisdiction may not be waived even with consent of the parties, and may be raised at any time. Brown v. State, 343, S.C. 342, 540 S.E. 2d 846 (2001).

And, "no indictment may be true-billed by grand jury when circuit court lacks jurisdiction, since grand jury's jurisdiction is coextensive with criminal jurisdiction of the court in which it is impaneled and for which it is to make inquiry " State v. McClure, 277 S.C. 432, 289 S.E. 2d 158 (S.C. 1982) and State v. Funderburk, 259 S.C. 256, 191 S.E. 2d 520 (1972), State v. Wheeler, 259 S.C. 571, 193, S.E. 2d 515 (1972).

The primary question before this court are whether S.C. code Ann. § 14-9-210 is jurisdictional in nature and whether it requires that all criminal indictments must be issued through a grand jury impaneled before the court of General sessions, and whether state's noncompliance with mandatory indictment procedures, and willful acts of perjury have rendered all judicial proceedings invalid and its indictments null.

The statutory provisions at issue are contained in section 14-9-210, and provide in pertinent part that. "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 indictments 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 shall 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 at its next ensuing term...

The statutory terms above are clear, unambiguous, and require the county solicitor to prepare and submit bills of indictment through the presiding judge of the court of General Sessions to a grand jury impaneled under the authority of the court of General Sessions NO EXCEPTIONS.

It is a cardinal rule of statutory construction that the primary purpose in interpreting statutes is to ascertain the intent of the legislature. Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E. 2d 578, 181 (2000). State v. Martin, 293 S.C. 46, 358 S.E. 2d 697 (1987). When a statute's terms are clear and unambiguous on their face, there is no room for statutory construction and a court must apply the statute according to its literal meaning. Carolina Powe & Light Co. v. City of Bennettsville, 314 S.C. 137, 139, 442 S.E. 2d 177, 179 (1994). And words must be given their plain and ordinary meaning without resort to subtle or

forced construction to limit or expand the statutes operations. Bayant v. City of Charleston, 295 S.C. 408, 368 S.E. 2d 899 (1998). Moreover, penal statutes must or construed strictly against the state and in favor of defendant. State v. Blackmon, 304 S.C. 270, 403 S.E. 2d 660 (S.C. 1991).

Accordingly, section 14-9-210, requires strict compliance with its provisions, and mandates that the grand jury must be impaneled under the jurisdiction of the court of General Sessions before Lawful return of a true billed indictment can take place.

However, here evidence will establish that state unlawfully impaneled its grand jury outside the jurisdiction of the court of General Sessions, and then willfully printed and published false and misleading information in its indictment in order to keep secret its violations of statutory Law.

Thus a controversy has come before the court

In this case True Bill of indictment prints that it was returned. At a court of General Sessions convened on February 12, 2016, the grand jurors of Laurens county present upon their oath (see exhibit 1) the indictment is signed by the Solicitor/Assistant Solicitor and ~~no true billed or sealed stamp on the face of indictment~~ further, the title page of state's indictment prints that it was published at a court of General Sessions term as convened on February 12, 2016, However, the evidence presented below will conclusively establish that state printed and published FALSE information in Petitioner's indictment.

The terms of the court of General Sessions for Laurens county are fixed by S.C. code ANN. § 14-5-410 and which does not offer provisions for a court to be open on February 12, 2016, thus state could not have Lawfully returned its indictment" at a court of General Sessions, convened on February 12, 2016, as falsely alleged in state's indictment. See exhibit 1). Also note the same dates on the true bill stamp, because no such court is allowed to be open.

One addition piece of evidence very clearly settles the matter of state's false condition. The information contained in record also establishes that no special term of the court of General Sessions was convened on February 12, 2016, under the provisions of either section 14-5-410, section 14-5-910. or section 14-55-920.

When a Legislative enactment limits the manner in which something may be done, the enactment also evinces the intent that it shall not be done another way. Thus, since the court utilized an unlawful mode of procedure not allowed under section 14-9-210, state lacked the requisite jurisdiction to complete return of its true-billed indictment.

as established above, section 14-9-210 is clearly a jurisdictional statute, and sets forth mandatory procedure to be utilized by state for Lawful return of a true-billed indictment. A substantial body of South Carolina Law holds that a failure to comply with statutory Law jurisdictional in nature deprives the court of subject matter jurisdiction, State v. Lee, 564 S.E. 2d 372 (S.C. App. 2002); State v. Brown, 570 S.E. 2d 559 (Ct. App. 2002); State v. Felder, 437 S.E. 2d 43 (S.C. 1993); State v. Richburg, 304 S.C. 162, 403 S.E. 2d 315 (1991); State v. Loftin, 275 S.E. 2d 575 (S.C. 1981); Gray v. State, 276 S.C. 634, 281 S.E. 2d 226 (S.C. 1981); state v. Brunson, 274 S.C. 220, 262 S.E. 2d 44, 1980); State v. Castleman, 64 S.E. 2d 250 (1951), and many more.

Consequently, and in keeping with the mandatory provisions of section 14-9-210, state has no jurisdiction to issue return of true-billed indictment except during a time when the court of General Sessions is Lawfully convened to oversee the grand jury process. Any acts of the court taken outside those statutory restrictions would by necessity be null and void in fact our supreme court has already determined that no indictment may be true-billed by a grand jury when the court lacks jurisdictional. The grand jury must be impaneled under the jurisdiction of the court of General Sessions before Lawful return of indictment can take place. See State v. McClure, State v. Funderburk, and State v. Wheeler,

Therefore, since no court of General Sessions was convened on the date February 12, 2016, indictment was alleged true-billed the grand jury proceedings would therefore by necessity be held invalid, and its illegally issued indictment null and without binding legal effect.

B. Court Rules order or other processes

It should be noted that section 14-9-210 is not a local rule or statute but a general provision applicable to the courts in every county, and as shown, mandates that the grand jury must be impaneled under the jurisdiction of the court of General Sessions before Lawful return of a true-bill indictment can take place. Thus, section 14-9-210 is clearly a jurisdictional statute, and sets forth the only process allowed for Lawful return of indictment.

No local rule of court, Administrative order, policy, or other procedure can take precedent over statutory Law, which is always controlling. See S.C. constitution Article §§ 1. 4, and State v. Cottingham, 77 S.E. 2d 897, 224 S.C. 181 (1953) (statutes override rules of court if in conflict); State v. Duncan, 264 S.E. 2d 421 (S.C. 1980) (circuit court rule promulgated by individual judicial circuit was unconstitutional and void).

However, the issue of whether or not a local rule, order, policy, or procedure was utilized for process and return of petitioner's indictment is irrelevant, because by state Law, it would still have to be in agreement with the provisions of section 14-9-210 for it to be constitutional.

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]

And, S.C. code ANN. § 14-5-310, Rules of court; "The circuit courts may make and establish all necessary rules for the orderly conducting of business in said courts provided such rules are not repugnant to the Laws of the state or the rules prescribed by the justices of the supreme court and circuit judges
"[Emphasis added].

Thus, under those requirements, no rules can be made or established for process and return of indictments, unless it comports with section 14-9-210. Otherwise, it would be unconstitutional and null, being without binding legal effect.

Additionally, it should be noted that the court of Common Pleas is vested with no authority to take any action on matters pertaining to return of true-billed criminal indictments. "The court is made up of the court of Common Pleas which hears Civil action and the court of General Sessions which hears criminal cases... "See Dove v. GoldKist Inc., 314 S.C. 235, 442 S.E. 2d 598, 600 (S.C. 1994); See also S.C. constitution Article V. § 1.

Thus, there is no grant of concurrent jurisdiction, and therefore no true-bill criminal indictments can be Lawfully issued through grand jury proceedings held before a court of Common Pleas.

Lastly, it should also be noted that a circuit court judge retains no authority on his own standing to conduct and oversee grand jury proceeding; outside the bounds of a Lawfully convened court or General Sessions. "Under our judicial system the presiding judge in the circuit court loses jurisdiction with the adjournment of the term. "See State v. Best, 257 S.C. 361, 186 S.E. 2d 272 (1972) (Citing State v. Thompson, 122 S.C. 40 115 S.E. 326). Also See State v. Rinheart, 430 S.E. 2d 536 (S.C. App. 1993). Therefore if raised by state there would be no merit to the contention that a judge on his own standing retains authority to impanel a grand jury after the close of court, because in this case the record shows that no Lawful term of General Sessions court was in progress on February 12, 2016, see exhibit 1). And as established a judge loses jurisdiction with the adjournment of court thus, no term of court no Lawful Judicial authority.

Accordingly and in this case no court rules, orders or other procedures can be invoked or cited by state to save its unlawful grand jury process, and resulting null indictment. Therefore execute justice and righteousness.

C. Criminal Violations

Also brough before the court judgment area violations of S.C. code ANN. § 16-9-10. Offense Against Public Justice and S.C. code ANN. § 16-17-410.

[Offense Against Public Justice]

S.C. code ANN. § 16-9-10, "perjury and subornation of perjury. States in pertinent part; A (2) It is unlawful for a person to willfully give false, misleading, or incomplete information on a document record, or report, or form required by the Law of this state.

B. (2) A person who violates the provisions of subsection A (2) is guilty of a misdemeanor, and upon conviction, must be imprisoned not more than six months, or fined not less than one hundred dollars. or both.

C. A person may be convicted under this section... if he commits perjury by his own acts, consent, or agreement.

First, as previously shown in subsection A, S.C. code ANN. § 14-9-210, mandates that the county Solicitor shall prepare and process bills of indictment through the jurisdiction of the court of General Sessions. Also established in subsection A, was the fact that Petitioner's indictment was sealed with a true-billed stamp, signed by the Solicitor/ Assistant Solicitor, and contained false information incorrectly printing that it had been processed. "At a court of General Sessions, convened on February 12, 2016, compare Exhibit 1)

Clearly showing that no General Sessions court was convened on February 12, 2016,

Second, it should be noted that a criminal indictment is a document required by the Law of this state in Gentry, our supreme court determined that an indictment is a notice document required by state constitution and statutes. See S.C. constitution Article 1, § 11 and Article V. § 22 [footnote omitted], S.C. code ANN. § 17-19-10 (2003) ("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 specified instances).

Thus, petitioner true-billed indictment satisfies the provisions of section 16-9-10 A (2), perjury, that specify the false information must be included in a document ... required by the Law of this state.

Third, and importantly, it must be emphasized for purposes of blame that an Solicitor/ assistant Solicitor holds full knowledge an understanding of the Law of this state. It is a requirement of the high office of a prosecutor.

The prosecutor occupies a quasi-judicial position, and must see that justice is done, that no conviction take place except in strict conformity with the Law. See e.g. State v. Quattlebaun, 331 S.C. 441, 327, S.E. 2d 105 (S.C. 2000); State v. Durden,

264 S.C. 86, 212 S.E. 2d 387 (1975); State v. King, 222 S.C. 108, 71 S.E. 2d 793 (1952).

Hence, the Solicitor/Assistant is required to know and obey the legal mandates of section 14-9-210, and Lawfully impanel a grand jury accordingly.

As presented above, instead of discharging his responsibilities in conformity with state Law, the Solicitor/Assistant Solicitor broke his oath of office. The Solicitor/Assistant Solicitor intentionally violated the provisions of section 14-9-210 by unlawfully processing Petitioner indictment (See subsection A above). Outside the jurisdiction of the court of General Sessions, and then by willfully printing false and misleading information in the indictment incorrectly stating that it had been returned true-billed to court of General Sessions (See subsection A above). Thus he committed the offense of perjury and must be punished accordingly.

The Solicitor/Assistant Solicitor is now subject to the governing Authority.

[Conspiracy against Public Policy]

S.C. code ANN. § 16-17-410 provides in pertinent part.

The common-law crime known as "conspiracy" is defined as a combination between two or more persons for the purpose of accomplishing an unlawful object, or lawful object by unlawful means.

A person who commits the crime of conspiracy is guilty of a felony and upon conviction, must be fined not more than five thousand dollars or imprisoned not more than five years. From the evidence shown above and in subsection A of this memorandum, it was determined that the Solicitor/Assistant Solicitor committed an offense of perjury against Public Justice by willfully printing false information in petitioner's state indictment.

Here the false and evidence will establish that the Solicitor/ Assistant Solicitor also conspired with several other state Judicial personnel in order to impanel a grand jury outside the authority of the court of General Sessions, to complete return of an illegal true-billed and to print and publish, false indictment information. Petitioner submits that sufficient evidence is presented here to establish the existence of criminal conspiracy.

A "conspiracy" is a combination of agreement between two or more persons for the purpose of accomplishing a criminal or unlawful object, or achieving by criminal or unlawful means an object that is neither criminal nor unlawful. See State v. Buckman, 347 S.C. 316, 555 S.E. 2d 402 (S.C. 2001) (emphasis added).

The gravamen of conspiracy is the agreement or mutual understanding. See State v. Hammitt, (C.S. App. 2000), 341 S.C. 638, 535 S.E. 2d 459, rehearing denied, certiorari granted. If there is one overall agreement among the various parties to perform different functions in order to carry out the objective of the conspiracy, the agreement among all the parties constitutes a single conspiracy. "State v. Dasher, 298 S.E. 2d 215, 217 (S.C. 1986) (citing 16, Am. Jur. 2d, conspiracy § 11 (1979)).

Conspiracy may be shown by circumstantial evidence including the parties consent. State v. Oliver, 275 S.C. 79, 267 S.E. 2d 529 (1980), and under South Carolina does not require an overt act. See State v. Ferguson, 221 S.C. 300, 70 S.E. 2d cert. denied, 344 U.S. 830, 735 S.Ct. 35, 97 L. Ed. 646 (1952).

Preliminary Statement:

For some time now it has been an open secret in this state's Judicial circuit that none of its true-billed indictment are being processed and returned in compliance with statutory Law, and that some unlawful process is being utilized. In fact, several of one more prominent Newspaper have commented on the impossibility of Lawfully returning true-billed indictment at the excessive rates reported, given the known time constraints.

(See exhibit 1).

The grand jury proceedings were most likely held in a back office conference room with Solicitor/Assistant Solicitor overseeing the process. Also present would have been a court Administrative assistant, the clerk of court, the court reporter and grand jury foreman in this case, the actual type of unlawful process utilized on state to complete return of petitioner's true-billed indictment is not important or determinative of the criminal conspiracy issue presented here. However what is determinative is the fact that the grand jury proceedings were held outside the jurisdiction of the court of General Sessions for illegal return of true bill and that the Solicitor/Assistant Solicitor committed an offense of perjury in order to keep secret the unlawful process. That overt act of perjury along with the cooperation provided by other parties to make complete and secret the illegal process, is determinative of the criminal conspiracy issue.

A criminal conspiracy is very clearly evident here unless that is the Solicitor/Assistant Solicitor submits that he forged petitioner indictment otherwise, and realizing that it would have been impossible for the Solicitor/Assistant Solicitor to fully complete return of true-bill indictments on his own, cooperation from the below listed judicial officials would have been necessary.

Here petitioner has restricted the list of conspirators to individuals essential to the state indictment process full blame can be properly determined once the grand jury records are subpoenaed, and the necessary criminal investigation is complete.

Additionally and importantly, it must be pointed out that all the below listed conspirators are state Judicial officials and as such, they are required by virtue of their high offices to possess full knowledge and understanding of the Law of South Carolina in this case, a claim of ignorance to the Law would be unacceptable.

Conspirators and Blame

-First, the circuit court Administrative Judge of Laurens county who was seated in office at the times relevant to the indictments -return date February 12, 2016, would be the state judicial officer directly responsible for the scheduling and ordering a grand jury impaneled outside the bounds of the court of General Sessions. This judge would have been in possession of knowledge concerning the mandatory provisions of section 14-9-210, and still chose to impanel an unlawful grand jury and assist in printing and publishing the false information contained in petitioner's state indictment.

It should be noted that the code of Judicial conduct, cannon 2 (A), states, "A judge shall respect and comply with the Law, and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

Second, the facts and evidence presented above, and in subsection A of this memorandum establish that the Solicitor/Assistant Solicitor violated his oath of office and committed perjury by willfull printing false information in petitioner's indictment. Thus, the Solicitor/Assistant Solicitor is a central figure in the criminal conspiracy.

- Also. it should be noted that the Laurens county solicitor as chief prosecuting officer for the County, directs and supervises the activities of the assistants under his authority. Thus, it would be the Solicitor who is ultimately responsible for the criminal acts committed by the Assistant Solicitor in any case. Moreover the possibility exists that others of the Solicitor's assistants are involved in the same type of unlawful and illegal indictment activities. Therefore the activities of the Solicitor's office should be investigated by the appropriate authorities.

Third, the grand jury foreman was the individual responsible for signing the true bill stamp affixed to petitioner's indictment thus completing and grand validity to the unlawful grand jury process by not signing the false and incorrect true bill

stamp the grand jury foreman by his actions, committed an offense of perjury as well as assisted the other conspirators.

Fourth, the clerk of court pursuant to section 14-9-210, reported petitioner's state indictment with its printed false information to the presiding judge at the court's next term. Moreover, the indictment containing the shown false information would have been filed in the courts Public records.

Fifth, the presiding judge at the petitioner's term of General Sessions court allowed petitioner's indictment containing the false information to be reported and published (See exhibit 1) at his court judge allowed the illegal indictment to enter into the official court records uncalled even he would have known that no county grand juries were being impaneled under the jurisdiction of the court of General Sessions.

Also, it should be noted that the code of judicial conduct cannon 2 (A) requires a judge in this state to comply with the Law and promote public confidence in the integrity of the judiciary.

Again, unless the Solicitor/Assistant Solicitor is willing to admit that acting alone, he knowingly and completely forged petitioner's indictment the existence of a criminal conspiracy is established, because barring the existence of an outright forged indictment. It would have taken the combined effort of the above listed judicial officials all working in concert to establish scheduling to order and impanel the grand jury during a time when no court of General Sessions was scheduling to order and impanel the grand jury during a time when no court of General Sessions was convened, to meet and execute the return of the illegal true bill, to report and publish petitioner's illegal indictment and to then file the illegal indictment into the court records.

It is axiomatic that conspiracy need not be proved by direct evidence of unlawful agreement a conspiracy may be shown by circumstantial evidence including the party's consent. See State v. Oliver, Supra. And the substantive crime on crimes committed in furtherance of the conspiracy constitutes . . . circumstantial evidence of the existence of the conspiracy, its object and scope. See State v. Amerron, 428 S.E. 2d 871 (S.C. supreme court 1993).

In this case, it has been shown that various parties performed different functions in order to carry out, and make complete by an act of perjury, a state indictment process done by unlawful means. Section 16-17-410, provides in pertinent part that conspiracy is defined as a combination between two or more persons for the purpose of accomplishing Lawful object [return of true bill indictment] by unlawful means [illegal grand jury and act of perjury] (insertions added). Accordingly, an offense of criminal conspiracy has come before the court for judgment.

D. Contemporaneous objections and rights violations

Here, petitioner's would show this court that his failure to make timely objections to the illegal grand jury and void indictment were the direct result of state's act of perjury and criminal conspiracy, and that U.S. constitutional Law requires the default to be imputed against the responsible party, the state of South Carolina S.C. code ANN. § 17-1-10, provides that " A criminal action is prosecuted by the state as party, against a person charged with a public offense, for the punishment thereof. Thus, all criminal violations of section 16-9-10, perjury and section 16-17-410. Conspiracy must by necessity be imputed against both the individuals actually responsible and the state of South Carolina.

Consequently, South Carolina is a party to criminal acts.

The record in this case has clearly established that petitioner was indicted by way of a grand jury process that the court of General Sessions had no lawful authority to adopt. And that in order to keep secret the fact of the illegal grand jury the Solicitor/Assistant Solicitor willfully printed false information in petitioner's indictment (See subsection A and C), and then joined into a criminal conspiracy with other state Judicial officials to make effective a null indictment. See subsection A and C.

Consequently the criminal acts of state resulted in violation to petitioner's constitutional rights, and caused his failure to make objections to the illegal grand jury and null indictment.

[Constitutional and statutory rights]

in Gentry, the court held that an indictment is a notice document required by state constitution and statutes. See S.C.

constitution Article 1 § 11 and Article V. § 22 [footnote omitted]. S.C. code ANN. § 17-19-10 (2003) ("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 specified instances).

The primary purposes of an indictment are to put the defendant on notice of what he is called upon to answer i.e. to apprise him of the elements of the offense and to allow him to decide whether to plead guilty or stand trial, and to enable the circuit court to know what judgment to pronounce if the defendant is convicted.

See Evans v. State, 263 S.C. 495, 508-13, 611 S.E. 2d 510, 517-19 (S.C. 2005) (citing Gentry, 363 at 102-03, 610 S.E. 2d at 500).

Furthermore, a sufficient indictment prevents later retrials for the same offense in contravention of the constitutional prohibition against double jeopardy and prevents the prosecutor from usurping the power of the grand jury by ensuring a defendant is tried for the crime which he was indicted. See State v. Tabory, 262 S.C. 136, 139, 202 S.E. 2d 852, 853 (1974), State v. Guthrie, 352, S.C. 103, 108, 572 S.E. 2d 309, 312 (Ct. App. 2002), overruled on other grounds Gentry, 363 S.C. 93, 610 S.E. 2d 404; People v. Grega, 531 N.E. 2d 279, 382 (NY 1988); State v. Lewis, 36 SW 3d 88, 97 (Tenn Crim. App. 2000).

This required notice is a component of the due process that is accorded every criminal defendant. See U.S. constitution Amendment V. S.C. constitution Article 1. § 3.

Additionally a criminal defendant has a constitutional and statutory right to have the indictment issued by a legally constituted grand jury. See e.g. State v. Means, OP. NO. 26105 (S.C. supreme court filed February 6, 2006). See Evans v. State, 363 S.C. 495, 611 S.E. 2d 510 (2005); State v. Williams, 263 S.C. 290, 210 S.E. 2d 298 (1974). Also see S.C. constitution Article 1. § 11 and Article V. § 22, S.C. code ANN. § 14-9-210.

[Contemporaneous objections]

In Gentry, relying on section 17-19-90, ("Every objection to an indictment for any defect apparent on the face thereof, shall be taken by demurrer or on motion to squash such indictment before the jury shall be sworn and not afterwards."), the supreme court held that the sufficiency of an indictment must be challenged before the jury is sworn.

Recognizing Gentry, our supreme court in Evans held that challenges to the legality and sufficiency of the process of a county grand jury also must be made before the jury renders a verdict in order to preserve the error for direct appellate review. See S.C. code ANN. § 14-7-1140 (Supp. 2003), no irregularity in any writ of venire fascias or in drawing summoning returning or impaneling of jurors is sufficient to set aside the verdict, unless the party making the objection was injured by the irregularity or unless the objection is made

before the returning of the verdict. The Evans court overruling several cases, further determined that an indictment which is deemed to be a nullity because it was issued by an illegal grand jury no longer implicate subject matter jurisdiction.

In this case however, petitioner takes the position that a challenge to either the illegal grand jury process or null indictment would be immaterial, because no valid waiver can be entered absolving the state of its criminal conduct, and a null indictment is of no legal effect and therefore nonbinding. Under Law, petitioner's null indictment (See subsection A and C) is by its very nature insufficient to support a conviction or sentence, and protects against double jeopardy. It is an axiomatic rule of Law that an indictment deemed to be a nullity is "something that is legally void" and of no legal effect (citing Blacks Law Dictionary, 8 Ed. 2004, nullity and void) See e. g., Hardison v. GlendHill, 72, GA App. 432, 33 S.E. 2d 921, 924 (void, null ineffectual augatory, having no legal force or binding effect, unable in Law to support the purpose for which it was intended).

And most certainly, a conviction and sentence based, on the fruits of criminal acts cannot be allowed to stand under any circumstances. The facts and evidence in this case very clearly show that state committed perjury and criminal conspiracy, (See subsection A and C) in order to secure its conviction against petitioner, surely the Evans ruling does not stand for the proposition that because state was not caught for its criminal acts in a timely manner, it is granted absolution. For the reason state above petitioner asserts that an objection to state's illegal grand jury and null indictment would be pointless. However, for the sake of argument petitioner would show this court that in Murray v. Carrier, 106 S.Ct. 2639, 2645 (1986) the United States supreme court held that the existence of cause for procedural default [for failure to comply with a state's contemporaneous objection Rule], must ordinarily turn on whether the prisoner can show that some objective factor external to the defense impeded counsel's efforts to comply with the state

procedural rule. The court stated. Without attempting an exhaustive catalog of such objective impediments to compliance with a procedural rule, we note that a showing that the factual or legal basis for a claim was not reasonable available to counsel. "See Reed v. Ross, 468 U.S. at 16, 104 S.Ct. at 2910, or that some interference by officials Brown v. Allen, 244 U.S. 443, 485, 73 S.Ct. 397, 422 97 L.Ed. 469 (1953) made compliance impracticable, would constitute cause under this standard Id 106 U.S. at 2645 in this case, the Solicitor/Assistant Solicitor willfully printed false information in petitioner state indictment (See subsection A). And then joined into a criminal conspiracy to keep secret the illegal grand jury process (See subsection C) surely those acts by state constitute an external factor sufficient to show causes for failure to make timely objection.

Additionally, however, Evans, citing State v. Griffen, 277 S.C. 193, 285 S.E. 2d 634 (1981). State v. Thompson, 305 S.C. 496, 409 S.E. 2d 420 (Ct. App. 1991), hold that the regularity of grand jury proceedings is presumed absent clear evidence to the contrary. And that counsel was therefore, not ineffective for failing to request and review the impaneling documents and supporting materials.

In this case, it seems that state utilized that presumption of correctness to assist in keeping its criminal acts secret and to make effective an unlawful taking of petitioner's rights to make contemporaneous objections. State used to its benefit the fact that no one would be checking into its grand jury process.

Therefore, in light of the United States supreme court's decision in Murray v. Carrier, and taking into consideration state's criminal acts, the responsibility for petitioner's failure to make timely objections to the illegal grand jury and null indictment, must be imputed to state.

This court should also take note of the fact that in State v. Arthur, 296 S.C. 495, 374 S.E. 2d 291 (1988), the court held that a waiver of a constitutional and statutory right requires a showing on the record that a defendant made the waiver knowingly and intelligently, citing Patton v. United States, 281 U.S. 276, 50 S.Ct. 253, 74 L.Ed. 854 (1930) as the Landmark case. That same standard should be applied here, because under no circumstances, can state be allowed to use criminal means to effect a forfeiture of petitioner's right to make objections.

Here, petitioner is convicted and sentenced pursuant to a null indictment and illegal grand jury made effective by criminal acts committed by state in order to keep secret its unlawful procedures. A null indictment by its very nature does not protect petitioner against double jeopardy and is insufficient to enable the court to pronounce judgment. See also section 17-25-10. In this case, state violated nearly every component of the due process notice requirement that's owed to petitioner. State, however, seems to have overlooked one very essential fact; God's righteous justice always prevails. Accordingly, and for the reasons shown above this court should remand this case back to the lower court in order to allow petitioner to enter belated objections to state's illegal grand jury and null indictment.

Petitioner would show is this court, that as a result of the criminal violations committed by state in this case, the lower trial court was divested of the requisite authority to impose sentencing.

Section 17-25-10 provides that:

No person shall be punished for an offense unless duly and legally convicted thereof, in a court having competent jurisdiction of the cause and of the person.

South Carolina Law holds that words of a statute must be given their plain and ordinary meaning without resort to subtle or forced construction. See State v. Muldrow, 348, S.C. 264, 559 S.E. 2d 847 (2003), And statutory prescriptions couched in language such as shall and must are mandatory in application

and effect. See e.g., South Carolina Police officers Ret. vs v. City of Spartanburg, 301 S.C. 188, 191, 391 S.E. 2d 239, 241 (1990); Starnes v. South Carolina Dept. of Public Safety, 342 S.C. 216, 221, 535 S.E. 2d 655, 667 (Ct. App. 2000).

A plain reading of section 17-25-10 requires that a criminal defendant cannot be punished [sentenced] for an offense until after the state has duly and legally convicted the individual. That did not happen in this case.

As established above in subsection A, state knowingly violated the provisions of S.C. code ANN. § 14-9-210 by, (1) unlawfully impaneling its grand jury outside the jurisdiction of the court of General sessions, (2) utilizing an unlawful process for the return of true bill, and (3) causing false information to be printed and published in petitioner's indictment, consequently, the grand jury was illegal and its indictment null.

As established above in subsection C. the Solicitor/Assistant Solicitor knowingly committed an offense of perjury in violation of S.C. code ANN. § 16-9-10, by willfully printing false and misleading information in petitioner's state indictment. Additionally several judicial personnel joined into a criminal conspirator, in violation of S.C. code ANN. § 16-17-410, for purposes of completing return and publications of state's illegal and void indictment.

As established above in subsection 1), State's unlawful indictment process and subsequent criminal acts, resulted in an illegal grand jury a void indictment a denial of petitioner's rights to make objection to the indictment, and violation of every component of the due process notice requirement owed to petitioner by this state.

Accordingly, it would be hard to imagine a situation where the state of South Carolina has violated more of a criminal defendant's rights, than in this case found here. In deed, it would take a novel rule of Law, which would allow the state to maintain a conviction and sentence under the circumstances described above.

To adopt such a Rule of Law here would be tantamount to an unrighteous.

And Perverted Judgment.

Based on the above reasons Petitioner has established that he was not duly and legally convicted, and therefore was sentenced in violation of section 17-25-10. Accordingly, the sentence in this case should be vacated.

Conclusion

The holding in Evans, should not stand for the proposition that a conviction and sentence gained through judicial acts of perjury and criminal conspiracy can be declared lawful, judicial integrity will have been lost if the state is not constrained by its own statutory and criminal Laws. Basis United States constitutional due process Law ditates, with authority, that under no circumstances can a state commit criminal acts against its citizens in the name of judicial economy.

Petitioner would point out that in this case the criminal acts committed by state clearly establish the essential elements of fraud on the court in addressing a case involving fraud on the court, the United States supreme court explained that to be granted relief under the provisions, of Rule 60 (b) (3), Fed R. civil Proc., the issue turns on whether the alleged misconduct "harms" the intergrity of the judicial system.

" Tampering with the Administration of justice in the manner undisputedly shown here involves far more than injury to a single litigant. It is a wrong against the instituion set up to protect and safeguard the public institution in which fraud cannot complacently be tolerated consistently with the good order of society. Surely it cannot be that preservation of the integrity of the judicial process must always wait upon the diligence of litiigants. The public welfare demands that the agencies of public justice be not so impotent that they must always be mute and helpless victims of deception and fraud. Hazet Atlas Glass Co. v. Hartford Empire Co., 322 U.S. 238, 246, 64 S.Ct.

Accordingly, fraud on the court is misconduct by an officer of the court that is directed at the judicial machinery itself. Thus, fraud on the court is very evident here. . .

However, it should be noted that even if appropriate, the filing of a state Rule 60 (b), (3) S.C. Rules of Civil Proc., would not be proper in this case due to the criminal conspiracy issues raised implicating the very circuit court judges who in all likelihood would be instrumental in ruling on the motion Hence Petitioner has no other adequate remedy at Law except the person action at bar.

In sum, determination of the issues raised in this petition must by necessity be resolved through consideration of one question can the state of South Carolina commit acts and gross misconduct in order to gain a conviction. Petitioner would pray the answer no

Therefore, based on the reasons above Petitioner respectfully moves this court to grant a writ of mandamus, and issue an order specifically directing the lower court to allow entry of belated objections, to hold invalid the unlawful grand jury process and to squash state's null indictment.

Additionally, Petitioner moves this court to initiate an official investigation into the herein alleged misconduct and criminal violations of Law or in the alterative, vacate the illegal conviction and sentence.

RESPECTFULLY SUBMITTED,

WITNESSES

Tyrone Goggins
Clinton Police Department

WARRANT NUMBER

2015A3020100467

True Bill
Louis Childs
Foreman of the Grand Jury
Date: 2/12/16

VERDICT

Foreman

THE STATE OF SOUTH CAROLINA

COUNTY OF LAURENS

COURT OF GENERAL SESSIONS

February Term, 2016

Indictment # 16GS30- 0 227

THE STATE

vs.

Frederick Calvin Jones

INDICTMENT FOR

Murder

§16-03-0010

CDR: 0116

A TRUE COPY OF ORIGINAL
Lynn W. Lancaster
Lynn W. Lancaster
Laurens County CCCP & GS

THE STATE OF SOUTH CAROLINA

COUNTY OF LAURENS

INDICTMENT FOR

Murder
§16-03-0010

At a Court of General Sessions, convened on the 12th day of February, 2016, the Grand Jurors of Laurens County present upon their oath:

That Frederick Calvin Jones did, on or about November 17, 2015, in Laurens County, willfully, feloniously, and with malice aforethought kill one Calvin Walker by means of shooting and that the said Calvin Walker did die in Laurens County as a proximate result thereof on or about November 17, 2015, in violation of Section 16-3-10 of the South Carolina Code of Laws, 1976, as amended.

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

O. Warren
Deputy Solicitor

LAURENS COUNTY CCP & GS
Lynn W. Lancaster
Lynn W. Lancaster
A TRUE COPY OF ORIGINAL

STATE OF SOUTH CAROLINA)
COUNTY OF LAURENS)

IN THE COURT OF COMMON PLEAS
FOR THE EIGHTH JUDICIAL CIRCUIT
Case No. 2018-002232

Frederick Calvin Jones, # 321866
Applicant,

VS.

CERTIFICATE OF SERVICE

STATE OF SOUTH CAROLINA)
Respondent.)

I, Frederick Calvin Jones, # 321866, being duty sworn upon my oath, depose and say I have subscribed to the foregoing Pro-Se brief, that I know the contents thereof, that it includes every grounds known to me for vacating setting aside or correcting the conviction and sentence in this above case attacked in this matter. And allegations therein set forth are true. I do hereby under oath and penalty orperjury certfy that I have served copies of this pro se brief upon the below party.

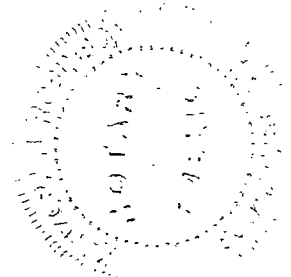
South Carolina court of Appeals
Jenny Abbott Kitchings, clerk
Post Office Box 11629
Columbia, SC 29211

S/ Frederick C. Jones
Frederick C. Jones, # 321866

Sworn to and subscribed before me
This 17th day of December 2019

Kangera Robinson
Notary Public For South Carolina

My Commission Expires: 8/5/2024



RECEIVED
DEC 19 2019
SC Court of Appeals

Mr. Frederick Calvin Jones, # 321866
Broad River Correctional Institution
Marion Unit A - 243
4460 Broad River Rd.
Columbia, SC 29210

Date: 12-17-2019

South Carolina court of Appeals
Jenny Abbott Kitchings, Clerk
Post Office Box 11629
Columbia, SC 29211

RECEIVED

DEC 19 2019

SC Court of Appeals

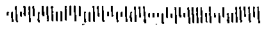
RE: APPELLATE CASE NO. 2018-002232

This will acknowledge receipt of the notice that I received on November 13, 2019, in regarding my appeal. My counsel advised me that I have forty-five (45) days of the date of the letter to file with this court a pro se brief addressing any issues that I may have for the court consideration. Which I have submitted to this court this memorandum of Laws I would like for this Honorable court to take into consideration.

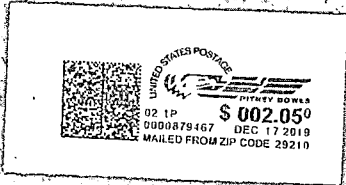
Sincerely,

S/ Frederick C. Jones

Frederick C. Jones, # 321866



Mr. Frederick Calvin Jones, # 321866
 Broad River Correctional Institution
 Marion Unit A - 243
 4460 Broad River Rd.
 Columbia, SC 29210



RECEIVED
 DEC 19 2019
 SC Court of Appeals

South Carolina Court of Appeals
 Jenny Abbott Ritchings, Clerk
 Post Office Box 11629
 Columbia, SC 29211

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