

ORIGINAL

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Letitia H. Verdin, Circuit Court Judge

RECEIVED

Appellate Case No. 2017-001353

MAY 25 2018
SC Court of Appeals

THE STATE,RESPONDENT

v.

JEROME WILLIAMS,APPELLANT.

SUPPLEMENTAL RECORD ON APPEAL

JEROME WILLIAMS, #213559
Tyger River Correctional Inst.
200 Prison Road
Enoree, South Carolina 29335

APPELLANT, PRO SE

ALAN WILSON
Attorney General

J. BENJAMIN APLIN
Senior Assistant Deputy Attorney General

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
(803)734-3727

W. WALTER WILKINS, III
Solicitor, Thirteenth Judicial Circuit

305 North Street, Suite 325
Greenville, South Carolina 29601
(864) 467-8647

ATTORNEYS FOR RESPONDENT

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STATE OF SOUTH CAROLINA)

) IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE)

) 2002-CP-23-6815

) Jerome Williams, # 213559,)

) Applicant,)

) v.)

) **ORDER DENYING**
) **POST-CONVICTION RELIEF**

) State of South Carolina,)

) Respondent.)

PROCEDURAL HISTORY

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed October 7, 2002. Respondent made its Return on April 30, 2003. An evidentiary hearing into the matter was convened on December 4, 2003, at the Greenville County Courthouse. Applicant was present at the hearing and was represented by Andrew R. McKenzie, Esquire. Respondent was represented by Christopher L. Newton of the South Carolina Attorney General's Office.

JWS

At the hearing, Applicant testified on his own behalf. Testifying on behalf of the State was Ernest N. Irby, II, Esquire. This Court also had before it a copy of the transcript of the proceedings against Applicant, records of the Greenville County Clerk of Court, and Applicant's records from the South Carolina Department of Corrections (SCDC).

The records before this Court indicate Applicant is presently confined in the SCDC. Applicant was indicted at the November 2001 and February 2002 terms of General Sessions by the Greenville County Grand Jury for Burglary in the First Degree (02-GS-23-1576), two counts of Burglary in the Second Degree (02-GS-23-1563, 1575), and two counts of Grand Larceny (01-GS-

23-7889, 7891). Ernest N. Irby, II, Esquire represented Applicant on the charges. On June 19, 2002, Applicant pled guilty as indicted. The Honorable John C. Few sentenced Applicant to thirty (30) years for burglary first, two concurrent fifteen (15) year terms for the burglary second convictions, and two concurrent terms of five (5) years on the grand larceny convictions. Applicant did not appeal his conviction or sentence.

In his application for PCR, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel;
2. Involuntary guilty plea; and
3. The trial court lacked subject matter jurisdiction.

DISCUSSION OF THE FACTS

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This Court has had the opportunity to review the record in its entirety and has heard the testimony at the PCR hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility, and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

At the hearing, Applicant testified regarding various factual issues. Applicant testified he was not told what charges to which he was pleading, and claimed the indictments were not read to him. He stated that he arrived at the courthouse under the impression that he was being transported for a trial on a burglary charge but ended up pleading to all charges, and was not prepared to do so. Applicant claimed all the charges except one did not occur in Greenville; therefore, venue was improper. He also alleged his trial counsel never discussed a twenty-year plea offer; Applicant claimed he was told the arrangement was for fifteen years. Applicant claimed trial counsel was

supposed to ask the court for a fifteen year sentence, but did not; instead, he asked for a fifteen to twenty year sentence. Applicant claimed as well that he was not told he could appeal his guilty plea. He further testified that the trial court failed to discuss his other burglaries with him.

In addition to the testimony of Applicant, this Court also heard the testimony of trial counsel Ernest N. Irby, II. He testified that he fully discussed the plea with Applicant, and informed Applicant that he would be pleading to all pending charges. Further, trial counsel had no reason to challenge the venue because he believed it was proper. He also stated that he discussed a twenty-year plea arrangement with Applicant, and never told him the deal was for fifteen years. According to counsel, Applicant lost this more favorable offer for less time that was extended by the solicitor early on when he refused the offer, and it was taken off the table. Trial counsel further pointed out that he had obtained the dismissal of numerous charges in the negotiations that led to the guilty plea. Finally, counsel testified that he had discussed with Applicant his right to appeal, but he was never asked to file an appeal.

DISCUSSION OF THE LAW

In a PCR action, Applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, Applicant must prove "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, Id.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume counsel rendered adequate

JWS
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assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, Id. Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, Applicant must prove counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625, *citing Strickland*. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court does not find Applicant's testimony to be credible. Trial counsel's testimony is found credible. This Court finds Applicant has failed to show his trial counsel rendered deficient performance in this case. In addition, this Court finds no legal problem regarding either arraignment issues or venue in Applicant's case. Applicant's claim that he was not prepared to plead and that counsel failed to properly advise him of the charges and the status of the cases is without merit. Additionally, there is no merit to Applicant's claim that the sentence imposed was greater than one promised to him. Further, trial counsel persuaded the State to drop a number of charges in his negotiations for the plea, and Applicant received a significant benefit for accepting the plea offer. Trial counsel was never asked to file an appeal in this case. Applicant has simply failed to show any

prejudice arising out of any alleged errors. There is no reasonable probability that the result of the proceeding would have been different but for the alleged errors.

CONCLUSION

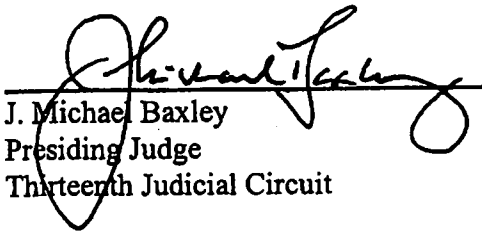
Based on all the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations requiring this court to grant his application. Therefore, this application for PCR must be denied and dismissed with prejudice.

This Court advises Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order to secure the appropriate appellate review, if he so desires. His attention is also directed to South Carolina Appellate Court Rule 227 for appropriate procedures after notice has been timely filed.

IT IS THEREFORE ORDERED:

1. That Application for PCR must be denied and dismissed with prejudice; and
2. Applicant must be remanded to and remain in the custody of the Respondent.

AND IT IS SO ORDERED this 6th day of February, 2004.



J. Michael Baxley
Presiding Judge
Thirteenth Judicial Circuit

Hartsville, South Carolina.

Jerome Williams

Tyger River Correctional Institution

Unit 3, 114A

Enoree, S.C. 29335

October 6, 2014

Clerk of Court

305 E. North Street

Greenville, S.C. 29601

Re: Filing of 60 (b) (3) (5) Motion with Clerk's office

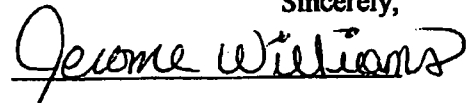
Dear Honorable Clerk,

Would you please be so kind as to file this 60 (b) (3) (5) motion at your earliest convenience.

In advance, I would like to make you aware that I have served this Motion along with proof of Service on the 13th Circuit Solicitor's office.

Thank you for your valuable time on this matter. In kind regards,

Sincerely,



Jerome Williams, 213559

Enoree, S.C. 29335

Cc: 13th Circuit Solicitor

FILED
CLERK OF COURT
GREENVILLE CO. S.C.
PAUL H. HICKENSHIER
2014 NOV 20 PM 10 32

State of South Carolina
County of Greenville

Jerome Williams
Defendant

-vs.-

State of South Carolina
Plaintiff.

In the Court of General Sessions
Case No: 02-~~65~~-23-1576

02-65-23-1576

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL D. WOODRUM/STEN
2019 NOV 20 AM 10 32

Notice of motion, and motion to set aside judgment

To plaintiff, State of South Carolina

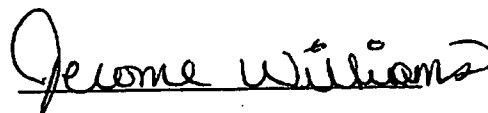
You will please take notice that Jerome Williams, moving Pro se, will so move before Honorable Judge John Few, to have the court issue an order setting aside the Judgment of Conviction and sentence entered on June 19, 2002 in the above mentioned matter.

This motion is based on fraud upon the Court, and shall be heard at a date and time specified by the court.

Defendant Jerome Williams, pro se, and pursuant to rule 60 (b) (3) (5), of the South Carolina Rules of Civil Procedure ("SCRCP") to have the June 19, 2002 judgment of conviction and sentence entered in the above-captioned matter, set aside because of a shown fraud upon the court. Specifically, the Greenville County Assistant Solicitor Lora A. Reese who was in office at the time of defendant's indictment and judgment and conviction and sentence, engaged in acts of perjury and gross misconduct, thereby interfering with the proper function of the Judicial process.

This motion is supported by with attached memorandum and exhibits. Therefore, Defendant Jerome Williams, for good cause shown, hereby moves this court to schedule an evidentiary hearing at the soonest available date for the taking of additional evidence and testimony in support of the claims herein alleged.

I so move,



Jerome Williams, #213559
Tyger River Correctional Institution
Unit 3, 114A
Enoree, S.C. 29335

Solicitor 13th Judicial Circuit
305 E. North Street
Greenville, S.C. 29601

Plaintiff's Attorney

State of South Carolina
County of Greenville

Jerome Williams
Defendant

-vs.-

State of South Carolina
Plaintiff.

In the Court of General Sessions

Case No: ~~02-65-23-1576~~

02-65-23-1576

Memorandum in support of motion to set aside
judgment.

Comes now the defendant, Jerome Williams, Pro se, and herby submits the memorandum in support of his rule 60 (b) (3) (5), SCRCF, motion to set aside judgment, raising claim of a fraud upon the court, as perpetrated by Greenville County Assistant Solicitor Lora A. Reese. Accordingly, defendant Jerome Williams (hereafter "Williams") would show this court the following:

I

Statement of Facts

Williams was convicted and sentenced in the Court of General Sessions, for Greenville County, after entering a guilty plea on June 19, 2002 for violation of S.C. Code Ann. { 16-11-311 Burglary First Degree. Judge John Few accepted Williams' plea and sentenced him to a thirty (30) year period of incarceration in the S.C. department of Correction.

II

Statement of Case

This motion involves Williams' attempt to gain relief from the judgment and conviction and sentence entered against him on June 19, 2002 in the above captioned criminal case. The rule 60 (b) (3) (5), SCRPC motion raises claim of a fraud upon the court, resulting from acts of gross misconduct and criminal violation of the law, as perpetuated by Lora A. Reese, the Greenville County Assistant Solicitor, in office on February 19, 2002, at the time the violations herein alleged arose.

Specifically, Assistant Solicitor Lora A. Reese (hereafter "Reese") caused false and misleading information to be printed and published in the true billed State Indictments returned against defendant Williams.

The facts and evidence below will conclusively establish an instance of extrinsic fraud upon the court.

III

Argument

[Standard of Review]

It is clear that a motion made for relief from judgment under Rules of Civil Procedure (SCRPC) rest within the sound discretion of the trial court. See Savo Investments V. Ocean Holiday Partnership, 314 S.C. 116, 441 SE2d 835, 843 (ct App 1994); Thomas V. Hammond, 279 S.C. 115, 382 SE2d 900 (S.C. 1989). A motion asserting "Fraud upon the court concerns the integrity of the Judicial process itself [and] a judgment may be set aside for fraud upon the court at any

time”; see 12 Joseph T. McLaughlin, Morris Federal Practice {60.21 [4] [a] at 60-61. That is, when a party can show [extrinsic] fraud upon the court “there is no time limit on any party or the court.” Id. See also Chewing V. Ford Motor Credit Co. 354 S.C. 72, 579 SE2d 605 (S.C. 2003). (There is no statute of limitation when a party seeks to set aside a judgment due to fraud upon the court.) Indeed, the very language of rule 60 (b) (3) (5), so provides, “This rule does not limit the power of the court...to set aside a judgment for fraud upon the court.”

Accordingly, this motion raising claim of an extrinsic fraud upon the court is both timely and proper, and Williams should be allowed to take testimony and present evidence at the hearing when scheduled.

Therefore, Williams would show this Court the following:

[Fraud Upon the Court]

In this case, Williams’ bill of indictment prints that, at a Court of General Sessions, convened on February 19, 2002, the Grand Jurors of Greenville County presented upon their oath (see exhibit 1 Indictment) and the title page prints that it was published at a Court of General Sessions during its February term 2002 (see exhibit 1 Indictment). Lastly, all indictments are true billed and signed by Greenville County Assistant Solicitor Lora A. Reese (see exhibit 1 Indictment) who was in office at the time, and who would therefore be the person directly responsible for preparing and processing Williams’ indictment.

However, the clear evidence presented below conclusively establishes that no Court of General Sessions had in fact been open on the indictment’s February 19, 2002 date of return. Thus, false information is contained in Williams’ State indictment, and therefore, in support of his claims, Williams would show this court the following:

The terms of court for Greenville County are tentatively fixed by S.C. code Ann. { 14-5-790, and which does not provide for a court to be open on the indictments day or return and publishing. Although in practice, the Greenville County terms of court are actually being set in six month intervals by order of the State Supreme Court. However, notwithstanding those conditions, the record clearly shows that no General Sessions Court had been open on the date in question (see exhibit 2 certified true copy court term calendar). Therefore, false information is contained in Williams' State Indictment, which was processed by Assistant Solicitor Lora A. Reese.

It is an offense against public justice to willfully give false information in a state indictment. S.C. code Ann. { 16-9-10, "Perjury and subordination 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, 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 or she commits perjury by his own act, consent or agreement.

First, it should be noted that a criminal indictment is a document required by the law of this state (see S.C. code Ann. {17-17-10 (2003) "No person shall be held to answer in any court for an alleged criminal offence, unless upon indictment by Grand Jury" except in specific

instances). Therefore, for purposes of establishing perjury under these provisions of {16-9-10, Williams true billed indictment would clearly satisfy the requirements of subsection A. (2).

Second, it should be noted that Assistant Solicitor Lora A. Reese was in office and operating as Greenville County Prosecutor during the times relevant to the herein alleged violations, and therefore, was required to know the laws of this state, and had special responsibilities to see that justice was done. See Appellant Court Rules 407, Rules of Professional Conduct, Rule 3.8 comment; see also State V. Quattlebaum, 338 S.C. 86, 212 SE2d 587 (1975); State V. King, 222 S.C. 108, 71 SE2d 793, 798 (1952) "...the 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 rights or privileges".

[Insert added]

Therefore, Assistant Solicitor Reese's act of printing false court term information in Williams' indictment would by necessity have to be viewed as a "willful" act. Accordingly, Ms. Reese is guilty of violations of {16-9-10, which acts would also constitute gross misconduct (see Rules of Professional Conduct, Rule 407, SCRPC; Rule 8.4b) "It is professional misconduct for a lawyer to commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects"; and Rule 8.4(d) "It is professional misconduct for a lawyer to engage in dishonesty, fraud, deceit or misrepresentation".

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 its impartial task of adjudging cases that are presented for adjudication" (see Evan V. Gunter, 294 S.C. 525, 366 SE2d 44, 46 [1988], quoting H. Lightsey, J. Flannagon, S.C. Civil Procedure, 408

2nd ed. [1985]). Importantly, our Supreme Court in Chewing held that, “The subordination of perjury by an attorney and/or the intentional concealment of documents by an attorney are actions which constitute extrinsic fraud” Id at 579 Se2d at 610.

Defendant Williams asserts that the facts and evidence presented above showing Reese’s criminal violations of {16-9-10 “perjury against public justice” is in and of itself sufficient under Chewing to make out a Prima facie case of extrinsic fraud upon the court. Plainly, the false February 19, 2002 information printed and published in Williams’ indictment by Assistant Solicitor Lora A. Reese did indeed harm the integrity of the judicial process.

Therefore, Williams would also show this court the following:

A criminal defendant in this state has a constitutional and statutory right to have an indictment returned by a legally constituted Grand Jury (see Evans V. State, 363 S.C. 495, 611 SE2d 510 [2005]; State V. Williams 263 S.C. 290, 210 SE2d 298 [1974]), and the right to make contemporaneous objections to a defective indictment, see S.C. Code Ann {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.” Those procedural Due Process rights are owed to every criminal defendant in this state, and which also operates as checks and balances in the Judicial Process. However, in this case, the proper functioning of the court was frustrated by Ms. Reese’s willful act of printing false information in Williams’ indictment, incorrectly stating that the Grand Jury had been impaneled at a court of General Sessions on February 19, 2002 when in fact no such court had been open (see exhibit 1 indictment in comparison with exhibit 2 calendar). Thus Ms. Reese was able to

give an appearance of correctness to an otherwise irregular and most likely unlawful Grand Jury process (see exhibit 3, Newspaper Article).

Significantly, the false information also operated in such a manner as to improperly lead Williams into believing that the Grand Jury process had been supervised by the Court. In fact, it was this very reliance on the correctness of process that caused Williams not to make a contemporaneous objection to either the Grand Jury procedures, or its indictments. Importantly, Williams' failure to make contemporaneous objection to false indictment information also resulted in the court itself be deprived of the opportunity to examine and make necessary correction to a Grand Jury process known for its irregularities, (see exhibit 3, Newspaper Article). Interfering with the administration of justice in the manner shown here involves injury not only to Williams, but to public confidence in our state's judicial system as well. The proper functioning of our courts is a topic of great and fundamental interest in South Carolina, (see Quattlebaum, 338 S.C. 441 527 SE2d 109 (2000), "Every South Carolinian has a vital interest in the fair administration of justice").

Based on the facts and evidence presented in the record of this case, Williams has established that Assistant Solicitor Reese committed gross acts of misconduct and perjury against public justice, directed at the Judicial Process itself. Accordingly, fraud upon the court is shown here, (see Chewing and Evans, Rule 60 (b) (3) (5), SCRCP, places no limit on the power of the court to set aside judgment of conviction and sentence for a fraud upon the court.

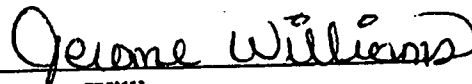
Therefore, this court should correct its wrongs committed against Williams and this state's judicial system by Ms. Reese.

Conclusion

Accordingly, setting aside the judgment of conviction and sentence on Williams 60 (b) (3) (5), SCRCF, motion is an appropriate sanction under the circumstances found here, because it would act to both protect the integrity of our judicial system and vindicate Williams, victimized by Assistant Solicitor Lora A. Reese's acts of gross misconduct and violations of {16-9-10 resulting in fraud upon the court.

Dated: 10-13-14

Respectfully Submitted



Jerome Williams

Defendant Pro Se

Tyger River Correctional Institution

Unit 3, 114A

Enoree, S.C. 29335

Solicitor 13th Circuit
Attorney for Plaintiff
305 E. North Street
Greenville, S.C. 29601

State of South Carolina
County of Greenville

In the Court of General Sessions
Case No: 02-65-23-1576

Jerome Williams
Defendant

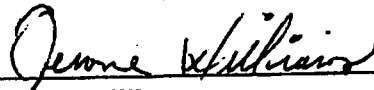
-vs.-

State of South Carolina
Plaintiff.

Verification

Jerome Williams, being first duly sworn, says that he is the defendant herein, and has read the forgoing Motion with Memorandum, and knows that the contents there of, that the same is true of his own knowledge, and those matters he believes to be true.

Dated: 10-13-14



Jerome Williams
Defendant Pro Se
Tyger River Correctional Institution
Unit 3, 114A
Enoree, S.C. 29335

Sworn and affirmed to me

this 13th day of Oct., 2014

Herbert J. [Signature]
Notary Public for South Carolina

My commission expires 1-14-2019

State of South Carolina
County of Greenville

Jerome Williams
Defendant
-vs.-
State of South Carolina
Plaintiff.

In the Court of General Sessions
Case No: ~~02-65-23-1576~~

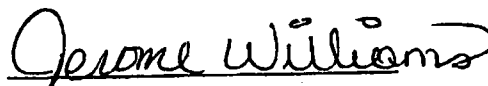
02-65-23-1576

Proof of Service

I do hereby certify that I have served the attached NOTICE OF MOTION TO SET ASIDE JUDGMENT, WITH MEMORANDUM IN SUPPORT, on Plaintiff by depositing a copy of it in the U.S. Mail, postage prepaid and addressed to the following:

Clerk of Court
305 E. North Street
Greenville, S.C. 29601

Solicitor 13th Circuit
305 E. North Street
Greenville, S.C. 29601



Jerome Williams
Tyger River Correctional Institution
Unit 3, 114A
Enoree, S.C. 29335

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
 The State of South Carolina)
)
 v.)
)
 Jerome Williams,)

IN THE COURT OF GENERAL SESSIONS
 THIRTEENTH JUDICIAL CIRCUIT

Case No. 02-^{As}~~68~~-23-1576
 02231576

REPLY TO MOTION TO SET ASIDE
 JUDGMENT

FILED
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 AW

On June 19, 2002, in Greenville County, Jerome Williams pled guilty to first-degree burglary and received a sentence of 30 years imprisonment in the South Carolina Department of Corrections. He now moves to set aside the judgment, pursuant to Rule 60(b)(3) and (5) of the South Carolina Rules of Civil Procedure. Williams' motion is untimely and without merit and, accordingly, should be denied.

Jurisdiction is proper in the Court of General Sessions

Williams moves pursuant to the South Carolina Rules of Civil Procedure to set aside the criminal sentence imposed on him. Any motions related to a criminal sentence are proper under the South Carolina Rules of Criminal Procedure. *See* Rule 37, SCRCrimP ("These rules shall apply to every trial court of criminal jurisdiction within this State"); Rule 1, SCRCP ("These rules govern the procedure in all South Carolina courts in all suits of a civil nature"). Williams last filed documents with the court relating to the Post Conviction Relief (PCR) action related to his plea. (Case number 2002-CP-23-06815, dismissed December 8, 2003). It is possible he filed this motion in the court of common pleas and pursuant to Rule 60(b)(3), SCRCP, under the mistaken belief the motion relates to the PCR action. The allegations in the motion, however, relate to the indictment and guilty plea, not to the PCR, and thus the motion is

proper in the court of general sessions and subject to the South Carolina Rules of Criminal Procedure. The rules provide Williams ten days from the date of his sentence to make any motions based on the facts alleged herein. *See* Rule 29(a), SCRCrimP. More than ten days have passed since Williams was sentenced. As such, the motion is untimely and should be denied. Should the Court decide Williams' motion may be heard in the court of common pleas, it should deny the motion as untimely and without merit.

The Motion is Untimely

Williams moves pursuant to Rule 60(b)(3) of the South Carolina Rules of Civil Procedure to set aside the judgment based on alleged fraud upon the court by the Assistant Solicitor assigned to his case. Specifically, Williams alleges the Assistant Solicitor committed extrinsic fraud by "caus[ing] false and misleading information to be printed and published in the true billed [i]ndictment returned against" him by the Greenville County Grand Jury. (Williams' Motion, page 2). He argues February 19, 2002, the date listed as that on which the grand jury convened and his indictment was presented, is incorrect. Williams argues the Assistant Solicitor willfully conveyed "false court term information" and therefore committed a fraud upon the court as would entitle him to relief from the judgment under Rule 60(b). (Williams' Motion, page 5).

The proper means for Williams to address the alleged defect in the indictment in this case would have been to file a motion to quash the indictment. S.C. Code Ann. §17-19-90 (Supp. 2013). A motion to quash an indictment is timely when it is made before the jury is sworn in a trial, and at the equivalent time during a guilty plea. *See Thompson v. State*, 357 S.C. 192, 593 S.E.2d 139 (2004) ("Non-jurisdictional defects apparent on the face of the indictment must be timely raised as required by S.C. Code Ann. §17-19-90 (2003) or they are waived."); *Hooks v. State*, 353 S.C. 48, 577 S.E.2d 211 (2003) ("[§17-19-90] applies to guilty pleas as well as those

actions tried by jury.”). As Williams did not move to quash the indictment at the appropriate time, his right to do so is now waived.

Williams instead has chosen to allege this error through a post-judgment motion based on Rule 60(b)(3), which allows a party one year from the date of a judgment to file a motion to set aside the judgment. The residual clause of Rule 60 states the statute of limitations “does not limit the power of a court to entertain an independent action to . . . set aside a judgment for fraud upon the court.” The South Carolina Court of Appeals has construed the residual clause to allow a party to file an action to set aside a judgment based on extrinsic fraud outside the one-year limit. *See Evans v. Gunter*, 294 S.C. 525, 366 S.E.2d 44 (Ct. App. 1998).

Here, Williams argues the alleged error by the Assistant Solicitor constitutes extrinsic fraud on the court which renders his motion timely. As discussed below, Williams has not proven extrinsic fraud exists in this case as would entitle him to relief from judgment and take this motion outside the statute of limitations. Therefore, if anything, his Rule 60(b)(3) motion is one for relief on the basis of intrinsic fraud or misrepresentation and is subject to the one-year statute of limitations contained in Rule 60. Williams pled guilty and was sentenced on June 19, 2002, and did not file his motion until October 6, 2014. The motion to set aside judgment is untimely and should be denied.

Williams’ motion refers numerous times to Rule 60(b)(5); however, he does not offer any argument to support relief based on the judgment having been “satisfied, released, or discharged” or to support the proposition that “it is no longer equitable” for the judgment to be applied, as this section requires. Therefore, Williams’ motion pursuant to Rule 60(b)(5) should be deemed abandoned.

The Motion is Without Merit

Should the Court decide Williams' allegations involve extrinsic fraud and therefore are not limited by the statute of limitations contained in Rule 60, the Court should deny the motion as without merit. Williams argues the Assistant Solicitor committed perjury and fraud upon the court when she entered what he believes is the wrong date of the grand jury session into the body of his indictment for first-degree burglary. This argument fails.

Exhibit 2 to Williams' motion is a copy of the Circuit Court Judge Assignments for the month of February 2002. Based on this exhibit, he argues "no Court of General Sessions had in fact been open on the indictment's February 19, 2002 date of return" which would mean the date listed in the body of the indictment is incorrect. (Williams' Motion, page 3). The Greenville County Grand Jury did in fact convene on February 19, 2002, as ordered by the Chief Administrative Judge for General Sessions in Greenville County. (See State's Exhibit A). Williams' confusion perhaps lies in the fact that the grand jury term is not listed on the schedule on which he relies, or in the reference to State Grand Jury proceedings held on February 22. (See Williams' Exhibit 2).

Neither the lack of a specific reference to the Greenville County Grand Jury nor the reference to the State Grand Jury on Williams' Exhibit 2 means the date of the grand jury term listed on the indictment in question is incorrect. Rather, according to the order of the Chief Administrative Judge enumerating the terms for the Greenville County Grand Jury, the date listed on the indictment is correctly noted as February 19, 2002.

Williams' confusion as to the grand jury schedule aside, the allegation that the Assistant Solicitor willfully "printed false court term information" and the argument that such an act would

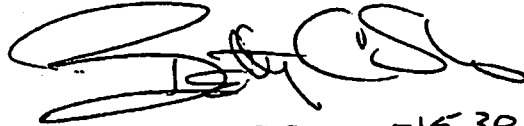
rise to the level of perjury and extrinsic fraud upon the court are wholly without merit. Fraud upon the court is "that species of fraud which does, or attempts to, subvert the integrity of the Court itself, or is a fraud perpetrated by officers of the court so that the judicial machinery cannot perform in the usual manner its impartial task of adjudging cases that are presented for adjudication." *Evans v. Gunter*, 294 S.C. 525, 529, 366 S.E.2d 44, 46 (Ct. App. 1988). Our courts have distinguished intrinsic and extrinsic frauds. Intrinsic fraud refers to "fraud presented and considered in the judgment assailed, including perjury and forged documents presented at trial." *Id.* Extrinsic fraud is "some intentional act or conduct by which the prevailing party has prevented the unsuccessful party from having a fair submission of the controversy." Relief is available only for extrinsic fraud on the theory that intrinsic deceptions should be discovered during the litigation, and to allow parties relief for such acts would "undermin[e] the stability of all judgments." *Id.*

Even if the Assistant Solicitor in this case had erroneously listed the date on which the indictment was presented to the grand jury, it cannot be said that such an act "subvert[s] the integrity of the Court" in a way that would rise to the level of an extrinsic fraud upon the court for which our courts would grant relief. *Id.* Likewise, the State's Exhibit A shows February 19, 2002 was the day on which the Greenville County Grand Jury convened and passed on Williams' indictment, such that there is no argument the Assistant Solicitor committed perjury. See S.C. Code Ann. §16-9-10(A)(2) (Supp. 2013) ("It is unlawful for a person to willfully give false, misleading, or incomplete information on a document, record, report, or form required by the laws of this State.").

Conclusion

Williams' motion, construed as pursuant to either Rule 29(a), SCRCrimP, or Rule 60(b)(3), SCRCP, is untimely and without merit. As such, the State respectfully requests the motion be DENIED.

Respectfully submitted,



Betty C. Strom 015305
Deputy Solicitor
Thirteenth Judicial Circuit

10-24, 2014

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
)
COUNTY OF GREENVILLE) THIRTEENTH JUDICIAL CIRCUIT

THE STATE)
)
VS.) ORDER DENYING DEFENDANT'S MOTION
)
JEROME WILLIAMS,) 2002-GS23-1576
)
DEFENDANT)

02231576

FILED
MAY 15 2017
1:39 PM
CLERK
GREENVILLE CO. SC

THIS MATTER CAME BEFORE ME FRIDAY, MAY 12, 2017 ON A PRO SE MOTION OF THE DEFENDANT, Jerome Williams requesting to set aside judgement of the above Indictment. The defendant alleges a fraud upon the court in that he claims that a Grand Jury was never convened on February 19, 2002, the date his indictment was true billed.

The defendant was present for the hearing. The State was present and represented by Betty C. Strom, Deputy Solicitor for the 13th Circuit Solicitor's Office.

Upon hearing from the defendant and consideration of the filed pleadings, I find that the defendant's motion is without merit and is hereby DENIED.

So Ordered this 15 day of May, 2017.



Honorable Letitia H. Verdin
Chief Administrative Judge, 13th Circuit

Greenville, SC

WITNESSES
INV. A.T. KING *AK*
GCSO
03/20/01

ARREST WARRANT NUMBER
Ref G 761082
Rec'd & Presented

ACTION OF GRAND JURY
TRUE BILL
John Thomas
Foreperson of GRAND JURY

VERDICT
Foreperson of Petit Jury
Date:

DOCKET NO. 2002-GS-23-
LAR *61576*
The State of South Carolina
County of Greenville

COURT OF GENERAL SESSIONS
6/19/02
FEBRUARY TERM 2002

THE STATE
vs.
PLD Guilty
JEROME WILLIAMS

Indictment for
0079
BURGLARY
FIRST DEGREE
VIOLATION § 16-11-311

720

02-23-1576

EXHIBIT *1*

A Certified Copy
Paul B. Wickman
Clerk of Court C.P. & G.S.
Greenville County, SC
Dated *9.17.14*

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
BURGLARY
FIRST DEGREE

At a Court of General Sessions, convened on FEBRUARY 19, 2002 the
Grand Jurors of Greenville County present upon their oath:


That JEROME WILLIAMS did in Greenville County, on or about the 27th day of January, 2001,
willfully and unlawfully enter the dwelling of Robert E. Seay located at 1 Cedar Court,
without consent with the intent to commit a crime therein, and the entering remaining did occur in the
nighttime. This is in violation of §16-11-311 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 case made and provided.


SOLICITOR

CERTIFICATE OF COUNSEL

Counsel for Respondent certifies that this Supplement Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

BY: 

J. Benjamin Aplin
S.C. Bar No: 8729

May 25, 2018

RECEIVED

MAY 25 2018

SC Court of Appeals