

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE  
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING  
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA  
In The Court of Appeals**

The State, Respondent,

v.

Johnnie L. Jones, Appellant.

Appellate Case No. 2017-002619

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Appeal From Bamberg County  
Doyet A. Early, III, Circuit Court Judge

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Unpublished Opinion No. 2020-UP-171  
Submitted May 1, 2020 – Filed June 3, 2020

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**AFFIRMED**

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Johnnie L. Jones, pro se.

Attorney General Alan McCrory Wilson and Deputy  
Attorney General Donald J. Zelenka, both of Columbia;  
and Solicitor James Strom Thurmond, Jr., of Aiken, all  
for Respondent.

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**PER CURIAM:** Johnnie L. Jones appeals the circuit court's order denying his motion for a new trial based on after-discovered evidence for his attempted kidnapping and assault and battery of a high and aggravated nature convictions.

On appeal, Jones argues (1) the circuit court erred in denying his motion and (2) his constitutional rights were violated. We affirm.<sup>1</sup>

1. The circuit court did not abuse its discretion in denying Jones's motion for a new trial based on after-discovered evidence. See *State v. Irvin*, 270 S.C. 539, 545, 243 S.E.2d 195, 197 (1978) ("A motion for a new trial based on after-discovered evidence is addressed to the sound discretion of the [circuit court]."); *id.* at 545, 243 S.E.2d at 197-98 ("The granting of a new trial because of after-discovered evidence is not favored, and [appellate courts] will sustain the [circuit] court's denial of such a motion unless there appears an abuse of discretion."). Jones did not produce any purported after-discovered evidence. See Rule 29(b), SCRCrimP ("A motion for a new trial based on after-discovered evidence must be made within one (1) year after the date of actual discovery of the evidence by the defendant or after the date when the evidence could have been ascertained by the exercise of reasonable diligence."). On appeal, Jones only included his motion, the circuit court's order denying his motion, a habeas petition, his indictments, and a sentencing sheet; the record did not include the transcript from the circuit court. Jones based his motion on purported issues with his indictments, the grand jury, and constitutional violations, but he did not explain how this information was not known to him under reasonable diligence at least by the time of trial, which was years prior to the filing of this motion, and did not argue how this "evidence" entitled him to a new trial pursuant to Rule 29(b), SCRCrimP. See *McCoy v. State*, 401 S.C. 363, 368 n.1, 737 S.E.2d 623, 625 n.1 (2013) ("To obtain a new trial based on after discovered evidence, the party must show that the evidence: (1) would probably change the result if a new trial is had; (2) has been discovered since trial; (3) could not have been discovered before trial; (4) is material to the issue of guilt or innocence; and (5) is not merely cumulative or impeaching." (quoting *Clark v. State*, 315, S.C. 385, 387-88, 434 S.E.2d 266, 267 (1993))). Rather, Jones asserts to this court that the proper review should be based on Rule 60(b)(3), SCRCP; however, that rule is not applicable. See Rule 81, SCRCP ("These rules, or any of them, shall apply to every trial court of *civil* jurisdiction within this state, within the limits of the jurisdiction and powers of the court provided by law, and the procedure therein shall conform to these rules insofar as practicable." (emphasis added)). Accordingly, we affirm.<sup>2</sup>

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<sup>1</sup> We decide this case without oral argument pursuant to Rule 215, SCACR.

<sup>2</sup> To the extent Jones argues the grand jury and trial court did not have jurisdiction, those arguments are meritless. First, the Chief Justice of the South Carolina Supreme Court has the authority to add additional terms of court beyond the terms mandated by statute. See S.C. Const. art. V, § 1 ("The judicial power shall be

2. Jones's arguments relating to constitutional violations at the circuit court are not preserved for this court's review. *See State v. Dunbar*, 356 S.C. 138, 142, 587 S.E.2d 691, 693 (2003) ("In order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the [circuit court]."); *State v. Langford*, 400 S.C. 421, 432, 735 S.E.2d 471, 477 (2012) ("Constitutional questions must be preserved like any other issue on appeal."); *State v. Mitchell*, 330 S.C. 189, 194, 498 S.E.2d 642, 645 (1998) (noting the "burden is on [the] appellant to provide a sufficient record for review").

**AFFIRMED.**

**WILLIAMS, KONDUROS, and HILL, JJ., concur.**

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vested in a unified judicial system, which shall include a Supreme Court, a Court of Appeals, a Circuit Court, and such other courts of uniform jurisdiction as may be provided for by general law."); S.C. Const. art. V, § 4 ("The Chief Justice of the Supreme Court shall be the administrative head of the unified judicial system. . . . The Chief Justice shall set the terms of any court and shall have the power to assign any judge to sit in any court within the unified judicial system."); *Pringle v. State*, 287 S.C. 409, 410-11, 339 S.E.2d 127, 128 (1986) ("In the absence of evidence to the contrary, the regularity of the proceedings of a court of general jurisdiction will be assumed."). Second, even if the indictments were not proper, the trial court had subject matter jurisdiction to hear Jones's case. *See State v. Gentry*, 363 S.C. 93, 101, 610 S.E.2d 494, 499 (2005) ("[S]ubject matter jurisdiction of the circuit court and the sufficiency of the indictment are two distinct concepts and the blending of these concepts serves only to confuse the issue. Circuit courts obviously have subject matter jurisdiction to try criminal matters.").