

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

STATE OF SOUTH CAROLINA

RESPONDENT

v

WILLIE YOUNG

PETITIONER

Appellate Case No.
2017-000557

MOTION FOR REHEARING
EN BANC **RECEIVED**

OCT 09 2020

SC Court of Appeals

THIS MATTER COMES before the court on pro se Petitioner's motion for Rehearing En Banc, pursuant to rule 221, SCACR. and rules 35(b)(1)(A)(B), FRAP.

STATEMENT OF PURPOSE

The petitioner in this matter asserts strongly before this court that: "A material factual and legal matter was overlooked in the decision made by the court(s) and the opinion is in conflict with decisions of the United States Supreme Court, this court and other Court of appeals and the conflict is not addressed in the opinion.

CASE CITATION(S)

S.C. Const. Art. 1, 11

5th Amend. U.S.C.A

STATE v. Mercer 672 S.E.2d 556

S.C. Code of law 14-9-210

U.S. v Goodwin 457 U.S. 368

S.C. Const. Art. V, 24

Benigar v. United States 172 F. 646 (4th Cir. 1909)

Russell v. United States 82 S.Ct. 1038 (1962)

S.C. code of law 14-9-170

STATE v. Fletcher 322 S.C. 256 (1996)

ATTACHMENT

Judicial Calendar

ISSUE(S) FOR RE HEARING

I: Did the Court of Appeal error in its ruling that County Solicitor had general Session Jurisdiction to return true bill indictment when its procedure violated state procedure and constitutional rights of the Petitioner?

II Did the Court of Appeal error in its denial of relief when the circuit court abused its discretion to uphold State Constitutional Due process?

LEGAL AND MATERIAL FACTS OVERLOOKED

The South Carolina State Constitution holds: No person may be held to answer for any crime the Jurisdiction over which is not within the magistrate's Court unless on a presentation of indictment of a grand Jury. S.C. Const. ART. 1, 11; 5TH AMEND. U.S.C.A

On review from a denial of a motion for new trial we may not make our own facts. The standard of review constrains the court to affirm the trial court if "reasonably" supported by the evidence. State v. Mercer 672 S.E.2d 556

The Court of Appeal, as did the lower court, failed to weigh the evidence submitted by the Solicitor to the lower court that "it practices convening its grand jury(s) prior to the term of court." (R-45) This evidence is "polarizingly confusing" as it outlines clear state provision and U.S. constitutional violations that the court(s) ruling(s) deprived the petitioner of their guarantee and protection.

Petitioner's motion filed in the lower courts expressed clearly that S.C. code of law 14-9-210 requires: a county solicitor to present a

bill of indictment to the grand jury
"While in attendance" of a general session
court term with a presiding Judge...
as a result the court(s) has invited a due
process violation. An indictment which
is "true-billed" two weeks prior to a
general session term of court shows
compromise, and infringes on a unalienable
right. Further, the language, "Through the
presiding Judge" and "while in attendance of
the court of general session" is a mandate and
requirement of the lawful procedure to
present and return bill of indictments.

It is a due process violation to punish a
person for exercising a protected statutory
and constitutional right. U.S. v Goodwin
457 U.S. 368

In South Carolina, the solicitor is charged with the responsibility of procuring an indictment properly from and thru the grand jury. S.C. Const. Art. V, 24 S.C. Code Ann. 14-9-210.

The motion and brief presented for appellate review expressed the right to a lawfully returned indictment by a properly impaneled grand jury.

The bill of indictment served as evidence that the petitioner was "True-billed" January 28, 2002, however, the record of the S.C. Judicial

Department for the first circuit shows no general session term of court was scheduled at that time! -See Attach. A-

In the fourth circuit case of *Penigar v. United States*, 172 F. 646 (4th Cir. 1909), The courts ruled that an indictment not physically returned in open court must be dismissed.

The record is clear that there was no general session term on the day the petitioner was "true-billed" and because the statutory language is couched in mandatory terms, this court has a duty to apply state and constitutional provisions and as a result has no discretion to ignore jurisdictional dictate. The fifth amendment of the U.S. Constitution requires an indictment be brought by a grand jury on the bases and policies inherent therein. 5th Amend. U.S.C.A. Russell v. United States 82 S.Ct. 1030 (1962)

As S.C. state law requires, "a bill of indictment must be presented to a grand jury in a term of general session. The judicial record shows no general session jurisdiction January 28, ~~2002~~ and the grand jury, whose services are drawn in accordance with law upon the Court of general sessions. S.C. code of law 14-9-170; 14-9-210

It was Unconstitutional of the Court(s) to shift the burden of proof to the petitioner to establish whether the prosecution conducted itself according to state and U.S. Constitutional provisions, which amounts to an abuse of discretion when the due process clause and S.C. Code of law (14-9-210) directs the prosecution in the lawful and Constitutional method to return/present an bill of indictment. The indictment was authored by the Solicitor, and the Solicitor alone is charged with the responsibility of procuring a proper indictment by the grand jury. Due process burdens the prosecution with returning its indictment according to the Constitution. State v. Fletcher 322 S.C. 256 (1996) 5th Amend, U.S.C.A

The U.S. Supreme Court has held: The substantial safeguards to those charged with serious crimes cannot be eradicated under the guise of technical departures from the rules. Russell v. United States 369 U.S. 749 (1962)

In this matter the courts have failed to uphold the state and constitutional rights of the petitioner and instead have opted to depart from the rules of the Constitution and disguise the serious condition in which this affords him. The courts are in acknowledgement of the error of the petitioner being indicted against S.C. Code of laws but have legitimized these violations while record and evidence submitted by petitioner contradicts the bases of these rulings!

The petitioner presented to this court for review a state constitutional claim that the prosecution returned an indictment by an unlawful impaneled grand jury, at a time the Orangeburg general session court lacked jurisdiction!

Conclusion

The petitioner presents Constitutional, state provisions, judicial record and Opinions of the court(s) that obligate the court(s) to fully address and adjudicate this matter according to Due Process.

DATED: OCTOBER 5, 2020

/s/ Willie Yang
4848 GOLDMINE HWY
KETCHAW S.C
29067

ATTACHMENT A



South Carolina
JUDICIAL DEPARTMENT

10/10/2002

SEARCH

Home Supreme Court Court of Appeals Trial Courts Court Orders Clerks/Deputies Calendar

Display: (HTML) (PDF)

Terms of Circuit and Family Court
January 2002

Holidays:
Tue Jan 01 - New Year's Day

Mon Jan 21 - Martin Luther King Day

Circuit Number	1/1/2002	1/14/2002	1/17/2002	1/28/2002
	Common Pleas Dorchester Goodson, Diane	Common Pleas Calhoun Goodson, Diane	General Sessions Dorchester Goodson, Diane	General Sessions Dorchester Goodson, Diane
	PL	PL	PL	PL
	Administrative Week Williams, James	General Sessions Orangeburg Williams, James	General Sessions Orangeburg Williams, James	Common Pleas Orangeburg Johnson, L.
	PLSD	PLSD	PLSD	PLSD
	Family Court Dorchester McLin, Nancy C.	Family Court Dorchester Smith, Gerald C.	Family Court Dorchester McLin, Nancy C.	Family Court Dorchester Smith, Gerald C.
	PLSD	PL	January 21, 22 23 24 Jan	PL
	Family Court Orangeburg Wyle, William J.	Family Court Calhoun / Dorchester McLin, Nancy C.	Family Court Dorchester Wyle, William J.	Family Court Calhoun / Dorchester Wyle, William J.
	January 7 8, 9, 10, 11	PLSD	PLSD	PLSD
	Family Court Orangeburg Jones, Arnie Gue	Family Court Orangeburg Jones, Arnie Gue	Family Court Orangeburg Jones, Arnie Gue	Family Court Orangeburg Jones, Arnie Gue
	January 7, 8, 9	PLSD	PLSD	PLSD

Proof of Service

The Undersigned attests a true
Copy has been Served upon
Joshua Edwards at P.O. box
11549 Cola, S.C. 29211

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SC Court of Appeals

Date. October 5, 2020

Willie Young
4848 Goldmine Hwy
Kerchaw S.C.
29067

I, Willie Young, 285487, am a prisoner
in S.C.D.C. attest for the court
of this filing that this order
was not served upon this petitioner
until September 29, 2020

Thereby commencing S.C. Rules
of Court Rule 221 at this/that time
for the allotted 15 days.

Signed: Willie Young

Dated: October 7, 2020

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Subscribed and subscribed before me on the 7th of

Witness October 2020

Cathleen A. Amos

My commission expires Dec. 22, 2029

Witness

Willie Young 285487

one

K.R.C.I.

4848 GOLDMINE HWY

Kerchaw S.C. 29069

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S.C. COURT OF APPEAL

Clerk

1220 SENATE ST.

Columbia, S.C. 29201

OCT 07 2020