THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM ORANGEBURG COUNTY
Court Of General Sessions
Edgar W.Dickson, Circuit Court Judge

Appellate Case No.2017-000557
Unpublished Opinion No.2020-UP-268

THE STATE — Respondent

V.

WILLIE YOUNG — Petitioner

APPENDIX

WILLIE YOUNG
285487
4848 goldmine hwy.
KERSHAW,S.C.29067

I N D E X

STATE OF SOUTH CAROLINA COUNTY OF ORANGEBURG	IN THE COURT OF GENERAL SESSIONS FOR THE FIRST JUDICIAL CIRCUIT
State of South Carolina vs. Willie Young III, Defendant.	2013-CP38-00757 CASE NO.: 2001-GS-38-2492 **ORDER DENYING DEFENDANT'S MOTION FOR NEW TRIAL**

This matter is before the court on Defendant Willie Young III's ("Defendant") motion for a new trial based on after-discovered evidence pursuant to Rule 29(b) of the South Carolina Rules of Criminal Procedure. After due deliberation, review of the motions and supporting documents, and hearing arguments on behalf each party, for the reasons stated below, this court denies Defendant's motion.

FACTS

Defendant was indicted for the offense of armed robbery under Indictment No. 2001-GS-38-2492. Defendant proceeded to trial by jury, and was convicted of the aforementioned offense on June 28, 2002. The Honorable James C. Williams thereafter ordered Defendant to be committed to the State Department of Corrections for a period of thirty (30) years.

By motion dated July 26, 2016, Defendant asserts that he is entitled to a new trial based on his discovery of new evidence. Specifically, Defendant argues that S.C. Code Ann. § 14-5-620(3)[1] does not provide for a general sessions term of court in Orangeburg for the month of February, the

[1] S.C. Code Ann. § 14-5-620(3) states, in pertinent part, the following:

> The Court of general sessions for the county of Orangeburg shall be held at Orangeburg the second Monday in January, the first Monday in May, and the second Monday in September. The term shall be three weeks for the May session.

Id.

month Defendant was indicted. Defendant argues that "[t]here is simply no language in the statute which gives the solicitor authority to modify the month in [S.C. Code Ann. §] 14–5–620(3)," and that "[i]f the legislature had intended the month of February to apply in subsection (3), it could have included such language in the statute." Because Defendant was indicted on February 11, 2002, Defendant contends that the indictment and subsequent conviction are null and void.

In his motion, Defendant also claims that the Solicitor committed a Brady violation. He states:

> The Defendant humbly contends that the Solicitor withheld exculpatory evidence from the defense. Here, exculpatory information of the Solicitor alleges that the defendant committed (ARMED ROBBERY) with a hand gun, that weapon was never produced in open Court. As a result, the (petit jury) found the Defendant not guilty of the weapon charge. Both due process and common sense dictate, without a weapon it cannot be a "Armed Robbery" charge.

Defendant also makes an unsubstantiated claim that the grand jury foreperson is related to the victim because they have the same last name. Lastly, Defendant claims that the Solicitor committed "obstruction of justice and conspire[d] to commit official Misconduct and obstruct the due Administrative of justice" because the indictment was true billed out of term.

A hearing was held before this court on October 26, 2016 in Orangeburg County, in which Defendant appeared pro se. Assistant Solicitor Ashley Cornwell appeared on behalf of the State. This court heard arguments from both parties, and the matter was taken under advisement.

DISCUSSION

A. S.C. Code Ann. § 14–5–620 provides for the minimum terms of court scheduled for each county, and does not limit the ability of the Chief Justice of the Supreme Court to schedule terms of court as is necessary.

The judicial power is vested under Article V of the South Carolina Constitution, in the unified judicial system. Article V, Section 1, provides for the following: "The judicial power shall

be vested in a unified judicial system, which shall include a Supreme Court, a Circuit Court, and such other courts of uniform jurisdiction as may be provided for by general law." With regard to setting terms of court, this power remains with the Chief Justice of the Supreme Court, who is the administrative head of the unified judicial system. See S.C. Const. Art. V, § 4 ("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."). The provision further states, in pertinent part:

> [E]ach county shall be entitled to four weeks of court each year and such terms therefor shall be provided by the General Assembly. Provided, further, that the Chief Justice shall set a term of at least one week in any court of original jurisdiction in any county within sixty days after receipt by him of a resolution of the county bar requesting it. The Supreme Court shall make rules governing the administration of all the courts of the State.

Id.

The above statute merely provides for a minimum amount of terms of court that are to be scheduled in each county, which is the responsibility of the General Assembly. However, the statute does not limit the ability of the Chief Justice of the Supreme Court to schedule additional terms of court pursuant to its constitutional power delineated in Article V, § 4. As stated above, the Chief Justice has the power to 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. See also S.C. Const. Art. V, § 4 (The Chief Justice also has the power to "appoint an administrator of the courts and such assistants as he deems necessary to aid in the administration of the courts of the State."). Although S.C. Code Ann. § 14-5-620(3) does not provide for Orangeburg general sessions terms of court at the time Defendant was indicted and ultimately convicted, the South Carolina Court Administration specifically scheduled general sessions terms of court during those weeks and it acted within their constitutional authority in doing so.

Accordingly, Defendant's argument that he was indicted and convicted out of term is without merit.

B. Defendant's other grounds for relief are successive and untimely.

S.C. Code Ann. § 17–27–90 provides that:

> All grounds for relief available to an application under this chapter must be raised in his original, supplemental or amended Application. Any ground finally adjudicated or not so raised, knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence or in any other proceeding Applicant has taken to secure relief, may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which for sufficient reason was not asserted or was inadequately raised in the original, supplemental or amended Application.

Successive applications are disfavored and the burden is on the applicant to establish that any new ground raised in a subsequent application could not have been raised by him in a previous application. Aice v. State, 305 S.C. 448 (1991); see also Foxworth v. State, 275 S.C. 615 (1981).

This court finds that the current allegations were or could have been raised in the proceedings based on Defendant's prior applications for post-conviction relief[2] and, thus, the current application is successive. Applicant has failed to establish sufficient reason why he could not have raised his current allegations in his previous application for post-conviction relief.

[2] Defendant filed an application for post-conviction relief on December 23, 2003, raising ineffective assistance of counsel and lack of subject matter jurisdiction, which was dismissed with prejudice. Defendant appealed to the South Carolina Court of Appeals, and the appeal was denied by Order dated April 20, 2007. Defendant thereafter filed a petition under 28 U.S.C. § 2254 for Writ of Habeas Corpus by a Person in State Custody on August 21, 2007. The petition was dismissed with prejudice. Applicant appealed to the Fourth Circuit Court of Appeals, and the Court dismissed the appeal in an unpublished opinion on June 16, 2009. Defendant then filed another application for post-conviction relief on December 13, 2010. That application was barred as successive by Order dated September 9, 2011. Defendant filed yet another application for post-conviction relief on June 28, 2013, which was denied by Order dated September 24, 2013.

WITNESSES

DET. K. KINSEY/OCSD

Arresting Agency:

Orangeburg Co. Sheriff Dept.

ARREST WARRANT NUMBER

G731578

Arrested: Sep 12, 2001

ACTION OF GRAND JURY

TRUE BILL

Henrietta Hubbard

Foreperson of Grand Jury

Date: January 28, 2002

VERDICT

Guilty

R C Dickson 6/28/02

Foreperson of Petit Jury

Date:

DOCKET NO. 2001GS38-2492

The State of South Carolina

County of

ORANGEBURG

COURT OF GENERAL SESSIONS

February 11, 2002 TERM

THE STATE
vs.

Willie Young

Indictment for

ARMED ROBBERY

SC Code: **16-11-0330**
CDR Code: **0139**
Class: **FEL-A(V)**

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I _____
hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA)
)
COUNTY OF ORANGEBURG)

INDICTMENT

At a Court of General Sessions, convened on February 11, 2002 the Grand Jurors of Orangeburg County present upon their oath:

ARMED ROBBERY

That Willie Young, did in Orangeburg County, on or about May 9, 2001, feloniously take from the person or presence of the victim, Nathaniel Hubbard, by means of force or intimidation, while armed with a deadly weapon being a handgun, goods or monies of the said victim, being described as follows: cash monies. This offense being a violation of Section §16-11-330 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.

J. Angela Garrick SOLICITOR

R-8

STATE OF SOUTH CAROLINA)
COUNTY OF Orangeburg)
STATE VS.)
Willie Young III)
AKA:)
Race: B Sex: M Age:)
DOB: [redacted]80 SS#: [redacted])
Address:)
DL# SID#:)

IN THE COURT OF GENERAL SESSIONS
INDICTMENT/CASE#:
2001 -GS- 38 - 2492
A/W#: G731578
Date of Offense: 5-9-01
S.C. Code §: 16-11-330
CDR Code #: 01139

☐ CASE RESTORED

SENTENCE
☐ PLEA ☒ TRIAL

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS TO: Armed Robbery
in violation of § 16-11-330 of the S.C. Code of Laws, bearing CDR Code # 01139
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ 17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.
ATTEST:

Solicitor | Defendant | Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ **State Department of Corrections,** ☐ **County Detention Center,** for a determinate term of 30 ~~days/months~~/years or ☐ under the **Youthful Offender Act** not to exceed _____ years and/or to pay a fine of $ _____; provided that upon the service of _____ days/months/years and/or payment of $_____; plus costs and assessments as applicable*; the balance is suspended with **probation** for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ The Defendant is to be given credit for _____ days/months jail time.
☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐Heard, ☐Waived, ☐Ordered
Total: $_____ plus 20% fee: $_____
Payment Terms: _____
☐ set by SCDPPPS _____
Recipient: _____

*Fine:	$
§14-1-206 (Assessments 100%)	$
§14-1-211(A)(1) (Surcharge)	$ 100.00
§14-1-211(A)(2) (Surcharge)	$
§56-5-2995 (DUI Assessment)	$
3% to County (if paid in installments)	$ 30.00
TOTAL	$ 1030.00

Clerk of Court/ Deputy Clerk

PTUP _____
_____ days/hours Public Service Employment
Obtain GED _____
Attend Voc Rehab. or Job Corps _____
May serve W/E beginning _____
Substance Abuse Counseling _____
Random Drug/Alcohol Testing _____
Fine may be pd. in equal, consecutive weekly/monthly pmts. of $ _____ beginning _____
$ _____ paid to Public Defender Fund.
Other: _____

PRESIDING JUDGE
Judge Code: 01114

STATE OF SOUTH CAROLINA COUNTY ORANGEBURG	IN THE COURT OF GENERAL SESSIONS CASE NO.: 2001-GS-38-2492
STATE OF SOUTH CAROLINA	
VS.	MOTION FOR AFTER-NEWLY DISCOVERED EVIDENCE And
WILLIE YOUNG,	MOTION TO EXPAND RECORD
DEFENDANT,	ATTORNEY "APPOINTMENT REQUESTED

THIS MATTER COMES before the court on the pro Se Defendant's motion for After-Newly Discovered Evidence and motion to Expand record, pursuant to rule 29 (B), SCRCRIM.P. and Rule 60 (B)(3), SCRCP. There is no Statute of limitation when a party seek to set aside a judgment due to fraud upon the court. (Citing Aouda v. Mobil Oil Corperation, 862 F.2d 1115, 1118 (1st Cir. 1989); Catee v. State, Supra., Ther is no time limitation within such motion must be brought forth. See State v. Williams, 108 S.C. 295, 93 S.E.2d 106.

PROCEDURAL HISTORY

For purpose of the motion, Defendant discovered that the Solicitor unlawfully inpaneled its Grand Jury outside the Statute of S.C. Code Ann.§ 14-5-620 (3) "The Forperson of the Grand Jury committed fraud upon the court by signing the indictment before a full panel was assembled of the grand Jury." And the Solicitor committed a (BRADY VIOLATION) by withholding exculpatory evidence

from the defense, also the solicitor manufactured their indictment for "Armed Robbery."

ALLEGATION

In his current motion The defendant alleges that he is being held in custody unlawfully for the following reasons:
Ground (A) "DiD the SOlicitor commit (sic) a procedural error" by unlawfully impaneling its Grand jury outside the statue of S.C. code Ann.§ 14-5-620 (3)?

Supporting facts: The defendant humbly contends that the Solicitor committed (sic) a procedural error' by unlawfully impaneling its Grand jury outside the statute of S.C. code Ann.§ 14-5-620 (3). Here, the general Assembly did not make a provision in sec. 14-5-620 (3), that set forth a [term of court] for the month of (February).

S.C. code Ann.§ 14-5-620 (3) states generally:

The courts of judicial circuit shall be held as hereinafter provided.

However, the statute sets forth no exceptions, including:

sec. (3) Orangeburg County.-The Court of General Sessions for the county of Orangeburg shall be held in Orangeburg the second Monday in January, the first Monday in may, and second Monday in September. the term shall be for two weeks for the January and September sessions. The term shall be for three weeks for the May session. Nowhere, in S.C. code Ann.§ 14-5-620 (3), did the legisture provide a (term of court) for the month of (February) within the court of General Sessions. As set forth the plain unabiguous language of §14-5-620 (3) plainly applies to the months in section (3) Anderson v. state farm Mut. Auto. Ins. co., 314 S.C. 140, 442 S.E.2d 179 (1994) (words of a statue should be accorded their plain and ordinary meaning without resorting to subtle or forced construction to limit or expand the statute's operation). There is simply no language in the statute which gives the solicitor authority to modify the month in 14-5-620 sec. (3). If the legislature had intended the month of (February) to apply in section (3), it could have included such language in the statute.

Estate of Guide v. Spooner, 318 S.C. 335, 447 S.E.2d 623 (Ct.APP. 1995) (if the Legislature intended the statute to include the month of February, it could have done so by including February in section (3). In the case at hand, the indictment reads as follow: (At a court of General Session convened on February 11, 2002 the Grand jury of Orangeburg county present upon their oath) (exhibit B).

In this case, the South Carolina Supreme Court confirm the standard for the (term of court) thats set fourth in the statutory Laws of this State and in Ex part Lilly, 7 S.C. 372, 1876 WL 5977 and State v. Henderson, 136 S.E. 363. These issues set forth in 1876 as well as the many rulings in other such cases like State v. Henderson Supra and still apply today are protected by the U.S. constitution and laws of the State.

However, here, evidence will establish that the (Forperson of the Grand jury) signed the (true bill) dated January 28, 2002. As set forth, "The Foreperson of the Grand jury committed fraud upon the court by signing the indictment before full panel was assembled of the Grand jury." Here, the indictment states the Grand jurors convened on February 11, 2002. Also, see Gaithers v. United States, 413 F.2d 1061, rule 6 (f) of the federal rule of criminal procedure provides; "An indictment may be found only upon the concurrence of 12 or more jurors. "rule 6 (c) emphasizes the requirement also that 12 jurors shall "find" each indictment by its provision and that the foreperson "shall keep a record of the number of jurors concurring of the finding of every indictment. Further observing the specification Of the fifth Amendment's command that "no person shall be held to answer for a capital, or other infamous crime unless, on a presentment of indictment of a Grand jury."

Here the defendant insists that an indictment which is not physically returned in open court must be dismissed under "the leading case" of Reniger v. United States, 172 F 646 (4th cir. 1909). As a result, defendant alleges that because the statutory language is couched in mandatory terms. This Court has a duty to apply State law and Accordingly has no discretion to ignore the jurisdictional dictates of the door closing statute.

The Defendant attacks the indictment procedure followed here on the basis of the policies inherent in the constitutional guarantee of indictment by the Grand jury, and in the history underlying that guarantee. THe Fifth Amendment guarantee that prosecution for serious crime may only be instituted by indictment. The indictment as a charging instrument has been recognized for having two chief purposes-first to apprise the accused of the charges against him, so that he may adequately prepare his defense, and second: to describe the crime with which he is charged with, with sufficient specificity to enable him to be protected against further jeopardy for the same offense. See also, **Russell v. United States,** 82 S.Ct. 1038, 8 L.Ed 2d 240 (1962). But these are not the only purpose of the indictment provisions of the Fifth Amendment. The Fifth Amendment requires that an indictment be brought by a Grand jury. The Grand jury is interposed "to afford a safegaurd against oppressive actions of the prosecutor or a court. "the decision to hale a man into a court is a serious one, subject to official abuse. For this reason, 12 ordinary citizens must agree upon an indictment before a defendant is tried on a felony charge. The content of the charges as well as the decision to charge at all is entirely up to the Grand jury subject to popular veto, as it were. The Grand jury's decision not to indict at all,on not to charge the facts alleged by the prosecutorial officials, is not subject to review by any other body.

The matter presented above for review is not a challenge to the court's general grant 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 494 (2005), and will not be at issue here.

GROUND (B) LEGAL FRAMEWORK

SUPPORTING FACTS: The defendant alleges that the solicitors failure to request for a special term of the Court of General Sessions deprived him of his (procedure to due process). Here, one additional piece of evidence very clearly settles the matter of the State's **FALSE** condition. The information contained in **Exhibit (A)**, also establishes that no special term of the Court of General Sessions was convened on (February 11, 2002) under the provision of either Section 14-5-410, Section 14-5-910, Section 14-5-920.

As establish above, what (competent Authority) can the solicitor produce to this Court, that they had approval from the Chief Justice to modify the (term of Court) that set forth in section 14-5-620 (3). 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 lawful mode of procedure not allowed under Section 14-9-210 the State lacked the requisite jurisdiction to complete a return of its true-Billed indictment. Therefor, the legislative has set forth the procedure in the South Carolina rules of Civil procedure Rule 77. Cancelling or ordering term of Court.

Here, the indictments against the defendant were "manufactured"by the foreperson of the Grand jury by signing the indictment before the full panel was assembled of the grand jury. "as set forth, the foreperson of the Grand jury side steped the constitutional machinery provided in the constitution. Certainly the grand juror's bare the decision whether or not if the defendant should be indicted for (Armed Robbery) However it does not entail that or show 12 of them did agree, or even could have

agreed, to an indictment for that offense. Thus in our view the signature of the foreman cannot in itself convert the indictment, admittedly not seen by the full Grand jury, into one properly found by 12 jurors as required by Rule 6.

Consequently, the unlawful and illegal acts committed by the Solicitor requires this Court to hold Defendant's indictment null and invalidate all judicial proceedings taken in this case. Rule 77 (e). SCRCP, provides:

"Sec. (e) no term of Court shall be cancelled nor additional term scheduled without the prior approval of the Chief Justice, When the local bar requests that a week of General Sessions Court be not held the Clerk shall immediately notify the Court Administrator of this State.

The Statutory terms above are clear, unambiguous, and require the County Solicitor to requests that a week of General Sessions Court be not held. The Clerk shall then immediately notify the Court Administrator of the State. Here,the Solicitor failed to follow these procedures set forth in Rule 77 (e), SCRCP.

GROUND (C) The Solicitor committed (sic) a BRADY VIOLATION

SUPPORTING FACTS: The Defendant humbly contends that the Solicitor withheld exculpatory evidence from the defense. Here, exculpatory information of the Solicitor alleges that the Defendant committed (ARMED ROBBERY) with a hand gun, that weapon was never produced in open Court. As a result, the (petit jury) found the Defendant not guilty of the weapon charge.

Both due process and common sense dictate, without a weapon it cannot be a "ARMED ROBBERY" charge.

IN the present case, the foreperson of the grand jury has the same last name as the victim, which is (HUBBARD), with importance to the defense for purposes of the preparation of the case or for trial was not disclosed to defense. . . , If the

foreperson of the Grand jury was a family member of the victim it would have affected the proceedings in this case and the outcome of the trial entirely. This case, however, does involve deliberate prosecutional misconduct by allowing a family member to set on the grand jury.

GROUND (D) "Did the Solicitor commit obstruction of justice and conspire to commit official Misconduct and obstruct the due Administrative of justice"?

SUPPORTING FACTS: The Defendant humbly contends that the Solicitor conspired with the Foreperson of the Grand jury, to sign the indictment before full panel was assembled of the Grand jury. The case before this Court happened with evil intent and in the potential for a Solicitor to deliberately mislead the Court, jury and defense counsel is inherent in every phase of the trial, including offering evidence, questioning witnesses, making comments, and presenting arguments. Even non-willful misleading conduct is a serious breach, and when prejudice is demonstrated, a reversal usually follows. Misleading conduct may arise to the level of due process violation when it involves the knowing use of false evidence, or when the conduct renders the defendant's trial fundamentally unfair to have a foreperson of the Grand jury to sign the indictment before full panel was assembled of the Grand jury. Here, "Administration of justice" means performance of acts or duties required by law in discharge of duty.

Simply put, it should be noted that the code of judicial conduct cannon (A) State: "A judge shall respect and comply with the law, and shall at all times in a manner, that promotes public confidence in the integrity and impartiality of the judiciary.

CONCLUSION

For all of the foregoing reasons, the defendant, Willie Young, respectfully request this Court to reverse the trial decision and reverse the conviction and vacate the conviction and sentence as a matter of law

This ___ day of July 2016

Respectfully Submitted,

By: Willie Young

Willie Young

THE STATE OF SOUTH CAROLINA
IN THE COURT OF Appeals

Appeal From Orangeburg County
Court of General Sessions
EDGAR W. Dickson, Circuit Judge

CASE NO: 2001-GS-38-2492

STATE OF South Carolina ..... Respondant

v.

Willie Young ..... Appellant.

NOTICE OF Appeal

Willie Young Appeals the order of Judge EDGAR W. Dickson DATED Dec, 21, 2016. Appellant received written notice of Order on February 13, 2017.

Signature Willie young
1057 Revolutionary trail
Fairfax, S.C. 29827

proof of Service

THE STATE OF SOUTH CAROLINA
IN THE COURT OF Appeals

Appeal From Orangeburg County
Court of General Sessions
EDGAR W. Dickson Circuit Judge

I willie Young certify that a proof of Service has been served upon All parties involved in the Above referenced matter.

February 20, 2017

Signature Willie Young

STATE OF SOUTH CAROLINA COUNTY ORANGEBURG	IN THE COURT OF GENERAL SESSIONS CASE NO.: 2001-GS-38-2492
STATE OF SOUTH CAROLINA VS. WILLIE YOUNG, DEFENDANT.	MOTION FOR AFTER-NEWLY DISCOVERED EVIDENCE And MOTION TO EXPAND RECORD ATTORNEY "APPOINTMENT REQUESTED

THIS MATTER COMES before the court on the pro Se Defendant's motion for After-Nevly Discovered Evidence and motion to Expand record, pursuant to rule 29 (B), SCRCRIM.P. and Rule 60 (B)(3), SCRCP. There is no Statute of limitation when a party seek to set aside a judgment due to fraud upon the court. (Citing Aouda v. Mobil Oil Corperation, 862 F.2d 1115, 1118 (1st Cir. 1989); Catee v. State, Supra.; Ther is no time limitation within such motion must be brought forth. See State v. Williams, 108 S.C. 295, 93 S.E.2d 106.

PROCEDURAL HISTORY

For purpose of the motion, Defendant discovered that the Solicitor unlavfully inpaneled its Grand Jury outside the Statute of S.C. Code Ann. § 14-5-620 (3) "The Porperson of the Grand Jury committed fraud upon the court by signing the indictment before a full panel was assembled of the grand Jury." And the Solicitor committed a (BRADY VIOLATION) by withholding exculpatory evidence

Exh. D

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ALLEGATION

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Supporting facts: The defendant humbly contends that the Solicitor committed (sic) a procedural error" by unlawfully impaneling its Grand jury outside the statute of S.C. code Ann § 14-5-620 (3). Here, the general Assembly did not make a provision in sec. 14-5-620 (3), that set forth a [term of court] for the month of (February).

S.C. code Ann § 14-5-620 (3) states generally:

The courts of judicial circuit shall be held as hereinafter provided.

However, the statute sets forth no exceptions, including:

sec. (3) Orangeburg County.-The Court of General Sessions for the county of Orangeburg shall be held in Orangeburg the second Monday in January, the first Monday in may, and second Monday in September. the term shall be for two weeks for the January and September sessions. The term shall be for three weeks for the May session. Nowhere, in S.C. code Ann § 14-5-620 (3), did the Legisture provide a (term of court) for the month of (February) within the court of General Sessions. As set forth the plain unabiguous language of §14-5-620 (3) plainly applies to the months in section (3) Anderson v. state farm Mut. Auto. Ins. co., 314 S.C. 140, 442 S.E.2d 179 (1994) (words of a statue should be accorded their plain and ordinary meaning without resorting to subtle or forced construction to limit or expand the statute's operation). There is simply no language in the statute which gives the solicitor authority to modify the month in 14-5-620 sec. (3). If the legislature had intended the month of (February) to apply in section (3), it could have included such language in the statute.

Code of Laws of South Carolina 1976 Annotated
Title 14. Courts
Chapter 5. Circuit Courts
Article 9. Special Sessions of Circuit Courts

Code 1976 § 14-5-910

§ 14-5-910. Special session may be ordered when public interest requires.

Currentness

Whenever the public interest shall require the holding of a special session of the court of general sessions or the court of common pleas in any county of the State and such fact satisfactorily appears (a) by petition of the solicitor of the judicial circuit in which such county is situate in the case of the court of general sessions or (b) by petition of a majority of the members of the bar of such county in the case of the court of common pleas, such petitions having been first approved by the resident circuit judge or the circuit judge last presiding in such county and duly filed with the clerk of the Supreme Court, a special session of the court of general sessions or common pleas may be ordered for any such county by the Chief Justice of the Supreme Court. The special session of court so ordered shall be held at such time and for such term and such notice of the holding thereof shall be given as may be provided in the order therefor, which shall be transmitted to and filed by the clerk of court of the county.

Credits
HISTORY: 1962 Code § 15-301; 1952 Code § 15-301; 1942 Code § 69; 1932 Code § 69; Civ. P. '22 § 66; Civ. P. '12 § 33; Civ. P. '02 § 28; 1873 (15) § 28; 1878 (16) 395 § 3; 1884 (18) 770; 1931 (37) 257; 1934 (38) 1204.

Notes of Decisions (2)

Exhibit e

be vested in a unified judicial system, which shall include a Supreme Court, a Circuit Court, and such other courts of uniform jurisdiction as may be provided for by general law." With regard to setting terms of court, this power remains with the Chief Justice of the Supreme Court, who is the administrative head of the unified judicial system. See S.C. Const. Art. V, § 4 ("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."). The provision further states, in pertinent part:

> [E]ach county shall be entitled to four weeks of court each year and such terms therefor shall be provided by the General Assembly. Provided, further, that the Chief Justice shall set a term of at least one week in any court of original jurisdiction in any county within sixty days after receipt by him of a resolution of the county bar requesting it. The Supreme Court shall make rules governing the administration of all the courts of the State.

Id. Orangeburg County would have to

The above statute merely provides for a minimum amount of terms of court that are to be scheduled in each county, which is the responsibility of the General Assembly. However, the statute does not limit the ability of the Chief Justice of the Supreme Court to schedule additional terms of court pursuant to its constitutional power delineated in Article V, § 4. As stated above, the Chief Justice has the power to 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. See also S.C. Const. Art. V, § 4 (The Chief Justice also has the power to "appoint an administrator of the courts and such assistants as he deems necessary to aid in the administration of the courts of the State."). Although S.C. Code Ann. § 14-5-620(3) does not provide for Orangeburg general sessions terms of court at the time Defendant was indicted and ultimately convicted, the South Carolina Court Administration specifically scheduled general sessions terms of court during those weeks and it acted within their constitutional authority in doing so.

there was to be A request to the chief justice to get another court Supreme was then there A request Made?

Exhibit F

Add sup request 3/5

EXH. G-A R-23

South Carolina Court Administration

South Carolina Supreme Court

Columbia, South Carolina

ROSALYN FRIERSON
DIRECTOR

1015 SUMTER STREET, SUITE 200
COLUMBIA, SOUTH CAROLINA 29201

December 5, 2013

Willie Young #285487
ACI
P. O. Box 1151
Fairfax, SC 29827

Dear Mr. Young:

Your inquiry has been received by this office. Enclosed you will find the information you requested. The schedule is for that entire week (Monday-Friday) of the date shown at the top of the schedule.

Please be advised that the convening of the Grand jury is scheduled by the Chief Judge for Administrative Purposes, in conjunction with the Solicitor's Office. The convening of the Grand Jury is not dependent upon a term of General Sessions court and often does not meet at the same time as General Sessions terms.

Sincerely,

South Carolina Court Administration

Exh. G, B

South Carolina Court Administration

South Carolina Supreme Court

Columbia, South Carolina

ROSALYN W. FRIERSON
DIRECTOR

1220 SENATE STREET, SUITE 200
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1800
FAX: (803) 734-1355
E-MAIL: rfrierson@sccourts.org

December 19, 2016

Willie Young, #285487
A.C.I., F4-A-52
Post Office Box 1151
Fairfax, South Carolina 29827

Re: Your correspondence received December 13, 2016

Dear Mr. Young:

In response to your recent correspondence concerning the convening of the grand juries and petitions for "special" sessions of court, please be advised that with the adoption of the amendments to Article V of the South Carolina Constitution in 1973, the Chief Justice now sets all terms of court, and the statutory terms in Title 14 are not binding on the Chief Justice. Article V, §4 of the South Carolina Constitution provides that "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." Under the current constitutional provision, all terms of the circuit court are set by the Chief Justice and there are no "special" terms. As such, there are no petitions for special terms.

Additionally, you expressed concern over a communication from this office in 2013. Please be advised that this office does not provide legal advice. If you seek legal advice relating to the validity of your indictment, you will need to consult with your attorney.

Sincerely,

Exhibit G-B

Staff Attorney Section / tr

Exh. G, C

South Carolina Court Administration

South Carolina Supreme Court

Columbia, South Carolina

ROSALYN W. FRIERSON
DIRECTOR

1220 SENATE STREET, SUITE 200
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1600
FAX: (803) 734-1355
E-MAIL: rfrierson@sccourts.org

February 24, 2017

Willie Young, #285487
A.C.I., F4-A-52
1053 Revolutionary Trail
Fairfax, South Carolina 29827

Re: Your correspondence received February 22, 2017

Dear Mr. Young:

Your recent correspondence to the Clerk of the Supreme Court has been forwarded to this office for response. Your letter requests information concerning a deviation from the terms of general sessions court for Orangeburg County as set forth in Section 14-5-620 of the SC Code. Article V, Section 4 of the SC Constitution grants the Chief Justice with exclusive authority to set all terms of court within the state.

The statute you cite predates this exclusive grant of authority to the Chief Justice by the Constitution and has no effect on the authority of the Chief Justice to set terms of court. As stated in our prior letter to you (a copy of which is enclosed) dated December 19, 2017, there are no longer "special" terms of court. All terms of court are set by the Chief Justice pursuant to Article V, Section 4 of the SC Constitution. As such, there are also no petitions for special terms.

Sincerely,

Staff Attorney Section /tr

Enclosure

Exhibit G-C

Code of Laws of South Carolina 1976 Annotated
Title 14. Courts
Chapter 9. County Courts (Refs & Annos)

Code 1976 § 14-9-210

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

Currentness

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

Credits
HISTORY: 1962 Code § 15-621; 1952 Code § 15-621; 1942 Code § 89; 1932 Code § 89; Civ. P. '22 § 86; Civ. C. '12 § 3861; Civ. C. '02 § 2764; 1900 (23) 322.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS
APPEAL From Orangeburg County
Edgar W. Dickson First Judicial Judge

THE STATE ..... RESPONDENT

V.

WILLIE YOUNG ..... APPELLANT

CASE #
2017-000557

AMENDED NOTICE OF APPEAL

For Purpose of this motion the appellant according to rule 203(B)(2) S.C.A.C.R. Is Giving proper notice to All Parties involved in the Above referenced MAtter.

)The appellant was A pro-se litigant on October 26, 2016. At the hearing for "AFter-NEWLY Discovered evidence. in the Orangeburg County general Session Court, And made Error by filing the CASE No.(2001 GS 38 2192) filed in Orangeburg County Clerk of Court instead of the Appellate Case No. 2017-000557.

2) AFTER receipt of Circuit Court denying the rule 29(B) motion for "AFter-NEWlY Discovered" evidence the Appellant filed Notice to Appeal with the S.C. court of appeal clerks office And the attorney generals office.

3) The S.C. court of appeals clerk directed the appellant on (2) occassions to perfect his appeal by attaching the circuit courts order to the Notice of Appeal.

4) The Appellant corrected the deficiencies and timely forwarded the Notice of Appeal to the attorney general and S.C. court of Appeals, And was not directed or informed to also provide the Orangeburg county clerk of court with notice due to him being pro-se!

FILED FOR RECORD
WINNIFRED ...
2010 FEB -4 ...
CLERK OF COURT
ORANGEBURG, SC

5) Though both the Attorney general office And S.C. court of appeals were provided with the Appellants Notice of Appeal And "brief", the Appellant Now due to the failure of the S.C. court of Appeals clerk, to have the appellant with direction to file "Notice" in the Orangeburg clerks office, Now provides orangeburg clerk of court with Notice.

b) This "Notice" now perfects this Appeal And cures the/this deficiency.

The Circuit Court order is Attached.

Thank you.

DATE: 1/19/18 /s/ Willie Young

Notary _____

Copy 2

Orangeburg County Clerk of Court Office

WINNIFA B. CLARK
CLERK OF COURT

YOJUANA T. CREWS
DEPUTY CLERK OF COURT

SANDRA P. OWEN
DEPUTY CLERK OF COURT

PO BOX 9000
ORANGEBURG, SC 29116-9000
PHONE: (803) 533-6260
FAMILY COURT FAX: (803) 534-3848
CLERK OF COURT FAX: (803) 268-2763

To Gwendolyn Walker
IN RE: Appeal

The enclosed document is being returned for the following reason(s):

(1) ☐ Requires Address, Phone number and Work number if filing Pro Se.

(2) ☐ Insufficient amount of filing fee. **Correct Amount: $150.00.**

(3) ☐ Requires original signature.

(4) ☐ Not an Orangeburg County Case.

(5) ☐ Venue change to: _____.

(6) ☐ Check or Money Order must be made payable to Clerk of Court. **(No Personal Checks)**

(7) ☐ Check not signed. **(No Personal Checks)**

(8) ☐ Copy – Must file original.

(9) ☐ No copies provided. Please include in future mailings.

(10) ☐ No self addressed stamped envelope provided. Please include in future mailings.

(11) ☐ No original DHEC/Certificate of Adoption Form.

(12) ☐ No Payment of Child Support/Alimony Form (Form SCCA/446).

(13) ☐ $25.00 Motion fee not included.

(14) ☐ Motion exempt from filing fee.

(15) ☑ Other: Please Forward to correct Court. Thank-You

Please provide the requested information/changes and return.

Thank you for your assistance.

/s/ Winnifa B. Clark ITUM
CLERK

February 22, 2018
DATE

Orangburg Clerk of Court
P.O. Box 9000
Orangburg SC 29115

FILED FOR RECORD
WINNIFA B. CLARK
2010 FEB -9 TIME 10:45 CANCELLED
CLERK OF COURT
ORANGEBURG, SC

STATE OF SOUTH CAROLINA)
COUNTY OF ORANGEBURG)

IN THE COURT OF GENERAL SESSIONS
FIRST JUDICIAL CIRCUIT

2001-GS-38-02492

State of South Carolina,

Plaintiff,

v.

Willie Young, Jr.,

Defendant.

Transcript of Record

October 24, 2016
Orangeburg, South Carolina

B E F O R E:

The Honorable Edgar W. Dickson

A P P E A R A N C E S:

Ashley Cornwell, Esquire
Attorney for the Plaintiff

Breen Stevens, Esquire
Attorney for the Defendant

Hilda M. Jordan, CVR-M
Circuit Court Reporter

I N D E X

Motion Hearing

THE COURT: Yes, ma'am.

MS. CORNWELL: The State calls Willie Young.

(Off the record discussion)

MS. CORNWELL: I have a photocopy of Mr. Young's motion on the bench for Your Honor.

THE COURT: And I appreciate that.

(Off the record discussion)

MS. CORNWELL: May it please the Court, Your Honor. Before you is Willie Young. Mr. Young was convicted by in 2002 for armed robbery. He has since filed a motion for after newly discovered evidence and a motion to expand the record. I've given you a copy of that motion and I will turn the floor over to Mr. Young.

THE COURT: And, Mr. Young, I've got your motion -- Oh, you got it from her?

DEFENDANT YOUNG: Yes, sir. Yes, sir.

THE COURT: And Mr. Young, it looks like you wrote this July 26th, 2016?

DEFENDANT YOUNG: Yes, sir.

THE COURT: All right. And Mr. Young, do you have an attorney to represent you?

DEFENDANT YOUNG: No, sir. I do not.

THE COURT: Okay. Do you want to get one?

DEFENDANT YOUNG: Yes, sir. I would like to be able to start with, you know, representation on this issue.

It's a very --

THE COURT: Okay. Now, you understand I don't think there's anything that I can appoint one for you. Can you hire one?

DEFENDANT YOUNG: That would probably be a problem, sir. I've been incarcerated for a significant amount at this time, sir.

THE COURT: What, fourteen, fifteen, years?

DEFENDANT YOUNG: Yes, sir. Fifteen years.

THE COURT: Okay. I don't know that there's any requirement -- are you aware on a motion to reopen?

MS. CORNWELL: No, Your Honor, I believe --

THE COURT: Is he entitled to an attorney?

MS. CORNWELL: I believe once he exhaust his appellate rights --

THE COURT: Ms. Hinds, do you have any idea?

MS. HINDS: I'm not but --

THE COURT: Can you hold a second where we can get our walking encyclopedia.

MS. HINDS: Exactly.

THE COURT: If you'd bear with us, Mr. Young.

DEFENDANT YOUNG: Yes, sir.

THE COURT: We have a walking encyclopedia that we call every now and then. I don't always agree with him, but I like to hear from him.

MS. CORNWELL: I rarely agree with him.

THE COURT: Mr. Young, while we're waiting, where are you from?

DEFENDANT YOUNG: I'm originally from Chicago, Illinois.

MS. HINDS: Here he is. Breen, we need you.

THE COURT: Come here, Breen.

MR. STEVENS: Sir, how can I help you.

THE COURT: Well, Mr. Young has filed a motion for after discovered evidence. He'd like to have an attorney. I don't think I can appoint one for that.

MR. STEVENS: Ah, okay.

THE COURT: That's what I wanted to find out from you. Is there any case law in South Carolina that you are aware of.

MS. CORNWELL: He's already exhausted his appeal --

THE COURT: Yeah. The appeal's gone. Well, he was convicted in 2002, right?

DEFENDANT YOUNG: Yes, sir.

MR. STEVENS: There are, to my knowledge, two paths to go forward with that. It's either 29(b) for after discovered motion -- or motion for after discovered evidence.

THE COURT: This is what he has.

MR. STEVENS: Or under the PCR act they could file a subsequent PCR and if it's truly based upon after-discovered evidence, it could be -- trip and applied through that because there's a subsection, which does allow that. The person would have to actually take action and file their information, to my knowledge, anyway within a year of obtaining that information or to properly act upon it. So they can. If it happens then yes, it would deemed under civil court to a PCR. And that's one of the ways to get a subsequent PCR without it being deemed a second subsequent PCR. To my knowledge.

THE COURT: Okay. Okay. So he should file the subsequent PCR that we he can get somebody appointed to represent him on that.

MR. STEVENS: That would be one path. Yes, sir.

THE COURT: He can't get with a 29(b) motion, can he? Have an attorney -- is there any law that would require me to appoint an attorney for him for --

MR. STEVENS: Required, not to my knowledge. I mean, the court has inherent authority to do all things reasonably necessary to achieve just results. But, you know, aside from the court's inherent authority to make appointments, you know, the PCR would be one avenue where it would be -- he could apply and then it goes through that process.

THE COURT: Okay. Okay. All right. Don't wander off.

MR. STEVENS: Yes, sir.

THE COURT: We've got to talk to Mr. Young here for a second.

Mr. Young, I don't know if you could -- whenever Mr. Stevens represents somebody I always ask him did you understand what the attorney said.

DEFENDANT YOUNG: Uh-huh. (Affirmative response.)

THE COURT: And they always, as a matter of form say yes. And I always want to go and say really? Did you understand that really? Okay, so I don't know whether you did. Did you understand -- you'd filed a PCR on this years ago, right?

DEFENDANT YOUNG: Yes, sir. I did.

THE COURT: And I don't want you to tell me how long it's been since you discovered this evidence. I don't want you to get into that right now because I believe you heard him say that you have to file your request within --

DEFENDANT YOUNG: One year.

THE COURT: -- one year of discovering that.

DEFENDANT YOUNG: Yeah. Uh-huh. (Affirmative response.)

THE COURT: Okay. But one path of you being able to get this in front of a Circuit Court Judge with an

attorney to represent you would be filing a new PCR and filing this with it would be one of doing that.

DEFENDANT YOUNG: Uh-huh. (Affirmative response.)

THE COURT: Now, you didn't file this with the court, did you?

DEFENDANT YOUNG: No, sir. This was somebody -- It's filed, like you said, in July. I never got out. Yes, sir.

THE COURT: You don't have a -- you didn't get a filed copy did you?

MS. CORNWELL: No, Your Honor.

THE COURT: They just mailed it to you?

MS. CORNWELL: I got what Solicitor Pasco placed on my desk, Your Honor.

THE COURT: Okay. I'm glad Solicitor Pasco is now doing process serving. It makes our jobs easier.

MS. CORNWELL: I believe -- and actually I believe it went from his to Mr. Scott's desk to my desk.

THE COURT: Oh, okay. All right.

MS. CORNWELL: But I think it was just mailed to our office.

THE COURT: Okay. Okay. So you have the original?

MS. CORNWELL: I do. I also have the PCR file for -- I guess his final appeal was denied by the Supreme Court

October 21st of 2015.

THE COURT: October 21st of 2016?

MS. CORNWELL: '15, Your Honor.

THE COURT: Okay. Now, let me ask you a question, Mr. Young. When you filed -- that was your PCR was appealed that's denied here?

DEFENDANT YOUNG: Yes, sir. That was actually a subsequent PCR that I filed under another newly discovered evidence that I had discovered but not this per se. It was a ruling that actually had been ruled upon by the courts, I think about three or four years prior to that.

THE COURT: Okay.

DEFENDANT YOUNG: And that PCR was dismissed. Yes, sir.

THE COURT: Okay. So this is evidence you have learned since that time?

DEFENDANT YOUNG: Since. Since then. Yes, sir.

THE COURT: Okay. All right. Who represented you at the PCR hearing, do you --

DEFENDANT YOUNG: I wasn't appointed counsel.

THE COURT: Huh?

DEFENDANT YOUNG: I was not able to overcome the procedural barrier.

THE COURT: Okay.

DEFENDANT YOUNG: Yes, sir.

THE COURT: Okay. Well, I guess my question for you right now is even though I have the authority possibly to appoint an attorney under a 29(b) motion, I'm not inclined to do that.

DEFENDANT YOUNG: Yes, sir.

THE COURT: Okay?

DEFENDANT YOUNG: Uh-huh. (Affirmative response.)

THE COURT: However, if you want to file a subsequent PCR and use this as the basis of it --

DEFENDANT YOUNG: Uh-huh. (Affirmative response.0

THE COURT: -- I don't have any objection to you doing that. And then if you can overcome a procedural hearing, you'll be able to get an attorney with it. But you tell me how you want to do it. I'm not trying to -- this is your -- you know, Mr. Young, it's your life.

DEFENDANT YOUNG: Exactly. Yes, sir.

THE COURT: And I'm not going to make you do one thing or the other. I'm just trying to tell you how I'm willing to help you with this, okay?

DEFENDANT YOUNG: Well, I mean, Your Honor, I would rather go the route and attempt to entertain this motion now, you know.

THE COURT: Okay. All right.

DEFENDANT YOUNG: Yes, sir.

THE COURT: All right. Okay. Then Mr. Young, the

floor is yours. Tell me about it.

DEFENDANT YOUNG: Yes, sir. Your Honor, I have discovered -- after new discovered evidence like you said after my motion, my subsequent PCR motion had been dismissed in October of last year. And discovered that the indictment that was returned by the Orangeburg Solicitor's Office, Your Honor, was returned out of turn. On the face of this indictment, Your Honor, it shows the foreman of the grand jury had signed this indictment two weeks prior to the actual convening of the General Sessions Court. Therefore, Your Honor, making this indictment null and void for this armed robbery conviction, which I was sentenced thirty years for. And this is the basis of this motion, Your Honor. Most indictments, Your Honor, are returned within court under the South Carolina Rules of Criminal Procedure. And this is blatantly showing that the Orangeburg County Solicitor Office violated that particular rule and mandate.

THE COURT: All right. And I believe you have -- I'm looking -- it looks like you attached a copy of your armed robbery indictment and it was true-billed January 28, 2002?

DEFENDANT YOUNG: Yes, sir.

THE COURT: Is that what you're talking about?

DEFENDANT YOUNG: Yes, sir.

THE COURT: Okay. And you're saying that was

outside of the term?

DEFENDANT YOUNG: Yes, sir.

THE COURT: When was the term, to your knowledge?

DEFENDANT YOUNG: On the face of the indictment, Your Honor, it said February 11th, 2002.

THE COURT: Okay. Oh, I see. February. Okay. All right, sir. Anything else you want to tell me?

DEFENDANT YOUNG: Your Honor, further, you know, Your Honor, as well, you know, Your Honor, the convening of this indictment -- I mean on that particular date -- again, this establishes that this is void and also is malicious prosecution. As well as in the body of my indictment, Your Honor, it states that I automatically -- the allegation states that I was armed with a deadly weapon. As we know that, I went through a jury trial right here in the County of Orangeburg and I was acquitted of the weapon that was alleged to be in the body of this indictment. And I was still, Your Honor, some type a way convicted and sentenced under the armed robbery statute. According to 6-11-330, Your Honor, the requirement of a weapon is used is necessary to validate this particular charges.

THE COURT: Okay. So they found you not guilty of --

DEFENDANT YOUNG: Of possession of deadly -- the weapon that was alleged to have been used in the armed

robbery, according to the body.

THE COURT: Okay.

DEFENDANT YOUNG: Yes, Your Honor.

THE COURT: But the jury still convicted you of armed robbery?

DEFENDANT YOUNG: And still was convicted of armed robbery.

THE COURT: Now, you didn't have -- you did not attach a copy of the verdict form or anything like that, did you?

DEFENDANT YOUNG: No, sir. I never had a verdict form. No verdict form was given to me in my motion for discovery or --

THE COURT: Okay. All right. All right. What else, Mr. Young.

DEFENDANT YOUNG: Your Honor, that's the basis of my motion. I mean, all my proceedings would basically -- I mean, it would be null at this point because of the indictments, Your Honor, at the initiation of this prosecution. I mean, there would be no -- there would be no hearing for this if it had not been for this, this error. This is a grave injustice. I've been incarcerated fifteen years behind this particular procedure, you know, and it doesn't show any type of faith in the judicial system if I can be incarcerated and be sentenced to something of this

magnitude with no basis.

THE COURT: And, Mr. Young, what was your sentence?

DEFENDANT YOUNG: Thirty years.

THE COURT: Thirty years?

MS. CORNWELL: If I may, Your Honor.

THE COURT: Oh, You've got it. You have never seen a copy of your sentencing sheet?

DEFENDANT YOUNG: I've never had it myself, Your Honor.

THE COURT: All right. We'll make a copy.

DEFENDANT YOUNG: Okay, sir.

THE COURT: Okay. All right. Judge Williamson --

DEFENDANT YOUNG: yes, sir.

THE COURT: All right. Anything else?

DEFENDANT YOUNG: No, sir.

THE COURT: Okay. All right. And Ms. Cornwell, anything from the State?

MS. CORNWELL: No, Your Honor. I mean, just simply in response to the arguments, obviously a grand jury is convened prior to the term of court and this particular grand jury was convened in January prior to the February term of court. That's why the indictment says February term and is signed on January. We always have our grand juries convene prior to the term of court. That way we can handle

any of those indictments during court, as Your Honor knows.

As far as the guilty on armed robbery, not guilty on the possession of a weapon, this trial was in 2002. I was not present for that trial. However, knowing Judge Williams I'm sure that he explained the elements of each charge thoroughly to the jury. Obviously, the Court knows that there are many ways that somebody can be found guilty of armed robbery and not guilty of a possession charge. So we believe that given the appeals that he's gone through, including the appeal of the trial verdicts, that that motion should be denied as well.

THE COURT: Okay.

And Mr. Young, I don't know, do we have your -- in your motion -- do you have his address?

MS. CORNWELL: He's in Allendale right now, Your Honor.

THE COURT: You're in Allendale?

DEFENDANT YOUNG: Yes, sir.

THE COURT: And what's your address in Allendale?

DEFENDANT YOUNG: 1057 Revolutionary Trail, Fairfax, South Carolina, 29827.

THE COURT: All right. And what's your Department of Corrections Number?

DEFENDANT YOUNG: 285487.

THE COURT: 2854 --

DEFENDANT YOUNG: 87.

THE COURT: --87. Okay. All right. All right. Anything in response?

DEFENDANT YOUNG: Yes, Your Honor. Your Honor, according to South Carolina Code -- according to criminal law, Your Honor, it states that Orangeburg County, Your Honor, only meets in the month of January, May and September, Your Honor. And this is going back again to the indictment alleging that this General Session term was held in February. And the only way this could happen, Your Honor, is if a special term had been requested by the Solicitor's officer. There's nothing in the record, Your Honor, that can validate or even show that Orangeburg County Solicitor Office even requested a special term for this indictment to be returned.

THE COURT: Okay. And I'll have to look up that, Mr. Young. I don't know what it was like in 2002.

DEFENDANT YOUNG: Yes, sir.

THE COURT: We've got criminal court going two weeks a month every month of the year.

DEFENDANT YOUNG: Yes, sir.

THE COURT: Now.

DEFENDANT YOUNG: Now.

THE COURT: But I don't know what it was like in 2002. Okay. Anything else?

DEFENDANT YOUNG: No, sir.

THE COURT: Okay. Mr. Young, what I'll do is -- let me make a copy of this.

DEFENDANT YOUNG: Yes, sir.

THE COURT: And we'll send it back to you. I'll read over this --

DEFENDANT YOUNG: Yes, sir.

THE COURT: -- and pull the verdict form. And I'll get back to you with my decision.

DEFENDANT YOUNG: Thank you, sir.

THE COURT: Now, do you understand -- well, you've already been through this. You understand the way to file for appeal and things like that?

DEFENDANT YOUNG: Yes, sir. Yes, sir, I do.

THE COURT: Okay. All right. Good luck to you.

DEFENDANT YOUNG: Thank you, sir. Thank you.

MS. CORNWELL: Thank you, Your Honor.

THE COURT: Yes, sir.

(This proceeding was concluded.)

C-E-R-T-I-F-I-C-A-T-E

I, THE UNDERSIGNED HILDA M. JORDAN, CVR-M, OFFICIAL COURT REPORTER FOR THE FIRST JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF THE PROCEEDING IN THE CAPTIONED CAUSE, IN THE COURT OF GENERAL SESSIONS FOR ORANGEBURG COUNTY, SOUTH CAROLINA, ON THE 24 DAY OF OCTOBER, 2016.

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

_____

Hilda M. Jordan, CVR-M

July, 2, 2018

STATE OF SOUTH CAROLINA COUNTY OF ORANGEBURG	IN THE COURT OF COMMON PLEAS FOR THE FIRST JUDICIAL CIRCUIT
Willie Young, III, #285487, Applicant, v. State of South Carolina, Respondent.	Case No. 2013-CP-38-00757 CONDITIONAL ORDER OF DISMISSAL

This matter comes before this Court by way of an Application for post-conviction relief filed June 28, 2013. In its return, Respondent requested the Application be summarily dismissed.

PROCEDURAL HISTORY

This Court has before it a copy of the records of the Orangeburg County Clerk of Court, Applicant's records from the South Carolina Department of Corrections, the appellate records, and the prior post-conviction relief records. The records before this Court indicate that Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Orangeburg County Clerk of Court. Applicant was true bill indicted during February 2002 term of the Orangeburg County Grand Jury for Armed Robbery (2001-GS-38-2492). Mary Miles, Esquire, represented Applicant. On June 24-28, 2002, Applicant went to trial by jury and was found guilty as indicted. The Honorable James C. Williams, Jr. sentenced Applicant to confinement for thirty years.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected by Robert M. Pachak, Esquire, in the form of an Anders brief. The South Carolina Court of Appeals dismissed Applicant's appeal on September 29, 2003. State v. Young, No. 2003-UP-564

(Ct. App. September 29, 2003). The Remittitur was issued on November 4, 2003.

Applicant filed an initial application for post-conviction relief on December 23, 2003 (2003-CP-38-1585). In that application, Applicant alleged the following grounds for relief:

1. Ineffective assistance of trial counsel.
2. Subject matter jurisdiction.

Respondent filed its Return on October 12, 2004. An evidentiary hearing into the matter was convened at the Dorchester County Courthouse on April 27, 2005 before the Honorable Diane S. Goodstein. Applicant was present at the hearing and represented by W. Scott Palmer, Esquire. Judge Goodstein denied and dismissed Applicant's post-conviction relief action with prejudice by written Order dated June 22, 2005, filed June 27, 2005.

A timely Notice of Appeal was filed. A Johnson Petition for Writ of Certiorari was submitted by Robert M. Pachak, Esquire. On April 20, 2007, the South Carolina Supreme Court denied Applicant's Petition. The Remittitur was issued on May 23, 2007.

On August 21, 2007, Applicant filed a Petition for Writ of Habeas Corpus in federal court (C.A. No. 6:07-2893-CMC-WMC). In his Petition, Applicant alleged:

1. Conviction obtained by use of coerced confession.
2. Conviction obtained on violation of 14th Amendment Due Process clause of the U.S. Constitution.
3. 5th Amendment violation: constructive amendment of indictment.

Respondent made a Return and Motion for Summary Judgment on January 11, 2008. On September 16, 2008, the Honorable Cameron McGowan Currie dismissed Applicant's Petition with prejudice. Applicant subsequently filed a Notice of Appeal. The United States Court of Appeals for the Fourth Circuit dismissed Applicant's appeal in an unpublished opinion on June 16, 2009.

Applicant thereafter filed a second application for post-conviction relief on December 10,

2010 (2010-CP-38-1759). In that application, Applicant alleged the following grounds for relief:

1. 14th Amendment Violation.
2. 5th Amendment Violation.
3. Illegal Incarceration.
    a. All issues were not adjudicated in first PCR.
4. Jurisdiction.
    a. Circuit court had no jurisdiction to try or sentence Applicant based on indictment.
5. Ineffective assistance of counsel.
    a. PCR counsel failed to file motion 59(E) on behalf of Applicant.

Respondent filed a Return and Motion to Dismiss August 9, 2011, requesting the application be summarily dismissed as it was successive and filed untimely. Judge Goodstein, acting in her capacity as the Chief Administrative Judge for the First Judicial Circuit denied and dismissed Applicant's second application with prejudice by written Order on July 25, 2012.

In his current Application for post-conviction relief, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of PCR Counsel for failing to file a rule 59e motion for appellate review of all issues raised.
2. Ineffective Assistance of trial counsel for failing to object to trial judge jury instruction.
3. 14th Amendment violation USCA Constructive Amendment of Indictment; violation of grand jury.
4. Did Trial Court err in denying petitioner's motion for new trial due to trial jury(s) incomplete/inconsistent verdict?
5. Does the crime of Armed robbery require proof of a nexus between it and possession of a firearm during commission of a violent crime?
6. Was petitioner entitled to a directed verdict when a material variance existed between the charge and proof?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court finds that the current Application for post-conviction relief must be summarily dismissed because it is successive to Applicant's prior two applications for post-conviction relief. S.C. Code Ann. §17-27-90 provides that:

> All grounds for relief available to an application under this chapter must be raised in his original, supplemental or amended Application. Any ground finally adjudicated or not so raised, knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence or in any other proceeding Applicant has taken to secure relief, may not be the basis for a subsequent Application, unless the court finds a ground for relief asserted which for sufficient reason was not asserted or was inadequately raised in the original, supplemental or amended Application.

Successive applications are disfavored and the burden is on Applicant to establish that any new ground raised in a subsequent application could not have been raised by him in a previous application. Foxworth v. State, 275 S.C. 615, 274 S.E.2d 415 (1981); Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991); Arnold v. State/Plath v. State, 309 S.C. 157, 420 S.E.2d 834 (1992).

This Court finds that the current allegations were or could have been raised in the proceedings based on Applicant's prior applications for post-conviction relief and thus the current Application is successive and barred under S.C. Code § 17-27-90. Applicant has failed to establish a sufficient reason why he could not have raised his current allegations in his prior two applications for post-conviction relief therefore, he has failed to meet the burden imposed upon him. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980); Aice, 305 S.C. 448, 409 S.E.2d 392 (1991).

This Court finds, further, that this Application for post-conviction relief should be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. § 17-27-10 to -160. S.C. Code Ann. §17-27-45(a) reads as follows:

> An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower

court from an appeal or the filing of the final decision upon an appeal, whichever is later.

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). Applicant was convicted of the offense he challenges in this Application on June 28, 2002. The Remittitur from the Court of Appeals was issued on November 4, 2003. This Application was filed on June 28, 2013, which was filed well beyond after the statutory filing period had expired.

A motion for summary judgment may properly be used to raise the defense of statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, S.C. Code Ann. §17-27-70(c) (1985) authorizes the Court to "grant a motion by either party for summary disposition of [an] application when it appears from the pleadings ... that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." Therefore, this Court finds that the Application for post-conviction relief is summarily dismissed for failure to file within the time mandated by statute.

Additionally, this Court finds that Applicant's contention that he received ineffective assistance of counsel on his prior post-conviction relief application is not a ground for relief. Applicant contends that under the United States Supreme Court's recent decision in Martinez v. Ryan, ___ U.S. ___, 132 S. Ct. 1309 (2012), he is able to file a successive state post-conviction relief action alleging ineffective assistance of previous collateral counsel. This Court finds this contention to be without merit as the ruling in Martinez has no bearing on an Applicant's ability to raise ineffective assistance of collateral counsel claims in a subsequent, successive state post-conviction relief application. Rather, Martinez sets forth a narrow exception to the procedural default rules imposed on federal habeas corpus petitions when considered under the so-called "cause and prejudice" standard. See Coleman v. Thompson, 501 U.S. 722, 750, 111 S. Ct. 2546,

2565 (1991) ("In all cases in which a state prisoner has defaulted his federal claims in state court pursuant to an independent and adequate state procedural rule, federal habeas review of the claims is barred unless the prisoner can demonstrate cause for the default and actual prejudice as a result of the alleged violation of federal law, or demonstrate that failure to consider the claims will result in a fundamental miscarriage of justice."). The Martinez Court used this standard as the foundation for its decision, finding that attorney error amounting to ineffective assistance of counsel during an initial-review collateral proceeding may be sufficient "cause" to excuse a prisoner's procedural default in a federal habeas corpus proceeding. See Martinez at ___, 132 S. Ct. at 1315. ("Inadequate assistance of counsel at initial-review collateral proceedings may establish cause for a prisoner's procedural default of a claim of ineffective assistance at trial."). With this framework in mind, it is clear Martinez has no application to successive state post-conviction relief actions, as the fundamental "cause and prejudice" standard on which Martinez relies is exclusive to federal habeas corpus actions. Further, the Martinez Court specifically noted that their decision was not addressing ineffective assistance of counsel claims raised in subsequent state post-conviction relief actions, opining "[t]his is not the case, however, to resolve whether [an exception to the constitutional rule that there is no right to counsel in collateral proceedings] exists as a constitutional matter." Id. at ___, 132 S. Ct. at 1326. Therefore, Applicant's contention that Martinez allows him to bring this untimely and successive state post-conviction relief application is misguided and erroneous. The South Carolina Supreme Court recently held that Martinez is inapplicable to state post-conviction relief actions. "Like other states, we hereby recognize that the holding in Martinez is limited to federal habeas corpus review and is not applicable to state post-conviction relief actions. . . . As such, petitioner's contention that, based on Martinez, the circuit court erred in dismissing petitioner's third

application for post-conviction relief as successive is without merit." Jason Kelly v. State, 2013-06-20-01 (S.C. Sup. Ct. filed June 20, 2013).

Additionally, Martinez's interpretation of federal laws applicable to federal habeas corpus actions has no effect on South Carolina's interpretation and application of its Post-Conviction Relief statute. S.C. Code Ann. § 17-27-10 to –160. Therefore, the South Carolina Supreme Court's opinion in Aice v. State is still applicable to a claim raised in a subsequent state post-conviction relief action alleging ineffective assistance of prior collateral counsel. See Aice v. State, 305 S.C. 448, 451, 409 S.E.2d 392, 394 (1991) ("The contention that prior PCR counsel was ineffective is not *per se* a 'sufficient reason' warranting a successive PCR application under 17-27-90."). Aice went on to note that such a holding was in accord with the United States Supreme Court's opinion in Pennsylvania v. Finley, 481 U.S. 551, 107 S. Ct. 1990 (1987) (there is no constitutional right to counsel for collateral review of a conviction). Accordingly, this Court finds Applicant's claim regarding the application of Martinez to be without merit.

Finally, because Applicant has failed to set forth any reason he could not have raised the current allegations in his previous applications other than to allege post-conviction relief counsel was ineffective in failing to raise them, the current Application is in fact successive in nature. Accordingly, this Court finds that this Application must be summarily dismissed for a failure to state a claim entitling Applicant to relief, for being successive in nature and for failing to file the action within the statute of limitation as set forth in S.C. Code Ann. § 17-27-45(a).

Pursuant to S.C. Code Ann. § 17-27-70(b), the Court intends to dismiss this Application with prejudice unless Applicant provides specific reasons, factual or legal, why the Application should not be dismissed in its entirety. Applicant is granted twenty (20) days from the date of service of this Order upon him to show why this Order should not become final. Applicant shall

file any reasons he may have, factual or legal, with the Orangeburg County Clerk of Court and shall serve opposing counsel at the following address:

Office of the Attorney General
Attn: Megan E. Harrigan, Esquire
P.O. Box 11549
Columbia, South Carolina 29211

AND IT IS SO ORDERED this 24th day of Sept., 2013.

EDGAR W. DICKSON
Chief Judge for Administrative Purposes
First Judicial Circuit

Orangeburg, South Carolina.

STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

Willie Young, #285487,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT

2013-CP-38-00755

FINAL ORDER OF DISMISSAL

This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed June 28 2013. Respondent made its Return and Motion to Dismiss on August 22, 2013, requesting that the application be summarily dismissed. Pursuant to this request, and after reviewing the pleadings in this matter and all of the records attached thereto, this Court issued a Conditional Order of Dismissal filed October 10, 2013, provisionally denying and dismissing this action, while giving the Applicant twenty (20) days from the date of service of said Order in which to show why the dismissal should not become final. Attached to this Final Order and incorporated herein by reference is a Certificate of Service dated January 24, 2014, serving the above-mentioned Conditional Order of Dismissal on the Applicant's counsel.

Applicant filed a document captioned, "Motion In Opposition To Conditional Order of Dismissal." In this motion, Applicant argues this Court should not construe this application as successive because "the issues asserted here are claims that were raised in the initial application for relief which were not, with finality, adjudicated." Applicant further argues the PCR Court failed to make sufficient findings of fact as required by the Post-Conviction Relief Act in the order dismissing his first PCR application (2003-CP-38-1585). Applicant argues PCR counsel, W. Scott Palmer, was ineffective for failing to file a Rule 59(e), SCRCP Motion to Alter or

Amend because the Order of Dismissal did not sufficiently rule on all of the allegations raised. Applicant urges this Court to apply the Supreme Court's decision in Martinez v. Ryan, __ U.S. __, 132 S. Ct. 1309 (2012) to this case. Applicant also argues that Counsel Palmer's failure to file a Rule 59(e), SCRCP Motion to Alter or Amend should be a recognized ground for relief. Applicant urges the Court to extend the limited exception to the statute of limitations in Austin v. State[1] to PCR counsel's failure to file a motion to alter or amend. Applicant asserts this Court misapplied Aice v. State, 305 S.C. 448, 451, 409 S.E.2d 392, 394 (1991) in its Conditional Order of Dismissal in finding the allegation of ineffective assistance of PCR counsel to be non-cognizable. Applicant further argues the South Carolina Supreme court's decision in State v. Whitesides, 397 S.C. 313, 725 S.E.2d 487 (2012) is on point and should be considered newly and after discovered evidence. Finally, Applicant claims trial counsel was ineffective in failing to object to certain jury instructions.

Applicant then filed a document captioned "Motion in Opposition to Conditional Order of Dismissal" on September 12, 2013. This document was written in pencil and was illegible. Applicant then filed a verbatim copy of the filing on September 18, 2013, in an effort to ensure the document was legible and available for the Court's review. Applicant explained that the previous filing was written in pencil, so he resubmitted the document to ensure a readable copy was available.

Next, Applicant filed a document captioned "Applicant's Response to Respondent's Conditional Order of Dismissal" on February 6, 2014. In this document, Applicant concedes that all but one issue would be time barred: "Does the crime of armed robbery require proof of a nexus between it and possession of a firearm during the commission of a violent crime?" Applicant cites Whitesides and argues the case should be considered newly discovered evidence

[1] 305 S.C. 453, 409 S.E.2d 395 (1991).

since it was not available when Applicant filed his first PCR action in 2003. Applicant asks this Court to grant him an evidentiary hearing on the issue.

Applicant then filed a document captioned "Motion for Summary Judgment" on May 27, 2014. Applicant accuses Respondent of disregarding the Supreme Court's decision in Whitesides and of failing to respond to his numerous filings. Applicant requests this Court to grant him summary judgment.

On February 10, 2014, Applicant sent Respondent a document captioned "Pursuant to South Carolina Rules of Civil Procedure 56: The Petitioner Moves the Honorable Ms. Diane S. Goodstein on Summary Judge for the Court in his Favor." In this document, Applicant asks this Court to grant him summary judgment. Applicant also alludes to a request that relief be granted due to the State's default.

Respondent notes Applicant also composed a letter to the South Carolina Supreme Court filed on December 18, 2014, where he complained that this action has not been ruled upon.

This Court has reviewed the Applicant's response to the Conditional Order of Dismissal in its entirety, in conjunction with the original pleadings, and finds a sufficient reason has not been shown why the Conditional Order of Dismissal should not become final.

This Court notes the Applicant was convicted and sentenced on June 28, 2002, and the South Carolina Court of Appeals dismissed the subsequent appeal on November 4, 2003. As this action was filed on June 28, 2013, it was clearly filed well outside the expiration of the statute of limitations. See S.C. Code Ann. § 17-27-45(a) (Supp. 2003). This is the Applicant's fourth collateral attack on his conviction. This Court notes successive PCR applications are disfavored. See Land v. State, 274 S.C. 243, 246, 262 S.E.2d 735, 737 (1980). This Court finds the Applicant had the opportunity to litigate all issues related to his case at the evidentiary hearing

for his first PCR application and before the federal courts. See Odom v. State, 337 S.C. 256, 261, 523 S.E.2d 753, 755 (1999) ("[A]n applicant is entitled to a full adjudication on the merits of the original petition, or 'one bite at the apple.'").

This Court finds Applicant's allegation that his PCR attorney was ineffective is not a proper claim for post-conviction relief. While Applicant cites Martinez v. Ryan, ___ U.S. ___, 132 S. Ct. 1309 (2012) to support his claim, the South Carolina Supreme Court has found that "the holding in Martinez is limited to federal habeas corpus review and is not applicable to state post-conviction relief actions." Kelly v. State, 404 S.C. 365, 745 S.E.2d 377 (2013).

This Court summarily dismisses Applicant's allegation that his prior PCR Counsel was ineffective for failing to file a 59(e) as this claim is outside the scope of PCR. This Court notes the Sixth Amendment right to effective assistance of counsel does not extend to state post-conviction relief actions. Coleman v. Thompson, 501 U.S. 722, 111 S.Ct. 2546, 115 L.Ed.2d 640 (1991). This Court finds that the contention that prior PCR counsel was ineffective for failing to file a 59(e) is non justiciable. Aice, 305 S.C. at 451, 409 S.E.2d at 394.

The only recognized exception to the rule barring claims of ineffective assistance of post-conviction relief counsel is found in Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991). Austin recognizes a general exception to this rule where prior post-conviction relief counsel fails to appeal the denial of the application. Id. Austin "is limited to its particular factual situation . . ." Aice, 305 S.C. at 452, 409 S.E.2d at 394. Applicant invites this Court to extend Austin's holding to include a claim of ineffective assistance of PCR counsel for failing to file a motion to alter or amend judgment pursuant to rule 59(e) SCRCP. However, this Court finds Austin does not contemplate such reasoning and declines to extend Austin's specific exception to ineffective

assistance of post-conviction relief counsel to include a claim of ineffective assistance of PCR counsel for failing to file a rule 59(e) SCRCP.

This Court also denied Applicant's Motion for Default Judgment and Motion for Summary Judgment. For an applicant to be granted default judgment in post-conviction relief he must show prejudice from the State's delay in failing to timely answer his Application. See Kneece v. State, 269 S.C. 177, 236 S.E.2d 745 (1977); Herring v. State, 262 S.C. 597, 206 S.E.2d 885 (1974). To show prejudice, an Applicant must show that his application has merit. Herring. Furthermore, compliance with the statutory time limits is discretionary with the trial court. Guinyard v. State, 260 S.C. 220, 195 S.E.2d 392 (1973). This Court finds that Applicant has failed to demonstrate the requisite prejudice or merit to his application. Therefore, the Motion for Default Judgment and Motion for Summary Judgment are both denied.

Finally, this Court finds Whitesides has no applicability to the present case. This Court finds that Applicant's claim that Whitesides constitutes newly or after discovered evidence must be dismissed. An applicant requesting a new trial based on after discovered evidence must show that the evidence:

> (1) Is such as would probably change the result if a new trial was had; (2) Has been discovered since the trial; (3) Could not by the exercise of due diligence have been discovered before the trial; (4) Is material to the issue of guilt or innocence; and (5) Is not merely cumulative or impeaching.

Hayden v. State, 278 S.C. 610, 611-12, 299 S.E.2d 854, 855 (1983). Applicant has not shown how South Carolina Supreme Court precedent establishes newly discovered evidence. Whitesides interpreted S.C. Code § 16-23-490(A) and held that "a nexus must be established in order to convict a defendant for possessing a firearm during the commission of a violent crime." Whitesides, 397 S.C. at 313, 725 S.E.2d at 490. Here, Applicant was convicted of armed robbery and acquitted of possession of a weapon during the commission of a violent crime. On direct

appeal, Applicant raised the issue of inconsistent verdicts, and the South Carolina Court of Appeals upheld the conviction and dismissed the appeal. Whitesides is not applicable to Applicant's PCR action.

IT IS THEREFORE ORDERED that, for the reasons set forth in the Court's Conditional Order of Dismissal, the application for PCR is hereby 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 if he wants to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

AND IT IS SO ORDERED this 20 **day of** March **, 2015.**

Maité Murphy

MAITÉ MURPHY
Chief Judge for Administrative Purposes
First Judicial Circuit

St. George, South Carolina.

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF ORANGEBURG) FIRST JUDICIAL CIRCUIT
)
) CASE NO.: 2013-CP-38-00757
Willie Young, #285487)
Plaintiff,) **MOTION AND ORDER INFORMATION FORM AND COVERSHEET**
vs.)
)
State of South Carolina)
Defendant.)

FILED FOR RECORD
JENNIFER B. CLARK
CLERK OF COURT
ORANGEBURG, SC
2015 MAR 31 AM 11:15

Plaintiff's Attorney:	Defendant's Attorney:
Willie Young, Bar No. 285487 Address: Allendale CI, 1057 Revolutionary Trail, Fairfax SC 29827 Phone: _____ Fax _____ E-mail: _____ Other: _____	J. Clayton Mitchell, Bar No. 101443 Address: PO Box 11549, Columbia SC 29211 Phone: _____ Fax_____ E-mail: _____ Other: _____

☐ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
☐ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**
☒ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion: _____
Estimated Time Needed: _____ Court Reporter Needed: ☐ YES/☐ NO

SECTION II: Motion/Order Type

☐ Written motion attached
☒ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

_____ 2/24/15
Signature of Attorney for ☐ Plaintiff /☒ Defendant Date submitted

SECTION III: Motion Fee

☐ PAID – AMOUNT: $_____
☒ EXEMPT: (check reason)
- ☐ Rule to Show Cause in Child or Spousal Support
- ☐ Domestic Abuse or Abuse and Neglect
- ☐ Indigent Status ☐ State Agency v. Indigent Party
- ☐ Sexually Violent Predator Act ☒ Post-Conviction Relief
- ☐ Motion for Stay in Bankruptcy
- ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
- ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions
  Name of Court Reporter: _____
- ☐ Other: _____

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.
☐ Other:

JUDGE CODE: _____
Date: _____

ATTEST: TRUE COPY
Virginia B. Clark
CLERK OF COURT
ORANGEBURG COUNTY, SC

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____
☐ MOTION FEE COLLECTED: $ _____
☐ CONTESTED – AMOUNT DUE: $ _____

CLERK'S VERIFICATION

Collected by:_____ Date Filed: _____
☐ MOTION FEE COLLECTED: $_____
☐ CONTESTED – AMOUNT DUE: $_____

SCCA 233 (11/2003)

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ORANGEBURG COUNTY

Court of General Sessions

Honorable Edgar W. Dickson, Circuit Court Judge

Appellate Case No. 2017-000557

THE STATE,..... Respondent,

v.

WILLIE YOUNG,..... Appellant.

RULE 210(g) CERTIFICATE OF COUNSEL

The Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

Christopher R. Geel

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ORANGEBURG COUNTY

Court of General Sessions

Honorable Edgar W. Dickson, Circuit Court Judge

Appellate Case No. 2017-000557

THE STATE,..... Respondent,

v.

WILLIE YOUNG,..... Appellant.

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the enclosed Record on Appeal in the above-referenced case has been served upon Joshua Edwards, Esq. at P.O. Box 11549, Columbia SC 29211-1549.

Christopher R. Geel

68

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ORANGEBURG COUNTY

Court of General Sessions

Honorable Edgar W. Dickson, Circuit Court Judge

Appellate Case No. 2017-000557

THE STATE ..... Respondent,

v.

WILLIE YOUNG ..... Appellant

BRIEF OF APPELLANT

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843-277-5080
Attorney for Appellant

TABLE OF CONTENTS

70

TABLE OF AUTHORITIES

CASES

STATUTES

OTHER AUTHORITIES

RULES

lawyer, cannot be assured a fair trial unless counsel is provided for him.'" *Id.* (quoting *Gideon v. Wainwright*, 372 U.S. 335, 344, 83 S. Ct. 792 (1963)).

Here, the lower court erred by failing to appoint Young counsel during his hearing. His pleading clearly stated that he wanted an attorney appointed, and during the colloquy with the lower court, he again stated that he could not afford an attorney due to his incarceration, and that he wanted the assistance of competent counsel in order to properly litigate these issues. South Carolina has recognized the right of individuals to self-representation, but this must be the litigant's choice, and the court is required to ensure the individual has knowingly elected to represent himself, and waived his right to counsel. *See State v. Brewer*, 328 S.C. 117 (1997). In fact, South Carolina has recognized the right of a defendant to have appointed standby counsel even when the defendant chooses to represent himself. *State v. Sanders*, 269 S.C. 215, 237 S.E.2d 53 (1977).

The face of Young's motion raises meritorious legal issues, and it cites numerous statutes and cases in support of Young's arguments. Although Young made admirable efforts to summarize and verbally argue these issues, he cannot be expected to navigate the complexities of post-conviction procedure and present his evidence and arguments without the advice of competent counsel. Accordingly, it

was error for the lower court to deny his unambiguous requests for counsel,[2] and this case should be remanded to the lower court with direction to hold a second hearing. Further, this court should require the lower court to appoint Young counsel at the second hearing, so that these issues can be fully explored by the lower court.

II. The lower court erred by denying Young's motion for new trial, which alleged that his indictment was true-billed during a time period when Orangeburg County lacked general sessions jurisdiction.

Standard of Review: "A motion for a new trial based on after-discovered evidence is addressed to the sound discretion of the trial judge." *State v. Irvin*, 270 S.C. 539, 545, 243 S.E.2d 195, 197 (1978). A lower court's ruling on a defendant's Rule 29 motion for new trial based on after-discovered evidence is reviewed on appeal for abuse of discretion. *State v. Harris*, 391 S.C. 539, 243 S.E.2d 195 (2011).

"No person may be held to answer for any crime the jurisdiction over which is not within the magistrate's court, unless on a presentment or indictment of a

[2] At one point during the colloquy, the court informed Young that it lacked authority to appoint counsel. (R-35). Young respectfully submits that this is an abuse of discretion; a failure to exercise discretion amounts to an abuse of that discretion. *Fontaine v. Peitz*, 291 S.C. 536, 538, 354 S.E.2d 565, 566 (1987)("When the trial judge is vested with discretion, but his ruling reveals no discretion was, in fact, exercised, an error of law has occurred."); *Balloon Plantation v. Head Balloons*, 303 S.C. 152, 155, 399 S.E.2d 439, 441 (1990)(quoting *State v. Smith*, 276 S.C. 494, 498, 280 S.E.2d 200, 202 (1981)("It is an equal abuse of discretion to refuse to exercise discretionary authority when it is warranted as it is to exercise the discretion improperly.")).

grand jury." S.C. CONST., ART. 1, § 11; S.C. Code Ann. § 17-19-10 (1976); *State v. Beachum*, 288 S.C. 325, 342 S.E.2d 597 (1986). At the hearing on Young's Rule 29 motion, his primary argument was that the indictment in his case was returned during a time when Orangeburg County lacked the authority to convene a grand jury for the purposes of returning general sessions indictments. Specifically, Young noted that his indictment was true-billed on January 28, 2002, and was labeled as being presented during the "Court of General Sessions February 11, 2002 Term," and that the county lacked general sessions jurisdiction during the January period where the indictment was true-billed. The solicitor who argued against Young's motion indicated that it was that jurisdiction's common practice to convene grand juries and return indictments outside of the term of general sessions court.

After hearing argument from both parties, the lower court indicated that it would take these issues under advisement, and the subsequent order indicated that the court may have consulted with Court Administration to determine when Orangeburg County had general sessions jurisdiction in early 2002,[3] though it is unclear. In any event, the State did not offer evidence of when Orangeburg County had jurisdiction in early 2002, and the Judge's finding to the contrary must be

[3] The order denying Young's motion stated as follows regarding the time period when Young's case was true-billed: "...South Carolina Court Administration specifically scheduled general sessions terms of court during those weeks..." (R-3).

discarded by this court, even under the deferential standard of review employed here.[4] What we are left with for the purposes of this court's review is an admission by the State that Young's indictment was true-billed during a time period (late January, 2002) when Orangeburg County lacked authorization to hold general sessions court. The prosecution conceded that this was actually the common practice in that jurisdiction.

Young respectfully submits that he was entitled to be indicted by a lawfully-impaneled grand jury with proper authority to return indictments. Because this procedure was not properly employed in this case, Young submits that the indictment in his case is null-and-void, and he is entitled to a new trial. Because the record before the lower court clearly demonstrates that Orangeburg County lacked proper authority to impanel a grand jury in January 2002, the lower court abused its discretion by finding to the contrary and denying Young's motion. Consequently, Young respectfully urges this court to reverse the lower court's denial of his Rule 29 motion for new trial.

[4] "On review [from denial of a motion for new trial], we may not make our own findings of fact. The deferential standard of review constrains us to affirm the trial court *if reasonably supported by the evidence*." *State v. Mercer*, 381 S.C. 149, 167, 672 S.E.2d 556 (2009)(emphasis added).

80

CONCLUSION

For the reasons stated, this Court should reverse the judgment of the circuit court, and vacate Young's conviction and sentence, and remand the case to Orangeburg County for a new trial. Alternatively, Young respectfully urges this court to remand the case to Orangeburg County with direction to appoint counsel and conduct a re-hearing on these issues.

Respectfully submitted,

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843-277-5080
Attorney for Appellant

DATED: January 19, 2019

81

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ORANGEBURG COUNTY

Court of General Sessions

Honorable Edgar W. Dickson, Circuit Court Judge

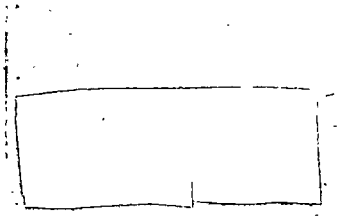
Appellate Case No. 2017-000557

THE STATE,..... Respondent,

v.

WILLIE YOUNG,..... Appellant.

FINAL REPLY BRIEF OF APPELLANT



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21,756

82

TABLE OF CONTENTS

83

TABLE OF AUTHORITIES

CASES

STATUTES

RULES

ARGUMENT IN REPLY

I. Contrary to the State's arguments, because Young's request for counsel was denied, this Court should hesitate to hold the record's deficiencies against him.

Despite well-intentioned efforts to the contrary, Willie Young finds himself caught between a legal Scylla and Charybdis, and the State asks this Court not to spare him from this dilemma, but instead to hold him accountable for it. Young, in his efforts to review his conviction and proceedings *pro se*, discovered an alleged defect in the process by which he was hailed to court. After consulting with Court Administration and concluding that the indictment in his case may have been fraudulently generated, Young promptly filed a Rule 29 motion. Being a state prisoner, Young lacked the ability to research this issue sufficiently, to contact potential witnesses, to visit the courthouse to review records, or to subpoena witnesses. As such, Young made the wise choice to request counsel *in writing*, knowing full well that he lacked the technical and procedural expertise that would be required to present these issues to the court, and to preserve his right to meaningful appellate review. The court denied Young's request, and he was forced to present his arguments below *pro se*.[1]

Proceeding without the aid of counsel, Young did his best to articulate the issues he discovered, and the Court ultimately denied his motion. After beginning

[1] As an aside, it bears noting that appointing Young an attorney to litigate these issues would have cost the State approximately 5% of what it spends to incarcerate Young *every year*. *See* "South Carolina Department of Corrections cost per inmate fiscal years 1988-2017," available at dc.statelibrary.sc.gov/handle/10827/25172.

the process to appeal that ruling, Young was able to retain counsel, and present counsel promptly made a motion to remand the case in order to correct deficiencies in the record. The State opposed that motion, stating that the record before this Court is sufficient to rule on these issues. Now, the State urges this Court to hold Young accountable for the deficiencies in the record. In summary, after Young discovered these alleged issues *pro se*, and after he was denied the assistance of counsel, and after he was forced to litigate these issues himself, and after he moved to remand the case to the trial court to fix deficiencies in the record, the State now urges this Court to lay blame for this predicament on Young. Respectfully, this Court should decline to do so. Further, if the Court concludes that the record is inadequate to meaningfully review these issues, Young respectfully urges this Court to find that remand is the appropriate remedy, rather than affirming the lower court's judgment.

II. Contrary to the State's argument, Young's motion did allege newly-discovered evidence, and was timely.

The State argues that Young's argument fails because his motion did not "allege any newly-discovered facts . . . the alleged defects in the indictment could have been discovered when this case went to trial in 2002." (Br. of Resp't at 6). As a preliminary matter, the court below did not rule that Young's argument regarding his indictment fails on the ground that it is not newly-discovered, despite having the opportunity to do so. Having declined to dismiss Young's motion on those

grounds, Young respectfully urges this Court to defer to the lower court's implied conclusion, and reach the substance of these claims.

Further, Young respectfully urges this Court to discard the State's argument that Young could have discovered these facts "when this case went to trial in 2002." (Br. of Resp't at 6). At the time when Young's case went to trial, he was represented by counsel. The State appears to ask this Court to burden a criminal defendant with conducting an independent, parallel investigation into the details of his case while it is in a pre-trial posture (and he is represented by counsel), otherwise he would waive Rule 29 issues that *could have been* discovered at that time.[2] To be sure, the argument could be made that constitutionally effective counsel would have identified and challenged this defect, but what procedural vehicle does a defendant have when this deficiency is not raised by any of his prior attorneys, and existence of the issue only comes *to his attention* after his direct appeal and PCR proceedings have lapsed?

The lower court and the State appear to answer to this question by characterizing Young's Rule 29 motion as "yet another application for post-conviction relief masquerading as a Rule 29(b) motion." (Br. of Resp't at 6). The implication is that this claim should have been raised in an application for post-

[2] Bear in mind that, even if Young had conducted such an investigation, and had encountered this defect in the indictment, the decision whether to challenge the defect during his trial would not have been Young's to make. *Abney v. State*, 408 S.C. 41, 49-50 (2014)(decisions that are strategic or tactical in nature are "reserved to defense counsel."); *State v. Devore*, 416 S.C. 115 (2106)("[s]ince there is no right to hybrid representation, substantive documents filed pro se by a person represented by counsel are not accepted unless submitted by counsel.")(quoting *State v. Stuckey*, 333 S.C. 56, 58 (1998)).

conviction relief (which would have been time-barred in 2016), and therefore Young raised it under Rule 29 to circumvent the statute of limitations in S.C. Code § 17-27-45. In other words, it appears as though the lower court and the State would prescribe no vehicle for Young to have these claims heard. And further, they appear to argue that Young – who the State claims offered "zero proof" to substantiate his Rule 29 claims during his motion hearing – was possessed with the procedural savvy to file under Rule 29 in order to utilize its more favorable limitations period. Respectfully, Young asks this Court to discard this argument. Young has conducted himself in good faith, and he filed his Rule 29 motion in a timely manner after discovering the defects alleged in his motion. Young asks this Court to conclude that his motion was timely, substantive, and made in good faith.

III. Contrary to the State's argument, Young's motion did not allege a mere defect in "the statutory procedures employed" when he was indicted.

The State argues that, because Young's arguments here deal with defects in his indictment, they have no bearing on the validity of his conviction, and would not have changed the result at trial. (Br. of Resp't at 10-11). The Supreme Court has noted that it is crucial for a defendant to be given the opportunity to mount an attack on "not only the [] evidence and the circumstances in which it was found, but the *thoroughness and even the good faith of the investigation, as well*." *Kyles v. Whitley*, 514 U.S. 419, 445 (1995)(emphasis added). Young's claims clearly raise the specter of improper action on the State's behalf in obtaining his indictment; whether that conduct is better described as negligence or outright fraud would have

been a key area for trial counsel to explore during Young's trial, and could have had a direct bearing on a validity of the State's investigation into Young, and its decision to charge him. Put another way, calling into question the propriety of the State's conduct during Young's prosecution could have simultaneously called into question the State's motives in proceeding against him, and could have cast an unfavorable light on the entire case.

Furthermore, Young's motion alleged facts that would have been known to the State since the date of his indictment. Although the face of the indictment states that Young was indicted during a term of general sessions court, if this is not entirely true, this constitutes material information that was known to the State and never affirmatively disclosed to Young. To now claim that these heretofore-undisclosed issues are immaterial to the question of guilt would empower the courts in this State to conduct grand jury proceedings (or not conduct them at all, as the case may be) in any manner they see fit, and further to withhold the details of those proceedings from defendants facing trial. Young respectfully urges this Court not to reach that result in this case.

IV. Contrary to the State's argument, it was not proper for the trial court to take judicial notice of the applicable terms of court, nor is it clear that the court did take notice of such alleged facts.

As noted in our brief, the lower court's order concludes that "South Carolina Court Administration specifically scheduled general sessions terms of court during those weeks..." (Br. of Appellant at 11 n.3). The State argues that this was proper,

Young respectfully urges this Court to discard the State's allegation that the terms of court are in the record by judicial notice, and instead simply discard these findings of fact as unsupported by the record.

CONCLUSION

For the reasons stated herein, and previously enumerated in the Brief of the Appellant, this Court should reverse the judgment of the lower court. Alternatively, Young respectfully urges this Court to remand the case to Orangeburg County for additional proceedings.

Respectfully submitted,

Christopher R. Geel
171 Church St., Suite 330
Charleston, SC 29401
843-277-5080
Attorney for Appellant

DATED: January 19, 2019.

91

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ORANGEBURG COUNTY

Court of General Sessions

Honorable Edgar W. Dickson, Circuit Court Judge

Appellate Case No. 2017-000557

THE STATE,..... Respondent,

v.

WILLIE YOUNG,..... Appellant.

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the enclosed Final Reply Brief of Appellant in the above-referenced case has been served upon Joshua A. Edwards at P.O. Box 11549, Columbia SC 29211.

Christopher R. Geel
171 Church St., Suite 330
Charleston, SC 29401
843-277-5080
Attorney for Appellant

DATED: January 19, 2019

92

93

TABLE OF CONTENTS

STATEMENT OF ISSUES ON APPEAL

I.

The circuit court did not abuse its discretion by declining to appoint counsel to represent Appellant on his 29(b) motion because there is no right to counsel in a collateral attack on a criminal conviction.

II.

The lower court correctly denied Appellant's 29(b) motion for a new trial because Appellant's motion was not timely and he did not produce any newly discovered evidence.

95

Standard of Review

The granting of a motion for a new trial based on after-discovered evidence is not favored and, absent error of law or abuse of discretion, an appellate court will not disturb the trial judge's denial of the motion. State v. Needs, 333 S.C. 134, 158, 508 S.E.2d 857, 869 (1998).

STATEMENT OF THE CASE

In 2002, Appellant was convicted in Orangeburg County of armed robbery and sentenced to thirty years' incarceration. Appellant timely filed a notice of appeal and an appeal was perfected in the form of an Anders brief. This Court reviewed the record pursuant to Anders and dismissed the appeal. State v. Young, No. 2003-UP-564 (Ct. App. September 29, 2003). Appellant subsequently filed four collateral attacks on his conviction, all of which were denied.[1]

On July 26, 2016, Appellant filed a pro se motion for a new trial pursuant to Rule 29(b) SCRCrimP. A hearing was held at the Orangeburg County Courthouse on October 26, 2016, before the Honorable Edgar W. Dickson. Appellant told the court he was unable to hire counsel and requested the court appoint counsel. R. 34. The trial court initially expressed doubt that it had the authority to appoint counsel for a Rule 29(b) motion. R. 35. The court consulted with Breen Stevens of the First Circuit Public Defender's Office, who opined that the court had the inherent authority to appoint counsel. R. 36-37. The court accepted it had the authority to appoint counsel but declined to do so. R. 41. Appellant proceeded pro se.

Appellant did not allege any newly-discovered facts related to the merits of his case. Instead, he raised a legal challenge to the indictment under which he was convicted, complaining of alleged defects apparent on the face of the indictment. He also argued his conviction for armed robbery was invalid because he was acquitted of a companion weapons charge.[2] The trial court denied Appellant's motion in a written order dated December 21, 2016. R. 1-5 This appeal follows.

---

[1] Young v. State, 2003-CP-38-1585; Young v. Burtt, C.A. No. 6:07-2893-CMC-WMC; Young v. State, 2010-CP-38-1759; Young v. State, 2013-CP-38-00757.

[2] Young raised the subject matter jurisdiction and weapons charge issues in prior collateral attacks. R. 50-67.

97

ARGUMENT

I.

The circuit court did not abuse its discretion by declining to appoint counsel to represent Appellant on his 29(b) motion because there is no right to counsel in a collateral attack on a criminal conviction.

Appellant claims the circuit court erred by refusing to appoint counsel to represent him on his motion for a new trial, citing cases involving the constitutional right to counsel. However, Appellant was not entitled to counsel at this proceeding because his motion was a collateral attack on his conviction and the right to counsel extends only to the first appeal of right. Appellant has not shown an abuse of discretion in the court's ruling. This Court should affirm.

This is not a proceeding where Appellant was "haled into court" to answer criminal charges. See Gideon v. Wainwright, 372 U.S. 335, 344 (1963). This motion was filed by Appellant fourteen years after his conviction following four separate collateral challenges. A motion for a new trial based on after discovered evidence filed outside the time for post-trial motions and after the direct appeal is a collateral proceeding. State v. Clinkscales, 318 S.C. 513, 515, 458 S.E.2d 548, 549 (1995) ("We hold that Clinkscales was not entitled to counsel. Clearly, the New Trial Motion on the ground of after-discovered evidence was not heard and determined at a critical stage. Moreover, the record does not contain evidence which would support a New Trial for after-discovered evidence."); United States v. Williamson, 706 F.3d 405, 415 (4th Cir. 2013) (collecting cases and explaining "after an appeal has been filed and the window has closed on the record of conviction, Rule 33 'newly discovered evidence' proceedings in the district court are truly collateral proceedings to which the Sixth Amendment right to counsel does not attach"). There is no right to counsel in collateral proceedings. Pennsylvania v. Finley, 481 U.S. 551, 555 (1987) ("Our cases establish that the right to

appointed counsel extends to the first appeal of right, and no further."). Accordingly, Appellant was not entitled to appointed counsel for his 29(b) motion.

Appellant ignores the above-cited controlling authority and instead cites a family court termination of parental rights case[3] and three cases[4] involving the right to counsel during a jury trial. These cases are inapplicable to a collateral challenge. Appellant cites no other case or provision of law in support of his argument, and has failed to show how the trial court abused its discretion by refusing to appoint counsel to represent Appellant on this successive, untimely, and meritless motion. This Court should affirm.

Requesting 2 new pros-e

[3] Broom v. Jennifer J., 403 S.C. 96, 742 S.E.2d 382 (2013).
[4] State v. Sanders, 269 S.C. 215, 237 S.E.2d 53 (1977); State v. Brewer, 328 S.C. 117, 119, 492 S.E.2d 97, 98 (1997); Gideon v. Wainwright, 372 U.S. 335 (1963).

99

II.

The lower court correctly denied Appellant's 29(b) motion for a new trial because Appellant's motion was not timely and he did not produce any newly discovered evidence.

Though styled as a motion for a new trial based on after-discovered evidence, Appellant's Rule 29(b) motion does not allege any newly-discovered facts, much less facts material to guilt or innocence. Instead, it is a legal challenge to the indictment under which Appellant was tried. Furthermore, the motion is untimely because the alleged defects in the indictment could have been discovered when this case went to trial in 2002. The lower court correctly characterized the motion as yet another application for post-conviction relief masquerading as a Rule 29(b) motion for a new trial. In any case, Appellant's claims are meritless because defects in an indictment do not deprive a court of subject matter jurisdiction. This Court should affirm.

Rule 29(b) of the South Carolina Rules of Criminal Procedure states, in pertinent part:

> 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.

In South Carolina, 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 by the exercise of due diligence; (4) is material to the issue of guilt or innocence; and (5) is not merely cumulative or impeaching. Jamison v. State, 410 S.C. 456, 467, 765 S.E.2d 123, 128 (2017); State v. Needs, 333 S.C. 134, 157-58, 508 S.E.2d 857, 869 (1998). Appellant fails to make the requisite showing.

First, Appellant's motion is untimely. The alleged defect in the indictment could have been discovered at or before trial by simply looking at the charging document. Not only is the

motion untimely under Rule 29(b), S.C. Code Ann. § 17-19-90 provides: "Every objection to any indictment for any defect apparent on the face thereof shall be taken by demurrer or on motion to quash such indictment before the jury shall be sworn and not afterwards." See also State v. Gentry, 363 S.C. 93, 101, 610 S.E.2d 494, 499 (2005) (citing S.C. Code §17-19-90) (holding "if an indictment is challenged as insufficient or defective, the defendant must raise that issue before the jury is sworn and not afterwards"). The purpose of the statute is "to prevent motions to arrest judgment on grounds based upon defects in indictment apparent on the face thereof." State v. Lark, 64 S.C. 350, 42 S.E. 175, 176 (1902). This is precisely the type of challenge Appellant now mounts— one apparent on the face of the indictment. Appellant was required to raise this issue at trial, and may not do so now.

Moving on to the substance of Appellant's motion, Appellant alleges the indictment under which he was convicted was "null and void" because it was stamped with a true bill on January 28, 2002. Appellant alleges the Orangeburg County Court of General Sessions lacked jurisdiction at this time, citing S.C. Code §14-5-620, the statute that lays out the minimum terms of court that must be held yearly in each county. See Appellant's written motion, R. 9-16. At the motion hearing, Appellant further claimed the indictment was invalid because the true bill date did not match the term of court listed in the caption of the indictment. R. 42.

The merits of Appellant's motion need not even be considered because he does not allege any new facts related to his guilt or innocence. Instead, he makes a purely legal challenge on grounds that were apparent on the face of the indictment and available a trial. As such, his motion is not based on after-discovered evidence at all, and is not within the scope of Rule 29(b).

Regardless, Appellant's claim is meritless. Subject matter jurisdiction is the power to hear and determine cases of the general class to which the proceedings in question belong. Dove

v. Gold Kist, Inc., 314 S.C. 235, 237-38, 442 S.E.2d 598, 600 (1994). In State v. Gentry, our supreme court abandoned the view that, in criminal matters, the circuit court acquires subject matter jurisdiction to hear a particular case by way of a valid indictment by either a county or state grand jury. State v. Gentry, 363 S.C.93, 101, 610 S.E.2d 494, 499 n.6 (2005) ("We note that a presentment of an indictment or a waiver of presentment is not needed to confer subject matter jurisdiction on the circuit court. However, an indictment is needed to give *notice* to the defendant of the charge(s) against him.") (emphasis in original). The subject matter jurisdiction of the circuit court and the sufficiency of an indictment are two distinct concepts. Id. A defendant has a constitutional right to demand that a grand jury which is properly established and constituted under the law consider the criminal allegations against him. Evans v. State, 363 S.C. 495, 509, 611 S.E.2d 510, 518 (2005). However, such a challenge does not implicate the subject matter jurisdiction of the circuit court. Id.

Here, Appellant does not dispute the existence of an indictment which put him on notice of what charge he was called upon to answer, apprised him of the elements of the offense, allowed him to decide whether to plead guilty or stand trial, and enabled the circuit court to know what judgment to pronounce when Appellant was convicted. The indictment demonstrates Appellant's charge was presented to, and true billed by, the Orangeburg County grand jury on January 28, 2002. Appellant's challenge before the lower court and in this appeal goes to the statutory procedures employed to empanel the grand jury that indicted him. Because this challenge does not implicate subject matter jurisdiction, it is not a ground for relief. See State v. Lark, 64 S.C. 350, 42 S.E. 175, 176 (1902) ("[T]he caption of an indictment is no part of the finding of the grand jury[.]").

The judicial power is vested under Article V of the South Carolina Constitution in the unified judicial system. It provides: "The judicial power shall be vested in a unified judicial system, which shall include a Supreme Court, a Circuit Court, and such other courts of uniform jurisdiction as may be provided for by general law." S.C. Const. art. V, § 1. With regard to setting terms of court, this power remains with the Chief Justice of the Supreme Court, who is the administrative head of the unified judicial system. S.C. Const. art. V, § 4. The provision states in pertinent part:

> [E]ach county shall be entitled to four weeks of court each year and such terms therefor shall be provided by the General Assembly. Provided, further, that the Chief Justice shall set a term of at least one week in any court of original jurisdiction in any county within sixty days after receipt by him of a resolution of the county bar requesting it. The Supreme Court shall make rules governing the administration of all the courts of the State.

Id.

In his written motion, Appellant relied on S.C. Code Ann. § 14-5-620, which states the following:

> (3) Orangeburg County. - The court of general sessions for the county of Orangeburg shall be held at Orangeburg the second Monday in January, the first Monday in May and the second Monday in September. The term shall be for two weeks for the January and September sessions. The term shall be for three weeks for the May session. The court of common pleas for the county of Orangeburg shall be held at Orangeburg on the second Monday in March for three weeks, the first Monday in June for three weeks, and a three-week term commencing the first Monday in October, continuing for two weeks and then recommencing on the fourth Monday and continuing for an additional week.

S.C. Code Ann. § 14-5-620 (2017). Appellant appears to contend that, because he was not indicted and tried in the second week of January, his indictment and subsequent conviction are null and void. However, the above statute merely provides for a minimum amount of terms of court that are to be scheduled in each county, which is the responsibility of the General Assembly. The statute does not limit the ability of the Chief Justice of the Supreme Court to

schedule additional terms of court pursuant to its constitutional power delineated in Article V, Section 4. Although section 14-5-620 does not provide for Orangeburg County general sessions terms of court at the time of Appellant's trial, South Carolina Court Administration, pursuant to authority given by the Chief Justice, appears to have specifically scheduled general sessions terms of court during those weeks, and it acted within its constitutional authority in doing so.

Even though Appellant offered zero proof that Court Administration did not schedule court for the week his indictment was true billed or when his trial held, the trial court took it upon itself to look up the 2002 terms of court and discovered Orangeburg County did in fact have General Sessions jurisdiction at those times. See Order, R. 47. Appellant claims this Court must discard the lower court's finding, ironically claiming it is without evidence. However, it was permissible for the court to take judicial notice of terms of court. See State v. Lark, 64 S.C. 350, 42 S.E. 175, 176 (1902) ("But the best evidence of the time of the finding of the indictment was the court journals, of which, doubtless, the trial judge took notice."). Appellant bears the burden of proving the grand jury was not properly impaneled. Here, he failed to carry his burden of proof. In other words, Appellant has failed to demonstrate that the alleged newly-discovered "evidence" is material to guilt or innocence and would have changed the result of trial. Thus, his motion was properly denied by the lower court.

108

South Carolina
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Site Map | Feedback
Search:

Home | Supreme Court | Court of Appeals | Circuit Courts | Court Forms | Opinions & Orders | Calendar

January | 2002 | Go To Date

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	1/7/2002	1/14/2002	1/21/2002	1/28/2002
1	Common Pleas Dorchester Goodstein, Dana ER, Administrative Week Williams, James VALOIR	Common Pleas Calhoun Goodstein, Dana ER, General Sessions Orangeburg Williams, James VALOIR	General Sessions Dorchester Goodstein, Dana ER, General Sessions Orangeburg Williams, James VALOIR	General Sessions Dorchester Goodstein, Dana ER, Common Pleas Orangeburg Manning, L. HOGAN
	Family Court Dorchester McLin, Nancy C. MURDAUGH Family Court Orangeburg Wyle, William J. HOGAN 7 BROWN 8, 9, 10, 11 Family Court Orangeburg Jones, Anne Gua BROWN 7, 8, 9 BATT 10	Family Court Dorchester Smoak, Gerald C. PYE Family Court Calhoun / Dorchester McLin, Nancy C. MURDAUGH Family Court Orangeburg Jones, Anne Gua BROWN	Family Court Dorchester McLin, Nancy C. MURDAUGH 21, 22 BATT 23 MURDAUGH 24 am Family Court Dorchester Wyle, William J. SHAW Family Court Orangeburg Jones, Anne Gua BROWN	Family Court Dorchester Smoak, Gerald C PYE Family Court Calhoun / Dorchester Wyle, William J. SHAW Family Court Orangeburg Jones, Anne Gua BROWN

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

109

STATE OF SOUTH CAROLINA RESPONDENT V WILLIE YOUNG, PETITIONER	Appellate Case No. 2017-000557 MOTION FOR REHEARING EN BANC

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), F.R.A.P.

STATEMENT OF PURPOSE

The petitioner in this matter asserts strongly before this court that: "A material factual and legal matter was over looked 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.

110

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

Renigar v. United States 172 F. 646 (4cir. 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

III ISSUE(S) FOR REHEARING

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 it's denial of relief when the circuit court abused its discretion to uphold State Constitutional Due process?

II2 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 it's 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 gurantee and protection.

Petitioners 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 excercising 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 appeallate 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 renigar v. United States, 172 F. 646 (4th cir. 1909), The courts ruled that an indictment not physically returned in open court must be dismissed.

115

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 theirin. 5th Amend. U.S.C.A. Russell v. United States 82 S.ct. 1038(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, [redacted] 2002 and the grand jury, who 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 procurring 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 law's 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!

118.

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
KERSHAW S.C
29067

119

Proof of service

The Undersigned attests a true copy has been Served upon Joshua Edwards at p.o. box 11549 Cola, S.C. 29211

Date. October 5, 2020

Willie Young
4848 GOLDMine Hwy
Kerchaw S.C.
29067

F20

The South Carolina Court of Appeals

The State, Respondent,

v.

Willie Young, Appellant.

Appellate Case No. 2017-000557

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

Thomas C. Huff J.

H. B. W. J.

John D. Geathers J.

Columbia, South Carolina

cc:
Willie Young, III, 285487
Alan McCrory Wilson, Esquire
Joshua Abraham Edwards, Esquire
David Michael Pascoe, Jr., Esquire
The Honorable Edgar W. Dickson

FILED
Dec 21 2020

THIS CASE BECAUSE HE'S THE VICTIM. YOUR MOTION IS DENIED. MOVE ON.

MS. MILES: YOUR HONOR, I MAKE A MOTION AT THIS TIME TO QUASH THE INDICTMENT, YOUR HONOR. YOUR HONOR, THE INDICTMENT SPECIFICALLY, PURSUANT TO THE STATUTE, AN INDICTMENT MUST PROPERLY APPRAISE THE DEFENDANT OF THE CHARGES AGAINST HIM, AND YOUR HONOR, THAT IS UNDER STATE VERSUS JACOBS, A NINETEEN SIXTY-ONE CASE, YOUR HONOR, AND ALSO, AS YOU KNOW, YOUR HONOR, THE BODY OF THE INDICTMENT IS THE REALLY IMPORTANT PART. AND THE CAPTION IS NO MANNER OF A SUBSTITUTE FOR THE BODY OF THE INDICTMENT, YOUR HONOR. THAT'S UNDER STATE VERSUS WILKES, WHICH IS A COURT OF APPEALS CASE, TWO THOUSAND AND ONE. YOUR HONOR, IF YOU LOOK AT THAT INDICTMENT VERY CAREFULLY, YOUR HONOR, ---

THE COURT: WHICH INDICTMENT, PLEASE, MA'AM?

MS. MILES: WE'RE TALKING ABOUT BOTH OF THEM.

THE COURT: OKAY.

MS. MILES: THERE IS ONE THAT'S FOR ROBBERY, ESPECIALLY, YOUR HONOR. YOUR HONOR, AS YOU LOOK AT THAT INDICTMENT THERE IS NO TIME MENTIONED IN THAT INDICTMENT OF WHEN THIS -- THIS ELEMENT IS VERY IMPORTANT IN AN INDICTMENT, THAT THE DEFENDANT MUST KNOW

SPECIFICALLY WHAT HE'S BEING CHARGED WITH, THERE MUST BE A TIME DESIGNATED. IF YOU LOOK AT THOSE INDICTMENTS, THAT THE STATE FAILED TO PUT THE TIME OF OFFENSE, AND THERE IS NO TIMING OF THE FINDING BY THE GRAND JURY. AND YOUR HONOR, I OBJECT TO BOTH OF THOSE INDICTMENTS UNDER STATE VERSUS WILKES AS WELL AS STATE VERSUS DAVIS. AS YOU KNOW, YOUR HONOR, AN INDICTMENT CONSISTS OF THREE PRINCIPLE FEATURES, THE CAPTION, THE CHARGE AND THE CONCLUSION, AS STATE VERSUS MOORE, AND YOUR HONOR, IT IS EXPRESSLY STATED IN, IN THE STATUTE THAT THE TIME HAS TO BE MENTIONED, AS REQUIRED BY LAW. IT EXPRESSLY REQUIRES THAT THE INDICTMENT ALLEGE THE TIME, AS REQUIRED.

THE COURT: WHERE IS THAT?

MS. MILES: I'LL READ THE STATUTE TO YOU, YOUR HONOR. SEVENTEEN/NINETEEN/TWENTY, "EVERY INDICTMENT SHALL BE DEEMED AND JUDGED SUFFICIENT AND GOOD IN LAW WHICH IN ADDITION TO ALLEGATIONS AS TO TIME AND PLACE AS REQUIRED BY LAW, CHARGES THE CRIME SUBSTANTIALLY IN LANGUAGE OF THE COMMON LAW OR OF THE STATUTE PROHIBITING THE CRIME ARE SO PLAINLY THAT THE NATURE OF THE OFFENSE CHARGED MAY BE EASILY UNDERSTOOD, AND IF THE OFFENSE BE A STATUTORY OFFENSE, THAT THE OFFENSE BE ALLEGED BE CONTRARY TO THE STATUTE AND IN SUCH CASE MADE AND PROVIDED." AND THAT'S SEVENTEEN,