

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM ORANGEBURG COUNTY
Court Of General Sessions

Edgar W. Dickson, Circuit Judge

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Unpublished Opinion No.2020-UP-268

RECEIVED

JAN 15 2021

SC Court of Appeals

THE STATE

....RESPONDENT

v.

WILLIE YOUNG

...PETITIONER

PETITION FOR A WRIT OF CERTIORARI

Willie YOUNG #285487
4848 Goldmine hwy.
Kershaw, s.c. 29067

I N D E X

Certificate of Counsel 1

Questions Presented 1

Statement of The Case 1

Arguments.....

1. Did the court of Appeals err in its holding that the county Solicitor had General Session Jurisdiction to return a " True-Billed " indictment when its procedure violated state procedure and the Constitutional rights of the petitioner?

2. Does State and Constitutional provisions allow County Solicitors to commit fraud on the court to convene Grand Jury's to return bills of indictment without General Sessions Jurisdiction?

Conclusion9

CERTIFICATE OF COUNSEL

Petitioner, who is pro-se litigant, attest that the petition for rehearing was made October 9, 2020 and finally ruled on by the court of appeals December 21, 2020 (appendix pg. 120-

QUESTIONS PRESENTED

1. Did the court of appeals err in its holding that the county solicitor had general session jurisdiction to return a "true-bill" indictment when its procedure violated state procedure and the constitutional rights of the petitioner?
2. Does state and constitutional provisions allow county solicitors to commit fraud upon the court to convene grand jury's to return "true-billied" indictments without general sessions jurisdiction?

STATEMENT OF THE CASE

Willie Young was convicted of one count of armed robbery on June 28, 2002 in Orangeburg general session court. On July 26, 2016 young filed a pro-se motion pursuant to S.C.R. Crimp rule 29, alleging numerous grounds for relief. (appendix pg. 9)

A hearing was held on Young's motion October 24, 2016 in Orangeburg county where he raised, 1) That the county solicitor obtained an indictment against him by unlawfully impaneling a grand jury outside of a term of court authorized by law, 2) That the indictment returned against young was signed by the foreperson prior to the actual convening of the grand jury, 3) That the state committed a Brady violation when it failed to disclose that the foreperson of the grand jury had the same name as the victim in Young's case, 4) That the solicitor colluded with the grand jury foreperson to return the indictment without a lawfully paneled grand jury. (appendix pg. 9-16)

Young submitted that his indictment was returned by the solicitor's office "out of turn". (appendix pg. 42)... and clarified that the face of the indictment shows that the grand jury foreperson signed and 'true billed' the indictment two weeks prior to the term of general sessions court. Young asserted that this method rendered the indictment null and void, pursuant to the rules governing criminal procedure in South Carolina. (appendix pg. 47)

Young confirmed his position that this date was outside of the term of general session court in orangeburg county, and further noted that the face of the indictment indicated it was returned during the february 11, 2002 term of general session, two weeks after it was "true-billed", which was inconsistent with the true bill date in january. (appendix pg.42-43)

The county solicitor affirmed the grand jury was convened prior to the authorized term of court and stated this was standard procedure. (appendix pg.45) It further asserted that the circuit court was aware of this procedure by the solicitors office. (appendix pg.45-46) Young responded that the county solicitor had failed to offer proof that such a term had been authorized. (appendix pg.47)

On December 21, 2016 the lower court denied youngs motion, and in regards to the claim that his indictment was returned out of term, the court ruled; "Although s.c. code.ann. 14-5-620(3) does not provide for orangeburg general sessions term of court at the time the 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". (appendix pg.3)

Young filed his notice of appeal february 13, 2017 to the court of appeals, alleging: 1) The lower court erred by failing to appoint young counsel during his rule 29 hearing when he requested it. 2) The lower court erred in denying youngs motion for new trial, citing his indictment was true billed during a time period when orangeburg county lacked general session jurisdiction. (appendix pg.75,77)

On September 23, 2020 the court of appeals affirmed the lower courts, holding the circuit court did not abuse its discretion denying youngs motion for new trial, citing his claim about the date his indictment was signed could have been discovered at the time of his trial in 2002, and that the county solicitor had jurisdiction to impanel a grand jury when he was indicted.

Lastly, the reviewing court ruled the petitioner had no right to appointed counsel when the motion was not at a critical stage and the record did not contain evidence to support a new trial. (appendix pg.105-107)

Petitioner filed for rehearing October 5, 2020 citing state and u.s. provisions overlooked by the lower court(s)

The lower court (court of appeal) denied that petition december 21, 2020. This writ of certiorari follows. (appendix pg.109-119 ;120)

ARGUMENTS

1. THE court of appeal erred in affirming the lower courts ruling when it based its ruling on evidence that the county solicitor had general session jurisdiction to return a bill of indictment against young as it upholds error of law that violates his state and constitutional rights. STANDARD OF REVIEW: " 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(2009)

At his hearing, young submitted evidence to support his motion for a new trial to set aside the conviction due to fraud on the courts. (appendix pg.9) The evidence presented by young was the bill of indictment returned by the orangeburg county solicitors office against him showed that the grand jury convened on january 28, 2002 and "Trye-Billed" the indictment outside the term of general sessions, and that this procedure rendered his conviction and sentence null and void. (appendix pg.6,43)

S.C. Code of law 14-9-210 holds; That a solicitor shall present its bill of indictment to the grand jury and presiding judge, "while" in attendance of a general session court term. (appendix pg.26) The true bill date indicated the grand jury convened two weeks prior to the authorized february 11, 2002 term of general sessions. Young asserted this was fraudulent and argued that the indictment must be returned during a term of general session, pursuant to the rules governing criminal procedure. (appendix pg.42-43) The court reviewed youngs indictment and acknowledged that the face of the indictment showed a true bill date of january 28, 2002. (appendix pg.42) The state did not object to youngs claim, in fact the response of the solicitor "acknowledged" that the grand jury was convened prior to the authorized term of court and that this was "standard procedure"! (appendix pg.45-46) When the circuit court is vested with discretion, but the ruling reveals no discretion was, in fact, exercised, an error of law has occurred. State v. Smith 276 s.c.494, 498 1981)

Evidence that the county solicitor convened it's own grand jury outside the general session term points to a violation of state and U.S. Constitutional provisions depriving this petitioner of life and liberty !

In South Carolina, the solicitor is charged with the responsibility of procuring an indictment properly from the grand jury. S.C. Const. ART. V, 24 The admittal by the state that its indictment against Young was true billed at a time when orangeburg county lacked jurisdiction to convene a grand jury, was improper, and also an error of law, that was presented to the circuit court on record, while it erroneously made it's finding of fact contrary to both evidence presented and state law. The Supreme Court has held ; " It will reverse the circuit court decision when it is controlled by an error of law. Simpson v. State 317 S.C.506 (1995) Holland v. State 322 S.C.111 (1996)

The circuit Court ruled the S.C. Court Administration scheduled general sessions court during "those weeks", referring to the weeks of January 28, 2002 and February 11, 2002. (appendix pg.3)

The County Solicitor presented upon its oath that the bill of indictment was returned in the february 11, 2002 term, though the true bill date of january 28, 2002, contradicts! The record contains no probative evidence that was submitted by neither petitioner or state, to support the denial of young's motion on this ground, as it is controlled by error of law. Pierce v. State 207 S.E.2d 414

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

Young raised both violations of state and united states provision's in the procedure he was haled to court, where the indictment reflects the true bill date as a date " No General Sessions " for the purpose of convening a grand jury to return a bill of indictment was scheduled, and points to the evidence of this unlawful procedure, that violated his due process. (appendix pg.108)

In simpson v. state, 317 s.c.506 (1995), the circuit judge erroneously believed a guilty plea had to be acknowledged in writing and vacated the defendant's plea, presuming he signed the incorrect plea agreement, and this court reversed!

In Youngs case the lower court believed a bill of indictment 'true -billed' before a scheduled term of general session is proper under its presumption that the S.C. Administration Court scheduled general session court at the court term January 28, 2002, though no evidence was presented by the state at the hearing, and accordingly, if the lower court took judicial notice as its ruling suggests, then the record reveals 'no' such schedule exists! (appendix pg. 3; 108) The appellate court erroneously ruled the circuit court did not abuse its discretion in denying young's motion for a new trial based on after discovered evidence, mainly because the date young's indictment was signed could have been discovered at the time of his trial in 2002, and that it is proper. (appendix pg. 105-107)

As a preliminary matter, in regards to the timeliness of this motion, "A RULING THAT WAS NOT MADE BY THE LOWER COURT", young did object to the legality and sufficiency of the indictment before his trial began in 2002. The motion to quash the indictment was based on numerous grounds, including 'the time of finding by the grand jury', however, this 'Abuse Of Discretion' is young's cry to the court, because the circuit court did not rule this claim was untimely, but that, "defendants argument that he was indicted and convicted 'out of term' was without merit".....and as to the 'defendants other grounds for relief were successive and untimely (appendix. 121-123); appendix pg. 4

"Generally motions for new trial must be made upon the minutes of the court, and before adjournment of the court at which the trial was had and the order(s) in such case cannot afterwards be reviewed by either a past or current judge. These motions, however are made upon matters growing out the trial, and as to facts occurring at the trial, and, when once passed upon, the action of the court is conclusive, unless an error of law is involved. State v. Williams 108 s.c. 295 (1917)

In the courts of law in the United States, a party may, under certain circumstances, become entitled to a new trial on account of newly discovered testimony, that ground being facts he now relies are external to those which transpired at the trial. The ruling by the appellate court notes a 'significance' with the signing date of the indictment, however, it suggests, that though young's motion is supported by evidence, young should be denied the opportunity of availing himself of this evidence!

As stated in Williams 108 s.c. 295, "If this is so, the right of a new trial on the ground of after discovered evidence is a delusion and a snare"....It is then a promise to the ear, but broken to the hope. The right to a new trial on newly discovered, when sufficient, is as fully settled and guaranteed by the law as any other, and this right cannot be lost!

As was the conduct of the lower court, where no evidence was presented by the state as to the 'timeliness' or the 'scheduling' of the court term, the appellate court too bases its ruling on its own findings of fact related to 'timeliness', that is presented nowhere in the record and violates the deferential standard to which the court is constrained, and therefore is an error of law. State v. Mercer 672 s.e. 2d 556 (2009) Young humbly asserts for this court as he detailed in his rule 29 motion, this matter is not a challenge to the courts general grant of authority to hear and determine cases, and that authority is rightfully granted by our constitution and is not at argument here. State v. Gentry 363 s.c. 93 (2005) app. pg. 12

Further, the statute empowering the circuit judges to grant new trials on after discovered evidence does not limit the time within which the motion must be made. Sams v. Hoover 33 s.c.401

Though , the circuit court heard Youngs motion and the appellate court reviewed, both court's denied the motion upholding error's of law, which was and is an abuse of discretion!

Abuse occurs when a material factor deserving significant weight is ignored (indictment), when an improper fact is relied upon or when all proper and improper factors are assessed, but the court makes a serious mistake in weighing them! State v. Williams, 108 S.C.295 Due Process burdens the prosecution with proving beyond a reasonable doubt all elements of guilt. The solicitor presented and returned this bill of indictment unlawfully, and the court(s) have punished young for the exercising of his constitutional right to a lawfully impaneled grand jury!

The Supreme Court has noted it is crucial for a defendant to be given the opportunity to mount an attack on not only evidence and circumstances in which it was found, but the thoroughness and even good faith of the investigation as well. (Kyles v. Whitley 514 U.S.419)1995

Young's claim raises a specter of improper actions on the states behalf in obtaining this indictment, whether that conduct is best described as negligence, vindictiveness or outright fraud, young filed his motion based upon fraud upon the court. (Aoude v. Mobile Oil Corp. 892 F.2d 1115 1st. cir. 1989); state v. Williams 108 s.c.295 (1917)

Fraud on the court occurs where it can be demonstrated, clearly and convincingly, that a party has sentiently set in motion some unconscionable scheme calculated to interfere with the judicial systems ability to impartially adjudicate a matter by improperly influencing the trier or unfairly hampering the presentation of the opposing party's claim or defense. (Alexander v. Robertson 882 F.2d421,424 (9th cir.1989)

Because corrupt intent knows no stylistic boundaries, fraud on the court can take many forms and the present case is a near-classic example of the genre. The states bad faith is manifest!

" By its own admission the county solicitor admitted it convened it's grand jury before the general session term of court to fabricate a bill of indictment against this petitioner in violation of state and u.s. constitutional guarantees, while allowing more than 15 years to elapse before the ' bread of deceit' was discovered by young.

The only conceivable reason for the county solicitors elaborate deception was to gain an unfair advantage, first in the dispute, there-after in the litigation. This tactic fatally hindered young's ability to assert his innocence, while simultaneously throwing a large monkey wrench into the judicial machinery, and this gross misbehavior constituted fraud on the courts. (Cleveland Demolition Co. v. Azcon Scrap Corp. 827 F.2d 984, 986 (4th. cir. 1987) (Fraud on the court may exist where witness and attorney conspire to present perjured testimony)

As Justice Black wrote; Tampering with the administration of Justice in the manner indisputably shown here involves far more than an injury to a single litigant. It is a wrong against the institutions set up to protect and safeguard the public institutions in which fraud cannot complacently be tolerated consistently with the good order of society.....the public welfare demands that the agencies of public justice be not so important that they must always be mute and helpless victims of deception and fraud. (Hazel-Atlas Glass Co. v. Hartford Empire Co. 322 s.c. 238 (1944)

The courts have inherent power to dismiss an action when a party has willfully deceived the court and engaged in conduct utterly inconsistent with the orderly administration of justice. (Eppes v. Snowden 656 F.Supp. 1267, 1279 (E.D. ky. 1986)

Instead, the lower courts appear to address this matter by making determinations void of probative evidence of/on record, abusing it's discretion. The U.S. Supreme Court has held ; The substantial safeguard to those charged with serious crimes cannot be eradicated under the guise of technical departure's from the rules. (Russell v. United States 36 U.S. 749 (1962))

In Renigar v. U.S. 172 F.646 (4th. cir. 1909) The courts ruled an indictment not physically returned in open court must be dismissed and the petitioner asserts that here!

This statutory language is couched in mandatory terms and the court(s) has a duty to apply state and U.S. Constitutional law, and accordingly has " No " discretion to ignore the jurisdictional dictates of the door closing statute. State v. Henderson 136 S.E.363, Ex part Wilson 114 U.S. 426

Factual evidence establishes that the foreperson of the grand jury signed the indictment January 28, 2002 (appendix pg. 6) As set forth, the orangeburg county solicitors office committed fraud upon the court by having the foreperson to sign the bill of indictment before a full panel was authorized to convene february 11 2002....Further establishing the violation of the Fifth amendment, a right, which holds; "No person shall be held to answer for a capitol, or infamous crime unless on a presentment of indictment of a grand jury"!(Gaithers v. United States 413 F.2d 1061, Mack v. United States 117 U.S. 352)

Though no evidence was proffered by the state(county solicitor) at the rule 29 hearing of the petitioner's motion being untimely Young object's to the unconstitutional shifting of the burden of proof by the appellate court, and it's contention that since young had access to the indictment since it was signed, "HE" could have discovered this error at his trial and that denial is proper.(appendix pg.105-107) This ruling relieves the state of its burden of proof, which is an error of law.

Legally and lawfully, young's motion on newly discovered evidence, alleges facts that would have been known to the county solicitor since it(indictment)was procured by its office! The face of the indictment alleged that young was indicted during a term of general session court, but since evidence proves this to be untrue, this constitutes material information that was known to the state beforehand and never affirmatively disclosed to Young.

The stance of the reviewing court(s) however minimizes this judicial machinery, suggesting that the details and circumstances of the signing of the indictment is immaterial to the question of guilt and/or due process and empowers the solicitor office in this state to conduct grand jury proceeding's (or not conduct them at all, as this case demonstrates) in any manner they see fit as the solicitor stated, "we always convene our grand juries before the general session court"!(appendix pg.45)

2. Does state and constitutional provisions allow county solicitors to commit fraud upon the court to convene grand jur(s) to return true bill indictments without general session jurisdiction?

Young in his effort to enjoy his state and constitutional right to due process, discovered that the indictment to which he plead his innocence had been returned by a procedure that violated state law and his constitutional rights, as it raises a meritorious legal issue, with numerous statues and cases in its support.(appendix pg.9-19) Due Process burdens the prosecution with returning its indictment according to the constitution. S.C. Const. Art.V.24, S.C.Code law 14-9-210; State V.Fletcher 322 S.C. 256

Both, Young and the state(county solicitor) presented evidence that, a grand jury was convened before a authorized court term wherein which it lacked general session jurisdiction to "true-bill" an indictment.(appendix pg.42-45) A bill of indictment must be returned, "Wile in Attendance" of the general session court.(appendix pg.26))

The Judicial calendar for the First Circuit show's, "NO " general session term was scheduled on the date of action by the grand jury. (appendix pg.108) This evidence, show's both, the Circuit and Appellate court(s) abused it's discretion by finding to the contrary!

It is the solicitors duty to procure a proper indictment by the grand jury. State v. Fletcher 322 s.c.256(1996)

Though, the safeguards of Due process gurantee these provisions, the lower and appellate court(s) ruling(s) suggest them to be waived because of the assumption and belief, that petitioner bore the task of presenting this bill of indictment to the general session court, but since he did not, he should remain caught between this illegal scylla and charybdis and the courts intend to continue holding him accountable and that he is entitled to no relief

Respectfully, the court should note that the bill of indictment was authored by the County Solicitor's Office, and it, not Young was responsible for proper presentment! These ruling's, again, are not supported by any evidence show's an unconstitutional shift of burden, that violates Youngs due process rights. (Sandstrom v. Montana 442 U.S.570 1979)

The date Youngs "True-Billed" indictment was signed two weeks "before" a authorized general session court and clearly establishes the indictment was not returned in open court. This procedure invalidate's youngs conviction as it violates his state and u.s. constitutional guranteed righ(s). Renigar v. United States 172 F.646, 14th Amend. U.S.C.A., Simmons v. Commonwealth 15 s.c. 352

C O N C L U S I O N

Young humbly has presented , for the highest court of South Carolina a issue of great ramification(s) due to the violation of life and liberty, petitioner asks for the grant of certiorari and reversal of this conviction!

Respectfully Submitted:

Willie Yang

Date:

1/13/21

PROOF OF SERVICE

I, WILLIE YOUNG #285487, attest i have served the above referenced matter on jenny abbott kitchings, p.o. box 11629, cola, s.c. 29211 january 7, 2021.

/s/ Willie Young

DATE 1/13/21

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