

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

MAY 24 2021

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

SC Court of Appeals

Cordell Maddox, Jr. Circuit Court Judge

Case No. 2018-001099

The State of South Carolina..... Respondent

v.

Gavin v. Jones Appellant

MOTION FOR REHEARING

The Appellant, Gavin v. Jones, pursuant to rule 221 SCACR, moves the court to reconsider the Decision made in Appeal Case No. 2018-001099, submitted March 1, 2021 Filed May 5 2021, received by Appellant on May 11 2021. In support of the motion, the Appellant shows the following to the court.

Let me start this petition for rehearing by submitting to this Court of appeals that I have a legal right to be indicted lawfully. Appellant's Mandamus is to compel the Solicitor to indict him lawfully, according to Statutory Law, specifically 14-9-210. The Solicitor has No discretion in this, he either followed the statutory guidelines of 14-9-210 or he did not. If he did not, the Indictment is unlawful; if he did the Indictment is Lawful. It is clear from the record on appeal he did not, as the Court must have over looked. Truth is in your hands. This Court has failed to state whether it determines that the Anderson County Grand Jury convened at a Court of General Sessions. This Court as well as the lower Court has dodged that specific question, rather both Courts have erroneously focused on whether the Grand Jury convened. However, the focus of Appellant's Mandamus is the lack of the convening of the Court of General Session, not the Grand Jury. Again, this Court conflates the concept of the convening of the Grand Jury with the concept of the convening of a Court of General Sessions.

This is truly a simple matter. Did the Grand Jury convene at the Court of General Session or not? No evidence has been presented by the State that the Grand Jury convened at a Court of General Sessions. This is because there was no order or subsequent order authorizing a term of General Session to be convened on January 5th 1999. There is no order in the record of this case before this Court which neither authorized nor specifies that a Court of General Sessions would legally convene on January 5th 1999. There's no factual evidence in the record which supports either the trial Courts determination or this Courts determination.

Mandamus is the highest judicial writ and is issued only when there is a specific right to be enforced, a positive duty to be performed and no other specific remedy, Anderson v. State 338 S.C. 629 527 Se 2d 398.

There are times that "truth" must be spoken not to disrespect any judge or clerk but because it is the truth. It would seem that this Court is overlooking the most crucial fact in this appeal. The Appellant has a Constitutional right to have the laws followed in presentment of his Indictment.

That law is in S.C. Code of Laws 14-9-210, which are the guidelines set by legislators in this case for presentment of a Lawful Indictment.

The Solicitor had a Ministerial Duty to follow that law when seeking an Indictment on Appellant.

Now this Court, in its opinion, seems to be overlooking facts and with good reason “Truth” will be shown to this Court in the record so all may see. The S.C. Attorney General has admitted it has been a “**PRACTICE**” in the State of S.C. for the Grand Jury to convene outside of General Session Court. (*Emphasis Added*). See respondent final brief 1st paragraph.

This is the same thing as saying “we do not follow Statutory Law 14-9-210”; notwithstanding this law mandates that the Grand Jury meet in Court of General Sessions.

To clarify, Appellant is not trying to compel the Solicitor to release him, but to use a Lawful Indictment. Because the Indictment used is unlawful. This Court has misconstrued Appellant reason for seeking a mandamus.

The question presented in the final brief, clearly show that Appellant is not trying to compel the State by Mandamus to release him. Mapp v. Ohio 367 us 643, 659 (1961).

- (1) Did the Lower Court err by not ruling that the Solicitor office have a ministerial duty to follow the lawful procedure for obtaining Indictments in S.C Code of Law 14-9-210?
- (2) Did the Lower Court err by not ruling that the Solicitor office have a ministerial duty to follow S.C. laws when obtaining a lawful Indictment?
- (3) Did the Lower Court err by not ruling that on illegally obtained Indictment can give notice and exercise Subject-Matter-Jurisdiction over his person end case?
- (4) Does trial Court have Subject-Matter-Jurisdiction over a case that was obtained by violating S.C. code of Law 16-9-10 A2 (perjury and Subornation of perjury)?

TRUTH:

This Court has overlooked the 4 part test of the standard review that also shows he is not trying to compel the State to release him Appellant only stated it was a conclusion if the Court found that his Indictment was unlawful. Anderson v. State .ID

See Appendix pg.

- (1) The opposing party has an indisputable and plainly defined duty to perform the act: The Solicitor in the present case had a Lawful duty to provide Mr. Jones with a lawfully obtained Indictment.

- (2) The ministerial nature of act: Solicitor and Court clerks have the “ministerial duty” to ensure that Exparte Grand Jury Indictment proceedings are convened and conducted in strict conformity of law.
- (3) The opposing party is specific legal right for which discharge of duty is necessary: Appellant had a 14th Amendment due process right to be provided with an indictment from a legally constituted Grand Jury.
- (4) A lack of any other legal remedy: Appellant had no other legal avenue to pursue this issue for there is no remedy to pursue this type of violation: ID @ Appellant practice in South Carolina pg. 281 (1999) (citing Wiblen v. Long, 205 Se 2d 174 (1974)).

Even if this Court is to rule under State v. Gentry, 363 S.C. 93, 102, 610 Se 2d 494, 500 (2003) that an Indictment is a noticing document, the Court would have to Agree that the notice has to be lawful. A notice that is unlawful cannot give notice.

Now this Court has said in its opinion “that Appellant failed to set forth any reason as to why the Indictment of issue provided insufficient notice. Appellant will clarify to the Court that a document that is unlawful cannot give notice.

TRUTH:

This Court ignores facts that the final brief and record on appeal clearly show, the burden was upon the Appellant to show how the Indictment is unlawful.

- (1) There was no General Session Court on January 5th 1999 for the Grand Jury to convene upon their oath. This violated South Carolina Code of law 14-9-210.
- (2) This deception was printed on Appellants Indictment that the Grand Jury convened at a Court of General Sessions January 5th 1999. When there was no General Sessions Court January 5th 1999. Under S.C. law 16-9-10 this is perjury to put false information on a document required by the law of this state.
- (3) This unlawful document was used to bring Appellant to trial; this was a Sham Legal Process. As defined by the criminal statute 16-17-735.

And as such, the Indictment itself was not a lawfully issued state required Indictment, causing the document itself to become a nullity.

Under South Carolina Code of Law 16-17-735 (E) (4)

Lawfully issued “means adopted, issued or rendered “in Accordance with the Applicable statutes, rules, regulations and ordinances of the United States, “A STATE”, an agency or a political subdivision of State. (*Emphasis Added*).

Appellant submits to the Court, South Carolina Code of law 14-9-210 was not followed in this Case.

I would ask the Court to please review the Mandamus Hearing Transcript. Trpg. 7 Ln 8-13 the Judge comments are clearly not in line with Statutory Law 14-9-210.

If this Court will also review Trpg. 9 Ln 2-16 again the courts direction on the procedure of the Grand Jury and where it meets is clearly an error in law. The circuit Judge states that the Grand Jury has no connection to where Court is held. This is a clear error of Law and clearly abuse of discretion.

But it becomes clear why the Judge made the statement when he was asked on Trps. 9 Ln 20 “has 14-9-210 is it repealed?”

Ln 22: The Court: I have no idea to be honest and to be honest with you I don’t know, what does it say?

Appellant then reads 14-9-210 on the record as he was asked by the Court, only to be stopped by the Court and then told that what he was reading was not what it meant. (Trpg. 10 Ln 10-14).

The legislature’s intent should be ascertained primarily from the plain language of the statute. State v. Landis 362 S.C 97, 102 606 Se 2d 503, 505 (ct App 2004).

When a statute’s terms are clear and unambiguous on their face, there is no room for statutory construction and a Court must apply the statute according to its literal meaning, Miller v. Aiken 364 S.C. 303,307,613, SE ad (2005).

Where the language of the statute is clear and explicit, the Court cannot rewrite the statute and inject matters into it which are not in the legislature’s language.id.

This Court has placed me in a position to tell them things that I know you know. Judge Cordelle Maddox abused his discretion in his decision, because it was outside of law. He did not rule according to 14-9-210.

I inform this Court of Appeals through this entire rehearing petition, “there was No Subsequent order which would authorize any additional terms of General Session Court or special terms of General Session Court. Therefore, there was No way that the Grand Jury convened upon there oath January 5th 1999.

Although an order was signed by Judge H. Dean Hall December 10, 1998, this order asked that **the Grand Jury be allowed to convene at the next (6) months of General Session Court.** This order is Not asking for additional or special terms of General Session.

Also the record of the Mandamus hearing is clear in Judge Maddox opinion; the Grand Jury does not have to meet at a Court of General Sessions. His statement amounted to an error of Law and thus an abuse of discretion, S.C. constitution Art 1&11; S.C. Code Ann. 14-9-210.

What a legislature says in the text of a statute is considered the best evidence of the legislature intent or will. Bayle v. S.C. Dept. of Transportation 344 S.C. 155, 122, 542 Se 2d 736, 740 (ct App 2001).

Will this Court be unfair and bias when it is clear in the record Statutory Law 14-9-210 has clearly been ignored and the Court is using a “sham legal Process” to indict S.C. citizens?

The S.C Attorney General office has openly admitted that it has been a “practice” in the state of S.C. to indict outside of Statutory Law 14-9-210.

This is how Courts have been able to indict 1,4040 people in one 8 ½ hour day, failure to follow the Statutory Laws and without meeting in a Court of General Sessions the lack of visibility means No Accountability.

An Abuse of discretion occurs when the conclusion of the circuit court of Law is either controlled by an error of Law or is based on unsupported factual conclusions. Clark v. Cantrell 339 S.C. 369 529 Se 2d 528

Clearly this Court can see that the Indictment was unlawful.

In its opinion this Court speaks about two (2) orders the first order was signed by Judge H. Dean Hall on December 10, 1998 asking that the Grand Jury by allowed to convene at the General session Court for the next (6) Months term of Court.

Also an order was signed by the late Chief Justice Finney on December 1, 1998, that incorporated a revised schedule for the Statutory terms of circuit Court for the first half of 1999 that did not include a term of general sessions Court in Anderson County during the week of January 4, 1999. As expressed by this Court in the footnote “however, Justice Finney’s order also authorized the scheduling of additional terms of Court “during this period by “Subsequent Orders””, depending upon the availability of judicial resources and case load information.

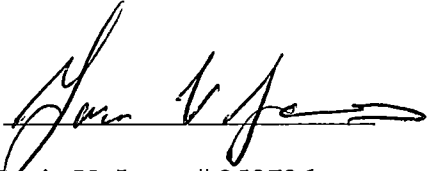
Appellant would point out to this Court there are no Subsequent Orders under any South Carolina Code of Law statute authorizing a special term of General Session Court for January 5th 1999. Although an order was signed asking that the Grand Jury be allowed to convene on January 5th 1999 and other dates, this was not during a Court of General Session as requested by said order and South Carolina Code of Law 14-9-210. Therefore, the Indictment used to bring Appellant to trial was unlawful and by S.C. Law the Indictment is a void instrument. (Emphasis Added).

I know this Court will make whatever decision it wants too. For 23 years I have been in prison based on a lie. When I read this Court’s opinion I wasn’t upset because this Court did not rule in my favor. But because this Court ruling wasn’t based on “Truth”, for four years Judge Maddox withheld his decision in this Mandamus because he knew it wasn’t going to be based on truth and that truth can truly be seen. The Solicitor has used an Indictment process that is clearly outside Statutory Law 14-9-210. Now I know that there are other factors that are weighing on this Court’s decision.

The decision in this case should be in favor of Appellant as it is the Solicitor’s duty to use a lawful Indictment.

WHEREFORE, the Appellant respectfully requests this Court to reconsider its opinion and ruling opinion No. 2021-up-147 submitted March 1, 2021. Filed may 5th 2021 and rule in favor of Appellant.

Date: 5/19/21



Gavin V. Jones # 259726
Tyger River Corr. Unit 7-111
200 Prison Road
Enoree S.C. 29335

South Carolina Department of Corrections
Division of Industries
COOPER TRUST FUND WITHDRAWAL

Financial Accounting
Branch Use Only:

Facility: **T Y R C I - U Y**

0 1 6 1
Location Code

Date: **0 5 1 1 2 1**
M M D D Y Y

ACCOUNT INFORMATION

Account Number: **2 5 9 7 2 6**

Unit: 7 Room: 111

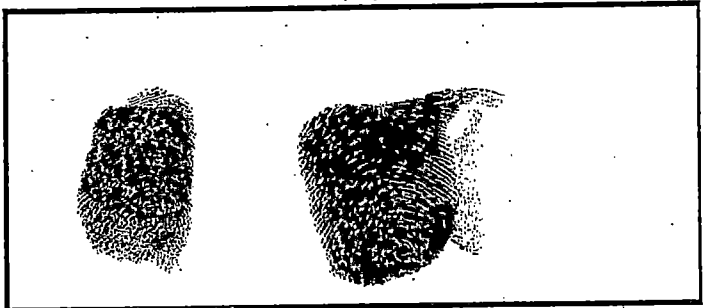
Inmate # or Employee SS#

Account Name: **G a v i n**
First

V **J o n e s**
MI Last

I request money be taken from my account to issue a check for this amount to be mailed to payee shown below

\$ **5 0 . 0 0**



Inmate Thumb Index fingerprint required.

For Filing Fee

Gavin Jones
Inmate/Account holder Signature.

B. Stearns
Signature of Institution Staff Inmate ID Verification

Signature of Warden / Printed Name of Warden

PAYEE INFORMATION

Payee Name: select vendor OR individual

Vendor/Business **S C C O U R T O F A P P E A L S**

Individual **MI Last**

PAYEE'S MAILING ADDRESS

Street/Box **P O B O X 1 1 6 2 9**

Street/Box (optional Line)

C O L U M B I A
City

S C
State

2 9 2 1 1
Zip Code

VENDOR ATTACHMENT: Y/N

Y

If an ORDER or REMITTANCE form is attached for mailing with a check to vendor enter Y=yes; if none, enter N. NO other types of attachments (letters, cards, etc.) will be accepted

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
Office of General Counsel
LEGAL/PRIVILEGED/CERTIFIED MAIL DELIVERY LOG

Date Received	Inmate Name and SCDC Number	Sender's Name and Address	Date Mail/Order to Report Delivered to Inmate	Inmate's Recipient's Signature	Inspected/Delivered in Inmate's Presence By:	Comments
5/7/2021	[REDACTED]	IRS DEPT OF TREASURY IRS STOP 6525 KANSAS CITY MO 64999	5/7/2021	[REDACTED]	PC	
5/7/2021	[REDACTED]	STATE OF SC ADMIN LAW CT EDGAR A BROWN BLDING 1205 PENDLETON ST STE 224 COLUMBIA SC 29201	5/7/2021	[REDACTED]	PC	
5/7/2021	GAVIN JONES 259726	STATE OF SC COURT OF APPEALS JENNY ABBOTT KITCHINGS CLERK PO BOX 11629 COLUMBIA SC 29211	5/7/2021	[REDACTED]	PC	
5/7/2021	[REDACTED]	PAT WELBORN CLERK OF COURT PO BOX 215 PICKENS SC 29671	5/7/2021	[REDACTED]	PC	
5/7/2021	[REDACTED]	SSA WILKES-BARRE DIRECT OPERATIONS CENTER PO BOX 7004 WILKES-BARRE PA 18767	5/7/2021	[REDACTED]	PC	
5/7/2021	[REDACTED]	SSA WILKES-BARRE DIRECT OPERATIONS CENTER PO BOX 7004 WILKES-BARRE PA 18767	5/7/2021	[REDACTED]	PC	

SCDC FORM 10-12 (Revised May 2013)

*This shows the Date I received
mail from this Court.*

*I/M
Received
Per Co ON 5-11-21
Due to
Holiday*

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

RECEIVED

MAY 24 2021

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

SC Court of Appeals

Cordell Maddox, Jr. Circuit Court Judge

Case No. 2018-001099

Gavin v. Jones Appellant

v.

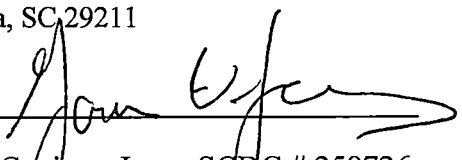
The State of South Carolina..... Respondent

PROOF OF SERVICE

I hereby certify that, on this day, I have served a petition for rehearing upon the following individuals by depositing a copy of the same in to the U.S. Mail, with receipt for filing fee, postage prepaid addressed as follows:

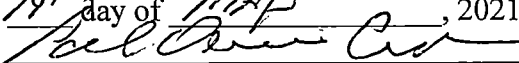
Taylor Z. Smith
Assistant Attorney General
Post Office Box 11549
Columbia, SC 29211

Jenny A. Kitchings
Clerk of Court
Post office Box 11629
Columbia, SC, 29211

/s/ 

Gavin v. Jones SCDC # 259726
Tyger River Unit 7A-111
200 Prison Road
Enoree, SC 29335

Sworn to and subscribed before me this
19th day of MAY, 2021



Notary of South Carolina
My Commission Expires:

Honorable Jenny A. Kitchings
S.C. Court of Appeals Clerk
Post office Box 11629
Columbia, SC 29211

RECEIVED

MAY 24 2021

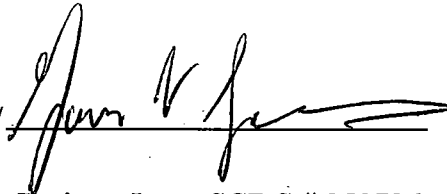
SC Court of Appeals

Re: Appeal of Mandamus

Dear Ms. Kitchings:

Enclosed please find my original petition for rehearing filed with this court and a proof of service of same filed with Attorney General.

With receipt for filing fee.

/s/ 

Gavin v. Jones SCDC # 259726
Tyger River Unit 7A-111
200 Prison Road
Enoree, SC 29335

CC: Attorney for Respondent
Taylor Z. Smith
Appellants File

Mr. GAVIN V. Jones #259
Tyger River Corr. Unit 7 #1
200 Prison Road
Enorce S.C. 29335



U.S. POSTAGE PITNEY BOWES
ZIP 29335 \$ 009.45⁰
02 4W
0000373866 MAY 19 2021

RECEIVED
MAY 19 2021
TYGER MAILROOM

RECEIVED
MAY 24 2021
SC Court of Appeals

S.C. Court of Appeals
Jenny A. Kitchins
Clerk of Court
P.O. Box 11629
Columbia, S.C. 29211

LEGAL MAIL

5/22