

STATE OF SOUTH CAROLINA

In the Supreme Court

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S.C. SUPREME COURT

APPEAL FOM ORANGEBURG COUNTY

Count of General Sessions

Honorable Edgar W. Dickson, Circuit Judge

CASE # 2021 – 000056

Willie Young

Petitioner

V

The State

Respondent

REPLY IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

WILLIE YOUNG

4848 Goldwine Hwy

Kershaw, SC

29067

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The circuit court upheld an error of law that denied this petitioner a state statutory right to
due process that deprived him of life and liberty.

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CASES

State v Mercer 381 s.c. 1494
S.C. v Williams 108 s.c. 2954
Evans v State 363 s.c. 4955
S.C. v Fletcher 322 s.c. 2565

STATUES

S.C. Code Ann. §14-5-620(3)3,4
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Renigar v U.S. 172 F. 6466
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Simpson v State 317 s.c. 5067
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U.S. v Goodwin 457 v U.S. 3686

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S.C. SUPREME COURT

Reply

I.

Respondents argument that circuit court was correct in denying Young's motion for new trial because both his motion was untimely, and that he did not produce any new evidence, is erroneous, as the denial was an error of law, which was an abuse of discretion by the circuit court.

A. Standard Of Review

On review of trial courts denial of motion for new trial on after discovered evidence, Appellate court may not make its own finding's of fact. The deferential standard of review constrains the appellate court tto affirm the trial court if reasonably supported by the evidence. state v mercer 381 s.c. 149(2009)

As noted by the S.C. Supreme Court, " The circuit court's are not only vested with the power to grant new trials, under and by virtue of provisions of said statue, but, likewise, as an incident to their jurisdiction, and further held " The statue empowering the circuit judges to grant new trials on after discovered evidence does not limit the time within which the motion can be made. S.C. V Williams 108 s.c. 295 (1917)

The circuit court(s) ORDER, Clearly expressed its reason(s) for the denial of Young's new trial motion, acknowledging that S.C. Code Ann. 14-5-620(3) did not provide for the orangeburg general session term of court at the time defendant was indicted ".....failing to mention throughout, of Young's motion being untimely in this regard, and , instead, ruled in it's discretion, that Young's claim was without merit. Appendix pg. 1-4

The decision whether to grant a new trial rests within the sound discretion of the trial court, and the Supreme Court will not disturb the trial court's decision absent an abuse of discretion.

Young raised to the circuit court that the county solicitor, unlawfully impaneled it's Grand Jury to return a " TRUE BILLED " indictment in violation of S.C. code ann. :14-5-620(3).

Young submitted the indictment to which he pled his innocence , showed by action of the grand jury he was true billed on a date that, 1) There is no record of in the general session court, the only term of court, wherein a lawfully paneled grand jury can return a bill of indictment. S.C. Code Ann. §14-9-170 , and 2) The indictment was in fact returned in violation of s.c. code ann. 14-5-620(3) as stated by the circuit courts order. APP. pg. 3

The circuit court abused its discretion as it was error to acknowledge that Young was true billed indicted (1/28/2002) AT A TIME S.C.CODE OF LAW PROHIBITED, then to mislead and confusingly rule. Young was indicted in the month of february, was a clear violation of Young's state and u.s. 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 (2005) APP.pg.1-2.

The reason stated by the circuit court order that " essentially . it was upholding an error of law was that the S.C.Administration court scheduled " those weeks ", again,referencing the dates of january 28,2002 and february 11,2002.App. pg 3

YOUNG,
submitted evidence that he was true billed outside the term of General Sessions court and without objection from the county solicitor . who admitted to returning Young's indictment outside the general session term, which is clearly an error of established state and u.s. constitutional laws and statues!

App. pg 45-46. 108

II.
Respondent's response and Circuit Court's ruling are clear efforts to undermine, minimize and relegate, as immaterial Young's state and u.s. constitutional right to Due Process and the judicial and constitutional machinery and its importance in the Due Process of law.

A. Grand Jury services are upon the General Sessions Court.

The Grand Jury as drawn in accordance with law for service upon the court's of General Sessions in each of the counties shall constitute the grand jury for the county court and shall meet with the county court at each of it's terms, except the term next succeeding each session of the circuit court. S.C. Code ann. §14-9-170

* One who demands and is refused the right to be tried for crime charged against him only upon an indictment presented by a legal grand jury, in instances where such indictment is required, may thereafter justly take the position that he has been deprived of life, liberty or property without due process of law.

In Evans V State 363 s.c. 495,509(2005), THIS COURT HELD: When a defendant timely moves to quash an indictment, the circuit court must determine whether the defendant's constitutional right to have the criminal allegations against him weighed by a properly constituted grand jury.

At Young's motion hearing no evidence was submitted on its record, as to if a motion was made at his jury trial, to "quash" the indictment, however, since the county solicitor "admitted" TO CLEARLY COMMITTING AN ERROR OF LAW BY RETURNING ITS BILL OF INDICTMENT AGAINST HIM OUTSIDE A GENERAL SESSION COURT TERM", While the circuit court abused its discretion by acknowledging the true billed date, in which no court term was held and upheld "AN ERROR OF LAW", Erroneously holding the s.c. administration court scheduled a orangeburg general session january 28, 2002, that is untrue, and can be proven by judicial calendar. App.pg45-46,108

....Though, it was not preserved for review, in good faith Young submitted to the appellate court record of his trial transcript, which show's the motion to quash the indictment alleged numerous grounds, the "Time of Finding by the grand jury" was raised as well. App pg. 108, 121-123

* It is a Due Process violation to punish a person for exercising a protected statutory and constitutional right. U.S. V Goodwin 457 U.S. 368

The county solicitor was required to properly procure an indictment from the grand jury. S.C. V Fletcher 322 s.c. 256; S.C. Const. Art.V,24

The solicitor is required to present its bill of indictment to the grand jury and presiding judge, "While in attendance" of a general session court term. s.c. code law 14-9-210 Young's claim at his motion for a new trial was that the county solicitor obtained an indictment against him unlawfully impaneling a grand jury outside a court authorized by law. (App.pg.9-10

Young's evidence was the indictment returned against him which stated he was 'true billed' indicted january 28, 2002. The circuit court acknowledged the date on Young's indictment, while the county solicitor "agreed" WITH YOUNG'S CLAIM, by admitting, that it had convened a grand jury prior to an authorized term, thereby, committing an error of law and violating Young's Due Process rights. App.pg42:45-46

Judicial record makes clear that on january 28, 2002 no general session court was authorized(hence, the admittal by the county solicitor) which violated Young's due process rights to a lawfully paneled grand jury. App.pg108

* The court(s) held in Renigar V U.S. 172 F.646(4 cir. 1909) , that an " indictment " not physically returned in open court must be dismissed.

III. Due Process; Right to grand jury

Young has a right under the state constitution to demand that a grand jury which is properly established and constituted under the law consider the criminal allegations against him. Const. Art. 1 §11; Art.5 §22

Young asserts that the evidence submitted by the county solicitors office that it " convenes " ITS OWN GRAND JURY(S) ..outside the general session court should be shocking to the conscious of justice, as it has been done by fraudulent means. The county solicitors signature that it returned a true billed indictment, while in attendance of a court term in orangeburg general sessions court before a presiding judge and grand jury in accordance to the statues and provisions governing the grand jury(a) SERVICE ON THE GENERAL SESSION COURT,...was both deceptive and fraudulent as evidence such as the county solicitors testimony and it's own indictment returned against petitioner, proves the fact(a) RAISED IN THE MOTION FOR NEW TRIAL HAVE MERIT. (App.pg 6: 45-46

Where it can be demonstrated that a party has clearly and convincingly set in motion a sheme, which is calculated to interfere with the judicial systems impartiality to adjudicate a matter properly, fraud on the court has occured. Alexander V Robertson 882 F.2d 421,424(9 cir. 1989)

The courts have inherent power to dismiss an action when a party has willfully deceived the court and engaged in conduct(as that admitted by solicitor) UTTERLY inconsistent with the administration of justice. Eppea V Snowden 656 F.Supp. 1267 (E.D. ky. 1986)

CONCLUSION

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(a) FROM THE RULES. Russell V UNITED STATES 36 u.s. 749 (1962)

The circuit courts ruling was improper, specifically when evidence was submitted by both petitioner and county solicitor that this indictment ,in which he is currently sentenced, was done by a procedure that violated state procedure.....and in fact showed " NO DISCRETION " was excercized, an error of law has taken place. State V Smith 276 s.c. 494, 498 (1981)

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)

Young, the petitioner in this matter has been denied fundamental fairness for twenty (20) long years, am entitled to a properly paneled grand jury to consider the allegations against him in a lawful open court. in accordance to state and u.s. constitutional gurantees.

THIS PETITIONER HUMBLY ASKS FOR THE GRANTING OF THIS PETITION, AND GRANT MOTION FOR NEW TRIAL.

/s/ W. Lee Young
Date 5/28/21

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