STATE OF SOUTH CAROLINA
In the Court of Appeals

On Appeal from Anderson County

The Honorable J. Cordell Maddox, Jr., Circuit Court Judge

Appellate Case No. 2018-001099

GAVIN V. JONES,

Appellant,

v.

STATE OF SOUTH CAROLINA,

Respondent.

RETURN TO PETITION FOR REHEARING

Appellant has petitioned for rehearing, asking for this Court to reverse the lower court's denial of Appellant's petition for a writ of mandamus to compel the Tenth Circuit Solicitor to "indict [Appellant] lawfully, according to Statutory Law, specifically [S.C. Code Ann. §] 14-9-210." Motion for Rehearing at 3. Appellant argues that the indictment issued against him by the Anderson County Grand Jury was unlawful because it was issued during a week that did not have a corresponding term of general sessions and that the Solicitor should be compelled "to use a Lawful Indictment."

South Carolina Code Section 14-9-210 provides a method whereby the "county solicitor" is to prepare and submit to the grand jury certain bills of indictment "in . . . cases pending in the county court", whereby the grand jury and the judge presiding over the court of general sessions

are required to take certain actions in response, and whereby those bills of indictment are to be tried by the "county court" as if they had been issued "by the grand jury while in attendance upon the county court." First, Appellant has failed to show that this statute provides the only means whereby he could have been lawfully indicted. The statute uses prescriptive language by providing that the "county solicitor", grand jury, and presiding judge of the court of general sessions shall each take a specified action, but the statute does not indicate that it provides the only means by which a defendant can be indicted. Appellant's interpretation of the statute should be rejected because it "would lead to a plainly absurd result which could not possibly have been intended by the legislature or which would defeat the plain legislative intent." State v. Sweat, 379 S.C. 367, 377, 665 S.E.2d 645, 650 (S.C. Ct. App. 2008).

Second, Appellant's reliance upon the statute is misplaced because the statute provides a method whereby bills of indictment may be tried by county courts. But those courts have been abolished in South Carolina. Austelle v. Austelle, 294 S.C. 19, 20-21, 362 S.E.2d 181, 182-83 (S.C. Ct. App. 1987) (explaining that the county courts were previously abolished and that "their jurisdiction devolved upon the unified court system.") (citation omitted). Instead, Appellant was indicted by a grand jury convened by an order issued by the Anderson County Court of General Sessions, which itself was issued in conformance with the late Chief Justice Finney's order giving judicial circuits the authority to tend to their own administrative affairs.

Third, Appellant has failed to show that the indictment issued against him provided insufficient notice to him about the charge of murder that he was facing. "The primary purposes of an indictment are to put the defendant on notice of what he is called upon to answer, *i.e.*, to apprise him of the elements of the offense and to allow him to decide whether to plead guilty or stand trial, and to enable the circuit court to know what judgment to pronounce if the defendant is

convicted." Evans v. State, 363 S.C. 495, 508, 611 S.E.2d 510, 517 (2005) (citing State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005)). This Court was right to affirm the lower court's finding that Appellant has failed to identify any respect in which the indictment actually issued by the grand jury afforded insufficient notice to him. At best, even if Appellant's interpretation of the statute is correct, Appellant has asserted a "mere irregularity" in the grand jury's practices. Id. (quotations omitted); see State v. Powers, 59 S.C. 200, 37 S.E. 690, 691-92 (1901) (finding that the lower court was right in requiring the jury commissioners in Oconee County to draw 18 people to serve as grand jurors for the year of 1900 when it would have been impossible to follow the provisions of the law in effect at the time because "there was no lawful grand jury then in existence for the county of Oconee"); State v. Jeffcoat, 26 S.C. 114, 1 S.E. 440, 440-41 (1887) (agreeing with the lower court that "merely changing the time for holding the court did not make the grand jury illegal").

Furthermore, Appellant has failed to prove that the lower court abused its discretion in denying the petition for a writ of mandamus. Appellant has failed to prove that the Solicitor has a duty "to perform the act" requested by Appellant; namely, seeking a new indictment against Appellant. Edwards v. State, 383 S.C. 82, 96, 678 S.E.2d 412, 419 (2009). As previously noted in this return, Appellant is improperly reading into section 14-9-210 a duty on the part of the Solicitor that simply is not there. Appellant has provided no authority establishing that the convening of a court of general sessions is a perquisite to the meeting of a grand jury. Since Appellant has failed to prove any duty on the part of the Solicitor to act in conformance with Appellant's preferences—and because of the other insufficiencies of the petition for a writ of mandamus, as noted in Respondent's brief—the lower court was right to deny the petition and this Court was right to

affirm. Appellant has given no reason for this Court to disturb its previous holding that the lower court acted within its discretion in denying the petition for a writ of mandamus.

Appellant was lawfully indicted; he has given this Court no reason to find that the indictment was unlawful, even though he was not indicted according to his preferences; and he has given this Court no reason to disturb the lower court's denial of the petition for a writ of mandamus.

This Court should deny the petition for rehearing.

Respectfully submitted,

ALAN WILSON
Attorney General

TAYLOR ZANE SMITH
Assistant Attorney General
SC Bar No. 103282

By: _____
ATTORNEYS FOR RESPONDENT
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Columbia, SC 29211

June 9, 2021

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Jun 09 2021
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

The Honorable J. Cordell Maddox, Jr., Circuit Court Judge

Appellate Case No: 2018-001099

GAVIN V. JONES, PETITIONER

v.

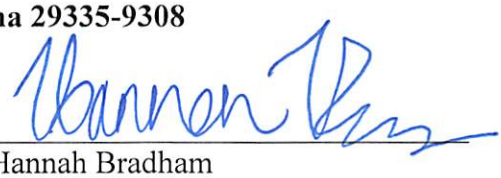
STATE OF SOUTH CAROLINA, RESPONDENT

CERTIFICATE OF SERVICE

I, Hannah Bradham, hereby certify that I have served the Return to Petition for Rehearing by depositing a copy of same in the United States mail addressed to:

Gavin V. Jones, #259726
Tyger River Correctional Institution
200 Prison Road
Enoree, South Carolina 29335-9308

This 9th day of June, 2021.



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ALAN WILSON
ATTORNEY GENERAL

RECEIVED
Jun 09 2021
SC Court of Appeals

June 9, 2021

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211
By email to ctappfilings@sccourts.org

Re: **Gavin V. Jones v. State of South Carolina**
Appellate Case No. 2018-001099
Lower Court Case No. 2012-CP-04-0861

Dear Ms. Kitchings:

Attached is a copy of the **Return to Petition for Rehearing** in the above-referenced case for filing in your office.

Sincerely,

Taylor Z. Smith
Assistant Attorney General
SC Bar #103282

TZS/hb

cc: Gavin V. Jones, Pro Se Petitioner, by mail