

THE STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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OCT 14 2021

APPEAL FROM Anderson County  
J. Cordell Maddox, Jr., Circuit Court Judge

S.C. SUPREME COURT

Opinion No. 2021-up-147  
S.C. Court of Appeals  
Submitted March 1, 2021- Filed May 5, 2021  
Rehearing Filed Aug 23, 2021

The State of South Carolina..... Respondent

v.

Gavin v. Jones ..... Petitioner

**PETITION FOR WRIT OF CERTIORARI**

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2. Did the Court of Appeals 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 Court of Appeals err by not ruling that on illegally obtained Indictment can give notice and exercise Subject-Matter-Jurisdiction over his person end case?
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## **CERTIFICATE OF COUNSEL**

Petitioner proceeding Pro Se certifies that the petition for rehearing was made and finally ruled upon by the court of appeal on August 23, 2021.

### **QUESTION PRESENTED**

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)?

### **STATEMENT OF THE CASE**

Petitioner is serving a sentence of Life without Parole. Chief Justice Ernest A. Finney Jr. of the South Carolina Supreme Court, canceled the statutory terms of General Session Court in South Carolina for the period beginning on January 4, 1999, and ending on July 2, 1999, by order issued on December 1, 1998. The order authorized the Chief Judge for administrative purposes in each circuit to schedule additional terms during their period. On December 10, 1998, the Honorable H. Dean Hall issued an order by request of George M. Duckworth requesting that the Grand Jury be allowed to convene the next (6) months of General Session Court to dispose of some cases. Although Solicitor had an order he declined to convene the Grand Jury during General Sessions Court as requested by the order.

The indictment for murder indicates it was true billed by the Grand Jury at a court of General Session January 5<sup>th</sup> 1999. However, there was no General Sessions Court on January 5<sup>th</sup> 1999. Solicitor committed Perjury by placing false information upon the indictment. And used a sham legal process to bring Petitioner to trial where he was found guilty with a weak circumstantial evidence case.

Petitioner filed a Petition for Writ of Mandamus on March 14, 2021, arguing that he was entitled to a Writ of Mandamus to compel the solicitor to indict him with a lawful indictment.

Respondent Has Admitted It Has Been a "Practice" to ignore statutory law 14-9-210 when obtaining indictments. And have defended this Action by saying Petitioner is trying to compel the State to release him instead of Indict him lawfully according to 14-9-210. A hearing was convened on February 20, 2014 before Honorable J. Cordell Maddox, Jr.

Judge Maddox (Circuit Court) denied the petition on February 6, 2018, four years later. Petitioner then filed a Motion to Alter or Amend Judgment pursuant to Rule 59(e), SCRPC, which was denied by the circuit court.

Petitioner then filed an Appeal in which was Passed down to the Court of Appeals. The Court of Appeals is ignoring facts that are clearly against S.C. Law.

- (1) The Court of Appeals ignore that J. Cordell Maddox abused his discretion in the Lower Court by basically saying the Grand Jury can meet in any Court.
- (2) The Court of Appeals has made reference that Petitioner is trying to compel the Lower Court to release him.
- (3) The Court of Appeals refuses to acknowledge Statutory Law 14-9-210, or that the Solicitor committed perjury under 16-9-10 A2.

Court of Appeals denied Petition Submitted March 1, 2021 Filed May 5, 2021, Rehearing denied August 23, 2021. So follows this Petition.

### **ARGUMENT**

- (1) The Court of Appeals should have held that although an indictment is a Noticing Document it still has to be Lawful and the Solicitor had a ministerial duty to follow the law.

In the Court of Appeals order affirming the Lower Courts decision. The Court of Appeal in writing this Order reminded Petitioner of a Quote "it's Not what you look at that matters it's what you See." Petitioner has made clear his issues to the Court. But will do it once more to clarify things to this Court.

- (1) Either the Law Applies to the case or it does not. It would be good if the Court of Appeals explain why statutory Law does Not apply in this Mandamus's

Explain why in there order they speak around the truth. Anyone looking at that order does not know the December 10, 1998 order signed by Judge Dean Hall is requesting that the Grand Jury be allowed to convened the next (6) months of General Sessions. THAT NEVER HAPPENED!!

Anyone looking at Judge Dean Hall order would have to read carefully to know there is Not a subsequent order for January 5, 1999. So how is the indictment lawful, it's just a piece of paper?

Petitioner 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. The Court of Appeals has failed to state whether it determines that the Anderson County Grand Jury convened at a Court of General Sessions. The Court of Appeals 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 Petitioner's Mandamus is the lack of the convening of the Court of General Session, not the Grand Jury. Again, the Court of Appeals 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 5<sup>th</sup> 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 5<sup>th</sup> 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 the Court of Appeals is overlooking the most crucial fact in this appeal. The Petitioner 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 Petitioner.

Now the Court of Appeals, 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 1<sup>st</sup> 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, Petitioner is not trying to compel the Solicitor to release him, but to use a Lawful Indictment. Because the Indictment used is unlawful. The Court of Appeals has misconstrued Petitioner reason for seeking a mandamus.

The question presented in the final brief, clearly show that Petitioner 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 an illegally obtained Indictment can give notice and exercise Subject-Matter-Jurisdiction over his person and 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:**

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

See Appendix pg. C-1

- (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: Petitioner had a 14<sup>th</sup> Amendment due process right to be provided with an indictment from a legally constituted Grand Jury.
- (4) A lack of any other legal remedy: Petitioner had no other legal avenue to pursue this issue for there is no remedy to purse this type of violation: ID @ Petitioner 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 the Court of Appeals has said in its opinion “that Petitioner failed to set forth any reason as to why the Indictment of issue provided insufficient notice. Petitioner will clarify to the Court that a document that is unlawful cannot give notice.

**TRUTH:**

The Court of Appeals ignores facts that the final brief and record on appeal clearly show, the burden was upon the Petitioner to show how the Indictment is unlawful.

- (1) There was no General Session Court on January 5<sup>th</sup> 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 Petitioner Indictment that the Grand Jury convened at a Court of General Sessions January 5<sup>th</sup> 1999. When there was no General Sessions Court January 5<sup>th</sup> 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 Petitioner to trial; this was a Sham Legal Process. As defined by the criminal statue 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*).

Petitioner 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?

Petitioner 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 the Court of Appeals through the 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 5<sup>th</sup> 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. Newspaper Articles, See appendix pg. B-1-2-3

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 the Court of Appeals speaks about two (2) orders the first order was signed by Judge H. Dean Hall on December 10, 1998 asking that the Grand Jury be 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 the Court of Appeals 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.

**Petitioner 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 5<sup>th</sup> 1999. Although an order was signed asking that the Grand Jury be allowed to convene on January 5<sup>th</sup> 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 Petitioner to trial was unlawful and by S.C. Law the Indictment is a void instrument. (*Emphasis Added*).**

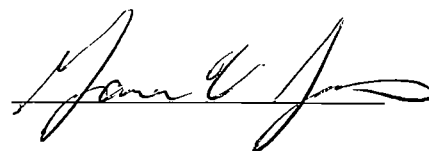
### CONCLUSION

I know this Court will make whatever decision it wants too. For 23 years I have been in prison based on a lie that I committed Murder. When I read the Court of Appeals opinion I wasn’t upset because the Court did not rule in my favor. But because the Court ruling wasn’t based on “Truth”, for four years Judge Maddox withheld his decision in the 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 Petitioner as it is the Solicitor’s duty to use a lawful Indictment.

WHEREFORE, the Petitioner respectfully requests this Court Grant this Petition for Writ of Certiorari.

Date: 10/13/21



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