

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM ORANGEBURG COUNTY

Court of General Sessions

Honorable Edgar W. Dickson, Circuit Court Judge

Appellate Case No. 2017-000557

THE STATE,..... Respondent,  
v.  
WILLIE YOUNG,..... Appellant.

RECEIVED  
JAN 18 2019  
SC Court of Appeals

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA )  
COUNTY OF ORANGEBURG )

IN THE COURT OF GENERAL SESSIONS  
FOR THE FIRST JUDICIAL CIRCUIT

2013-CP38-00757

State of South Carolina )

CASE NO.: 2001-GS-38-2492

vs. )

**ORDER DENYING DEFENDANT'S  
MOTION FOR NEW TRIAL**

Willie Young III, )  
Defendant. )

This matter is before the court on Defendant Willie Young III's ("Defendant") motion for a new trial based on after-discovered evidence pursuant to Rule 29(b) of the South Carolina Rules of Criminal Procedure. After due deliberation, review of the motions and supporting documents, and hearing arguments on behalf each party, for the reasons stated below, Defendant's motion.

FILED FOR RECORD  
WINNIE A. B. RINGGELLED  
CLERK OF COURT  
ORANGEBURG, SC  
FEB - 6 A 10 01

**FACTS**

Defendant was indicted for the offense of armed robbery under Indictment No. 2001-38-2492. Defendant proceeded to trial by jury, and was convicted of the aforementioned offense on June 28, 2002. The Honorable James C. Williams thereafter ordered Defendant to be committed to the State Department of Corrections for a period of thirty (30) years.

By motion dated July 26, 2016, Defendant asserts that he is entitled to a new trial based on his discovery of new evidence. Specifically, Defendant argues that S.C. Code Ann. § 14-5-620(3)<sup>1</sup> does not provide for a general sessions term of court in Orangeburg for the month of February, the

<sup>1</sup> S.C. Code Ann. § 14-5-620(3) states, in pertinent part, the following:

The Court of general sessions for the county of Orangeburg shall be held at Orangeburg the second Monday in January, the first Monday in May, and the second Monday in September. The term shall be three weeks for the May session.

Id.

1/5

month Defendant was indicted. Defendant argues that "[t]here is simply no language in the statute which gives the solicitor authority to modify the month in [S.C. Code Ann. §] 14-5-620(3)," and that "[i]f the legislature had intended the month of February to apply in subsection (3), it could have included such language in the statute." Because Defendant was indicted on February 11, 2002, Defendant contends that the indictment and subsequent conviction are null and void.

In his motion, Defendant also claims that the Solicitor committed a Brady violation. He states:

The Defendant humbly contends that the Solicitor withheld exculpatory evidence from the defense. Here, exculpatory information of the Solicitor alleges that the defendant committed (ARMED ROBBERY) with a hand gun, that weapon was never produced in open Court. As a result, the (petit jury) found the Defendant not guilty of the weapon charge. Both due process and common sense dictate, without a weapon it cannot be a "Armed Robbery" charge.

FILED FOR RECORD  
WINNIE RINE  
IN  
2016 FEB - 6  
A 10 5 10  
COURT  
OF  
SOUTH CAROLINA

Defendant also makes an unsubstantiated claim that the grand jury foreperson is related to the victim because they have the same last name. Lastly, Defendant claims that the Solicitor committed "obstruction of justice and conspire[d] to commit official Misconduct and obstruct the due Administrative of justice" because the indictment was true billed out of term.

A hearing was held before this court on October 26, 2016 in Orangeburg County, in which Defendant appeared pro se. Assistant Solicitor Ashley Cornwell appeared on behalf of the State. This court heard arguments from both parties, and the matter was taken under advisement.

**DISCUSSION**

**A. S.C. Code Ann. § 14-5-620 provides for the minimum terms of court scheduled for each county, and does not limit the ability of the Chief Justice of the Supreme Court to schedule terms of court as is necessary.**

The judicial power is vested under Article V of the South Carolina Constitution, in the unified judicial system. Article V, Section 1, provides for the following: "The judicial power shall

*2/5*

be vested in a unified judicial system, which shall include a Supreme Court, a Circuit Court, and such other courts of uniform jurisdiction as may be provided for by general law." With regard to setting terms of court, this power remains with the Chief Justice of the Supreme Court, who is the administrative head of the unified judicial system. See S.C. Const. Art. V, § 4 ("The Chief Justice shall set the terms of any court and shall have the power to assign any judge to sit in any court within the unified judicial system."). The provision further states, in pertinent part:

[E]ach county shall be entitled to four weeks of court each year and such terms therefor shall be provided by the General Assembly. Provided, further, that the Chief Justice shall set a term of at least one week in any court of original jurisdiction in any county within sixty days after receipt by him of a resolution of the county bar requesting it. The Supreme Court shall make rules governing the administration of all the courts of the State.

Id.

The above statute merely provides for a minimum amount of terms of court that are to be scheduled in each county, which is the responsibility of the General Assembly. However, the statute does not limit the ability of the Chief Justice of the Supreme Court to schedule additional terms of court pursuant to its constitutional power delineated in Article V, § 4. As stated above, the Chief Justice has the power to set the terms of any court and shall have the power to assign any judge to sit in any court within the unified judicial system. See also S.C. Const. Art. V, § 4 (The Chief Justice also has the power to "appoint an administrator of the courts and such assistants as he deems necessary to aid in the administration of the courts of the State."). Although S.C. Code Ann. § 14-5-620(3) does not provide for Orangeburg general sessions terms of court at the time 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.

Accordingly, Defendant's argument that he was indicted and convicted out of term is without merit.

**B. Defendant's other grounds for relief are successive and untimely.**

S.C. Code Ann. § 17-27-90 provides that:

All grounds for relief available to an application under this chapter must be raised in his original, supplemental or amended Application. Any ground finally adjudicated or not so raised, knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence or in any other proceeding Applicant has taken to secure relief, may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which for sufficient reason was not asserted or was inadequately raised in the original, supplemental or amended Application.

Successive applications are disfavored and the burden is on the applicant to establish that any new ground raised in a subsequent application could not have been raised by him in a previous application. Aice v. State, 305 S.C. 448 (1991); see also Foxworth v. State, 275 S.C. 615 (1981).

This court finds that the current allegations were or could have been raised in the proceedings based on Defendant's prior applications for post-conviction relief<sup>2</sup> and, thus, the current application is successive. Applicant has failed to establish sufficient reason why he could not have raised his current allegations in his previous application for post-conviction relief.

<sup>2</sup> Defendant filed an application for post-conviction relief on December 23, 2003, raising ineffective assistance of counsel and lack of subject matter jurisdiction, which was dismissed with prejudice. Defendant appealed to the South Carolina Court of Appeals, and the appeal was denied by Order dated April 20, 2007. Defendant thereafter filed a petition under 28 U.S.C. § 2254 for Writ of Habeas Corpus by a Person in State Custody on August 21, 2007. The petition was dismissed with prejudice. Applicant appealed to the Fourth Circuit Court of Appeals, and the Court dismissed the appeal in an unpublished opinion on June 16, 2009. Defendant then filed another application for post-conviction relief on December 13, 2010. That application was barred as successive by Order dated September 9, 2011. Defendant filed yet another application for post-conviction relief on June 28, 2013, which was denied by Order dated September 24, 2013.

This court finds, further, that this motion should be dismissed as untimely. Although Defendant couches his grounds for relief as a Rule 29(b) after-discovered evidence motion, it is nonetheless another application for post-conviction relief. S.C. Code Ann. § 17-27-45(a) states:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468 (1996). Therefore, this court finds that Defendant's application is denied for failure to file within the time mandated by statute.

**CONCLUSION**

Therefore, for the reasons stated above, IT IS ORDERED that Defendant's motion for a new trial pursuant to Rule 29(b) of the South Carolina Rules of Criminal Procedure be, and hereby is, denied.

IT IS SO ORDERED.



Edgar W. Dickson  
Presiding Judge, First Judicial Circuit

December 21, 2016  
Orangeburg, South Carolina

WITNESSES

DOCKET NO. 2001GS38-2492

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

The State of South Carolina

Defendant

County of

ORANGEBURG

I hereby appear in my own proper person and plead guilty to the within indictment or to

DET. K. KINSEY/OCSD

COURT OF GENERAL SESSIONS

Arresting Agency:

February 11, 2002 TERM

Orangeburg Co. Sheriff Dept.

Defendant

ARREST WARRANT NUMBER

G731578

Arrested: Sep 12, 2001

Witness:

C.C.C. PLS. AND G.S.

ACTION OF GRAND JURY

THE STATE

vs.

Willie Young

R-6

Indictment for

ARMED ROBBERY

VERDICT

Guilty

SC Code: 16-11-0330

CDR Code: 0139

Class: FEL-A(V)

TRUE BILL  
Henshella Hubbard  
Foreperson of Grand Jury  
Date: January 28, 2002

R. C. Dinssee 6/28/02  
Foreperson of Petit Jury  
Date:



STATE OF SOUTH CAROLINA

R-8

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Orangeburg  
STATE VS.  
Willie Young III  
AKA:  
Race: B Sex: M Age:  
DOB: [REDACTED] SS#: [REDACTED]  
Address:  
DL# SID#:

INDICTMENT/CASE#:  
2001-GS-38-2492  
A/W#: G731578  
Date of Offense: 5-9-01  
S.C. Code §: 16-11-330  
CDR Code #: 01139

CASE RESTORED

SENTENCE  
 PLEA  TRIAL

In disposition of the said indictment comes now the Defendant who was  CONVICTED OF or  PLEADS

TO: Armed Robbery  
in violation of § 16-11-330 of the S.C. Code of Laws, bearing CDR Code # 01139

NON-VIOLENT  VIOLENT  SERIOUS  MOST SERIOUS  17-25-45

The charge is:  As Indicted,  Lesser Included Offense,  Defendant Waives Presentment to Grand Jury.

The plea is:  Without Negotiations or Recommendation,  Negotiated Sentence,  Recommendation by the State.

ATTEST:

[Signature] Solicitor [Signature] Defendant [Signature] Attorney for Defendant

WHEREFORE, the Defendant is committed to the  State Department of Corrections,  County Detention Center, for a determinate term of 30 days/months/years or  under the Youthful Offender Act not to exceed \_\_\_\_\_ years and/or to pay a fine of \$ \_\_\_\_\_; provided that upon the service of \_\_\_\_\_ days/months/years and/or payment of \$ \_\_\_\_\_; plus costs and assessments as applicable\*; the balance is suspended with probation for \_\_\_\_\_ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

The Defendant is to be given credit for \_\_\_\_\_ days/months jail time.

CONCURRENT or  CONSECUTIVE to sentence on: \_\_\_\_\_

SPECIAL CONDITIONS:

RESTITUTION:  Heard,  Waived,  Ordered  
Total: \$ \_\_\_\_\_ plus 20% fee: \$ \_\_\_\_\_  
Payment Terms: \_\_\_\_\_  
 set by SCDPPPS \_\_\_\_\_  
Recipient: \_\_\_\_\_  
\*Fine: .....\$ \_\_\_\_\_  
§14-1-206 (Assessments 100%) .....\$ \_\_\_\_\_  
§14-1-211(A)(1) (Surcharge) .....\$ 100.00  
§14-1-211(A)(2) (Surcharge) .....\$ \_\_\_\_\_  
§56-5-2995 (DUI Assessment) .....\$ \_\_\_\_\_  
3% to County (if paid in installments) ...\$ 300  
TOTAL .....\$ 10300

PTUP \_\_\_\_\_  
\_\_\_\_\_ days/hours Public Service Employment  
Obtain GED \_\_\_\_\_  
Attend Voc Rehab. or Job Corps \_\_\_\_\_  
May serve W/E beginning \_\_\_\_\_  
Substance Abuse Counseling \_\_\_\_\_  
Random Drug/Alcohol Testing \_\_\_\_\_  
Fine may be pd. in equal, consecutive weekly/monthly  
pmts. of \$ \_\_\_\_\_ beginning \_\_\_\_\_  
\$ \_\_\_\_\_ paid to Public Defender Fund.  
Other: \_\_\_\_\_

[Signature]  
Clerk of Court/Deputy Clerk  
Court Reporter: [Signature]  
White - Clerk Green - Corrections Canary - Probation Pink - Defendant

PRESIDING JUDGE [Signature]  
Judge Code: 011114  
Sentence Date: 6/28/02

STATE OF SOUTH CAROLINA  
COUNTY ORANGEBURG

IN THE COURT OF  
GENERAL SESSIONS  
CASE NO.: 2001-GS-38-2492

STATE OF SOUTH CAROLINA

VS.

WILLIE YOUNG,

DEFENDANT,

MOTION FOR AFTER-NEWLY  
DISCOVERED EVIDENCE  
And

MOTION TO EXPAND RECORD

ATTORNEY "APPOINTMENT  
REQUESTED

**THIS MATTER COMES** before the court on the pro Se Defendant's motion for After-Newly Discovered Evidence and motion to Expand record, pursuant to rule 29 (B), SCRCRIM.P. and Rule 60 (B)(3), SCRCP. There is no Statute of limitation when a party seek to set aside a judgment due to fraud upon the court. (Citing Aouda v. Mobil Oil Corperation, 862 F.2d 1115, 1118 (1st Cir. 1989); Catee v. State, Supra., Ther is no time limitation within such motion must be brought forth. See State v. Williams, 108 S.C. 295, 93 S.E.2d 106.

**PROCEDURAL HISTORY**

For purpose of the motion, Defendant discovered that the Solicitor unlawfully inpaneled its Grand Jury outside the Statute of S.C. Code Ann. § 14-5-620 (3) "The Forperson of the Grand Jury committed fraud upon the court by signing the indictment before a full panel was assembled of the grand Jury." And the Solicitor committed a (BRADY VIOLATION) by withholding exculpatory evidence

from the defense, also <sup>the</sup> the solicitor manufactured their indictment for "Armed Robbery."

### ALLEGATION

In his current motion The defendant alleges that he is being held in custody unlawfully for the following reasons:

Ground (A) "Did the Solicitor commit (sic) a procedural error" by unlawfully impaneling its Grand jury outside the statute of S.C. code Ann. § 14-5-620 (3)?

Supporting facts: The defendant humbly contends that the Solicitor committed (sic) a procedural error' by unlawfully impaneling its Grand jury outside the statute of S.C. code Ann. § 14-5-620 (3). Here, the general Assembly did not make a provision in sec. 14-5-620 (3), that set forth a [term of court] for the month of (February).

S.C. code Ann. § 14-5-620 (3) states generally:

The courts of judicial circuit shall be held as hereinafter provided.

However, the statute sets forth no exceptions, including:

sec. (3) Orangeburg County.-The Court of General Sessions for the county of Orangeburg shall be held in Orangeburg the second Monday in January, the first Monday in may, and second Monday in September. the term shall be for two weeks for the January and September sessions. The term shall be for three weeks for the May session. Nowhere, in S.C. code Ann. § 14-5-620 (3), did the legislature provide a (term of court) for the month of (February) within the court of General Sessions. As set forth the plain unabiguous language of §14-5-620 (3) plainly applies to the months in section (3) Anderson v. state farm Mut. Auto. Ins. co., 314 S.C. 140, 442 S.E.2d 179 (1994) (words of a statue should be accorded their plain and ordinary meaning without resorting to subtle or forced construction to limit or expand the statute's operation). There is simply no language in the statute which gives the solicitor authority to modify the month in 14-5-620 sec. (3). If the legislature had intended the month of (February) to apply in section (3), it could have included such language in the statute.

Estate of Guide v. Spooner, 318 S.C. 335, 447 S.E.2d 623 (Ct.APP. 1995) (if the Legislature intended the statute to include the month of February, it could have done so by including February in section (3). In the case at hand, the indictment reads as follow: (At a court of General Session convened on February 11, 2002 the Grand jury of Orangeburg county present upon their oath) (exhibit B).

In this case, the South Carolina Supreme Court confirm the standard for the (term of court) that set fourth in the statutory Laws of this State and in Ex part Lilly, 7 S.C. 372, 1876 WL 5977 and State v. Henderson, 136 S.E. 363. These issues set forth in 1876 as well as the many rulings in other such cases like State v. Henderson Supra and still apply today <sup>are</sup> protected by the U.S. constitution and laws of the State.

However, here, evidence will establish that the (Foreperson of the Grand jury) signed the (true bill) dated January 28, 2002. As set forth, "The Foreperson of the Grand jury committed fraud upon the court by signing the indictment before full panel was assembled of the Grand jury." Here, the indictment states the Grand jurors convened on February 11, 2002. Also, see Gaithers v. United States, 413 F.2d 1061, rule 6 (f) of the federal rule of criminal procedure provides; "An indictment may be found only upon the concurrence of 12 or more jurors. "rule 6 (c) emphasizes the requirement also that 12 jurors shall "find" each indictment by its provision and that the foreperson "shall keep a record of the number of jurors concurring of the finding of every indictment. Further observing the specification Of the fifth Amendment's command that "no person shall be held to answer for a capital, or other infamous crime unless, on a presentment of indictment of a Grand jury."

Here the defendant insists that an indictment which is not physically returned in open court must be dismissed under "the leading case" of Reniger v. United States, 172 F 646 (4th cir. 1909). As a result, defendant alleges that because the statutory language is couched in mandatory terms. This Court has a duty to apply State law and Accordingly has no discretion to ignore the jurisdictional dictates of the door closing statute.

The Defendant attacks the indictment procedure followed here on the basis of the policies inherent in the constitutional guarantee of indictment by the Grand jury, and in the history underlying that guarantee. The Fifth Amendment guarantee that prosecution for serious crime may only be instituted by indictment. The indictment as a charging instrument has been recognized for having two chief purposes—first to apprise the accused of the charges against him, so that he may adequately prepare his defense, and second; to describe the crime with which he is charged with, with sufficient specificity to enable him to be protected against further jeopardy for the same offense. See also, Russell v. United States, 82 S.Ct. 1038, 8 L.Ed 2d 240 (1962). But these are not the only purpose of the indictment provisions of the Fifth Amendment. The Fifth Amendment requires that an indictment be brought by a Grand jury. The Grand jury is interposed "to afford a safeguard against oppressive actions of the prosecutor or a court. "the decision to hale a man into a court is a serious one, subject to official abuse. For this reason, 12 ordinary citizens must agree upon an indictment before a defendant is tried on a felony charge. The content of the charges as well as the decision to charge at all is entirely up to the Grand jury subject to popular veto, as it were. The Grand jury's decision not to indict at all, or not to charge the facts alleged by the prosecutorial officials, is not subject to review by any other body.

The matter presented above for review is not a challenge to the court's general grant of authority to hear and determine cases. That authority is rightfully granted by our constitution, State v. Gentry, 363 S.C. 93, 610 S.E. 2d 494 (2005), and will not be at issue here.

## GROUND (B) LEGAL FRAMEWORK

**SUPPORTING FACTS:** The defendant alleges that the solicitors failure to request for a special term of the Court of General Sessions deprived him of his (procedure to due process). Here, one additional piece of evidence very clearly settles the matter of the State's **FALSE** condition. The information contained in **Exhibit (A)**, also establishes that no special term of the Court of General Sessions was convened on (February 11, 2002) under the provision of either Section 14-5-410, Section 14-5-910, Section 14-5-920.

As establish above, what (competent Authority) can the solicitor produce to this Court, that they had approval from the Chief Justice to modify the (term of Court) that set forth in section 14-5-620 (3). When a Legislative enactment limits the manner in which something may be done, the enactment also evinces the intent that it shall not be done another way. Thus, since the Court utilized an lawful mode of procedure not allowed under Section 14-9-210 the State lacked the requisite jurisdiction to complete a return of its true-Billed indictment. Therefor, the legislative has set forth the procedure in the South Carolina rules of Civil procedure Rule 77. Cancelling or ordering term of Court.

Here, the indictments against the defendant were "manufactured" by the foreperson of the Grand jury by signing the indictment before the full panel was assembled of the grand jury. "as set forth, the foreperson of the Grand jury side staped the constitutional machinery provided in the constitution. Certainly the grand juror's bare the decision whether or not if the defendant should be indicted for (Armed Robbery) However it does not entail that or show 12 of them did agree, or even could have

agreed, to an indictment for that offense. Thus in our view the signature of the foreman cannot in itself convert the indictment, admittedly not seen by the full Grand jury, into one properly found by 12 jurors as required by Rule 6.

Consequently, the unlawful and illegal acts committed by the Solicitor requires this Court to hold Defendant's indictment null and invalidate all judicial proceedings taken in this case.

Rule 77 (e). SCRCF, provides:

"Sec. (e) no term of Court shall be cancelled nor additional term scheduled without the prior approval of the Chief Justice. When the local bar requests that a week of General Sessions Court be not held the Clerk shall immediately notify the Court Administrator of this State.

The Statutory terms above are clear, unambiguous, and require the County Solicitor to requests that a week of General Sessions Court be not held. The Clerk shall then immediately notify the Court Administrator of the State. Here, the Solicitor failed to follow these procedures set forth in Rule 77 (e), SCRCF.

**GROUND (C) The Solicitor committed (sic) a BRADY VIOLATION**

**SUPPORTING FACTS:** The Defendant humbly contends that the Solicitor withheld exculpatory evidence from the defense. Here, exculpatory information of the Solicitor alleges that the Defendant committed (ARMED ROBBERY) with a hand gun, that weapon was never produced in open Court. As a result, the (petit jury) found the Defendant not guilty of the weapon charge.

Both due process and common sense dictate, without a weapon it cannot be a "ARMED ROBBERY" charge.

IN the present case, the foreperson of the grand jury has the same last name as the victim, which is (HUBBARD), with importance to the defense for purposes of the preparation of the case or for trial was not disclosed to defense. . . . If the

foreperson of the Grand jury was a family member of the victim it would have affected the proceedings in this case and the outcome of the trial entirely. This case, however, does involve deliberate prosecutorial misconduct by allowing a family member to sit on the grand jury.

**GROUND (D)** "Did the Solicitor commit obstruction of justice and conspire to commit official Misconduct and obstruct the due Administrative of justice"?

**SUPPORTING FACTS:** The Defendant humbly contends that the Solicitor conspired with the Foreperson of the Grand jury, to sign the indictment before full panel was assembled of the Grand jury. The case before this Court happened with evil intent and in the potential for a Solicitor to deliberately mislead the Court, jury and defense counsel is inherent in every phase of the trial, including offering evidence, questioning witnesses, making comments, and presenting arguments. Even non-willful misleading conduct is a serious breach, and when prejudice is demonstrated, a reversal usually follows. Misleading conduct may arise to the level of due process violation when it involves the knowing use of false evidence, or when the conduct renders the defendant's trial fundamentally unfair to have a foreperson of the Grand jury to sign the indictment before full panel was assembled of the Grand jury. Here, "Administration of justice" means performance of acts or duties required by law in discharge of duty.

Simply put, it should be noted that the code of judicial conduct canon (A) State: "A judge shall respect and comply with the law, and shall at all times in a manner, that promotes public confidence in the integrity and impartiality of the judiciary.

**CONCLUSION**

For all of the foregoing reasons, the defendant, Willie Young, respectfully request this Court to reverse the trial decision and reverse the conviction and vacate the conviction and sentence as a matter of law

This \_\_\_ day of July 2016

Respectfully Submitted,

By: Willie Young  
Willie Young

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

Appeal From Orangeburg County  
Court of General Sessions  
EDGAR W. Dickson, Circuit Judge

CASE NO. 2001-GS-38-2492

STATE OF South Carolina

Respondant

v.

Willie Young

Appellant

NOTICE OF APPEAL

Willie Young Appeals the order of Judge EDGAR W. Dickson  
DATED Dec, 21, 2016. Appellant received written notice of  
Order on February 13, 2017.

Signature Willie Young  
1057 Revolutionary Trail  
Airfax S.C. 29827

**RECEIVED**

FEB 23 2017

SC Court of Appeals

proof of service

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF Appeals

Appeal From Orangeburg County  
Court of General Sessions  
EDGAR W. DICKSON circuit Judge

I willie Young certify that a proof of  
service has been served upon All parties involved  
in the Above referenced matter.

February 20, 2017

Signature Willie Young

**RECEIVED**  
FEB 23 2017  
SC Court of Appeals



from the defense, also the solicitor manufactured their indictment for "Armed Robbery."

ALLEGATION

In his current motion The defendant alleges that he is being held in custody unlawfully for the following reasons:

1 Ground (A) "Did the Solicitor commit (sic) a procedural error" by  
2 unlawfully impaneling its Grand jury outside the statute of S.C.  
3 code Ann. § 14-5-620 (3)?

4 Supporting facts: The defendant humbly contends that the  
5 Solicitor committed (sic) a procedural error" by unlawfully  
6 impaneling its Grand jury outside the statute of S.C. code Ann. §  
7 14-5-620 (3). Here, the general Assembly did not make a provision  
8 in sec. 14-5-620 (3), that set forth a [term of court] for the  
9 month of (February).

10 S.C. code Ann. § 14-5-620 (3) states generally:

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12 hereinafter provided.

13 However, the statute sets forth no exceptions, including:

14 sec. (3) Orangeburg County. -The Court of General Sessions  
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17 Monday in September. the term shall be for two weeks for the  
18 January and September sessions. The term shall be for three weeks  
19 for the May session. Nowhere, in S.C. code Ann. § 14-5-620 (3),  
20 did the legislature provide a (term of court) for the month of  
21 (February) within the court of General Sessions. As set forth the  
22 plain unabiguous language of §14-5-620 (3) plainly applies to the  
23 months in section (3) Anderson v. state farm Mut. Auto. Ins. co.,  
24 314 S.C. 140, 442 S.E.2d 179 (1994) (words of a statue should be  
25 accorded their plain and ordinary meaning without resorting to  
26 subtle or forced construction to limit or expand the statute's  
27 operation). There is simply no language in the statute which  
28 gives the solicitor authority to modify the month in 14-5-620  
29 sec. (3). If the legislature had intended the month of (February)  
30 to apply in section (3), it could have included such language in  
31 the statute.

Code of Laws of South Carolina 1976 Annotated  
 Title 14. Courts  
 Chapter 5. Circuit Courts  
 Article 9. Special Sessions of Circuit Courts

Code 1976 § 14-5-910

§ 14-5-910. Special session may be ordered when public interest requires.

Currentness

Whenever the public interest shall require the holding of a special session of the court of general sessions or the court of common pleas in any county of the State and such fact satisfactorily appears (a) by petition of the solicitor of the judicial circuit in which such county is situate in the case of the court of general sessions or (b) by petition of a majority of the members of the bar of such county in the case of the court of common pleas, such petitions having been first approved by the resident circuit judge or the circuit judge last presiding in such county and duly filed with the clerk of the Supreme Court, a special session of the court of general sessions or common pleas may be ordered for any such county by the Chief Justice of the Supreme Court. The special session of court so ordered shall be held at such time and for such term and such notice of the holding thereof shall be given as may be provided in the order therefor, which shall be transmitted to and filed by the clerk of court of the county.

Credits

HISTORY: 1962 Code § 15-301; 1952 Code § 15-301; 1942 Code § 69; 1932 Code § 69; Civ. P. '22 § 66; Civ. P. '12 § 33; Civ. P. '02 § 28; 1873 (15) § 28; 1878 (16) 395 § 3; 1884 (18) 770; 1931 (37) 257; 1934 (38) 1204.

Notes of Decisions (2)

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Code 1976 § 14-5-910; SC ST § 14-5-910

Current through the 2016 session, subject to technical revisions by the Code Commissioner as authorized by law before official publication.

End of Document

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Exhibit e

1 be vested in a unified judicial system, which shall include a Supreme Court, a Circuit Court, and  
 2 such other courts of uniform jurisdiction as may be provided for by general law." With regard to  
 3 setting terms of court, this power remains with the Chief Justice of the Supreme Court, who is the  
 4 administrative head of the unified judicial system. See S.C. Const. Art. V, § 4 ("The Chief Justice  
 5 shall set the terms of any court and shall have the power to assign any judge to sit in any court  
 6 within the unified judicial system"). The provision further states, in pertinent part:

6. [E]ach county shall be entitled to four weeks of court each year and  
 7 such terms therefor shall be provided by the General Assembly.  
 8. Provided, further, that the Chief Justice shall set a term of at least  
 9 one week in any court of original jurisdiction in any county within  
 10 sixty days after receipt by him of a resolution of the county bar  
 11 requesting it. The Supreme Court shall make rules governing the  
 12 administration of all the courts of the State.

Contradiction

Id. Orangeburg County would have to

13 The above statute merely provides for a minimum amount of terms of court that are to be  
 14 scheduled in each county, which is the responsibility of the General Assembly. However, the  
 15 statute does not limit the ability of the Chief Justice of the Supreme Court to schedule additional  
 16 terms of court pursuant to its constitutional power delineated in Article V, § 4. As stated above,  
 17 the Chief Justice has the power to set the terms of any court and shall have the power to assign any  
 18 judge to sit in any court within the unified judicial system. See also S.C. Const. Art. V, § 4 (The  
 19 Chief Justice also has the power to "appoint an administrator of the courts and such assistants as  
 20 he deems necessary to aid in the administration of the courts of the State."). Although S.C. Code  
 21 Ann. § 14-5-620(3) does not provide for Orangeburg general sessions terms of court at the time  
 22 Defendant was indicted and ultimately convicted, the South Carolina Court Administration  
 23 specifically scheduled general sessions terms of court during those weeks and it acted within their  
 24 constitutional authority in doing so.

Exhibit F  
 Date sup request 3/5

EXH. G-A



South Carolina Court Administration  
South Carolina Supreme Court  
Columbia, South Carolina

ROSALYN FRIERSON  
DIRECTOR

1015 SUMNER STREET, SUITE 200  
COLUMBIA, SOUTH CAROLINA 29201

December 5, 2013.

Willie Young #285487  
ACI  
P. O. Box 1151  
Fairfax, SC 29827

Dear Mr. Young:

Your inquiry has been received by this office. Enclosed you will find the information you requested. The schedule is for that entire week (Monday-Friday) of the date shown at the top of the schedule.

Please be advised that the convening of the Grand jury is scheduled by the Chief Judge for Administrative Purposes, in conjunction with the Solicitor's Office. The convening of the Grand Jury is not dependent upon a term of General Sessions court and often does not meet at the same time as General Sessions terms.

Sincerely,

South Carolina Court Administration

Ex H, G, B



South Carolina Court Administration  
South Carolina Supreme Court  
Columbia, South Carolina

ROSALYN W. FRIERSON  
DIRECTOR

1220 SENATE STREET, SUITE 200  
COLUMBIA, SOUTH CAROLINA 29201  
TELEPHONE: (803) 734-1800  
FAX: (803) 734-1355  
E-MAIL: rfrierson@sccourts.org

December 19, 2016

Willie Young, #285487  
A.C.I., F4-A-52  
Post Office Box 1151  
Fairfax, South Carolina 29827

Re: Your correspondence received December 13, 2016

Dear Mr. Young:

In response to your recent correspondence concerning the convening of the grand juries and petitions for "special" sessions of court, please be advised that with the adoption of the amendments to Article V of the South Carolina Constitution in 1973, the Chief Justice now sets all terms of court, and the statutory terms in Title 14 are not binding on the Chief Justice. Article V, §4 of the South Carolina Constitution provides that "The Chief Justice shall set the terms of any court and shall have the power to assign any judge to sit in any court within the unified judicial system." Under the current constitutional provision, all terms of the circuit court are set by the Chief Justice and there are no "special" terms. As such, there are no petitions for special terms.

Additionally, you expressed concern over a communication from this office in 2013. Please be advised that this office does not provide legal advice. If you seek legal advice relating to the validity of your indictment, you will need to consult with your attorney.

Sincerely,

Exhibit G-B

Staff Attorney Section /tr

ExH.G.C



South Carolina Court Administration  
South Carolina Supreme Court  
Columbia, South Carolina

ROSALYN W. FRIERSON  
DIRECTOR

1220 SENATE STREET, SUITE 200  
COLUMBIA, SOUTH CAROLINA 29201  
TELEPHONE: (803) 734-1600  
FAX: (803) 734-1355  
E-Mail: rfrierson@sccourts.gov

February 24, 2017

FILED FOR RECORD  
MINIFAIR  
IN TIME CANCELLED  
FEB - 6 A 10:55  
CLERK OF COURT  
ORANGEBURG, SC

Willie Young, #285487  
A.C.I. F4-A-52  
1053 Revolutionary Trail  
Fairfax, South Carolina 29827

Re: Your correspondence received February 22, 2017

Dear Mr. Young:

Your recent correspondence to the Clerk of the Supreme Court has been forwarded to this office for response. Your letter requests information concerning a deviation from the terms of general sessions court for Orangeburg County as set forth in Section 14-5-620 of the SC Code. Article V, Section 4 of the SC Constitution grants the Chief Justice with exclusive authority to set all terms of court within the state.

The statute you cite predates this exclusive grant of authority to the Chief Justice by the Constitution and has no effect on the authority of the Chief Justice to set terms of court. As stated in our prior letter to you (a copy of which is enclosed) dated December 19, 2017, there are no longer "special" terms of court. All terms of court are set by the Chief Justice pursuant to Article V, Section 4 of the SC Constitution. As such, there are also no petitions for special terms.

Sincerely,

Staff Attorney Section / tr

Enclosure

Exhibit G-C



Code of Laws of South Carolina 1976 Annotated

Title 14: Courts

Chapter 9. County Courts (Refs & Annos)

Code 1976 § 14-9-210

§ 14-9-210. Indictments for county court cases by grand jury of court of general sessions.

Currentness

The county solicitor shall prepare and, through the presiding judge of the court of general sessions, submit to the grand jury, while in attendance upon the court of general sessions, bills of indictment in all cases pending in the county court in which the punishment may exceed a fine of one hundred dollars or imprisonment for thirty days, when such cases have not been previously acted on by the grand jury. The grand jury shall act thereon and report its action to the presiding judge of the court of general sessions and said judge shall direct the clerk of the court of general sessions to report the same to the presiding judge of the county court at its next ensuing term. All cases in which bills of indictment are so found shall stand for trial by the county court as though found by the grand jury while in attendance upon the county court.

Credits

HISTORY - 1962 Code § 15-621; 1952 Code § 15-621; 1942 Code § 89; 1932 Code § 89; Civ. P. '22 § 86; Civ. C. '12 § 3861; Civ. C. '02 § 2764; 1900 (23) 322.

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Code 1976 § 14-9-210, SC ST § 14-9-210

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Exh. H

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

APPEAL From Orangeburg County

Edgar W. Dickson First Judicial Judge

THE STATE ..... RESPONDENT

V.

WILLIE YOUNG ..... APPELLANT

CASE #

2017-000557

CLERK OF COURT  
ORANGEBURG, SC

FILED FOR CLASSIFIED  
KIMBERLY CLARK  
2017 FEB - 6 A 10: 54

AMENDED NOTICE OF  
APPEAL

For Purpose of this motion the appellant according to rule 203(B)(2) S.C.A.C.R. Is Giving proper notice to All Parties involved in the Above referenced MATTER.

1) The appellant was A pro-se litigant on October 26, 2016. At the hearing for "AFTER-NEWLY Discovered evidence" in the Orangeburg County general Session Court, And made Error by filing the CASE No. (2001 GS 39 2492) filed in Orangeburg County Clerk of Court instead of the Appellate CASE No. 2017-000557.

EXHIBIT B

2) AFTER receipt of Circuit Court denying the rule 29(B) motion for "After-NEWLY Discovered" evidence the Appellant filed Notice to Appeal with the S.C. Court of appeal clerks office And the attorney generals office.

3) The S.C. Court of appeals clerk directed the appellant on (2) occasions to perfect his Appeal by attaching the circuit courts order to the Notice of Appeal.

4) The Appellant corrected the deficiency and forwarded the Notice of Appeal to the general and S.C. Court of Appeals, And was not informed to also provide the Orangeburg county clerk court with notice due to him being pro-se!

5) Though both the Attorney general office And S.C. Court of appeals were provided with the Appellants Notice of Appeal And "brief", the Appellant Now due to the failure of the S.C. Court of Appeals Clerk, to have the appellant with direction to file "Notice" in the Orangeburg clerks office, Now provides Orangeburg clerk of court with Notice.

FILED FOR REC'D BY  
WINNIE A. HINE  
CLERK IN THE CLERK'S OFFICE  
2016 FEB - 14 A 10 515  
CLERK OF COURT  
ORANGEBURG, SC

1) This "Notice" now perfects this Appeal  
And cures the/this deficiency.

The Circuit Court order is Attached.

Thank you.

DATE: 1/19/18

/s/ Willie Young

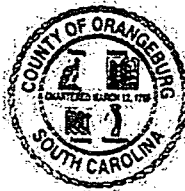
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WINNIE B. CLARK  
2018 FEB -6 A 10:54  
CLERK OF COURT  
ORANGEBURG, SC

Notary

Copy 2

# Orangeburg County Clerk of Court Office

WINNIFA B. CLARK  
CLERK OF COURT



YOJUANA T. CREWS  
DEPUTY CLERK OF COURT

SANDRA P. OWEN  
DEPUTY CLERK OF COURT

PO Box 9000  
ORANGEBURG, SC 29116-9000  
PHONE: (803) 533-6260  
FAMILY COURT FAX: (803) 534-3848  
CLERK OF COURT FAX: (803) 268-2763

To *G. Wendolyn Walker*  
IN RE: *Appeal*

*The enclosed document is being returned for the following reason(s):*

- (1)  Requires Address, Phone number and Work number if filing Pro Se.
- (2)  Insufficient amount of filing fee. **Correct Amount: \$150.00.**
- (3)  Requires original signature.
- (4)  Not an Orangeburg County Case.
- (5)  Venue change to: \_\_\_\_\_
- (6)  Check or Money Order must be made payable to Clerk of Court. **(No Personal Checks)**
- (7)  Check not signed. **(No Personal Checks)**
- (8)  Copy - Must file original.
- (9)  No copies provided. Please include in future mailings.
- (10)  No self addressed stamped envelope provided. Please include in future mailings.
- (11)  No original DHEC/Certificate of Adoption Form.
- (12)  No Payment of Child Support/Alimony Form (Form SCCA/446)
- (13)  \$25.00 Motion fee not included.
- (14)  Motion exempt from filing fee.
- (15)  Other: *Please Forward to correct Court. Thank-You*

Please provide the requested information/changes and return.

Thank you for your assistance.

/s/ Winnifa B. Clark

*ITCM*

CLERK

*February 22, 2018*  
DATE

Oranburg Clerk of Court  
P.O. Box 9000  
Oranburg SC 29115

FILED FOR RECORD  
WINNIFER B. CLARK  
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ORANGEBURG, SC  
~~CLERK OF COURT~~



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I N D E X

Motion Hearing

WITNESS/DESCRIPTION

PAGE NO.

EXHIBITS:

NO EXHIBITS WERE MARKED TO THIS PROCEEDING

Certificate of Court Reporter ..... 18

State v Young, Jr.

10/24/16

3

1 THE COURT: Yes, ma'am.

2 MS. CORNWELL: The State calls Willie Young.

3 (Off the record discussion)

4 MS. CORNWELL: I have a photocopy of Mr. Young's  
5 motion on the bench for Your Honor.

6 THE COURT: And I appreciate that.

7 (Off the record discussion)

8 MS. CORNWELL: May it please the Court, Your  
9 Honor. Before you is Willie Young. Mr. Young was convicted  
10 by in 2002 for armed robbery. He has since filed a motion  
11 for after newly discovered evidence and a motion to expand  
12 the record. I've given you a copy of that motion and I will  
13 turn the floor over to Mr. Young.

14 THE COURT: And, Mr. Young, I've got your motion  
15 -- Oh, you got it from her?

16 DEFENDANT YOUNG: Yes, sir. Yes, sir.

17 THE COURT: And Mr. Young, it looks like you wrote  
18 this July 26th, 2016?

19 DEFENDANT YOUNG: Yes, sir.

20 THE COURT: All right. And Mr. Young, do you have  
21 an attorney to represent you?

22 DEFENDANT YOUNG: No, sir. I do not.

23 THE COURT: Okay. Do you want to get one?

24 DEFENDANT YOUNG: Yes, sir. I would like to be  
25 able to start with, you know, representation on this issue.

State v Young, Jr.

10/24/16

4

1 It's a very --

2 THE COURT: Okay. Now, you understand I don't  
3 think there's anything that I can appoint one for you. Can  
4 you hire one?

5 DEFENDANT YOUNG: That would probably be a  
6 problem, sir. I've been incarcerated for a significant  
7 amount at this time, sir.

8 THE COURT: What, fourteen, fifteen, years?

9 DEFENDANT YOUNG: Yes, sir. Fifteen years.

10 THE COURT: Okay. I don't know that there's any  
11 requirement -- are you aware on a motion to reopen?

12 MS. CORNWELL: No, Your Honor, I believe --

13 THE COURT: Is he entitled to an attorney?

14 MS. CORNWELL: I believe once he exhaust his  
15 appellate rights --

16 THE COURT: Ms. Hinds, do you have any idea?

17 MS. HINDS: I'm not but --

18 THE COURT: Can you hold a second where we can get  
19 our walking encyclopedia.

20 MS. HINDS: Exactly.

21 THE COURT: If you'd bear with us, Mr. Young.

22 DEFENDANT YOUNG: Yes, sir.

23 THE COURT: We have a walking encyclopedia that we  
24 call every now and then. I don't always agree with him, but  
25 I like to hear from him.

State v Young, Jr.

10/24/16

5

1 MS. CORNWELL: I rarely agree with him.

2 THE COURT: Mr. Young, while we're waiting, where  
3 are you from?

4 DEFENDANT YOUNG: I'm originally from Chicago,  
5 Illinois.

6 MS. HINDS: Here he is. Breen, we need you.

7 THE COURT: Come here, Breen.

8 MR. STEVENS: Sir, how can I help you.

9 THE COURT: Well, Mr. Young has filed a motion for  
10 after discovered evidence. He'd like to have an attorney.  
11 I don't think I can appoint one for that.

12 MR. STEVENS: Ah, okay.

13 THE COURT: That's what I wanted to find out from  
14 you. Is there any case law in South Carolina that you are  
15 aware of.

16 MS. CORNWELL: He's already exhausted his appeal  
17 --

18 THE COURT: Yeah. The appeal's gone. Well, he  
19 was convicted in 2002, right?

20 DEFENDANT YOUNG: Yes, sir.

21 MR. STEVENS: There are, to my knowledge, two  
22 paths to go forward with that. It's either 29(b) for after  
23 discovered motion -- or motion for after discovered  
24 evidence.

25 THE COURT: This is what he has.

State v Young, Jr.

10/24/16

6

1 MR. STEVENS: Or under the PCR act they could file  
2 a subsequent PCR and if it's truly based upon after-  
3 discovered evidence, it could be -- trip and applied through  
4 that because there's a subsection, which does allow that.  
5 The person would have to actually take action and file their  
6 information, to my knowledge, anyway within a year of  
7 obtaining that information or to properly act upon it. So  
8 they can. If it happens then yes, it would deemed under  
9 civil court to a PCR. And that's one of the ways to get a  
10 subsequent PCR without it being deemed a second subsequent  
11 PCR. To my knowledge.

12 THE COURT: Okay. Okay. So he should file the  
13 subsequent PCR that we he can get somebody appointed to  
14 represent him on that.

15 MR. STEVENS: That would be one path. Yes, sir.

16 THE COURT: He can't get with a 29(b) motion, can  
17 he? Have an attorney -- is there any law that would require  
18 me to appoint an attorney for him for --

19 MR. STEVENS: Required, not to my knowledge. I  
20 mean, the court has inherent authority to do all things  
21 reasonably necessary to achieve just results. But, you  
22 know, aside from the court's inherent authority to make  
23 appointments, you know, the PCR would be one avenue where it  
24 would be -- he could apply and then it goes through that  
25 process.

State v Young, Jr.

10/24/16

7

1 THE COURT: Okay. Okay. All right. Don't wander  
2 off.

3 MR. STEVENS: Yes, sir.

4 THE COURT: We've got to talk to Mr. Young here  
5 for a second.

6 Mr. Young, I don't know if you could -- whenever Mr.  
7 Stevens represents somebody I always ask him did you  
8 understand what the attorney said.

9 DEFENDANT YOUNG: Uh-huh. (Affirmative response.)

10 THE COURT: And they always, as a matter of form  
11 say yes. And I always want to go and say really? Did you  
12 understand that really? Okay, so I don't know whether you  
13 did. Did you understand -- you'd filed a PCR on this years  
14 ago, right?

15 DEFENDANT YOUNG: Yes, sir. I did.

16 THE COURT: And I don't want you to tell me how  
17 long it's been since you discovered this evidence. I don't  
18 want you to get into that right now because I believe you  
19 heard him say that you have to file your request within --

20 DEFENDANT YOUNG: One year.

21 THE COURT: -- one year of discovering that.

22 DEFENDANT YOUNG: Yeah. Uh-huh. (Affirmative  
23 response.)

24 THE COURT: Okay. But one path of you being able  
25 to get this in front of a Circuit Court Judge with an

State v Young, Jr.

10/24/16

8

1 attorney to represent you would be filing a new PCR and  
2 filing this with it would be one of doing that.

3 DEFENDANT YOUNG: Uh-huh. (Affirmative response.)

4 THE COURT: Now, you didn't file this with the  
5 court, did you?

6 DEFENDANT YOUNG: No, sir. This was somebody --  
7 It's filed, like you said, in July. I never got out. Yes,  
8 sir.

9 THE COURT: You don't have a -- you didn't get a  
10 filed copy did you?

11 MS. CORNWELL: No, Your Honor.

12 THE COURT: They just mailed it to you?

13 MS. CORNWELL: I got what Solicitor Pasco placed  
14 on my desk, Your Honor.

15 THE COURT: Okay. I'm glad Solicitor Pasco is now  
16 doing process serving. It makes our jobs easier.

17 MS. CORNWELL: I believe -- and actually I believe  
18 it went from his to Mr. Scott's desk to my desk.

19 THE COURT: Oh, okay. All right.

20 MS. CORNWELL: But I think it was just mailed to  
21 our office.

22 THE COURT: Okay. Okay. So you have the  
23 original?

24 MS. CORNWELL: I do. I also have the PCR file for  
25 -- I guess his final appeal was denied by the Supreme Court

State v Young, Jr.

10/24/16

9

1 October 21st of 2015.

2 THE COURT: October 21st of 2016? ..

3 MS. CORNWELL: '15, Your Honor.

4 THE COURT: Okay. Now, let me ask you a question,  
5 Mr. Young. When you filed -- that was your PCR was appealed  
6 that's denied here?

7 DEFENDANT YOUNG: Yes, sir. That was actually a  
8 subsequent PCR that I filed under another newly discovered  
9 evidence that I had discovered but not this per se. It was  
10 a ruling that actually had been ruled upon by the courts, I  
11 think about three or four years prior to that.

12 THE COURT: Okay.

13 DEFENDANT YOUNG: And that PCR was dismissed.  
14 Yes, sir.

15 THE COURT: Okay. So this is evidence you have  
16 learned since that time?

17 DEFENDANT YOUNG: Since. Since then. Yes, sir.

18 THE COURT: Okay. All right. Who represented you  
19 at the PCR hearing, do you --

20 DEFENDANT YOUNG: I wasn't appointed counsel.

21 THE COURT: Huh?

22 DEFENDANT YOUNG: I was not able to overcome the  
23 procedural barrier.

24 THE COURT: Okay.

25 DEFENDANT YOUNG: Yes, sir.

State v Young, Jr.

10/24/16

10

1 THE COURT: Okay. Well, I guess my question for  
2 you right now is even though I have the authority possibly  
3 to appoint an attorney under a 29(b) motion, I'm not  
4 inclined to do that.

5 DEFENDANT YOUNG: Yes, sir.

6 THE COURT: Okay?

7 DEFENDANT YOUNG: Uh-huh. (Affirmative response.)

8 THE COURT: However, if you want to file a  
9 subsequent PCR and use this as the basis of it --

10 DEFENDANT YOUNG: Uh-huh. (Affirmative response.)

11 THE COURT: -- I don't have any objection to you  
12 doing that. And then if you can overcome a procedural  
13 hearing, you'll be able to get an attorney with it. But you  
14 tell me how you want to do it. I'm not trying to -- this is  
15 your -- you know, Mr. Young, it's your life.

16 DEFENDANT YOUNG: Exactly. Yes, sir.

17 THE COURT: And I'm not going to make you do one  
18 thing or the other. I'm just trying to tell you how I'm  
19 willing to help you with this, okay?

20 DEFENDANT YOUNG: Well, I mean, Your Honor, I  
21 would rather go the route and attempt to entertain this  
22 motion now, you know.

23 THE COURT: Okay. All right.

24 DEFENDANT YOUNG: Yes, sir.

25 THE COURT: All right. Okay. Then Mr. Young, the

State v Young, Jr.

10/24/16

11

1 floor is yours. Tell me about it.

2 DEFENDANT YOUNG: Yes, sir. Your Honor, I have  
3 discovered -- after new discovered evidence like you said  
4 after my motion, my subsequent PCR motion had been dismissed  
5 in October of last year. And discovered that the indictment  
6 that was returned by the Orangeburg Solicitor's Office, Your  
7 Honor, was returned out of turn. On the face of this  
8 indictment, Your Honor, it shows the foreman of the grand  
9 jury had signed this indictment two weeks prior to the  
10 actual convening of the General Sessions Court. Therefore,  
11 Your Honor, making this indictment null and void for this  
12 armed robbery conviction, which I was sentenced thirty years  
13 for. And this is the basis of this motion, Your Honor.  
14 Most indictments, Your Honor, are returned within court  
15 under the South Carolina Rules of Criminal Procedure. And  
16 this is blatantly showing that the Orangeburg County  
17 Solicitor Office violated that particular rule and mandate.

18 THE COURT: All right. And I believe you have --  
19 I'm looking -- it looks like you attached a copy of your  
20 armed robbery indictment and it was true-billed January 28,  
21 2002?

22 DEFENDANT YOUNG: Yes, sir.

23 THE COURT: Is that what you're talking about?

24 DEFENDANT YOUNG: Yes, sir.

25 THE COURT: Okay. And you're saying that was

State v Young, Jr.

10/24/16

12

1 outside of the term?

2 DEFENDANT YOUNG: Yes, sir.

3 THE COURT: When was the term, to your knowledge?

4 DEFENDANT YOUNG: On the face of the indictment,  
5 Your Honor, it said February 11th, 2002.

6 THE COURT: Okay. Oh, I see. February. Okay.  
7 All right, sir. Anything else you want to tell me?

8 DEFENDANT YOUNG: Your Honor, further, you know,  
9 Your Honor, as well, you know, Your Honor, the convening of  
10 this indictment -- I mean on that particular date -- again,  
11 this establishes that this is void and also is malicious  
12 prosecution. As well as in the body of my indictment, Your  
13 Honor, it states that I automatically -- the allegation  
14 states that I was armed with a deadly weapon. As we know  
15 that, I went through a jury trial right here in the County  
16 of Orangeburg and I was acquitted of the weapon that was  
17 alleged to be in the body of this indictment. And I was  
18 still, Your Honor, some type a way convicted and sentenced  
19 under the armed robbery statute. According to 6-11-330,  
20 Your Honor, the requirement of a weapon is used is necessary  
21 to validate this particular charges.

22 THE COURT: Okay. So they found you not guilty of  
23 --

24 DEFENDANT YOUNG: Of possession of deadly -- the  
25 weapon that was alleged to have been used in the armed

State v Young, Jr.

10/24/16

13

1 robbery, according to the body.

2 THE COURT: Okay.

3 DEFENDANT YOUNG: Yes, Your Honor.

4 THE COURT: But the jury still convicted you of  
5 armed robbery?

6 DEFENDANT YOUNG: And still was convicted of armed  
7 robbery.

8 THE COURT: Now, you didn't have -- you did not  
9 attach a copy of the verdict form or anything like that, did  
10 you?

11 DEFENDANT YOUNG: No, sir. I never had a verdict  
12 form. No verdict form was given to me in my motion for  
13 discovery or --

14 THE COURT: Okay. All right. All right. What  
15 else, Mr. Young.

16 DEFENDANT YOUNG: Your Honor, that's the basis of  
17 my motion. I mean, all my proceedings would basically -- I  
18 mean, it would be null at this point because of the  
19 indictments, Your Honor, at the initiation of this  
20 prosecution. I mean, there would be no -- there would be no  
21 hearing for this if it had not been for this, this error.  
22 This is a grave injustice. I've been incarcerated fifteen  
23 years behind this particular procedure, you know, and it  
24 doesn't show any type of faith in the judicial system if I  
25 can be incarcerated and be sentenced to something of this

State v Young, Jr.

10/24/16

14

1 magnitude with no basis.

2 THE COURT: And, Mr. Young, what was your  
3 sentence?

4 DEFENDANT YOUNG: Thirty years.

5 THE COURT: Thirty years?

6 MS. CORNWELL: If I may, Your Honor.

7 THE COURT: Oh, You've got it. You have never  
8 seen a copy of your sentencing sheet?

9 DEFENDANT YOUNG: I've never had it myself, Your  
10 Honor.

11 THE COURT: All right. We'll make a copy.

12 DEFENDANT YOUNG: Okay, sir.

13 THE COURT: Okay. All right. Judge Williamson --

14 DEFENDANT YOUNG: yes, sir.

15 THE COURT: All right. Anything else?

16 DEFENDANT YOUNG: No, sir.

17 THE COURT: Okay. All right. And Ms. Cornwell,  
18 anything from the State?

19 MS. CORNWELL: No, Your Honor. I mean, just  
20 simply in response to the arguments, obviously a grand jury  
21 is convened prior to the term of court and this particular  
22 grand jury was convened in January prior to the February  
23 term of court. That's why the indictment says February term  
24 and is signed on January. We always have our grand juries  
25 convene prior to the term of court. That way we can handle

State v Young, Jr.

10/24/16

15

1 any of those indictments during court, as Your Honor knows.

2 As far as the guilty on armed robbery, not guilty on  
3 the possession of a weapon, this trial was in 2002. I was  
4 not present for that trial. However, knowing Judge Williams  
5 I'm sure that he explained the elements of each charge  
6 thoroughly to the jury. Obviously, the Court knows that  
7 there are many ways that somebody can be found guilty of  
8 armed robbery and not guilty of a possession charge. So we  
9 believe that given the appeals that he's gone through,  
10 including the appeal of the trial verdicts, that that motion  
11 should be denied as well.

12 THE COURT: Okay.

13 And Mr. Young, I don't know, do we have your -- in your  
14 motion -- do you have his address?

15 MS. CORNWELL: He's in Allendale right now, Your  
16 Honor.

17 THE COURT: You're in Allendale?

18 DEFENDANT YOUNG: Yes, sir.

19 THE COURT: And what's your address in Allendale?

20 DEFENDANT YOUNG: 1057 Revolutionary Trail,  
21 Fairfax, South Carolina, 29827.

22 THE COURT: All right. And what's your Department  
23 of Corrections Number?

24 DEFENDANT YOUNG: 285487.

25 THE COURT: 2854 --

State v Young, Jr.

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16

1 DEFENDANT YOUNG: 87.

2 THE COURT: --87. Okay. All right. All right.

3 Anything in response?

4 DEFENDANT YOUNG: Yes, Your Honor. Your Honor,  
5 according to South Carolina Code -- according to criminal  
6 law, Your Honor, it states that Orangeburg County, Your  
7 Honor, only meets in the month of January, May and  
8 September, Your Honor. And this is going back again to the  
9 indictment alleging that this General Session term was held  
10 in February. And the only way this could happen, Your  
11 Honor, is if a special term had been requested by the  
12 Solicitor's officer. There's nothing in the record, Your  
13 Honor, that can validate or even show that Orangeburg County  
14 Solicitor Office even requested a special term for this  
15 indictment to be returned.

16 THE COURT: Okay. And I'll have to look up that,  
17 Mr. Young. I don't know what it was like in 2002.

18 DEFENDANT YOUNG: Yes, sir.

19 THE COURT: We've got criminal court going two  
20 weeks a month every month of the year.

21 DEFENDANT YOUNG: Yes, sir.

22 THE COURT: Now.

23 DEFENDANT YOUNG: Now.

24 THE COURT: But I don't know what it was like in  
25 2002. Okay. Anything else?

State v Young, Jr.

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1 DEFENDANT YOUNG: No, sir.

2 THE COURT: Okay. Mr. Young, what I'll do is --  
3 let me make a copy of this.

4 DEFENDANT YOUNG: Yes, sir.

5 THE COURT: And we'll send it back to you. I'll  
6 read over this --

7 DEFENDANT YOUNG: Yes, sir.

8 THE COURT: -- and pull the verdict form. And  
9 I'll get back to you with my decision.

10 DEFENDANT YOUNG: Thank you, sir.

11 THE COURT: Now, do you understand -- well, you've  
12 already been through this. You understand the way to file  
13 for appeal and things like that?

14 DEFENDANT YOUNG: Yes, sir. Yes, sir, I do.

15 THE COURT: Okay. All right. Good luck to you.

16 DEFENDANT YOUNG: Thank you, sir. Thank you.

17 MS. CORNWELL: Thank you, Your Honor.

18 THE COURT: Yes, sir.

19 (This proceeding was concluded.)  
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10/24/16

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C-E-R-T-I-F-I-C-A-T-E

I, THE UNDERSIGNED HILDA M. JORDAN, CVR-M, OFFICIAL COURT REPORTER FOR THE FIRST JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF THE PROCEEDING IN THE CAPTIONED CAUSE, IN THE COURT OF GENERAL SESSIONS FOR ORANGEBURG COUNTY, SOUTH CAROLINA, ON THE 24 DAY OF OCTOBER, 2016.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL, NOR INTEREST IN ANY PARTY HERETO.

\_\_\_\_\_  
Hilda M. Jordan, CVR-M

July, 2, 2018

STATE OF SOUTH CAROLINA )  
COUNTY OF ORANGEBURG )

IN THE COURT OF COMMON PLEAS  
FOR THE FIRST JUDICIAL CIRCUIT

Willie Young, III, #285487, )  
Applicant, )

Case No. 2013-CP-38-06757

v. )

CONDITIONAL ORDER OF DISMISSAL

State of South Carolina, )  
Respondent. )

2013 OCT 10 12:13:07  
FILED FOR  
CLERK OF COURT  
FIRST JUDICIAL CIRCUIT  
ORANGEBURG COUNTY  
SOUTH CAROLINA  
HJW

This matter comes before this Court by way of an Application for post-conviction relief filed June 28, 2013. In its return, Respondent requested the Application be summarily dismissed.

**PROCEDURAL HISTORY**

This Court has before it a copy of the records of the Orangeburg County Clerk of Court, Applicant's records from the South Carolina Department of Corrections, the appellate records, and the prior post-conviction relief records. The records before this Court indicate that Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Orangeburg County Clerk of Court. Applicant was true bill indicted during February 2002 term of the Orangeburg County Grand Jury for Armed Robbery (2001-GS-38-2492). Mary Miles, Esquire, represented Applicant. On June 24-28, 2002, Applicant went to trial by jury and was found guilty as indicted. The Honorable James C. Williams, Jr. sentenced Applicant to confinement for thirty years.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected by Robert M. Pachak, Esquire, in the form of an Anders brief. The South Carolina Court of Appeals dismissed Applicant's appeal on September 29, 2003. State v. Young, No. 2003-UP-564

(Cl. App. September 29, 2003). The Remittitur was issued on November 4, 2003.

Applicant filed an initial application for post-conviction relief on December 23, 2003 (2003-CP-38-1585). In that application, Applicant alleged the following grounds for relief:

1. Ineffective assistance of trial counsel.
2. Subject matter jurisdiction.

Respondent filed its Return on October 12, 2004. An evidentiary hearing into the matter was convened at the Dorchester County Courthouse on April 27, 2005 before the Honorable Diane S. Goodstein. Applicant was present at the hearing and represented by W. Scott Palmer, Esquire. Judge Goodstein denied and dismissed Applicant's post-conviction relief action with prejudice by written Order dated June 22, 2005, filed June 27, 2005.

A timely Notice of Appeal was filed. A Johnson Petition for Writ of Certiorari was submitted by Robert M. Pachak, Esquire. On April 20, 2007, the South Carolina Supreme Court denied Applicant's Petition. The Remittitur was issued on May 23, 2007.

On August 21, 2007, Applicant filed a Petition for Writ of Habeas Corpus in federal court (C.A. No. 6:07-2893-CMC-WMC). In his Petition, Applicant alleged:

1. Conviction obtained by use of coerced confession.
2. Conviction obtained on violation of 14<sup>th</sup> Amendment Due Process clause of the U.S. Constitution.
3. 5<sup>th</sup> Amendment violation: constructive amendment of indictment.

Respondent made a Return and Motion for Summary Judgment on January 11, 2008. On September 16, 2008, the Honorable Cameron McGowan Currie dismissed Applicant's Petition with prejudice. Applicant subsequently filed a Notice of Appeal. The United States Court of Appeals for the Fourth Circuit dismissed Applicant's appeal in an unpublished opinion on June 16, 2009.

Applicant thereafter filed a second application for post-conviction relief on December 10,

2010 (2010-CP-38-1759). In that application, Applicant alleged the following grounds for relief:

1. 14<sup>th</sup> Amendment Violation.
2. 5<sup>th</sup> Amendment Violation.
3. Illegal Incarceration.
  - a. All issues were not adjudicated in first PCR.
4. Jurisdiction.
  - a. Circuit court had no jurisdiction to try or sentence Applicant based on indictment.
5. Ineffective assistance of counsel.
  - a. PCR counsel failed to file motion 59(E) on behalf of Applicant.

Respondent filed a Return and Motion to Dismiss August 9, 2011, requesting the application be summarily dismissed as it was successive and filed untimely. Judge Goodstein, acting in her capacity as the Chief Administrative Judge for the First Judicial Circuit denied and dismissed Applicant's second application with prejudice by written Order on July 25, 2012.

In his current Application for post-conviction relief, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of PCR Counsel for failing to file a rule 59e motion for appellate review of all issues raised.
2. Ineffective Assistance of trial counsel for failing to object to trial judge jury instruction.
3. 14<sup>th</sup> Amendment violation USCA Constructive Amendment of Indictment; violation of grand jury.
4. Did Trial Court err in denying petitioner's motion for new trial due to trial jury(s) incomplete/inconsistent verdict?
5. Does the crime of Armed robbery require proof of a nexus between it and possession of a firearm during commission of a violent crime?
6. Was petitioner entitled to a directed verdict when a material variance existed between the charge and proof?

#### FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court finds that the current Application for post-conviction relief must be summarily dismissed because it is successive to Applicant's prior two applications for post-conviction relief. S.C. Code Ann. §17-27-90 provides that:

All grounds for relief available to an application under this chapter must be raised in his original, supplemental or amended Application. Any ground finally adjudicated or not so raised, knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence or in any other proceeding Applicant has taken to secure relief, may not be the basis for a subsequent Application, unless the court finds a ground for relief asserted which for sufficient reason was not asserted or was inadequately raised in the original, supplemental or amended Application.

Successive applications are disfavored and the burden is on Applicant to establish that any new ground raised in a subsequent application could not have been raised by him in a previous application. Foxworth v. State, 275 S.C. 615, 274 S.E.2d 415 (1981); Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991); Arnold v. State/Plath v. State, 309 S.C. 157, 420 S.E.2d 834 (1992).

This Court finds that the current allegations were or could have been raised in the proceedings based on Applicant's prior applications for post-conviction relief and thus the current Application is successive and barred under S.C. Code § 17-27-90. Applicant has failed to establish a sufficient reason why he could not have raised his current allegations in his prior two applications for post-conviction relief therefore, he has failed to meet the burden imposed upon him. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980); Aice, 305 S.C. 448, 409 S.E.2d 392 (1991).

This Court finds, further, that this Application for post-conviction relief should be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. § 17-27-10 to -160. S.C. Code Ann. §17-27-45(a) reads as follows:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower

court from an appeal or the filing of the final decision upon an appeal, whichever is later.

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). Applicant was convicted of the offense he challenges in this Application on June 28, 2002. The Remittitur from the Court of Appeals was issued on November 4, 2003. This Application was filed on June 28, 2013, which was filed well beyond after the statutory filing period had expired.

A motion for summary judgment may properly be used to raise the defense of statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, S.C. Code Ann. §17-27-70(c) (1985) authorizes the Court to "grant a motion by either party for summary disposition of [an] application when it appears from the pleadings ... that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." Therefore, this Court finds that the Application for post-conviction relief is summarily dismissed for failure to file within the time mandated by statute.

Additionally, this Court finds that Applicant's contention that he received ineffective assistance of counsel on his prior post-conviction relief application is not a ground for relief. Applicant contends that under the United States Supreme Court's recent decision in Martinez v. Ryan, \_\_\_ U.S. \_\_\_, 132 S. Ct. 1309 (2012), he is able to file a successive state post-conviction relief action alleging ineffective assistance of previous collateral counsel. This Court finds this contention to be without merit as the ruling in Martinez has no bearing on an Applicant's ability to raise ineffective assistance of collateral counsel claims in a subsequent, successive state post-conviction relief application. Rather, Martinez sets forth a narrow exception to the procedural default rules imposed on federal habeas corpus petitions when considered under the so-called "cause and prejudice" standard. See Coleman v. Thompson, 501 U.S. 722, 750, 111 S. Ct. 2546,

2565 (1991) ("In all cases in which a state prisoner has defaulted his federal claims in state court pursuant to an independent and adequate state procedural rule, federal habeas review of the claims is barred unless the prisoner can demonstrate cause for the default and actual prejudice as a result of the alleged violation of federal law, or demonstrate that failure to consider the claims will result in a fundamental miscarriage of justice."). The Martinez Court used this standard as the foundation for its decision, finding that attorney error amounting to ineffective assistance of counsel during an initial-review collateral proceeding may be sufficient "cause" to excuse a prisoner's procedural default in a federal habeas corpus proceeding. See Martinez at \_\_\_, 132 S. Ct. at 1315. ("Inadequate assistance of counsel at initial-review collateral proceedings may establish cause for a prisoner's procedural default of a claim of ineffective assistance at trial.").

With this framework in mind, it is clear Martinez has no application to successive state post-conviction relief actions, as the fundamental "cause and prejudice" standard on which Martinez relies is exclusive to federal habeas corpus actions. Further, the Martinez Court specifically noted that their decision was not addressing ineffective assistance of counsel claims raised in subsequent state post-conviction relief actions, opining "[t]his is not the case, however, to resolve whether [an exception to the constitutional rule that there is no right to counsel in collateral proceedings] exists as a constitutional matter." Id. at \_\_\_, 132 S. Ct. at 1326. Therefore, Applicant's contention that Martinez allows him to bring this untimely and successive state post-conviction relief application is misguided and erroneous. The South Carolina Supreme Court recently held that Martinez is inapplicable to state post-conviction relief actions. "Like other states, we hereby recognize that the holding in Martinez is limited to federal habeas corpus review and is not applicable to state post-conviction relief actions. . . . As such, petitioner's contention that, based on Martinez, the circuit court erred in dismissing petitioner's third

application for post-conviction relief as successive is without merit." Jason Kelly v. State, 2013-06-20-01 (S.C. Sup. Ct. filed June 20, 2013).

Additionally, Martinez's interpretation of federal laws applicable to federal habeas corpus actions has no effect on South Carolina's interpretation and application of its Post-Conviction Relief statute. S.C. Code Ann. § 17-27-10 to -160. Therefore, the South Carolina Supreme Court's opinion in Aice v. State is still applicable to a claim raised in a subsequent state post-conviction relief action alleging ineffective assistance of prior collateral counsel. See Aice v. State, 305 S.C. 448, 451, 409 S.E.2d 392, 394 (1991) ("The contention that prior PCR counsel was ineffective is not *per se* a 'sufficient reason' warranting a successive PCR application under 17-27-90."). Aice went on to note that such a holding was in accord with the United States Supreme Court's opinion in Pennsylvania v. Finley, 481 U.S. 551, 107 S. Ct. 1990 (1987) (there is no constitutional right to counsel for collateral review of a conviction). Accordingly, this Court finds Applicant's claim regarding the application of Martinez to be without merit.

Finally, because Applicant has failed to set forth any reason he could not have raised the current allegations in his previous applications other than to allege post-conviction relief counsel was ineffective in failing to raise them, the current Application is in fact successive in nature. Accordingly, this Court finds that this Application must be summarily dismissed for a failure to state a claim entitling Applicant to relief, for being successive in nature and for failing to file the action within the statute of limitation as set forth in S.C. Code Ann. § 17-27-45(a).

Pursuant to S.C. Code Ann. § 17-27-70(b), the Court intends to dismiss this Application with prejudice unless Applicant provides specific reasons, factual or legal, why the Application should not be dismissed in its entirety. Applicant is granted twenty (20) days from the date of service of this Order upon him to show why this Order should not become final. Applicant shall

file any reasons he may have, factual or legal, with the Orangeburg County Clerk of Court and shall serve opposing counsel at the following address:

Office of the Attorney General  
Attn: Megan E. Harrigan, Esquire  
P.O. Box 11549  
Columbia, South Carolina 29211

AND IT IS SO ORDERED this 24<sup>th</sup> day of Sept., 2013.



EDGAR W. DICKSON  
Chief Judge for Administrative Purposes  
First Judicial Circuit

Orangeburg, South Carolina.

STATE OF SOUTH CAROLINA  
COUNTY OF ORANGEBURG

Willie Young, #285487,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS  
FIRST JUDICIAL CIRCUIT

2013-CP-38-0075

FINAL ORDER OF DISMISSAL

FILED FOR RECORD  
WILLIAM E. CLARK  
CLERK OF COURT  
ORANGEBURG, SC

2015 MAR 31 AM 11:14

This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed June 28 2013. Respondent made its Return and Motion to Dismiss on August 22, 2013, requesting that the application be summarily dismissed. Pursuant to this request, and after reviewing the pleadings in this matter and all of the records attached thereto, this Court issued a Conditional Order of Dismissal filed October 10, 2013, provisionally denying and dismissing this action, while giving the Applicant twenty (20) days from the date of service of said Order in which to show why the dismissal should not become final. Attached to this Final Order and incorporated herein by reference is a Certificate of Service dated January 24, 2014, serving the above-mentioned Conditional Order of Dismissal on the Applicant's counsel.

Applicant filed a document captioned, "Motion In Opposition To Conditional Order of Dismissal." In this motion, Applicant argues this Court should not construe this application as successive because "the issues asserted here are claims that were raised in the initial application for relief which were not, with finality, adjudicated." Applicant further argues the PCR Court failed to make sufficient findings of fact as required by the Post-Conviction Relief Act in the order dismissing his first PCR application (2003-CP-38-1585). Applicant argues PCR counsel, W. Scott Palmer, was ineffective for failing to file a Rule 59(e), SCRPC Motion to Alter or

ATTEST: TRUE COPY  
*Wingie B. Clark*  
CLERK OF COURT  
ORANGEBURG COUNTY, SC

Amend because the Order of Dismissal did not sufficiently rule on all of the allegations raised. Applicant urges this Court to apply the Supreme Court's decision in Martinez v. Ryan, \_\_\_ U.S. \_\_\_, 132 S. Ct. 1309 (2012) to this case. Applicant also argues that Counsel Palmer's failure to file a Rule 59(e), SCRCP Motion to Alter or Amend should be a recognized ground for relief. Applicant urges the Court to extend the limited exception to the statute of limitations in Austin v. State<sup>1</sup> to PCR counsel's failure to file a motion to alter or amend. Applicant asserts this Court misapplied Aice v. State, 305 S.C. 448, 451, 409 S.E.2d 392, 394 (1991) in its Conditional Order of Dismissal in finding the allegation of ineffective assistance of PCR counsel to be non-cognizable. Applicant further argues the South Carolina Supreme court's decision in State v. Whitesides, 397 S.C. 313, 725 S.E.2d 487 (2012) is on point and should be considered newly and after discovered evidence. Finally, Applicant claims trial counsel was ineffective in failing to object to certain jury instructions.

Applicant then filed a document captioned "Motion in Opposition to Conditional Order of Dismissal" on September 12, 2013. This document was written in pencil and was illegible. Applicant then filed a verbatim copy of the filing on September 18, 2013, in an effort to ensure the document was legible and available for the Court's review. Applicant explained that the previous filing was written in pencil, so he resubmitted the document to ensure a readable copy was available.

Next, Applicant filed a document captioned "Applicant's Response to Respondent's Conditional Order of Dismissal" on February 6, 2014. In this document, Applicant concedes that all but one issue would be time barred: "Does the crime of armed robbery require proof of a nexus between it and possession of a firearm during the commission of a violent crime?" Applicant cites Whitesides and argues the case should be considered newly discovered evidence

<sup>1</sup> 305 S.C. 453, 409 S.E.2d 395 (1991).

since it was not available when Applicant filed his first PCR action in 2003. Applicant asks this Court to grant him an evidentiary hearing on the issue.

Applicant then filed a document captioned "Motion for Summary Judgment" on May 27, 2014. Applicant accuses Respondent of disregarding the Supreme Court's decision in Whitesides and of failing to respond to his numerous filings. Applicant requests this Court to grant him summary judgment.

On February 10, 2014, Applicant sent Respondent a document captioned "Pursuant to South Carolina Rules of Civil Procedure 56: The Petitioner Moves the Honorable Ms. Diane S. Goodstein on Summary Judge for the Court in his Favor." In this document, Applicant asks this Court to grant him summary judgment. Applicant also alludes to a request that relief be granted due to the State's default.

Respondent notes Applicant also composed a letter to the South Carolina Supreme Court filed on December 18, 2014, where he complained that this action has not been ruled upon.

This Court has reviewed the Applicant's response to the Conditional Order of Dismissal in its entirety, in conjunction with the original pleadings, and finds a sufficient reason has not been shown why the Conditional Order of Dismissal should not become final.

This Court notes the Applicant was convicted and sentenced on June 28, 2002, and the South Carolina Court of Appeals dismissed the subsequent appeal on November 4, 2003. As this action was filed on June 28, 2013, it was clearly filed well outside the expiration of the statute of limitations. See S.C. Code Ann. § 17-27-45(a) (Supp. 2003). This is the Applicant's fourth collateral attack on his conviction. This Court notes successive PCR applications are disfavored. See Land v. State, 274 S.C. 243, 246, 262 S.E.2d 735, 737 (1980). This Court finds the Applicant had the opportunity to litigate all issues related to his case at the evidentiary hearing

for his first PCR application and before the federal courts. See Odom v. State, 337 S.C. 256, 261, 523 S.E.2d 753, 755 (1999) (“[A]n applicant is entitled to a full adjudication on the merits of the original petition, or ‘one bite at the apple.’”).

This Court finds Applicant’s allegation that his PCR attorney was ineffective is not a proper claim for post-conviction relief. While Applicant cites Martinez v. Ryan, \_\_\_ U.S. \_\_\_, 132 S. Ct. 1309 (2012) to support his claim, the South Carolina Supreme Court has found that “the holding in Martinez is limited to federal habeas corpus review and is not applicable to state post-conviction relief actions.” Kelly v. State, 404 S.C. 365, 745 S.E.2d 377 (2013).

This Court summarily dismisses Applicant’s allegation that his prior PCR Counsel was ineffective for failing to file a 59(e) as this claim is outside the scope of PCR. This Court notes the Sixth Amendment right to effective assistance of counsel does not extend to state post-conviction relief actions. Coleman v. Thompson, 501 U.S. 722, 111 S.Ct. 2546, 115 L.Ed.2d 640 (1991). This Court finds that the contention that prior PCR counsel was ineffective for failing to file a 59(e) is non justiciable. Aice, 305 S.C. at 451, 409 S.E.2d at 394.

The only recognized exception to the rule barring claims of ineffective assistance of post-conviction relief counsel is found in Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991). Austin recognizes a general exception to this rule where prior post-conviction relief counsel fails to appeal the denial of the application. Id. Austin “is limited to its particular factual situation . . .” Aice, 305 S.C. at 452, 409 S.E.2d at 394. Applicant invites this Court to extend Austin’s holding to include a claim of ineffective assistance of PCR counsel for failing to file a motion to alter or amend judgment pursuant to rule 59(e) SCRPC. However, this Court finds Austin does not contemplate such reasoning and declines to extend Austin’s specific exception to ineffective

assistance of post-conviction relief counsel to include a claim of ineffective assistance of PCR counsel for failing to file a rule 59(e) SCRPC.

This Court also denied Applicant's Motion for Default Judgment and Motion for Summary Judgment. For an applicant to be granted default judgment in post-conviction relief he must show prejudice from the State's delay in failing to timely answer his Application. See Kneece v. State, 269 S.C. 177, 236 S.E.2d 745 (1977); Herring v. State, 262 S.C. 597, 206 S.E.2d 885 (1974). To show prejudice, an Applicant must show that his application has merit. Herring. Furthermore, compliance with the statutory time limits is discretionary with the trial court. Guinyard v. State, 260 S.C. 220, 195 S.E.2d 392 (1973). This Court finds that Applicant has failed to demonstrate the requisite prejudice or merit to his application. Therefore, the Motion for Default Judgment and Motion for Summary Judgment are both denied.

Finally, this Court finds Whitesides has no applicability to the present case. This Court finds that Applicant's claim that Whitesides constitutes newly or after discovered evidence must be dismissed. An applicant requesting a new trial based on after discovered evidence must show that the evidence:

- (1) Is such as would probably change the result if a new trial was had;
- (2) Has been discovered since the trial;
- (3) Could not by the exercise of due diligence have been discovered before the trial;
- (4) Is material to the issue of guilt or innocence; and
- (5) Is not merely cumulative or impeaching.

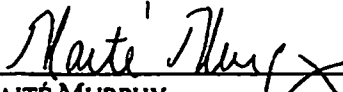
Hayden v. State, 278 S.C. 610, 611-12, 299 S.E.2d 854, 855 (1983). Applicant has not shown how South Carolina Supreme Court precedent establishes newly discovered evidence. Whitesides interpreted S.C. Code § 16-23-490(A) and held that "a nexus must be established in order to convict a defendant for possessing a firearm during the commission of a violent crime." Whitesides, 397 S.C. at 313, 725 S.E.2d at 490. Here, Applicant was convicted of armed robbery and acquitted of possession of a weapon during the commission of a violent crime. On direct

appeal, Applicant raised the issue of inconsistent verdicts, and the South Carolina Court of Appeals upheld the conviction and dismissed the appeal. Whitesides is not applicable to Applicant's PCR action.

**IT IS THEREFORE ORDERED** that, for the reasons set forth in the Court's Conditional Order of Dismissal, the application for PCR is hereby denied and dismissed with prejudice.

This Court advises Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order if he wants to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

**AND IT IS SO ORDERED** this 20 day of March, 2015.

  
MAITÉ MURPHY  
Chief Judge for Administrative Purposes  
First Judicial Circuit

St. George, South Carolina.

STATE OF SOUTH CAROLINA )  
COUNTY OF ORANGEBURG )

IN THE COURT OF COMMON PLEAS  
FIRST JUDICIAL CIRCUIT

CASE NO.: 2013-CP-38-00757

Willie Young, #285487

Plaintiff,

vs.

State of South Carolina

Defendant. )

**MOTION AND ORDER INFORMATION  
FORM AND COVER SHEET**

FILED FOR RECORD  
JENNIFER A. CLARK  
CLERK OF COURT  
ORANGEBURG, SC  
MAR 31 AM 11:15

Plaintiff's Attorney: Willie Young, Bar No. 285487 Address: Allendale CI, 1057 Revolutionary Trail, Fairfax SC 29827 Phone: _____ Fax _____ E-mail: _____ Other: _____	Defendant's Attorney: J. Clayton Mitchell, Bar No. 101443 Address: PO Box 11549, Columbia SC 29211 Phone: _____ Fax _____ E-mail: _____ Other: _____
--	---

MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)  
 FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)  
 PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

**SECTION I: Hearing Information**

Nature of Motion: \_\_\_\_\_

Estimated Time Needed: \_\_\_\_\_ Court Reporter Needed:  YES /  NO

**SECTION II: Motion/Order Type**

Written motion attached  
 Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

\_\_\_\_\_ 2/24/15  
 Signature of Attorney for  Plaintiff /  Defendant Date submitted

**SECTION III: Motion Fee**

PAID - AMOUNT: \$ \_\_\_\_\_  
 EXEMPT:

(check reason)

Rule to Show Cause in Child or Spousal Support  
 Domestic Abuse or Abuse and Neglect  
 Indigent Status  State Agency v. Indigent Party  
 Sexually Violent Predator Act  Post-Conviction Relief  
 Motion for Stay in Bankruptcy  
 Motion for Publication  Motion for Execution (Rule 69, SCRPC)  
 Proposed order submitted at request of the court; or,  
 reduced to writing from motion made in open court per judge's instructions  
 Name of Court Reporter: \_\_\_\_\_  
 Other: \_\_\_\_\_

**JUDGE'S SECTION**

Motion Fee to be paid upon filing of the attached order.  
 Other: \_\_\_\_\_

JUDGE CODE \_\_\_\_\_

ATTEST: TRUE COPY

Date: \_\_\_\_\_ *Wingji B. Clark*

**CLERK'S VERIFICATION**

Collected by: \_\_\_\_\_ Date Filed: \_\_\_\_\_  
 MOTION FEE COLLECTED: \$ \_\_\_\_\_  
 CONTESTED - AMOUNT DUE: \$ \_\_\_\_\_

\_\_\_\_\_  
 CLERK OF COURT  
 ORANGEBURG COUNTY, SC

**CLERK'S VERIFICATION**

Collected by: \_\_\_\_\_ Date Filed: \_\_\_\_\_

MOTION FEE COLLECTED: \$ \_\_\_\_\_

CONTESTED - AMOUNT DUE: \$ \_\_\_\_\_

SCCA 233 (11/2003)

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM ORANGEBURG COUNTY

Court of General Sessions

Honorable Edgar W. Dickson, Circuit Court Judge

Appellate Case No. 2017-000557

THE STATE,..... Respondent,  
v.  
WILLIE YOUNG,..... Appellant.

RECEIVED  
JAN 18 2019  
SC Court of Appeals

RULE 210(g) CERTIFICATE OF COUNSEL

The Record on Appeal contains all material proposed to be included by any of the parties and not any other material.



Christopher R. Geel

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM ORANGEBURG COUNTY

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Honorable Edgar W. Dickson, Circuit Court Judge


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THE STATE,..... Respondent,  
v.  
WILLIE YOUNG,..... Appellant.

CERTIFICATE OF SERVICE

RECEIVED  
JAN 18 2019  
SC Court of Appeals

The undersigned attorney hereby certifies that a true copy of the enclosed Record on Appeal in the above-referenced case has been served upon Joshua Edwards, Esq. at P.O. Box 11549, Columbia SC 29211-1549.

  
\_\_\_\_\_  
Christopher R. Geel