

RECEIVED

MAY 25 2022

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Petition For Original Jurisdiction:
Declaratory Judgment, And
For Certiorari Facias as to Appellate Case
Numbers
And Orders 2020-001111, Apellate Case
No. 2020-000582, Trial Case No. 2019-
040246, Appellate Case No. 2018-001533,
And Appellate Case No. 2018-001403

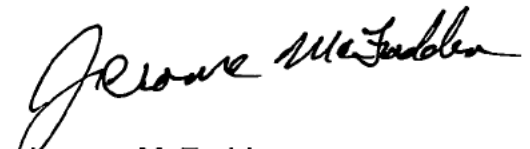
Jerome McFadden, 136919
Pro Se Petitioner

V.

South Carolina Department of Corrections
Daniel E. Shearous, Former Clerk of S.C. Supreme Court,
v. Claire Allen, Chief Deputy Clerk of S.C. Court of Appeals,
And Jody Ferguson, Mailroom Personnel of The S.C. Supreme Court.
Respondents.

Summons

The petitioner Jerome McFadden, hereby serve on all respondents at their respective places of employment mailing address this summons notifying that they have twenty (20) days from the date of its receipt to respond as required by the rules of court. If you fail to respond it maybe taken as consent for the Supreme Court to hear this matter in its original jurisdiction.


Jerome McFadden

This 17th day of May 2022

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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MAY 25 2022

SC Court of Appeals

Complaint

Jerome McFadden, 136919
Petitioner

V.

South Carolina Department of Corrections
Daniel E. Shearous, Former Clerk of S.C. Supreme Court,
v. Claire Allen, Chief Deputy Clerk of S.C. Court of Appeals,
And Jody Ferguson, Mailroom Personnel of The S.C. Supreme Court.
Respondents.

1. To The Clerk: You will please take notice that the above named petitioner here seeks relief herein pursuant to the declaratory judgment Act in this court's original jurisdiction rule 245 of the appellate court rules.

2. The following are parties as above mentioned: South Carolina Department of corrections, Daniel E. Shearous, Former Clerk of S.C. Supreme Court,
v. Claire Allen, Chief Deputy Clerk of S.C. Court of Appeals,
And Jody Ferguson, Mailroom Personnel of The S.C. Supreme Court.

Statement/Background of Case

3. The petitioner Jerome McFadden, is an inmate currently incarcerated within the South Carolina Department of Corrections (at Perry C.I.). Petitioner was arrested on June 10, 1986: Thereafter, he received various warrants was issued to him i.e. 1st degree criminal sexual conduct, kidnapping, 2nd degree Burglary and Robbery; days after receiving these warrants, petitioner was placed in a physical line up. Counsel had not been appointed by the court to represent petitioner at this critical stage of the

adversarial process where he had been identified by the victim and her husband as the person who assaulted Mrs. Jones.

Thereafter, the court ordered petitioner to submit for hair and other samples, still counsel had not been appointed by the court. However, after both procedures were initiated against petitioner, his family retained Federick K. Jones and Cherly T Hopkins, both attorneys of Florence County bar. Discovery motions filed by them pursuant the applicable rule and Brady; upon the prosecution's failure to comply, motions to compel was filed, despite which the prosecution Harry Conner refused to provide petitioner with documents.

On or about September 28, 1986, petitioner's case was called for trial: the trial was postponed due to all white citizens protesting in the courtroom with placards that read "citizens against rape". Thereupon, petitioner's attorneys moved for change of venue which was denied by Judge Richter. On October 9, 1986, the case was again called for trial: Attorneys for petitioner moved to quash the indictment and to suppress a disease the prosecution intended to introduce but had not disclosed pursuant to the Brady Request. These motions were denied by Judge Richter. The jury was selected from among the hostile mob, and petitioner proceeded to trial before an all-white jury and a biased judge.

The doctor that examined the victim reported that he found no semen or other indication that a rape had been committed and refused to come to court and say otherwise. The prosecution did not call him. Instead, it called the nurse of that doctor who was allowed to contradict the finding of this expert: over objection, her testimony was used as evidence to the jury, and over objection, the prosecution presented the

disease to the jury despite the fact that petitioner had not been tested for its match and the judge overruled the objection.

The presentation of the prosecution's case was predicated upon this line up and disease. At its end petitioner's attorney made several motions which were all denied. Petitioner offered an alibi to the charges against him. Several witnesses testified to having seen petitioner during time frame, that this crime was alleged to have been committed; at the conclusion of petitioner's defense on the 10th, the jury found him guilty of all charges and Judge Richter sentenced him to 30 years for CSC, Life for Burglary, Life for Kidnapping and 10 years for Robbery.

Petitioner appealed: An Anders brief was filed arguing inter alia the physical line-up (op.No.-89-M049) filed Feb 7, 1989) Post-conviction filed October 29, 1990, (90-CP-21-1385) dismissed with prejudice by Judge J. Lockemy; Federal Habeas Corpus c/a No. 0:13-3024. MGL-PJG denied. Petition for Cert. to U.S. Supreme Court No. 15-6812 denied.

Habeas Corpus Petition filed in this court's original jurisdiction: appellate case No. 2018-001533

4. Petitioner sought review of his conviction and sentences in this court's original jurisdiction. In addition to the above stated deprivations at trial (which lasted less than a day). Petitioner, therein, contends that the indictment was the result of a sham legal process, and that the mandation within the Grand jury clause in the 5th Amend. have been violated. The indictment issued in this case says that at a term of the court of General sessions for the September term 18th 1986, the Grand jurors presents upon their oath a true bill.

However, S.C. Code of laws 14-9-170 Grand jury statute, states that it "shall meet with the county court at each of its terms". However, 14-5-780 Terms of court in Twelfth Circuit: September is not within the statute stated months listed as terms of the court of General Sessions. Therefore, petitioner's argument is that the indictment is the result of a Sham legal process within the meaning of 16-17-735: (3) "Sham legal process "means the issuance, display, delivery, distribution, reliance on as lawful authority, or other use of an instrument that is not lawfully issued; (c) require or authorized the search, seizure, indictment, arrest, trial, or sentencing of a person or property.

Therefore, the meeting together of the judge and officers at a time not fixed by law, is not a court under the law. And their acts as such, must be regarded as coram non iudice. And that, the proceeding of a circuit court, held by the judge of another circuit, at a time unauthorized by law are void. Ex parte DeHay. And the doctrine of stare decisis governs.

Petitioner contend these errors are structural: the deprivation of basic constitutional protections, tainted his entire trial process, making it unreliable and rendering any punishment fundamentally unfair. This error is per se prejudicial and require automatic reversal. The trial court acquires subject matter jurisdiction in a criminal trial by way of a valid indictment, and a court lacks subject matter jurisdiction to convict and sentence a defendant for an offense for which he was not indicted by the Grand jury. 5th Amend. and S.C. constitution Art. 1 Section 11. According to Arizona v. Fulminante, 499 U.S. 279 (1991), being tried before a biased judge is structural error.

Chapman v. California, 386 U.S. 18, Specifically noted three constitutional error that could be categorized as structural error: "Using a coerced confession against a

defendant in criminal trial, depriving a defendant of counsel, and trying a defendant before a biased judge.”

The due process clause to both state and Federal constitutions prohibits the government from unfairly or arbitrarily depriving a person of life, liberty or property without due process of the law.

Brady Violation

In criminal procedure, information or evidence that is favorable to a criminal defendant's case must be granted to him upon request and the prosecution has a duty to disclose all such material. In *Brady v. Maryland*, 373 U.S. 83 the U.S. Supreme court held “Suppression by the prosecution of evidence favorable to an accused upon request violate due process where evidence is material either to guilt or to punishment, irrespective of good faith of prosecution.

Petitioner submits that the suppression of the disease was material evidence favorable to his case, and an exculpatory fact, and that failure of the prosecution to disclose it upon request, prevented an adequate defense which violate due process and denied the right to a fair trial.

Clerk of Court of Appeals, Chief Deputy Clerk V. Claire Allen

5. With regard to Appellate case No. 2020-000-582, and Appellate case No. 2020-001111. Petitioner Appeals the Administrative Law Court's Order, judgment and opinion Trial case No. 2018-040246, to the S.C. Court of Appeals Case No. 2020-000582. Clerk Allen refused to docket the petitioner's initial brief and designated matter because of exhibits were included to show the administrative Law court's judgment was not based on substantial evidence, and therefore, violate petitioner substantial rights.

However, the supreme Court held in Barnes v. State, 859 S.E.2d 260 (2021) that “the clerk of court have a ministerial duty to docket filing irrespective of potential procedural flaws that may exist. “A clerk of court may not exercise any judicial power reserved for a judge, this include the prohibition of performing any action contingent on deciding a question of law. “A clerk of court does not have the authority to reject a filing based on ostensible or perceived failures, including whether the document is contained on the proper form because the clerk’s role is ministerial in this respect the clerk shall not be concerned with the merit of the paper or with their effect and interpretation.”

Petitioner sought to have the case certified to the Supreme court pursuant to rule 221 of the Appellate court rules, Appellate case no. 2020-001111, which was denied. Petitioner then sought certiorari facias and to certify the record, but former clerk Daniel E. Shearous responded by letter stating that “he did rubber stamp the order but with the permission of the justices. Petitioner also sought certiorari facias with regard to the petition for Habeas Corpus Appellate case No 2018-001533, as to the orders issued, contending that the signatures was rubber stamped as well. There was no action taken by the court as to that writ.

The clerk of court are constitutional officers. Before entering Office, a Clerk of Court must take the oath of office prescribe by the South Carolina Constitution. Before entering on the duties of his office, the clerk shall, in addition to the oath of office prescribed by the constitution, take the oath required of such officer by section 8-3-20.

To render the clerk of a court and the sureties on the clerk’s official bond liable for the clerk’s malfeasance the complaining party must show a duty on the part of the clerk, a breach of the duty and consequent damages to the complaint meeting the normal

standards of direct and proximate cause. As a direct result of both clerks of court petitioner continue to suffer irreparable harm as complaint in the actions filed in both the S.C. Supreme court on Habeas Corpus relief and in the S.C. Court of Appeals and the relief sought there.

An affirmative legal duty to act has been created by statute. The principle of judicial immunity from liability does not extend to a clerk of court, because the clerk's role is non-discretionary, but ministerial for which immunity does not apply. Section 14-8-110 provides. "Duties of Clerk of Supreme Court; appointment of Clerk of Court of Appeals, "the clerk of the Supreme Court, in a manner prescribed by the Supreme Court shall be responsible for the custody and keeping of the records of the court. A clerk of the court of appeals shall be appointed by the judges of the court to aid the clerk of the supreme court". Barnes v. state.

S.C. Department of Corrections

South Carolina Department of Corrections (Hereinafter SCDC) is a respondent upon which declaratory judgment is sought. Throughout petitioner's incarceration SCDC's officials have discriminated against petitioner for these crimes: and if he seek judicial review of the actions against him, its officials respond with many forms of retaliation against him. Petitioner is the subject of searches of his person as well as legal materials, documents from such lawsuits and letters from courts, many of which has been stolen by officers.

Despite petitioner filing grievances, which are returned to him with no action or investigation ever done not even an explanation. Just more searches and taking documents by SCDC's officers and Warden Williams and Major Bennett, turn a blind

eye and show indifference and hostility to petitioner for thinking that they should do something about it. (see attached grievance)

In *Brayboy v. Ewing*, 428 S.E.2d 731, because petitioner is or was the father of Tameka L Brayboy, (see complaint of i.d.) he had the transcript of that appeal among other documents. SCDC's officers searched his legal box and took it and will not return it to petitioner which has cause severe mental anguish.

Petitioner contend that respondents are acting in confederation: to continue his incarceration, despite a showing that it is a miscarriage of justice.

Rule 245 Original Jurisdiction of Supreme Court

6. When appropriate. The Supreme court will not entertain matters in its original jurisdiction when the matter can be determined in a lower court in the first instance, without material prejudice to the rights of the parties. If the public interest is involved or if special grounds of emergency or other good reasons exist why the original jurisdiction of the supreme court should be exercised, the facts showing the reasons must be stated in the petition.

On March 13, 2020 the president of the United States declared a national emergency based on a determination that the corona virus (Covid 19) poses an actual or imminent public health emergency and Governor McMaster issued a state of emergency in South Carolina on March 27, 2020. The South Carolina Supreme court's Chief Justice Beatty, also issued an order as guidance to the South Carolina Court of Appeals and lower courts in this state, for relaxing the rules of court with the exception of a notice of the intent to appeal the matters complained of with respect to appellate case No. 2020-001111 and appellate case No. 2020-000582, had been filed in this

court's jurisdiction in the first instance by way of appeal, and is a complaint against this court's officials, for reasons that during this time of emergency within which these executive and judicial orders was placed in effect is sufficient reason for this court to exercise its power to hear this case in its original jurisdiction.

Petitioner has constitutional standing to bring this action in this court. Sloan v. Greenville City 590 S.E.2d 338 (ct app 2018). Standing is a party's right to make a legal claim or seek judicial enforcement of a duty or right. Before any action can be maintained, there must exist a justiciable controversy. 314 S.E.2d26 (1984). A justiciable controversy is a real and substantial controversy which is appropriate for judicial determination as distinguished from a dispute or difference of a contingent, hypothetical or abstract character.

7. The question is whether the justices of this supreme court. Signed these orders that is the subject of this complaint, that petitioner received as the judgment in response to his having sought judicial review of his claims and will this court certify the record for review of this complaint.

May a circuit court of General Sessions be convened at a time, and during a term of court and month that is not prescribed by the statute for that circuit.

Can SCDC search an inmate's legal mail out of his presence, read it and take it out of the presence of that inmate or make him submit to strip searches just to cause mental emotional injury or must there be a justified legitimate penological reason each time for these searches.

Is structural errors a miscarriage of justice where they lead to excessive sentence and conviction. Has Jody Ferguson committed Fraud in having signed for certified mail

on 11-7-18 that was addressed to Chief Justice Beatty from petitioners family, its receipt restricted to him or his agent? (tracking No. 0910-000-3312-6317).

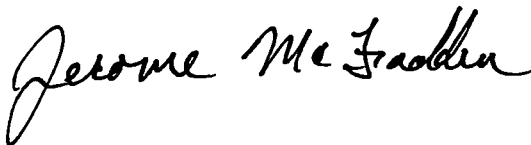
Did the Court have subject matter jurisdiction to convict and sentence petitioner without a valid indictment issued by the Grand Jury for the County of Florence, General Sessions Court.

8. Petitioner contends that had the prosecution disclosed the nature of the disease pursuant to his Brady request he would have been able to have an exculpatory defense to these crimes, and that a grand jury would have exonerated him of all criminal liability thereof. And that, deliberate deception of a court and jurors by the presentation of known false evidence is incompatible with rudimentary demands of justice. Giglio v. United States, 405 U.S. 150 (1972).

Petitioner, implore that this court issue a declaration pursuant to 15-53-20, on the matters of this complaint for petitioner. And that this court issue certiorari facias that it may be more fully informed.

9. That a full and complete answer by respondents to this complaint is ordered by the court, for process, discovery, and fact finding.

Respectfully Submitted,



Jerome McFadden

This 17th day of May 2022

The Supreme Court of South Carolina

Jerome McFadden, #136919, Appellant,

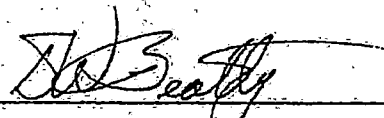
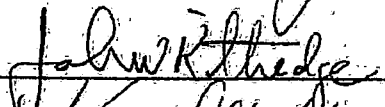

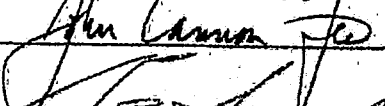

v.

South Carolina Department of Corrections, Respondent.

Appellate Case No. 2020-001111

ORDER

Appellant moves to certify this appeal for review by the Supreme Court pursuant to Rule 204(b), SCACR. The motion is denied.

	C.J.
	J.
	J.
	J.
	J.

Columbia, South Carolina

September 21, 2020

cc:

Jerome McFadden, 136919

Annie Laurie Rumler, Esquire

The Honorable Jenny Abbott Kitchings

The Supreme Court of South Carolina

Jerome McFadden, Petitioner,

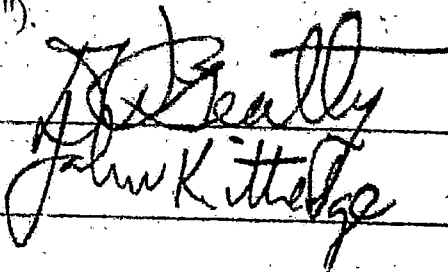
v.

Warden S. B. Lewis, Respondent.

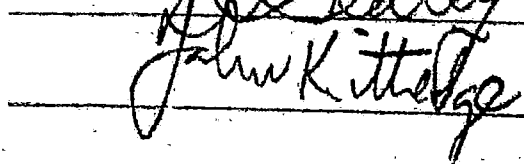
Appellate Case No. 2018-001403

ORDER

Petitioner has filed a petition for a writ of habeas corpus. The petition is denied. *See Gibson v. State*, 329 S.C. 37, 495 S.E.2d 426 (1998) (a petitioner seeking a writ of habeas corpus must set forth a constitutional violation which, in the setting, constitutes a denial of fundamental fairness shocking to the universal sense of justice). *See also Brown v. State*, 316 S.C. 258, 449 S.E.2d 494 (1994) ("The county grand jury is empaneled during the first term of general sessions of the calendar year. *See* S.C. Code Ann. §§ 14-7-1550 to -1570 (Supp. 1993). By Administrative Order of the Chief Justice, the Chief Judge for Administrative Purposes in each judicial circuit is responsible for scheduling when the grand jury in each county within the circuit will convene to receive evidence and deliberate. Administrative Section, South Carolina Court Register, pp. CC ADMIN 3-4. This order specifically encourages the Chief Judge to convene the grand jury when the court of general sessions is not in session. After the grand jury convenes, it then reports its findings of 'True Bill' or 'No Bill' to the court of general sessions. This report may be made on the same day as the day the grand jury makes its findings, or it may be made at some later time. In the present case, the dates show that the grand jury took action on the indictments on a date which was earlier than the date on which they made their report to the court of general sessions. As explained above, this is perfectly normal.").



C.J.



J.

Kaye L. Heam

J.

John Cannon
Lee Jones

J.

J.

Columbia, South Carolina

September 5, 2018

cc:

Alan McCrory Wilson, Esquire

Jerome McFadden, 136919

The Supreme Court of South Carolina

Jerome McFadden, Petitioner

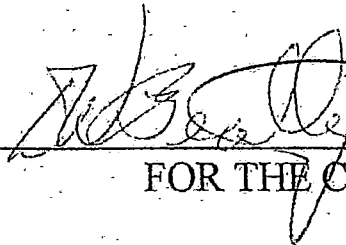
v.

Warden, S. B. Lewis, Respondent.

Appellate Case No. 2018-001533

ORDER

The petition for rehearing dated October 18, 2018, is untimely under Rule 221 of the South Carolina Appellate Court Rules. Accordingly, it is hereby stricken and dismissed.



C.J.

FOR THE COURT

Columbia, South Carolina
October 25, 2018.

cc: Alan McCrory Wilson, Esquire
Mr. Jerome McFadden, 136919

The Supreme Court of South Carolina

Jerome McFadden, Petitioner

v.

Warden S. B. Lewis, Respondent.

Appellate Case No. 2018-001403

ORDER

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C.J.
FOR THE COURT

Columbia, South Carolina
October 25, 2018

cc: Alan McGrory Wilson, Esquire
Mr. Jerome McFadden, 136919

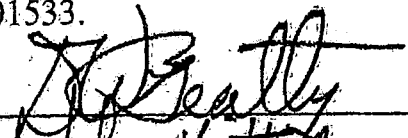
The Supreme Court of South Carolina

ORDER

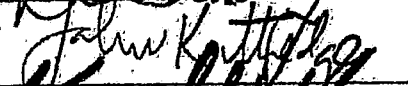
The following matters are dismissed pursuant to *Key v. Currie*, 305 S.C. 115, 406 S.E.2d 356 (1991), because no extraordinary reason exists to entertain them in this Court's jurisdiction:

1. Bakha Yawuti El v. Angela Cartrette, City of N. Chas Prosecutor, Thaddeus Doughty, Christopher Bojarski, Sylvia Skeeter, Thomas P. Morrison, Al Cannon, Julie Armstrong, Samuel Coleman, District of Columbia, United States, City of Charleston, Charleston County, State of South Carolina, City of North Charleston. Complaint/Claim, Constructive Trust Lawsuit, Affidavit of Fact - Affidavit of Obligation, Common Law Invocation, Notice of Injunctive Relief Stopping All Actions Preliminary & Permanent Amended Nunc Pro Tunc dated May 18, 2018. Appellate Case No. 2018-000899.
2. Minister Wazir Alvin Goldsmith Jr. Notice and Petition for an Immediate Injunction and a Well Written Order for Protection Against False Arrest Resulting from the False Claims and the Turpitudinous Conduct of Attorney Davida Mathis received June 11, 2018 and Notice and Acknowledgement of Father's Expectation to Receive a Well Written Order for Protection Against the Morally Turpitudinous Conduct of Attorney Davida Mathis from a Family Court Judge from the Family Court of Thirteenth Judicial Circuit received June 25, 2018. Appellate Case No. 2018-001086.
3. Robert William Wazney v. State of South Carolina. Affidavit dated July 16, 2018 and Letter to the Clerk of Court dated August 20, 2018. Appellate Case No. 2018-001376. Complaint dated July 16, 2018. Appellate Case No. 2018-001373.
4. Calvin E. Snell v. State of South Carolina. Motion to Compel dated August 20, 2018. Appellate Case No. 2018-001551.

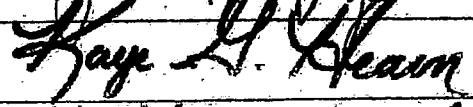
5. Jerome McFadden v. S.B. Lewis, Warden of Perry Correctional Institution and The Attorney General for the State of South Carolina.
Petition for Original Jurisdiction and Complaint dated August 13, 2018. Appellate Case No. 2018-001533.



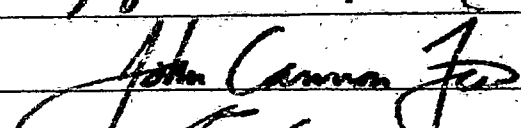
C.J.




J.



J.



J.



J.

Columbia, South Carolina

August 28, 2018.

Columbia, South Carolina

August 28, 2018

CC:

Mr. Bakha Yawuti

Mr. Alvin GoldSmith

✍ Paul B. Wickensimer

Mr. William Wazney

✍ Alan McCrory Wilson, Esquire

Mr. Calvin Earl Snell

Mr. Jerome McFadden

MAR 29 2022

INMATE GRIEVANCE FORM

GRIEVANCE

STEP 1

INMATE NAME: Jerome McFadden
 CDC NUMBER: 136919
 INSTITUTION: PCI
 HOUSING UNIT: Q3B 212
 WORK ASSIGNMENT: Cafeteria

OFFICE USE ONLY
 Grievance No. PCT-0148-22
 Code: General IP-23
 Policy _____
 Disc. Hear. _____
 Class. _____
 PREA _____
 Date Received 3-26-22
 IGC Initials [Signature]

STATEMENT OF GRIEVANCE (Indicate the date of incident, and if the grievance is a challenge to SCDC Policy, specify which policy. Include supporting documentation and attach answered RTSM or Kiosk reference number.)

Complaint - This is the only reference no. used (C062883) in the response. This is a formal complaint to the above response to my request. My room was searched a day before thanksgiving by oft Freeman and LT Hall, documents or legal letters was removed by Freeman and witnessed by LT Hall. The response to my informal complaint, by Major Bennett show indifference and it fails to acknowledge that LT Hall witnessed the search work was Hall questioned, I see no psychological legitimate reason to search and inmate's legal box. I complained about this before where my legal materials was stolen and nothing has been done yet. This search violates my 4th Amend. right against unreasonable searches.

Jerome McFadden 3-3-22
 Grievant Signature Date

ACTION REQUESTED: That LT Hall is questioned and his name is documented and that the camera is viewed.

ACTION TAKEN BY IGC: PROCESSED UNPROCESSED OTHER

You have exceeded the established time frame for filing a grievance on this issue. Pursuant to SCDC Inmate Grievance System, you have eight (8) days from date of incident to file a Grievance. November 23, 2021 as stated in your submitted grievance. Your grievance was not received until your grievance is being Processed & Returned to you.

B. Williams
 IGC Signature

(CONTINUE ON REVERSE SIDE)

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v. Claire Allen, Chief Deputy Clerk of S.C. Court of Appeals,
And Jody Ferguson, Mailroom Personnel of The S.C. Supreme Court.
Respondents.

Certificate of Service

The petitioner Jerome McFadden, hereby certify that he has served by certified mail 6 copies of this petition for original jurisdiction upon the clerk of S.C. Supreme Court. And a copy of same on all respondents at their respective places of employment's mailing address.


Jerome McFadden

This 17th day of May 2022

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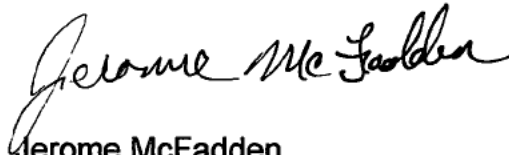
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001403, 2018-001533 Appellate Case No.
2020-000582

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v. Claire Allen, Chief Deputy Clerk of S.C. Court of Appeals,
And Jody Ferguson, Mailroom Personnel of The S.C. Supreme Court.
Respondents.



Jerome McFadden
Perry Correctional Institution
430 Oaklawn Rd
Pelzer, SC 29669

Jerome McFadden 136919
Perry Correctional Inst.
430 Oak Lawn Rd.
Pelzer, SC 29669

CERTIFIED MAIL



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1000 29211

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MAY 25 2022

SC Court of Appeals

SOUTH CAROLINA COURT OF APPEALS
CLERK'S OFFICE/CLAIRE ALLEN
P.O. BOX 11629
COLUMBIA, SC 29211

