

ALABAMA SUPREME COURT

EX PARTE JOHN GRANT

**IN RE:
STATE OF ALABAMA,**

V.

JOHN GRANT.

**TO THE ALABAMA SUPREME COURT
CASE NO. 1210198**

CRIMINAL APPEALS NO. CR-20-0804

**APPEAL FROM THE CIRCUIT COURT OF
MONTGOMERY COUNTY, ALABAMA**

CASE NO. CC-2020-116

**BRIEF IN OPPOSITION TO
STATE'S WRIT OF CERT**

**JENNIFER M. HOLTON
2508 Highland Avenue, Suite c
Montgomery, AL 36107
(334)782-6848
jholtonattorney@gmail.com**

COUNSEL FOR JOHN GRANT

ORAL ARGUMENT NOT REQUESTED

ORAL ARGUMENT STATEMENT

Oral Argument is not requested or warranted. This case is set for oral argument on June 1, 2022; however this Honorable Court was clear in *Ex parte Key*, 890 So. 2d 1056 (Ala. 2003) that the issue in this matter would need legislative not judicial intervention. The legislative branch during the 2022 session submitted bills in both the House and Senate to change the year and a day rule and not apply the bills retroactively. The legislative branch confirmed that at the time of the allegations of this incident the year and a day rule was the law of Alabama and if changed would not be applied retroactively.

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STATEMENT OF FACTS

On or about September 24, 2017, an incident occurred that caused injuries to a Mr. Earl Mack. Mr. Earl Mack expired from a multitude of reasons on December 26, 2018. The trial court held a hearing on Grant's motion to dismiss and denied the motion to dismiss. Further, the trial court held a bond hearing and at that time Grant renewed his motion to dismiss and the trial court entertained argument from Grant's counsel and the State of Alabama at which time the State of Alabama by and through the assistant district attorney Damien Lewis for Montgomery County admitted that there was no set of facts that could get to the indictment as charged, but that the state of Alabama wished the law was different and that they were going to move forward even as against the laws of the State of Alabama.

The allegations in the indictment even if view most favorably for the State of Alabama are outside of the year and a day rule therefore barring prosecution for murder in the State of Alabama. The year and a day rule dates back to the 13th century as part of the Statute of Gloucester and held that a death was conclusively presumed not to be murder (or any other homicide) if it occurred more than a year and one day since the act (or

omission) that was alleged to have been its cause. The Alabama Legislature did not expressly abolish the common-law year-and-a-day rule when it reenacted the Criminal Code in 1977, that common-law rule remains viable in Alabama law. Section 1-3-1, Ala.Code 1975, provides: "The common law of England, so far as it is not inconsistent with the Constitution, laws and institutions of this state, shall, together with such institutions and laws, be the rule of decisions, and shall continue in force, except as from time to time it may be altered or repealed by the Legislature." The common-law year-and-a-day rule stipulates that "a defendant can be prosecuted for homicide only if the victim dies within one year and a day of the defendant's wrongful act." *Woods v. State*, 709 So. 2d 1340, 1346-47 (Ala.Crim.App.1997). The Supreme Court of Alabama was given the opportunity to abolish the common law bar to prosecution and chose to retain the year and a day rule until such time as legislative action was taken against the rule. *Ex parte Key*, 890 So. 2d 1056, 1067 (Ala. 2003). It is undisputed that the allegations of a crime (of which Defendant denies any guilt) occurred September 24, 2017 and that the death of Earl Mock occurred on December 26, 2018. Pursuant to the

year and a day rule the death of Earl Mock is conclusively presumed not to be murder. Grant avers that the state of Alabama is procedurally barred from prosecution of Earl Mock. In the 2022 Alabama Legislative session in House Bill 260 and Senate Bill 286 both of the legislative branches submitted bills for a change to abrogate the year and a day rule, however neither asked for retro application. The Alabama legislative branch has confirmed that the year and a day rule is good law in the State of Alabama and the State of Alabama's Writ is without merit.

SUMMARY OF THE ARGUMENT

The State of Alabama has consistently argued that the death of Earl Mack did not occur within a year and a day. The application for rehearing by the State of Alabama purports to argue that the pleadings and attorneys arguments are not evidentiary material; however pursuant to Rule 40(e) Alabama Rules of Appellate Procedure the State of Alabama in its application for rehearing did not provide a separate statement of facts therefore they have acquiesced to the facts in this Honorable Court's opinion and their claim is without merit. Further, the State of Alabama is arguing that this Honorable Court's jurisdiction is not properly invoked

and that a motion to dismiss is not proper of which Grant is in opposition to and agrees with this Honorable Court. Grant avers that the motion to stay should be lifted and this Honorable Court's Order should be followed by the trial court.

ARGUMENT

The State of Alabama in its rhetoric fails to acknowledge that the State of Alabama in its response to Grant's Writ of Mandamus acquiesced to and argued that the Earl Mack did not die within a year and a day; further the State of Alabama continues to argue the fact that even though the Earl Mack did not die within a year and a day that the law should be changed although the year and a day rule is the law in the State of Alabama and their claim is without merit.

Grant avers that the State of Alabama knowingly pursuing an indictment wherein statutorily there is not a crime is a failure of justice and an irreparable injury. Grant has a clear legal right not to be incarcerated without bond since January 2, 2019 for the State of Alabama knowingly pursuing an indictment wherein the prosecutor and the State of Alabama readily admits is against the laws of the State of

Alabama, but the that prosecutor and the Attorney General's office labeled as the State of Alabama thinks that the law should be changed therefore they are holding Grant without bond. Grant avers that he is a victim of failure of justice and irreparable injury. When the State of Alabama repeatedly admits that no set of facts even if viewed most favorable for the State of Alabama could result in a guilty verdict then there is a legal insufficiency of the indictment as a matter of law.

The Alabama Legislature did not expressly abolish the common-law year-and-a-day rule when it reenacted the Criminal Code in 1977, that common-law rule remains viable in Alabama law. Section 1-3-1, Ala.Code 1975, provides: "The common law of England, so far as it is not inconsistent with the Constitution, laws and institutions of this state, shall, together with such institutions and laws, be the rule of decisions, and shall continue in force, except as from time to time it may be altered or repealed by the Legislature." The common-law year-and-a-day rule stipulates that "a defendant can be prosecuted for homicide only if the victim dies within one year and a day of the defendant's wrongful act." *Woods v. State*, 709 So. 2d 1340, 1346-47

(Ala.Crim.App.1997). The Supreme Court of Alabama was given the opportunity to abolish the common law bar to prosecution and chose to retain the year and a day rule until such time as legislative action was taken against the rule. *Ex parte Key*, 890 So. 2d 1056, 1067 (Ala. 2003).

In the 2022 Alabama Legislative Session both the House and the Senate presented their versions of the year and a day rule to abrogate.(Please see complete bills attached hereto as Appendix A) The legislature (the law making branch of government) both agree that the year and a day rule in the law in the State of Alabama and this Honorable Court has already adhered to that it is a judicial not law making branch of government. The State of Alabama was Ordered October 4, 2021 by the Alabama Court of Criminal Appeals in Grants Writ of Mandamus to grant the dismissal of the indictment as against Grant, however Grant is still incarcerated for an alleged crime that is procedurally barred from prosecution. Grant is due to be immediately released from incarceration for an allegation of which the State of Alabama knowingly unlawfully charged Grant.

CONCLUSION

The State of Alabama is in the peculiar situation that most Defendant's find themselves in when they are faced with the criminal justice system. The State of Alabama wishes that the law was different. The judiciary branch is not the appropriate avenue to overstep the legislative branch. Grant has been unlawfully incarcerated more than a thousand days since January 2, 2019. Grant prays that this Honorable Court will Order the immediate release of Grant.

/s/Jennifer M. Holton
JENNIFER M. HOLTON
2508 Highland Ave. St C
Montgomery, AL 36107
jholtonattorney@gmail.com
(334)782-6848

CERTIFICATE OF COMPLIANCE

I certify that the instant filing complies with the word limitation set forth in Ala. R. App. P. 40(g). According to the word-count function of Microsoft Word, this application contains 1,339 words from the beginning to the end. I further certify that this opposition complies with the font requirements of Ala. R. App. P. 32(a)(7). This application was prepared in the Century Schoolbook font in 14-point type. See Ala. R. App. P. 32(d).

Respectfully submitted this 25th day of April, 2022.

/s/Jennifer M. Holton
JENNIFER M. HOLTON
2508 Highland Ave. St C
Montgomery, AL 36107
jholtonattorney@gmail.com
(334)782-6848

CERTIFICATE OF SERVICE

This is to certify that I have served a copy of the foregoing upon the Attorney General's office by email to teresa.miller@alabamaag.gov this 25th day of April, 2022.

/s/Jennifer M. Holton
JENNIFER M. HOLTON
2508 Highland Ave. St C
Montgomery, AL 36107
jholtonattorney@gmail.com
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APPENDIX

1 HB260
2 216852-1
3 By Representative Simpson
4 RFD: Judiciary
5 First Read: 03-FEB-22

8 SYNOPSIS: Under existing common law, a person may be
9 prosecuted for homicide only if the victim dies
10 within one year and a day of the offender's
11 wrongful act.

12 This bill would provide that a person may be
13 prosecuted for homicide if the offender's wrongful
14 act causes the death of the victim, regardless of
15 the time that has elapsed between the wrongful act
16 and the victim's death.

17 This bill would also abrogate the common law
18 "year-and-a-day rule."

19 Amendment 621 of the Constitution of Alabama
20 of 1901, as amended by Amendment 890, now appearing
21 as Section 111.05 of the Official ReCompilation of
22 the Constitution of Alabama of 1901, as amended,
23 prohibits a general law whose purpose or effect
24 would be to require a new or increased expenditure
25 of local funds from becoming effective with regard
26 to a local governmental entity without enactment by
27 a 2/3 vote unless: it comes within one of a number

1 of specified exceptions; it is approved by the
2 affected entity; or the Legislature appropriates
3 funds, or provides a local source of revenue, to
4 the entity for the purpose.

5 The purpose or effect of this bill would be
6 to require a new or increased expenditure of local
7 funds within the meaning of the amendment. However,
8 the bill does not require approval of a local
9 governmental entity or enactment by a 2/3 vote to
10 become effective because it comes within one of the
11 specified exceptions contained in the amendment.

12
13 A BILL
14 TO BE ENTITLED
15 AN ACT
16

17 Relating to crimes and offenses; to add Section
18 13A-6-5 to the Code of Alabama 1975, to provide that a person
19 may be prosecuted for homicide if the person's wrongful act
20 causes the death of the victim, regardless of the time that
21 has elapsed between the wrongful act and the victim's death;
22 to abrogate the common law "year-and-a-day rule"; and in
23 connection therewith would have as its purpose or effect the
24 requirement of a new or increased expenditure of local funds
25 within the meaning of Amendment 621 of the Constitution of
26 Alabama of 1901, as amended by Amendment 890, now appearing as

1 Section 111.05 of the Official Recompilation of the
2 Constitution of Alabama of 1901, as amended.

3 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

4 Section 1. Section 13A-6-5 is added to the Code of
5 Alabama 1975, to read as follows:

6 §13A-6-5.

7 (a) A person may be prosecuted for any form of
8 criminal homicide, as defined in Section 13A-6-1, if the
9 person's wrongful act causes the death of another person,
10 regardless of the time that has elapsed between the wrongful
11 act and the victim's death.

12 (b) This act serves to abrogate the common law
13 "year-and-a-day rule," which provides that a person may not be
14 prosecuted for criminal homicide if the victim dies one year
15 and a day after the person's wrongful act.

16 (c) This section shall apply to any act or acts
17 occurring on or after the effective date of this act.

18 Section 2. Although this bill would have as its
19 purpose or effect the requirement of a new or increased
20 expenditure of local funds, the bill is excluded from further
21 requirements and application under Amendment 621, as amended
22 by Amendment 890, now appearing as Section 111.05 of the
23 Official Recompilation of the Constitution of Alabama of 1901,
24 as amended, because the bill defines a new crime or amends the
25 definition of an existing crime.

1 Section 3. This act shall become effective on the
2 first day of the third month following its passage and
3 approval by the Governor, or its otherwise becoming law.

1 SB286
2 216852-1
3 By Senator Weaver
4 RFD: Judiciary
5 First Read: 01-MAR-22

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9 prosecuted for homicide only if the victim dies
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13 prosecuted for homicide if the offender's wrongful
14 act causes the death of the victim, regardless of
15 the time that has elapsed between the wrongful act
16 and the victim's death.

17 This bill would also abrogate the common law
18 "year-and-a-day rule."

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20 of 1901, as amended by Amendment 890, now appearing
21 as Section 111.05 of the Official ReCompilation of
22 the Constitution of Alabama of 1901, as amended,
23 prohibits a general law whose purpose or effect
24 would be to require a new or increased expenditure
25 of local funds from becoming effective with regard
26 to a local governmental entity without enactment by
27 a 2/3 vote unless: it comes within one of a number

1 of specified exceptions; it is approved by the
2 affected entity; or the Legislature appropriates
3 funds, or provides a local source of revenue, to
4 the entity for the purpose.

5 The purpose or effect of this bill would be
6 to require a new or increased expenditure of local
7 funds within the meaning of the amendment. However,
8 the bill does not require approval of a local
9 governmental entity or enactment by a 2/3 vote to
10 become effective because it comes within one of the
11 specified exceptions contained in the amendment.

12
13 A BILL
14 TO BE ENTITLED
15 AN ACT
16

17 Relating to crimes and offenses; to add Section
18 13A-6-5 to the Code of Alabama 1975, to provide that a person
19 may be prosecuted for homicide if the person's wrongful act
20 causes the death of the victim, regardless of the time that
21 has elapsed between the wrongful act and the victim's death;
22 to abrogate the common law "year-and-a-day rule"; and in
23 connection therewith would have as its purpose or effect the
24 requirement of a new or increased expenditure of local funds
25 within the meaning of Amendment 621 of the Constitution of
26 Alabama of 1901, as amended by Amendment 890, now appearing as

1 Section 111.05 of the Official Recompilation of the
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8 criminal homicide, as defined in Section 13A-6-1, if the
9 person's wrongful act causes the death of another person,
10 regardless of the time that has elapsed between the wrongful
11 act and the victim's death.

12 (b) This act serves to abrogate the common law
13 "year-and-a-day rule," which provides that a person may not be
14 prosecuted for criminal homicide if the victim dies one year
15 and a day after the person's wrongful act.

16 (c) This section shall apply to any act or acts
17 occurring on or after the effective date of this act.

18 Section 2. Although this bill would have as its
19 purpose or effect the requirement of a new or increased
20 expenditure of local funds, the bill is excluded from further
21 requirements and application under Amendment 621, as amended
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23 Official Recompilation of the Constitution of Alabama of 1901,
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