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Jun 30 2022

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Certiorari from Berkeley County
The Honorable Roger M Young, Sr., Post-Conviction Relief Judge
R. Markley Dennis, Jr., Trial Judge
Appellate Case No. 2019-000119

ROGER A. WILLIAMS, SCDC # 303509,

Petitioner,

vs.

THE STATE OF SOUTH CAROLINA,

Respondent.

RETURN TO PETITIONER'S PETITION FOR REHEARING

On June 8, 2022, this Court, acting pursuant to Rule 243 of the South Carolina Appellate Court Rules, issued an order denying certiorari review of the denial of Petitioner Roger A. Williams's post-conviction relief action. See Roger A. Williams v. State, Appellate Case No. 2019-000119 ("This matter is before the court on a petition for a writ of certiorari following the denial of Petitioner's application for post-conviction relief. Based on the vote of the panel, the petition for a writ of certiorari is denied."). Thereafter, Petitioner filed a Petition for Rehearing, challenging this Court's denial of certiorari review pursuant to Rule 243, SCACR. By letter dated June 27, 2022, this Court requested Respondent file a return to the petition. This return follows and for the following reasons, Respondent asserts this Court should deny the petition for rehearing.

Respondent asserts the petition for rehearing should be denied because Petitioner is asking this Court to reconsider its denial of *discretionary* certiorari review, which clearly goes against the principles laid out in our appellate court rules and post-conviction relief statute. Pursuant to the

Uniform Post-Conviction Procedure Act, “[a] final judgment entered under this chapter *may* be reviewed by a writ of certiorari as provided by the South Carolina Appellate Court Rules.” S.C. Code Ann. § 17-27-100 (emphasis added). Moreover, according to our appellate court rules, “[a] writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons.” Rule 242(b), SCACR. See also CERTIORARI, Black's Law Dictionary (11th ed. 2019) (“An *extraordinary* writ issued by an appellate court, *at its discretion*, directing a lower court to deliver the record in the case for review.”) (emphasis added). Pursuant to Rule 221, SCACR, “[n]o petition for rehearing shall be allowed from an order denying a petition for a writ of certiorari under Rule 242, SCACR, or declining to entertain a matter under Rule 245, SCACR.” While certiorari review of post-conviction relief actions is governed by Rule 243, SCACR, the same prohibitions against petitions for rehearing from the denial of discretionary certiorari review under Rule 242, SCACR, or discretionary review under Rule 243, SCACR, should apply. Our Supreme Court has consistently held the non-prevailing party in a post-conviction relief action where certiorari was denied by this Court pursuant to Rule 243, SCACR, could not then petition for certiorari pursuant to Rule 242, SCACR. See Ellison v. State, 382 S.C. 189, 676 S.E.2d 671 (2009) (finding the Supreme Court will not review an order of the Court of Appeals denying a petition for a writ of certiorari in a post-conviction relief case); Haggins v. State, 377 S.C. 135, 659 S.E.2d 170 (2008) (stating the Supreme Court will not entertain petitions for a writ of certiorari pursuant to Rule 242¹ where Court of Appeals issues “letter denial”); Missouri v. State, 378 S.C. 594, 663 S.E.2d 480 (2008) (extending Haggins to petitions for a writ of certiorari filed in the Supreme Court pursuant to Rule 242 following the Court of Appeals’ issuance of order denying petition for writ of certiorari pursuant to Johnson v. State, 294

¹ Formerly Rule 226, SCACR.

S.C. 310, 364 S.E.2d 201 (1988)); and In re Exhaustion of State Remedies in Criminal and Post-Conviction Relief Cases, 321 S.C. 563, 471 S.E.2d 454 (1990) (stating this Court reviews decisions of Court of Appeals by way of writ of certiorari only where special reasons justify exercise of that power).

In the present case, Petitioner’s appellate counsel filed a thorough, twenty-four-page certiorari petition asserting the post-conviction relief court erred in denying relief as to seven issues. Respondent filed a return to this petition addressing all three issues and asking this Court to deny certiorari. Petitioner’s appellate counsel then filed a reply to Respondent’s return, again asserting why discretionary review was warranted. Thereafter, this Court, acting in its capacity under Rule 243, SCACR, declined to entertain Petitioner’s arguments and issued an order denying discretionary certiorari review based on its sound judicial discretion after a thorough review of the entire record, the filed appellate pleadings, and case law. See Rule 242(b) (“A writ of certiorari is not a matter of right, but of sound judicial discretion”); see also Rule 243(f), SCARC (outlining the contents of an appendix in a post-conviction relief appeal, including the entire lower court record and a copy of the final order entered after the post-conviction proceeding). Petitioner has not presented special or important reasons why this Court erred in denying his request for discretionary review after its exhaustive review of the entire record and the arguments set forth by Petitioner. See Rule 242(b), SCACR (“A writ of certiorari . . . will be granted only where there are special and important reasons.”). Accordingly, this Court should deny and dismiss this petition for rehearing based on the principles set forth in our appellate court rules.²

² As to the merits of Petitioner’s claims in his petition for rehearing, Petitioner has simply repeated the arguments he previously articulated in his petition for a writ of certiorari, which has now been denied by this Court. To the extent a merits-based response to these renewed arguments is necessary, Respondent relies upon the response originally included in its return to the petition for a writ of certiorari. (Return to Cert.).

In light of all those reasons coupled with the arguments raised in Respondent's return to the petition for certiorari, the post-conviction relief court properly denied relief and there is no compelling reason why this court should reconsider its decision to deny discretionary certiorari review. As a result, this Court should deny Petitioner's petition for rehearing.

Respectfully submitted,

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PROOF OF SERVICE

I, Megan Harrigan Jameson, certify that a true copy of Respondent's Return to the Petition for Rehearing has been served upon Petitioner by electronically mail a copy to opposing counsel's primary e-mail address as listed in the Attorney Information System (AIS):

C. Rauch Wise, Esquire
rauchwise@gmail.com

I further certify that all parties required by Rule to be served have been served.

This 30th day of June, 2022.

s/ Megan Harrigan Jameson

MEGAN HARRIGAN JAMESON
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