

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED
MAY 23 2013
SC Court of Appeals

Appeal from Aiken County
Honorable Doyet A. Early, III, Circuit Court Judge

Appellate Case No: 2012-212999

STATE OF SOUTH CAROLINA,

Respondent,

vs.

ALBERT CAVE,

Appellant.

RETURN TO MOTION TO REOPEN

Respondent, making Return to Appellant's Motion to Reopen would show unto this Court:

1. Respondent has not been served with or received any of the documents related to this appeal by the parties but has been provided with copies of documents by this Court. On information and belief, it appears Appellant entered a guilty plea on September 10, 2012. It also appears a Notice of Appeal was submitted.

2. By letter dated September 25, 2012, this Court requested Appellant to provide an original proof of service for the Notice of Appeal and a written explanation for appealing a guilty plea pursuant to Rule 203, SCACR.

3. Appellant submitted an Amended Notice of Appeal on October 1, 2012, indicating the appeal arises from a guilty plea. In the body of the Amended Notice of Appeal, Appellant states that the basis for his motion is that he filed a pre-trial motion to suppress fingerprint evidence

which was denied. Appellant states that it is his belief the lower court's ruling was incorrect.

4. By letter dated October 5, 2012, this Court asked counsel for Appellant to forward a copy of the explanation for appealing from the guilty plea to Appellant and that counsel also advise Appellant that Appellant may submit an additional *pro se* explanation for appealing. This Court repeated the request by letter dated January 28, 2013. Respondent has no information whether the request was complied with or whether Appellant submitted a *pro se* explanation.

5. By order filed March 8, 2013, this Court dismissed the appeal finding Appellant failed to provide sufficient reason for appealing his guilty plea. The order indicated the remittitur would be issued as set for the in Rule 221(b), SCACR.

6. On March 22, 2013, Appellant submitted a Motion to Reopen Case. It appears the motion was received by this Court on March 25, 2013.

7. The remittitur was issued by the Court on March 25, 2013 but was recalled on March 27, 2013.

8. Appellant states in the Motion to Reopen that the case was dismissed for failure to provide sufficient reasoning for appealing pursuant to Rule 203, SCACR. He also states that he “ is now prepared to provide such reasoning as required by the Rule.”

9. Respondent submits that the Motion to Reopen Case must be denied. The reason advanced by Appellant for permitting the appeal is not sufficient. The reason advanced by Appellant in the Amended Notice of Appeal indicates he wishes to appeal the denial of his pre-trial motion to suppress fingerprint evidence. However, the information available in the documents on appeal reflect that Appellant entered a guilty plea subsequent to the ruling on the

motion to suppress. With the guilty plea, Appellant waived the ability to challenge the refusal of the lower court to suppress the fingerprint evidence as a pre-plea ruling. See State v. Thomason, 341 S.C. 524, 534 S.E.2d708 (Ct. App. 2000) (stating that a guilty plea generally acts as a waiver of all non-jurisdictional defects and defenses); State v. Munsch, 287 S.C. 313, 338 S.E.2d 329 (1985)(stating that a guilty plea admits all elements of the offense charged and waives all defenses); State v. Passaro, 350 S.C. 499, 567 S.E.2d 862 (2002)(stating that a guilty plea generally waives all non-jurisdictional defects and claims of violations of constitutional rights prior to the plea); Rivers v. Strickland, 264 S.C. 121, 213 S.E.2d 97 (1975)(same). The only matters available for appeal from a guilty plea are issues, motions or objections made during the guilty plea and sentencing. Appellant does not state that any issue was preserved **during** the guilty plea that would be appropriate for consideration on appeal.

10. Respondent submits that this appeal was properly dismissed for failure to provide sufficient reasoning for appealing pursuant to Rule 203, SCACR. The Motion to Reopen Case must be denied because Appellant fails to identify any issue or matter that was preserved during the guilty plea to allow the appeal to proceed within the mandates of Rule 203, SCACR.

Respectfully submitted,

ALAN WILSON
Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

By: 

Salley W. Elliott
S.C. Bar No: 1871

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ATTORNEYS FOR RESPONDENT

May 23, 2013

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CERTIFICATE OF SERVICE

I, Angela Bennett, certify that I have today served the Return to Appellant's Motion to Reopen Case on Appellant by depositing a copy of the same in the United States mail, postage prepaid, addressed to:

Brian A. Katonak, Esquire
P.O. Box 1606
Aiken, South Carolina 29802

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

This 23rd day of May, 2013.



Angela Bennett
Administrative Assistant
Office of Attorney General
Post Office Box 11549
Columbia, SC 29211



ALAN WILSON
ATTORNEY GENERAL

May 23, 2013

The Honorable Jenny A. Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RE: State v. Albert Cave
Appellate Case No: 2012-212999

Dear Ms. Kitchings:

Enclosed please find the original and six (6) copies of Respondent's Return to Appellant's Motion to Reopen Case in the above case.

Sincerely,

Salley W. Elliott
Senior Assistant Deputy Attorney General
S.C. Bar No: 1871

SWE/ab
Enclosure

cc: Brian A. Katonak, Esquire
Assistant Solicitor David W. Miller
Ms. Trisha Allen

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