

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Oct 19 2022

S.C. SUPREME COURT

Appeal from Spartanburg County
Honorable J. Derham Cole, Circuit Court Judge
S.C. Court of Appeals Appellate Case No. 2019-001296

THE STATE,

Respondent,

vs.

CARL RAY FRALEY, JR.,

Petitioner.

**RETURN TO
MOTION FOR EXTENSION OF TIME
AND OTHER RELIEF**

Respondent (“the State”), through its undersigned counsel, would respectfully show unto the Court as follows:

I.

In March of 2013, Petitioner Carl Ray Fraley, Jr. was indicted by the Spartanburg County Grand Jury for two counts of first-degree criminal sexual conduct with a minor along with two counts of lewd act upon a child following an investigation into allegations he sexually assaulted his granddaughter when she was roughly two to three years old. On February 9, 2015, Fraley appeared in the Spartanburg County Court of General Sessions before the Honorable J. Derham Cole, circuit court judge, and—after waiving presentment—entered a guilty plea pursuant to North Carolina v. Alford, 400 U.S. 25 (1970), to the offense of first-degree assault and battery. At the conclusion of the plea hearing, the plea judge accepted Fraley’s guilty plea, sentenced him

to a ten-year term of imprisonment, and suspended the sentence to a period of home detention set to run through the remainder of the year coupled with a five-year term of probation. In addition to that, the plea judge directed Fraley to participate in a psychological sexual evaluation to determine whether he should be ordered to register as a sex offender, and that evaluation was subsequently conducted as mandated. Following the completion of the evaluation, the plea judge issued an order on August 16, 2017, requiring Fraley to register as a sex offender. Thereafter, Fraley filed a motion seeking reconsideration of that order, and a hearing was held on the motion on October 24, 2018. Subsequently, on July 24, 2019, the plea judge issued an order denying Fraley’s motion for reconsideration. Fraley then timely appealed.

II.

On appeal, the Court of Appeals—following briefing and oral argument—issued a published opinion unanimously affirming Fraley’s conviction and sentence.¹ State v. Fraley, 437 S.C. 135, 876 S.E.2d 703 (Ct. App. 2022). After that decision was issued, Fraley timely filed a petition for rehearing, and that petition was denied through an order issued—and sent out to all counsel—on August 12, 2022.² Thereafter, no petition for a writ of certiorari or extension requests were served or filed during the thirty-day time period set out in our state’s appellate court rules. See Rule 242(c), SCACR (“A petition for writ of certiorari shall be served on opposing counsel and filed with proof of service with the Clerk of the Court of Appeals and the Clerk of the Supreme Court within thirty (30) days after the petition for rehearing or

¹ The records associated with the Court of Appeals proceedings in Fraley’s case are currently available through the South Carolina Appellate Court Public Index. Appellate Records for State v. Carl Ray Fraley, South Carolina Appellate Court Public Index, <https://ctrack.sccourts.org/public/caseView.do?csIID=70499>.

² Copies of the order and the email message transmitting the order are attached to this return as Attachment “A.”

reinstatement is finally decided by the Court of Appeals.”). Accordingly, the Court of Appeals issued—and sent out to all counsel—the remittitur on September 19, 2022, which was thirty-eight days after the petition for rehearing was denied.³ See Rule 221(b), SCACR (“Where a petition for rehearing has been denied, the Court of Appeals shall not send the remittitur to the lower court or administrative tribunal until the time to petition for a writ of certiorari under Rule 242(c) has expired.”).

III.

Yesterday, on October 18, 2022, Fraley electronically submitted to this Court an undated motion entitled “Motion for Extension of Time and Other Relief” along with a petition for a writ of certiorari seeking review of the Court of Appeals’s decision in his case. Through that motion, Fraley requests “an extension of time to file the Petition for Certiorari to the Court of Appeals” in his case. Additionally, through the same motion, Fraley asks this Court to issue a writ of certiorari pursuant to Rule 242 of the South Carolina Appellate Court Rules. Meanwhile, Fraley does *not*—at least expressly—ask this Court to recall the remittitur that was already properly issued in his case. Furthermore, Fraley candidly acknowledges his failure to timely file a petition for a writ of certiorari stemmed not from any mistake, error, or inadvertence on the part of the Court of Appeals but from “the fact that office staff did not advise [his appellate] counsel” of the email message from the Court of Appeals transmitting the remittitur.

IV.

Significantly, “[w]hen remittitur has been properly sent, the appellate court no longer has jurisdiction over the matter and no motion can be heard thereafter.” Wise v. South Carolina Dep’t of Corr., 372 S.C. 173, 174, 642 S.E.2d 551, 551 (2007). “The only exception to this rule

³ Copies of the remittitur and the email message transmitting the remittitur are attached to this return as Attachment “B.”

is when the remittitur is sent down by mistake, error or inadvertence *of the Court.*” *Id.* (emphasis added); see State v. Barnes, 413 S.C. 1, 4, 774 S.E.2d 454, 456 (2015) (“In order to justify this court in exercising the unusual power of recalling the *remittitur* after it has been sent down, a very strong showing would be required that the *remittitur* was sent down through some mistake or inadvertence on the part of this court or its officer[.]” (citation and internal quotations omitted)).

V.

In Fraley’s case, Fraley—due to a regrettable oversight involving his appellate attorneys’ office staff—failed to timely submit a petition for a writ of certiorari within the time period prescribed by the South Carolina Appellate Court Rules, and, resultantly, the Court of Appeals properly issued the remittitur in a manner completely consistent with those rules. Rule 221(b), SCACR; see also Henning v. Kaye, 307 S.C. 436, 437, 415 S.E.2d 794, 794 (1992) (“[T]he South Carolina Appellate Court Rules are not mere technicalities but provide the parties and this Court with an orderly mechanism through which to guide appeals in this State.”). And, as Fraley’s candid acknowledgement makes clear, the remittitur was *not* sent down as a result of any mistake, error, or inadvertence on the part of the Court of Appeals. See State v. Keels, 39 S.C. 553, 17 S.E. 802, 803 (1893) (explaining “excusable neglect” by a party to the appeal is *not* a valid basis upon which remittitur may be recalled). Therefore, because the remittitur was properly issued in Fraley’s case, appellate jurisdiction has been extinguished and no longer exists. See Sullivan v. Speights, 14 S.C. 358, 360 (1880) (“After the *remittitur*, however, is sent down, the case passes beyond the reach of this court and its jurisdiction is lost, and no motion can be heard by this court on the matter thereafter.”); see also DeWitt v. South Carolina Dep’t of Highways and Pub. Transp., 274 S.C. 184, 187, 262 S.E.2d 28, 30 (1980) (“The acts of a court

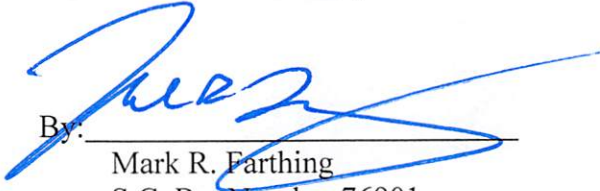
without jurisdiction are without effect.”). Accordingly, this Court does not have jurisdiction to consider Fraley’s motion or petition for a writ of certiorari, and, thus, those filings should and must be dismissed. Cf. Wise, 372 S.C. at 174, 642 S.E.2d at 551 (“The remittitur in this case was not sent down by mistake, error or inadvertence of the Court of Appeals. Instead, it was correctly sent after fifteen days had elapsed from the date of the order dismissing the appeal without the *proper* filing of a petition for reinstatement. Accordingly, this Court does not have jurisdiction to act in this matter. The documents filed by appellant are hereby dismissed.” (italics in original and citations omitted)).

WHEREFORE, Respondent prays this Court will deny Fraley’s “Motion for Extension of Time and Other Relief;” reject Fraley’s attempt to file his Petition for Certiorari to the Court of Appeals after the remittitur was properly issued in his case; hold the time period for the filing of any return to Fraley’s Petition for Certiorari to the Court of Appeals in abeyance pending a ruling on Fraley’s motion along with the State’s return to it; and for such other and further relief as the Court may deem just and proper.

Respectfully submitted,

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By: 
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