STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to the Court of Appeals
Appeal from Dorchester County
Hon. Brian M. Gibbons, Circuit Court Judge
Court of Appeals Appellate Case No. 2019-001068

THE STATE,

PETITIONER,

V.

TYLER J. EVANS,

RESPONDENT

OPINION NO. 2022-UP-319 (S.C. Ct. App. Filed August 3, 2022)

RETURN TO PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS

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ATTORNEYS FOR RESPONDENT

INDEX

PETITIONER'S QUESTIONS PRESENTED

Did the Court of Appeals err in affirming the trial court's dismissal of the State's appeal from magistrate court because it was untimely when both the trial court and Court of Appeals had to effectively rewrite section 18-3-30 of the South Carolina Code, which by its very clear and unambiguous language was never intended to apply to an appeal by the State, and other statutes or rules should have applied to allow the State thirty days to serve and file the appeal?

RESPONDENT'S COUNTER QUESTION PRESENTED

Did the Court of Appeals properly analyze the arguments presented and correctly apply precedent when it held that both the Petitioner and Respondent were bound by Title 18, Chapter 3, Section 30 as to the timing of appeals?

STATEMENT OF THE CASE

On December 15, 2016, Tyler James Evans, the Respondent, was arrested and charged with DUI 1st Offense. During the course of this arrest, Respondent was issued Uniform Traffic Ticket (hereinafter "UTT") 5102P0676001 (Uniform Traffic Ticket, R.9). At a pretrial hearing on June 27, 2017, before the Honorable Tera S. Richardson, Respondent moved to dismiss the case on the basis that the State failed to comply with §56-5-2953 of the South Carolina Code. (Magistrate's Return; R. 7). On June 28, 2017, Magistrate Richardson granted Respondent's motion and dismissed UTT 5102P0676001. (Respondent's Motion to Dismiss Appeal; R. 64).

Subsequently, the State authored an appeal on July 18, 2017, which it caused to be filed in Dorchester County on July 21, 2017, twenty (20) days subsequent to Magistrate Richardson's dismissal of UTT 5102P0676001. (Respondent's Motion to Dismiss Appeal; R. 64). Magistrate Richardson issued her return on October 11., 2017. (Magistrate's Return of Appeal; R.7). Respondent filed a Motion to Dismiss Appeal on December 21, 2017. (Respondent's Motion to Dismiss Appeal; R. 64).

The hearing on the Appeal was continued numerous times by the State, without objection by the Respondent, in reference to *State v. Dudley*, No. 2015-001785, 2018 WL 2979768, at*1 (Ct. App. June 13, 2018). The state was unsuccessful in this appeal. Subsequently, on May 28, 2019, a hearing on the State's appeal and Respondent's Motion to Dismiss took place before the Honorable Brian M. Gibbons. (5/28T.1; R.40). The State, in its statement of the case, incorrectly asserts that Respondent asserted that the appeal should be dismissed based on a failure to file the Notice of Appeal within 10 days pursuant to §18-3-30 of the South Carolina Code. Rather, the Respondent relied on both §18-3-20 and §18-3-30 in conjunction with the rest

of Title 18. The State countered that the statute did not apply, and the Notice of Appeal needed to be served and filed within 30 days pursuant to Rule 74, SCRCP. The Court granted Respondent's motion and issued a Form 4 Order, wherein he found "Respondent's Motion to Dismiss is hereby Granted, the Appeal was not timely filed." (Form 4 Dismissal Order; R.34). The State served and filed a Motion for Reconsideration. This motion was denied on June 18, 2019, by Form 4 Order. (Form 4 Denial of Motion to Reconsider; R.37).

The State served its Notice of Appeal to the Court of Appeals on June 26, 2019. After briefing and oral argument, the Court issued an unpublished opinion affixing the circuit court's finding the appeal was untimely because the State was required to serve and file the appeal within 10 days under section 18-3-30. The State served and filed a timely Petition for Rehearing, which was denied by Order on August 23, 2022. This Petition follows.

ARGUMENT

The Court of Appeals properly analyzed the arguments presented and correctly applied precedent when it held that both the Petitioner and Respondent were bound by Title 18, Chapter 3, Section 30 as to the timing of appeals.

This Court should deny certiorari because the state has failed to provide any special or important reason to invoke this Court's review. See Rule 242(b), SCACR. There is no dissent from the opinion issued by the Court of Appeals, and that opinion is not in conflict with prior decisions of this Court or the United States Supreme Court. See Rule 242(b)(2), (3), (5), SCACR. The Court of Appeals was correct in finding the State had to serve and file its Notice of Appeal to the circuit court within ten days pursuant to sections 18-3-20 and 18-3-30 of the South Carolina Code. By its express terms, section 18-3-20 requires that "all" appeals from "criminal causes" in Magistrate court "shall" be taken and prosecuted according to that "chapter". Likewise, the language of 18-3-30 refers to an "appellant" having 10 days to file and serve the notice of appeal. The court was correct in not applying 18-7-20 and Rule 74, SCRCP, as they are either more general statutes than 18-3-20 and 18-3-30, or they do not apply in the manner that the state suggests.

1. The Application of 18-3-20 and 18-3-30

"The cardinal rule of statutory construction is to ascertain the and give effect to the intent of the legislature. *State v. Pittman*, 373 S.C. 527, 561, 647 S.E.2d 144, 161 (2007). In interpreting statutes, the Court looks to the plain meaning of the statute and the intent of the legislature. *State v. Gaines*, 380 S.C. 23, 32, 667 S.E. 2d 728, 733 (2008). A statute's language must be construed in light of the intended purpose of the statute. *Id*. Statutes which are part of the same legislative scheme should be construed together. *Stardancer Casino, Inc. v. Stewart*, 347 S.C. 377, 556 S.E.2d 357 (2001). In construing statutory language, the statute must be read as a whole, and sections

which are part of the same general statutory law must be construed together and each one given effect, if it can be done by any reasonable construction. *State v. Alls*, 330 S.C. 528, 500 S.E.2d 781 (1998). Furthermore, the court should not consider the particular clause being construed in isolation, but should read it in conjunction with the purpose of the whole statute and the policy of the law. *South Carolina Coastal Council v. South Carolina State Ethics Comm'n*, 306 S.C. 41, 44, 410 S.E.2d 245, 247 (1991).

Title 18 of the Code of Laws of South Carolina is entitled "Appeals" and it contains only four (4) chapters. Chapter 1 is entitled "General Provisions", Chapter 3 is entitled "Appeals from Magistrates in Criminal Cases", Chapter 7 is entitled "Appeals to Circuit and County Courts in Other Cases", and Chapter 9 is entitled "Appeals to Supreme Court and Court of Appeals". From the titles of the Chapters alone, it becomes clear that the legislature had a specific and clear intent for Title 18, Chapter 3: to govern magistrate's criminal appeals. The language of various statutes within the Title makes it even clearer. Section 18-1-30 indicates that any "party aggrieved" may appeal "in the cases prescribed in this title". Section 18-3-20 reads:

> **All** appeals from magistrates' courts in criminal causes **shall** be taken and prosecuted as prescribed in **this chapter**."(Emphasis added.)
>
> Section 18-3-30(A) reads, in pertinent part:
>
> The **appellant**, **within ten days** after sentence, shall file notice of appeal with the clerk of court and shall serve notice of appeal on the magistrate who tried the case and upon the designated agent for the prosecuting agency or attorney who prosecuted the charge[…]." S.C. Code Ann. § 18-3-20 (Supp. 2019).

(Emphasis added.) Based upon the language of 18-3-20 and 18-3-30, when read in conjunction with one another and Section 18-1-30, along with the structure of the Chapters within

the title, it is clear that the intent of the legislature with regards to Chapter 3 was to have it govern the structure of all criminal appeals from magistrate's court, including those originating with the state. This is clarified further in *State v. Belviso*, 360 S.C. 112, 600 S.E.2d 68 (2004). The *Belviso* court recognized that affirming the State's right to appeal adverse outcomes from magistrate court was "consistent with the intent of the Legislature, especially when our statutory law is considered in its entirety [. . .] [i]n construing the statutory scheme as a whole, we 'escape the absurdity' and give efficacy to the manifest intention of the General assembly. [. . .] In doing so, our judicial decisions addressing the 'right of appeal' are in accord with legislative intent." *Id*. at 116-117. Thus, *Belviso* recognizes that the intent of the legislature is to govern the way that all appeals from criminal cases in magistrate court are prosecuted via Title 18. But if the "statutory law" as understood by *Belviso* indicates that the legislature's intent was to govern *all* criminal appeals in magistrate court, then how can that not be true – given that the statutes have not been amended since the time of *Belviso's* publication – in the instant appeal?

The State seeks, rather, for the Court to issue an order indicating that the intention of the Legislature, in enacting Title 18, Chapter 3, was to not apply it to the only party who is a necessary party in a criminal prosecution, and thus allow the State to "island hop" from specific and unavoidable statutes to either general or clearly non-applicable ones.

Further, language specific to 18-3-30 should not be used to disqualify it from controlling the timing of the State's appeal, as this language is specific guidance set up to aid a rather peculiar type of litigant common to magistrate court: the pro se litigant. Summary courts in South Carolina handle the vast majority of all criminal cases created within its borders, and upon information and belief, the majority of those individuals who appear in magistrates court on criminal matters (including traffic tickets) are pro se. Thus, statistically speaking, it is likely that a defendant who

would be interested in appealing his case would be pro se. While it is not difficult for an experienced prosecutor to quickly ascertain the method to perfect his appeal, a pro se defendant, attempting to perfect service on one of the many various departments, organs, and permutations of the State may have trouble, even in a less populous county. Thus, the language about serving prosecuting agencies and prosecutors is meant to ensure that a pro se defendant is clearly and adequately guided so as to know what and whom needs to be given notice that they are appealing.

CONCLUSION

Respondent respectfully requests this Court deny the petition for writ of certiorari. Should this Court grant the petition, Respondent respectfully requests the opportunity to brief the matter.

Respectfully Submitted,

s/*Tara L. Frost*
Tara L. Frost

s/*Jack C. Frost*
Jack C. Frost

This 21st day of October 2022.

ATTORNEYS FOR RESPONDENT

RECEIVED
Oct 21 2022
SC Court of Appeals

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CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Return to Petition for Writ of Certiorari in this case have been served on William M. Blitch, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS), which is wblitch@scag.gov, this 21st day of October 2022.

s/*Tara L. Frost*
Tara L. Frost

s/*Jack C. Frost*
Jack C. Frost

ATTORNEYS FOR RESPONDENT