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Nov 17 2022

SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Horry County
Honorable Benjamin H. Culbertson, Circuit Court Judge
Appellate Case Tracking No. 2022-001076

The State,

Respondent,

vs.

Daniel Gause,

Appellant.

MOTION TO DISMISS

Respondent, the State, through its undersigned counsel, would respectfully show unto this Court as follows:

I.

On November 18, 1981, Appellant was convicted of criminal sexual conduct in the first degree and kidnapping. He was sentenced to thirty years for criminal sexual conduct and life in prison for kidnapping. (See Sentence Sheet Attached as Exhibit A). On May 17, 2022, Appellant filed a Petition for a Re-Sentencing on 1981 Kidnapping with the circuit court seeking to have his life sentence reduced to thirty years based on the 1991 amendment to the kidnapping statute. (See Petition Attached as Exhibit B). The Honorable Benjamin H. Culbertson denied the motion by Order dated July 21, 2022. On July 26, 2022, Appellant served his Notice of Appeal.

II.

“It is a long-standing rule of law that a trial judge is without jurisdiction to consider a criminal matter once the term of court during which judgment was entered expires.” State v.

Campbell, 376 S.C. 212, 215, 656 S.E.2d 371, 373 (2008) (citing State v. Hinson, 303 S.C. 92, 399 S.E.2d 422 (1990)). “The rule has two exceptions: a timely post-trial motion and a motion for a new trial based on after-discovered evidence.” Campbell, 375 S.C. at 215, 656 S.E.2d at 373 (citing Rule 29, SCRCrimP). Rule 29 states:

Except for motions for new trials based on after-discovered evidence, post-trial motions shall be made within ten (10) days after the imposition of the sentence. . . . The time for appeal for all parties shall be stayed by a timely post-trial motion and shall run from the receipt of written notice of entry of the order granting or denying such motion. The time within which to make the motion shall not be affected by the ending of a term of court or departure of the judge from the circuit, and the circuit judge shall retain jurisdiction of the action for the purpose of hearing and disposing of the motion if not heard and disposed of during the term. Except by consent of the parties, argument on the motion shall be heard in the circuit where the trial or hearing was held. The motion may, in the discretion of the court, be determined on briefs filed by the parties without oral argument.

Rule 29(a), SCRCrimP. As this Court succinctly stated: “The court does not retain authority to entertain a motion which is not made within ten days of sentencing.” State v. Warren, 392 S.C. 235, 239, 708 S.E.2d 234, 236 (Ct. App. 2011).

Further, Rule 29(b) provides: “A motion for a new trial based on after-discovered evidence must be made within one (1) year after the date of actual discovery of the evidence by the defendant or after the date when the evidence could have been ascertained by the exercise of reasonable diligence.” Again, if the motion is not filed within the time allowed by the Rule, the court is without jurisdiction or authority to act on the motion.

III.

In the instant case, Appellant clearly did not file the Petition for Re-Sentencing—which should be considered as a motion pursuant to Rule 29(a), SCRCrimP—within ten days of sentencing. In fact, he filed the motion almost forty-one years after he was sentenced. As a

result, if the motion is considered pursuant to Rule 29(a) then it was clearly untimely, and the circuit court could not consider the motion.

Even if this Court considered the motion to be one based on after-discovered evidence because of the change in sentencing structure for kidnapping, Appellant's motion was clearly untimely. The Legislature altered the maximum sentence for kidnapping from life to thirty years in 1991. See 1991 Act No. 117, § 1.¹ As a result, Appellant knew or should have known through reasonable diligence of the "after-discovered evidence" no later than 1992. Again, his motion was untimely—this time by roughly thirty years. Accordingly, the circuit court did not have authority or jurisdiction to act on the motion even if it was made pursuant to Rule 29(b). Because the circuit court did not have jurisdiction to even consider the motion, this Court should dismiss the underlying appeal.

WHEREFORE, Respondent, the State, prays that the Court hold this matter in abeyance until ruling on this motion, and dismiss this appeal because the motion filed by Appellant was clearly untimely and the circuit court had no jurisdiction to even consider it; and for such other and further relief as the Court may deem just and proper.

Respectfully submitted,

ALAN WILSON
Attorney General

WILLIAM M. BLITCH, JR.
Senior Assistant Deputy Attorney General

¹ Additionally, the South Carolina Supreme Court has already concluded the 1991 amendment did not apply retroactively to alter any previously existing sentence for life. See State v. Varner, 310 S.C. 264, 266, 423 S.E.2d 133, 134 (1992).

BY: 

William M. Blich, Jr.
Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

November 17, 2022

EXHIBIT A

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Fifteenth Circuit

NOVEMBER Term, 1981

IN THE COURT OF GENERAL SESSIONS

THE STATE OF SOUTH CAROLINA,

vs.

DANIEL GAUSE

DOB: [REDACTED]
Age:
Color: BLACK

INDICTMENT FOR

81-GS-26-1146-CRIMINAL SEXUAL CONDUCT
1ST DEGREE CRIMINAL SEXUAL CONDUCT 2nd
DEGREE AND KIDNAPPING

VERDICT

Found guilty of Criminal Sexual Conduct 1st Degree and of Kidnapping.

SENTENCE

"The sentence of the law as pronounced by the court is that the within named defendant

DANIEL GAUSE

pay \$5000.00

Dollars

be confined

upon the

THIRTY (30) YEARS ON CT. I

public works of Horry County for a term of

or a like

period in the state penitentiary.

NOVEMBER 18

A. D. 1981

DAN MCEACHIN

Presiding Judge.

Criminal Sexual Conduct 1st Degree and on CT. III-Kidnapping

sentenced all of his natural life.

STATE OF SOUTH CAROLINA

COUNTY OF Horry

Fifteenth Circuit

NOVEMBER

Term, 1981

STATE OF SOUTH CAROLINA

Against

DANIEL GAUSE

Certified Copy of Sentence of Court

Billie G. Richardson

Billie G. Richardson, Clerk of Court

EXHIBIT B

STATE OF SOUTH CAROLINA ^
^
COUNTY OF HORRY ^
^
State of South Carolina, ^
^
Respondent, ^
vs, ^
^
Daniel Gause, #77753 ^
^
Defendant, ^

IN THE COURT OF GENERAL SESSIONS
FOR THE 15th JUDICIAL CIRCUIT

Case #81 – GS -26 -1146

PETITION FOR A RE-SENTENCING

ON 1981 KIDNAPPING

Pursuant of an Order per Honorable Jean
Toal S.C. Code ANN 16 - 3 - 910 up to
30 years

FILED
HORRY COUNTY
MAY 17 A 9 34
RENEE N. ELVIS
CLERK OF COURT
HORRY COUNTY, SC

JURISDICTION

The Honorable Jean Toal, Chief Justice for South Carolina signed an Oder, stating that any Defendant doing a life sentence for kidnapping, can petition the sentencing Court in the Court of General Sessions to be Re-sentenced to (30) Thirty years for kidnapping where the law was changed Pursuant to S.C. Code ANN 16 - 3 - 910.

FACTS

The Defendant Daniel Gause, SCDC #77753, has done (41) Forty One years for a kidnapping charge from 1981, Pursuant to Honorable Jean Toal's Order, the Defendant moves this court for a re-sentencing hearing, to time served (41) years and released from custody.

DISCUSSION

Pursuant to the S.C. Code ANN 16 – 3 – 910 the maximum sentence for kidnapping is (30) years and since the Defendant has served (41) years, he respectfully moves this court for a re-sentencing hearing and this petition be placed on the docket.

CONCLUSION

Defendant prays that the honorable court order a re-sentencing hearing, and sentence him to time served after he has done (41) years for kidnapping under the old law on kidnapping was a life sentence; now kidnapping is a maximum of (30) years pursuant to the law change S.C. code ANN 16 – 3 – 910.

Respectfully Submitted,



Daniel Gause #77753
Defendant Pro-se

FILED
HORRY COUNTY
2022 MAY 17 A 9:34
RENEE N. ELMIS
CLERK OF COURT
HORRY COUNTY, SC

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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Appeal from Horry County
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The State,

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vs.

Daniel Gause,

Appellant.

PROOF OF SERVICE

I, Caroline Collins, certify that I have served the Motion to Dismiss on Appellant by depositing a copy in the United States Mail, postage prepaid, to his address as follows:

Daniel Gause, #77753
Evans Correctional Institution, F4A-193
610 Highway #9, West
Bennettsville, South Carolina 29512

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

This 17th day of November, 2022.



CAROLINE COLLINS
Administrative Coordinator
Office of Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3727



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SC Court of Appeals

ALAN WILSON
ATTORNEY GENERAL

November 17, 2022

Daniel Gause, #77753
Evans Correctional Institution, F4A-193
610 Highway #9, West
Bennettsville, South Carolina 29512

Re: The State v. Daniel Gause
2022-001076

Dear Mr. Gause,

Enclosed please find two (2) copies of the Motion to Dismiss in the above-referenced case.

Sincerely,

William M. Blitch, Jr.
Senior Assistant Deputy Attorney General

WMB/cc
Enclosure

cc: The Honorable Jenny A. Kitchings (via electronic filing)