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Jan 13 2023

SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Certiorari to Spartanburg County

Honorable Robin B. Stilwell, Circuit Court Judge

JOHN WILLIE MACK, SR.

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2022-000296

REPLY TO RETURN TO PETITION FOR WRIT OF CERTIORARI
PURSUANT TO MACK V. STATE

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ARGUMENT IN REPLY

The two-issue rule does not apply to Petitioner's case. Petitioner's burden only applies at a hearing on the application, prior to that the burden is on the court and the State to follow the statutorily mandated scheme.

Respondent has asserted that Petitioner failed to challenge the trial court's ruling that Petitioner is not entitled to DNA testing because the court ruled that under § 17-28-90(B)(6) the items were already tested, and that further testing would not provide a more probative result. Respondent cites to the "two-issue rule" to support its position that the ruling of the trial court is now the law of the case. Respondent's reliance on this rule is misplaced.

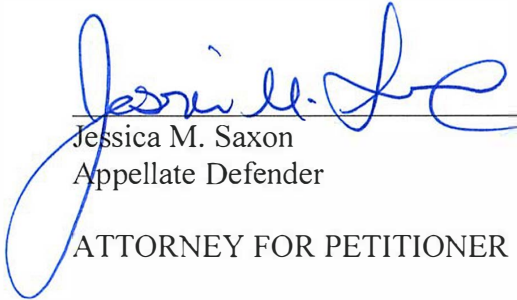
The two-issue rule does not apply to Petitioner's case. "Under the two-issue rule, **where a decision is based on more than one ground**, the appellate court will affirm unless the appellant appeals all grounds because the unappealed ground will become the law of the case." See Anderson v. Short, 323 S.C. 522, 525, 476 S.E.2d 475, 477 (1996); see also First Union Nat'l Bank of S.C. v. Soden, 333 S.C. 554, 566, 511 S.E.2d 372, 378 (Ct.App.1998) (holding an "unchallenged ruling, right or wrong, is the law of the case and requires affirmance"). Jones v. Lott, 387 S.C. 339, 346, 692 S.E.2d 900, 903 (2010), *abrogated on other grounds by* Repko v. Cnty. of Georgetown, 424 S.C. 494, 818 S.E.2d 743 (2018) (emphasis added). The decision in Petitioner's case was based only on an alleged failure to meet the requirements of § 17-28-90(B)(6). There were not two or more distinct grounds upon which the trial court based its decision. The order is clear that the application was denied on a single ground: the purported failure to meet factor six. Absent a second ground for the court's decision, the two-issue rule is inapplicable.

More importantly, Petitioner has challenged the sufficiency of the **entire order**. The order denying Petitioner's DNA application is based solely on the assertion that Petitioner failed to prove factor six. By challenging the sufficiency of the order, Petitioner has inherently challenged the basis for the court's decision. Petitioner did not argue against the specific, singular ruling that the trial court made precisely because the order lacked adequate findings of fact and conclusions of law on all seven factors, including factor six, to allow for meaningful appellate review.

Finally, Respondent suggest that by challenging the court and the State's failure to follow the statutory procedure that Petitioner has misapprehended his burden. Petitioner's burden of proof only applies at a hearing on the application. See S.C. Code Ann. § 17-28-90. Prior to a hearing being held, the court and the State have distinct and specific duties that each is statutorily required to perform. See S.C. Code Ann. §17-28-50 and §17-28-70. Those duties were not performed in Petitioner's case which greatly hindered, if not entirely foreclosed, his ability meet his burden of proof at the hearing on the application. The statutory law was not followed in Petitioner's case, and the order is not sufficiently detailed to ensure meaningful appellate review. Remand is the proper remedy in this matter.

CONCLUSION

Based on the arguments contained above, as well as those in the original Petition for Writ of Certiorari Pursuant to Mack v. State, Petitioner respectfully requests that this Court grant the petition to allow for full briefing of the issues.


Jessica M. Saxon
Appellate Defender
ATTORNEY FOR PETITIONER

This 13th day of January, 2023.

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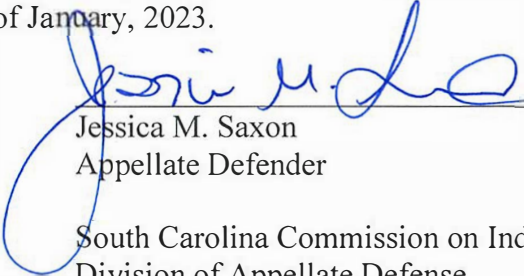
STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2022-000296

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Reply to Return to Petition for Writ of Certiorari in the above-referenced case has been served upon David Spencer, Esquire at the primary e-mail address listed in the Attorney Information System (AIS), this 13th day of January, 2023.



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From: [Warren, Kaylynn](#)
To: [David Spencer](#)
Cc: [Saxon, Jessica](#); [Anne Mueller](#)
Subject: 2022-000296 John Willie Mack, Sr. v. The State
Date: Friday, January 13, 2023 10:23:00 AM
Attachments: [2022-000296 John Willie Mack, Sr. v. The State Reply to Return to Petition for Writ of Certiorari Pursuant to Mack v. State and COS.pdf](#)

Good Morning,

Please find attached for service in the above-referenced case the Reply to Return to Petition for Writ of Certiorari Pursuant to [Mack v. State](#) which will be filed today, January 13, 2023, with the Court of Appeals via OneDrive. As this case does not appear on C-Track, please reply to confirm receipt.

Respectfully,
Kaylynn

Kaylynn Warren

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