THE STATE OF SOUTH CAROLINA

In The Court of Appeals

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SC Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Kristi L. Harrington, Circuit Court Judge

Case No. 2013-000692
[2010-CP-10-4462]

Larry G. Harvin, #253468, Appellant,

Vs.

State of South Carolina, Respondent.

WRITTEN EXPLANATION

OF

IMPROPER DETERMINATION

LARRY G. HARVIN, #253468
McC.I. F.I-125.B
386 Redemption Way
McCormick, SC 29899

- APPELLANT PRO.SE. -

Other Counsel of Record:

Matthew J. Friedman, Esquire
- Asst. Atty. Gen.
P.O. Box 11549
Columbia, SC 29211

- ATTORNEY FOR RESPONDENT

SUFFICIENT FACTS

South Carolina law allows an Evidentiary Hearing for non-Post Conviction Relief ("non-PCR") allegations brought in a Petition for a Writ of Habeas Corpus < see Keeler v. Mauney, 330 S.C. 568, 571, 500 S.E.2d 123, 124 (S.C. App. 1998) >; the Evidentiary Hearing is encompassed within Procedural Due Process protection where Appellant's liberty is implicated through such Evidentiary Hearing < see Green v. Catoe, 220 F.3d 220 (4th Cir. 2000) >. These two facts are clearly indisputable.

Relevant here is Judge Harrington's error of law in not only denying Appellant an Evidentiary Hearing, despite Appellant making the required allegations to receive the entitled Evidentiary Hearing, but not giving Appellant 'clear notice' of why Appellant shouldn't receive the entitled Evidentiary Hearing, in accords with South Carolina Rules of Civil Procedure ("SCRCP") 52(a); these facts are the crux of Appellant's 'Motion For Relief [of] Judgment' brought under SCRCP 60(b)(4), on January 31, 2013 — which, Judge Harrington also Denied on February 28, 2013 without complying with SCRCP 52(a). These errors of law facilitate the instant Appeal.

ARGUMENT AND CITATION TO LEGAL AUTHORITY

I. Judge Harrington committed an Abuse of Discretion by failing to state 'Findings of fact and conclusions of law' in conformity with SCRCP 52(a), in Denying Appellant's 'Motion For Relief [of] Judgment' under SCRCP 60(b)(4).

Appellant will be able to demonstrate that the Motion brought under SCRCP 60(b)(4) alleged Judge Harrington's Conditional Order of Dismissal and Final Order were 'void' where neither Order gave 'clear notice' of the relied upon 'Findings of Fact and Conclusions of Law' as required by Rule 52(a). See also In re Treatment and Care of Luckabaugh, 351 S.C. 122, 568 S.E.2d 338 (S.C. 2002). And, further, Judge Harrington's February 28, 2013 Order Denying the Motion brought under Rule 60(b)(4) neither contains any 'Findings of Fact and Conclusions of Law' as also required by Rule 52(a).

Thus, Judge Harrington's February 28, 2013 Order denying relief on Appellant's Motion for Relief under Rule 60(b)(4) was an 'improper determination', in that Judge Harrington committed an error of law (abuse of discretion) in failing to give 'clear notice' of why relief under Rule 60(b)(4) should not be granted, as mandated by Rule 52(a).

CONCLUSION

WHEREFORE, having set forth 'Argument and Citation to Legal Authority' regarding Judge Harrington's February 28, 2013 Order, Appellant submits that this Court should allow the instant Appeal to proceed.

/s/ L. Harvin II.

Larry G. Harvin, # 253468
McC.I. F.1-125.B
386 Redemption Way
McCormick, SC 29899

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DATE

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Vs.

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PROOF OF SERVICE

I Certify before below-signed Notary Public that I have served the 'Written Explanation of Improper Determination' on Respondent's attorney of record (Matthew J. Friedman, P.O. Box 11549, Columbia, SC, 29211), also on Clerk for Charleston County Court of Common Pleas, by depositing said material(s) into the U.S. Mail with sufficient postage attached, on same below date the material(s) were also forwarded to S.C. Court of Appeals in same manner.

Sworn and Subscribed to before me this 26 day of April, 2013

/s/ Joyce L Young
Notary Public, South Carolina
My Commission Expires: 10-11-2021

/s/ L. Harvin I
Larry G. Harvin, #253468
McC.I. F.1-125.B
386 Redemption Way
McCormick, SC 29899

Attn:- Ms. V. Claire Allen
- Deputy Clerk,
S.C. Court of Appeals
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Re:- • Harvin v. State, Case No. 2013-000692 ;

• 'Written Explanation of Improper Determination'.

Dear Ms. Allen :

I begin with thanking you for notifying me of my obligation to submit a 'Written Explanation...' in accords with SCACR 203, wherein I was presuming that such didn't apply to an Appeal upon a Motion under SCRCP 60(b). Such document is enclosed for Filing, along with a 'Proof of Service'.

Again, I Thank You.

Sincerely,

/s/ L. Harvin I

Larry G. Harvin, #253468
McCormick, South Carolina

4-26-13
DATE

• Enclosures