

RECEIVED

May 11 2023

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Honorable Kristi Lea Harrington, Circuit Court Judge

Opinion No. 28153

Submitted April 3, 2023 – Filed April 26, 2023

Town of Sullivan’s Island.....Petitioner,

v.

Michael MurrayRespondent.

PETITION FOR REHEARING

G. Trenholm Walker (SC Bar # 5777)
John P. Linton, Jr. (SC Bar # 79130)
Walker Gressette & Linton, LLC
P.O. Box 22167
Charleston, SC 29413

John J. Dodds, III (SC Bar #1707)
Cisa & Dodds, LLP
858 Lowcountry Blvd., Suite 101
Mt. Pleasant, SC 29464

Attorneys for Petitioner

Petitioner Town of Sullivan’s Island (“Petitioner” or the “Town”) hereby petitions the Court for rehearing pursuant to Rule 221 of the Appellate Court Rules. Petitioner respectfully submits that in issuing Opinion #28153 on April 26, 2023 (the “Opinion”), the Court overlooked or misapprehended numerous important points as set forth herein.

In the Opinion, the Court affirmed the Court of Appeals “in result” based on the Court’s view of the evidence at trial that “there was no evidence Respondent Michael Murray (“Respondent” or “Murray”) violated any provision of the ordinance. . .” (**Opinion, 2**)¹. As explained herein, the undisputed evidence supported the conviction.

The Opinion was issued following the filing of Petitioner’s Petition for Certiorari, a Return and a Reply. The Opinion was issued without the briefing contemplated in Rule 242(i). See Rule 242(i), SCACR (explaining briefing process when certiorari is granted). For these reasons explained herein, this Court should grant rehearing and issue an amended opinion reversing the court of appeals. Alternatively, the Court should withdraw the Opinion and issue an order granting certiorari and allowing for the briefing contemplated by Rule 242.

Rather than rehashing all the facts below, the most significant of which are covered in the prior briefing submitted to this Court, Petitioner will highlight the evidence that supported the conviction that the Respondent violated the building permit he accepted and agreed to follow. As recognized in the Opinion, Respondent was convicted of violating Town Ordinances 21-75 and 5-10. (**Opinion, 1**). Section 5-10 provides the requirement that a building permit must be applied for before any construction is undertaken within the Town. (**R. at pp. 77-78**). Section 21-75

¹ Petitioner sought review of several erroneous rulings of the Court of Appeals that were not addressed in the Opinion because the Court affirmed in result. For a discussion of the reasons certiorari should have been granted on those issues as well (and the Court of Appeals reversed), Petitioner refers to and fully incorporates its Petition for Certiorari and Reply to Respondent’s Return to Petitioner’s Petition for Writ of Certiorari.

provides that that no dock will be constructed without “approval of the Town of Sullivan’s Island . . . ” (**R. at pp. 66-67**)². Here, the conviction was based upon violation of the terms of a building permit that was issued and accepted by Respondent.

Respondent admitted to violating the permit. Notably, the Court of Appeals *did not* find that there was no evidence that the building permit was violated. The Court of Appeals simply noted after its holding that, in its own opinion of the evidence below, there was no evidence that the dock actually interfered with navigation. (**Court of Appeals Opinion, 6**). While the Court of Appeal’s view of the facts is incorrect, it is also irrelevant because that was not the basis of the conviction. **The conviction was for violating a permit**, not interfering with navigation.

Respondent violated the explicit limitations of a building permit that he accepted. The Opinion issued by this Court endorses the view that a contractor can accept a permit, violate it, admit the violation, and later claim the structure he illegally built should have permitted if requested. The Opinion is permission for a developer who disagrees with staff, a board of zoning appeal, or board of architectural review to ignore the ruling, build what they want, and argue about it later. That guts local governments’ ability to enforce their ordinances.

The conviction for violating the building permit was supported by undisputed evidence. Respondent applied for a building permit from the Town. (**R. at pp. 87-97**). The Town issued a dock construction permit, which stated, “approved as noted” with the written condition that the dock “**must not exceed adjacent docks. . .**” (**R. at pp. 87**) (emphasis added); see also (**R. at p. 217, ll. 3-25**); (**R. at p. 175, ll. 11-15**); (**R. at pp. 21-22**) (A Certificate of Zoning Compliance was also issued by the Town and included a notation to “. . . not exceed adjacent docks.”).

² An entirely separate subsection of Section 21-75—subsection B.(1)—includes a prohibition of docks that interfere with navigation. (**R. at pp. 66-67**). Subsection A. includes the relevant section that prohibits building a dock without Town approval.

The Town Zoning Administrator met with Respondent and discussed that the Town's permitting of the dock's construction included the above condition. (R. at p. 171, ll. 15-24);(R. at p. 174, l.18-p. 175 l. 19); (R. at p. 212 ll. 14-21).³ Further, the permit documents specifically put Respondent on notice that a failure to comply with the permit was a violation of the Town's ordinances:

I further understand that any deviation from the approved plans and conditions thereof shall constitute a violation of the Town of Sullivan's Island Zoning Ordinance.

(R. at p. 88) (bold added).

Appellant explained at trial that he accepted the permit and the condition that he could not build the dock exceeding adjacent docks:

Q: And you acknowledged that the building permit application, which has been initialed by both Mr. Henderson, the zoning administrator and Mr. Robinson, the building official, specifically say 'Approved as noted;' correct?

A: Yes, sir.

Q: And those notations being the two notes, "*must not exceed adjacent docks,*" and then the other issue with regard to ten feet from the adjoining property line; correct?

A: That is correct.

Q: And would you agree that *those specific notations became a part and parcel of the building permit* that was issued to your company relative to the construction of the dock [at the Property]?

A: As far as I know, *yes*, sir.

³ Respondent could have appealed the permit if he disagreed with the condition. See S.C. Code § 6-29-800 (A)(1); (R. at p 184, l.10–p. 185, l.6); (R. at p. 220, ll. 3-7) (no appeal of building permit that was issued).

(R. at pp. 244, l. 18-p. 245, l. 8) (double emphasis added); see also, (R. at p. 265, ll. 9-14) (Respondent acknowledging that he was required to comply with the terms and conditions of the building permit).

In direct violation of the permit and the Town's Ordinances, Respondent built the dock past adjacent docks by approximately ten feet and admitted to doing so. (R. at pp. 23-25); (R. at p. 49); (R. at p. 242, ll. 2-5); (R. at p. 245, ll. 13-18) (Appellant admitting that the dock he built exceeded the adjoining docks by at least nine feet); (R. at p. 244, ll. 4-8) ("Q: And you -- you agree with me that the as-built dock that your company constructed exceeds the adjoining dock, as depicted on the third page of Exhibit F, by some 9.2 feet - - A: That is correct.").

As summarized above, the evidence at trial was entirely undisputed that the permit documents included a condition that the dock not extend seaward of the adjacent docks and that the permit condition was violated. See (R. pp. 53-55 at ¶¶ 7-11) (municipal judge's return). Respondent was convicted of violating the permit.

Because the undisputed facts support the conviction for violating the permit, this Court should grant rehearing and issue an Opinion reversing the Court of Appeals and affirming the circuit court and municipal court. It is worth noting that the Opinion purportedly rejects the undisputed facts admitted at trial. There is no legal basis for disregarding admitted facts on appeal. Even if the fact that Respondent violated the permit was disputed, appellate courts are bound by the trial court's factual findings unless they are clearly erroneous. See State v. Wilson, 345 S.C. 1, 5, 545 S.E.2d 827, 829 (2001) (citation omitted); City of Aiken v. David Michael Koontz, 368 S.C. 542, 546, 629 S.E.2d 686, 688 (Ct. App. 2006) ("In criminal appeals from municipal court, the circuit court does not conduct a de novo review.") (emphasis added)). There was no such

finding in the Opinion that the trial court's factual findings were clearly erroneous, nor could there have been because the material facts were wholly undisputed.

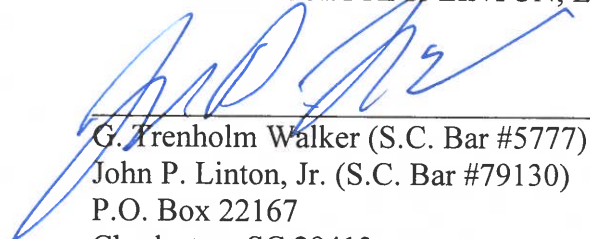
CONCLUSION

As explained in detail above, Murray agreed that the condition of the permit that the dock not be built seaward of the adjacent docks was part and parcel of the building permit; Murray understood the permit requirement; and the dock he constructed violated the permit. **(R. at pp. 244, l. 18-p. 245, l. 8); (R. at p. 265, ll. 9-14); (R. at p. 242, ll. 2-5); (R. at p. 245, ll. 13-18); (R. at pp. 53-55); (R. at p. 217, ll. 3-25); (R. at p. 175, ll. 11-15); (R. at p. 243, l.10-p. 244, l.8); (R. at pp. 23-25)** (surveys showing violation); **(R. at p. 49)** (same). The conviction must be reinstated.

Therefore, for these reasons, and the reasons stated in the Petition for Certiorari and supporting Reply brief, the Town respectfully requests that this Court grant rehearing and issue an opinion reversing the Court of Appeals and reinstating the conviction. Alternatively, the Court should withdraw the Opinion and issue an order granting certiorari and allowing for the briefing contemplated by Rule 242.

Respectfully submitted,

WALKER GRESSETTE & LINTON, LLC



G. Trenholm Walker (S.C. Bar #5777)
John P. Linton, Jr. (S.C. Bar #79130)
P.O. Box 22167
Charleston, SC 29413
Telephone: (843) 727-2200
walker@wgflaw.com
linton@wgflaw.com

May 11, 2023
Charleston, South Carolina