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Jun 12 2023

SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Lexington County
Hon. Walton J. McLeod, IV, Circuit Court Judge
Appellate Case No. 2019-001060

Andrew E. Torrence, Jr.,

Petitioner,

v.

State of South Carolina,

Respondent.

RETURN TO PETITION FOR REHEARING

On May 19, 2023, this Court, in its discretion pursuant to Rule 243 of the South Carolina Appellate Court Rules, denied the Petition for Writ of Certiorari served and filed by Petitioner, Andrew Torrence. Thereafter, Petitioner filed a Petition for Rehearing and for Rehearing *En Banc*, challenging this Court's denial of certiorari. By letter dated June 2, 2023, this Court requested Respondent file a return to the petition. This return follows, and for the following reasons, Respondent asserts this Court should deny the Petition for Rehearing and for Rehearing *En Banc*.

Initially, Respondent asserts the petition should be denied because Petitioner is asking this Court to reconsider its denial of **discretionary** certiorari review, which clearly goes against the principles laid out in our appellate court rules and post-conviction relief statute. Pursuant to the Uniform Post-Conviction Procedure Act, “[a] final judgment entered under this chapter **may** be reviewed by a writ of certiorari as provided by the South Carolina Appellate Court Rules.” S.C. Code Ann. § 17-27-100 (emphasis added). Moreover, according to our appellate court rules, “[a] writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only

where there are special and important reasons.” Rule 242(b), SCACR. See also CERTIORARI, Black's Law Dictionary (11th ed. 2019) (“An **extraordinary** writ issued by an appellate court, **at its discretion**, directing a lower court to deliver the record in the case for review.”) (emphasis added). Pursuant to Rule 221, SCACR, “[n]o petition for rehearing shall be allowed from an order denying a petition for a writ of certiorari under Rule 242, SCACR.” While certiorari review of post-conviction relief actions is governed by Rule 243, SCACR, the same prohibitions against petitions for rehearing from the denial of discretionary certiorari review under Rule 242, SCACR, should apply.

In considering whether to allow a petition for rehearing from the Supreme Court’s denial of a writ of certiorari from the Court of Appeals pursuant to what is now Rule 242, SCACR, the Court found no provision in the Rules allowing for a petition for rehearing in that circumstance. See State v. Rucker, 321 S.C. 552, 553, 471 S.E.2d 145, 145 (1996) (“Rule 226, SCACR, provides for review of a decision of the Court of Appeals by a writ of certiorari. This rule does not contain any provision authorizing a petition for rehearing following the denial of a petition for a writ of certiorari by this Court.”). The same analysis is applicable under what is now Rule 243, SCACR. Additionally, the Supreme Court explained:

Nor do we believe that a petition for rehearing is authorized by either Rules 221(c) or 224(i), SCACR. Both of these provisions allow a petition for rehearing where a petition or motion has the effect of dismissing or finally deciding a party's appeal. **The denial of a petition for a writ of certiorari to the Court of Appeals does not dismiss or decide the underlying appeal; it simply determines that, as a matter of discretion, this Court does not desire to review the decision of the Court of Appeals.**

Id. (emphasis added). The denial of the petition for writ of certiorari from the circuit court’s denial of Petitioner’s application for Post-Conviction Relief does not dismiss or decide the underlying

appeal. As the Supreme Court stated: “it simply determines that, as a matter of discretion, this Court does not desire to review the decision” Id.¹

Our Supreme Court has consistently held the non-prevailing party in a post-conviction relief action where certiorari was denied by this Court pursuant to Rule 243, SCACR, could not then petition for certiorari pursuant to Rule 242, SCACR. See Ellison v. State, 382 S.C. 189, 676 S.E.2d 671 (2009) (finding the Supreme Court will not review an order of the Court of Appeals denying a petition for a writ of certiorari in a post-conviction relief case); Haggins v. State, 377 S.C. 135, 659 S.E.2d 170 (2008) (stating the Supreme Court will not entertain petitions for a writ of certiorari pursuant to Rule 242² where Court of Appeals issues “letter denial”); Missouri v. State, 378 S.C. 594, 663 S.E.2d 480 (2008) (extending Haggins to petitions for a writ of certiorari filed in the Supreme Court pursuant to Rule 242 following the Court of Appeals’ issuance of order denying petition for writ of certiorari pursuant to Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988)); and In re Exhaustion of State Remedies in Criminal and Post-Conviction Relief Cases, 321 S.C. 563, 471 S.E.2d 454 (1990) (stating this Court reviews decisions of Court of Appeals by way of writ of certiorari only where special reasons justify exercise of that power). It is entirely consistent with this holding that the filing of a Petition for Rehearing is not appropriate and unnecessary.

In the instant case, Petitioner served and filed a twenty-five-page Petition for Writ of Certiorari addressing two issues. The State served and filed a twenty-five-page Return. The Court had before it an over 1600 page Appendix. The Petition for Rehearing merely asks the panel, or

¹ Further, there are no points which have been overlooked or misapprehended as contemplated by Rule 221 because this Court could, in its discretion, completely agree with Petitioner and still deny the Petition for Writ of Certiorari for any reason—or no reason at all—because the grant of certiorari is entirely discretionary.

² Formerly Rule 226, SCACR.

the entire court, to “review the Petition for Writ of Certiorari and the entirety of the arguments contained therein” and “review the lengthy record contained in the previously filed Appendix.” (Petition for Rehearing p.7). The Petition then merely readdresses the same arguments previously presented to this panel—including block quoting arguments already presented to the Court in the Petition for Writ of Certiorari. The implication is that the panel of this Court failed to conduct its due diligence and was negligent in its duty to properly consider everything before it prior to denying the purely discretionary consideration of the Petition for Writ of Certiorari. Respondent submits this Court, and specifically this panel, did not act improperly in denying certiorari, but rather, properly reviewed all materials and denied discretionary review as governed by South Carolina law. Respondent further submits, consistent with its Return to Petitioner’s original Petition for Writ of Certiorari, that Petitioner has failed to provide any ground necessitating the grant of certiorari. See, e.g., Rule 242(b), SCACR (“A writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons.”).

In light of the reasons presented above, coupled with the arguments raised in Respondent’s Return to the Petition for Writ of Certiorari, the post-conviction relief court properly denied relief and there is no compelling reason why this court should reconsider its decision to deny purely discretionary certiorari review. As a result, this Court should deny the petition for rehearing.

CONCLUSION

For all of the foregoing reasons, the State requests the panel deny the petition for rehearing.

Respectfully submitted,

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ATTORNEYS FOR RESPONDENT

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PROOF OF SERVICE

I, Caroline Collins, certify that I have served the within Return to the Petition for Rehearing by emailing a copy to Petitioner's counsel of record, Tricia A. Blanchette, at her primary email address as provided by the Attorney Information System (AIS).

I further certify that all parties required by Rule to be served have been served.
This 12th day of June, 2023.



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