THE STATE OF SOUTH CAROLINA

In The Supreme Court

Appellate Case No.

2023-000878

The State of South Carolina ..... Respondent

v.

Terron Dizzley ..... Appellants
Gwendolyn B. Frasier
LaQuesha Felder

MOTION TO REINSTATE APPEAL AND OBJECTIONS

S, Terron Dizzley

Terron Dizzley, 359480
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Fairfax, SC 29827

S, Gwendolyn B. Frasier

Gwendolyn B. Frasier
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S,

LaQuesha Felder
1440 Baxter Street
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STATEMENT OF CASE

Petitioners move before this Honorable Court with Objections and Motion to Reinstate Appeal on grounds that:

1. The Court's order fails to specially state findings of facts and conclusions of law on merits of Petitioners appeal, which is supported by a Memorandum of Law.

2. The Court's order is arbitrarily, capricious, disproportionate, erroneous, contrary to clearly established law, and amounts to "fraud upon the court," and obstruction of justice.

Petitioners objects to the court's order stating that Petitioners filed a notice of appeal from several "interlocutory" orders from the court of appeals as grounds for dismissal, without ruling on the merits of their case set forth in their "Memorandum of Law in Support of Immediate Appeal, Fraud Upon the Court." Petitioners contend that the orders that they are appealing are not interlocutory, but, are intermediate orders because, the orders prevents them from receiving a final judgment on their issues and affects substantial rights from which they may seek appellate review. See: Hagood v. Somerville, 362 S.C. 191 (2005).

Petitioners contend that one of the orders they appeal is the order from the court of appeals denying their motion to relieve Attorney William G. Yarborough. Attorney Yarborough was only retained to represent Petitioners at the November 17, 2022 hearing, pursuant to an order from the court of appeals remanding their case to the circuit court, pursuant to their "Emergency Motion For Alteration." Petitioners fee agreement with Attorney Yarborough establishes that the retainer of $7,500 would be refundable if Petitioners did not agree to allow him to represent them on appeal, by filing the appellate brief. Petitioner Terron Dizzley initially requested to fire Attorney Yarborough at the November 17, 2022 hearing, and proceed pro se, which was arbitrarily denied by the Honorable Judge Culbertson, which is also preserved for appeal. Petitioners filed a timely Emergency Motion to Relieve Counsel on March 28, 2023. The court of appeals order denying their motion to relieve counsel affects substantial rights, namely, their right to self-representation, See: State v. Barnes, 407 S.C. 27 (2014);

Faretta v. California, 422 U.S. 806 (1975); lawyer of choice, and conflict free counsel. State v. Gregory, 364 S.C. 150 (2005); Cuyler v. Sullivan, 446 U.S. 335 (1980).

Petitioners contend that according to clearly established South Carolina Supreme Court law, not only is such order immediately appealable, but, "must" be immediately appealed, or later objection in subsequent appeal will be waived. See: Hagwood v. Somerville, 362 S.C. 191 (2005), " In a matter of first impression, an order granting motion to disqualify party's attorney in civil case affects substantial right and may be immediately appealed; order granting motion to disqualify party's preferred attorney must be immediately appealed or any later objection in subsequent appeal will be waived. The right to be represented by an attorney of one's choosing is one of those rare orders which, in effect, could determine the action and prevent a judgement from which an appeal might be taken, or could discontinue an action due to the potential impact on both the attorney-client relationship and the overall litigation and trial of case."

Petitioner contend that these unconstitutional, and criminal acts of "fraud upon the court" were committed against him by Eleanor D. Cleary, the lower court, and this very court, which deprived Petitioner of his PCR. The record proves that Attorney Eleanor D. Cleary illegally obtained representation of Petitioners PCR without his knowledge nor informed consent in writing, by swindling Petitioners mother, Gwendolyn B. Frasier out of $10,000, and then contacted Judge William H. Seals and the Attorney General by "telephone," and had herself unlawfully substituted as Petitioner's counsel. Petitioner filed several Motions to relieve Eleanor Cleary as counsel, a writ of mandamus in this court, and a civil action against Eleanor D. Cleary, which is now pending as a writ of mandamus in this court. Eleanor D. Cleary also filed several Motions to relieve herself as counsel, and a Motion for Reconsideration, 59(e), after Petitioners PCR was dismissed, admitting that her representation was "conflicting," and that the courts was in "error" for forcing her to remain as Petitioner's counsel while Petitioner had a civil action pending against her, and that this caused Petitioner not to be heard on "strong meritorious" issues in his PCR.

See: Motion for Reconsideration of the Denial of Post-Conviction Relief, Rule 59(e), filed by Attorney Cleary on December 9, 2019. See: Page 5, paragraph 7 which states:

"Finally, Counsel asked this court to address the motion to be relieved in a separate order so that she would not be forced to argue it in conjunction with the strong and meritorious post-conviction relief claims that Applicant has." However, this Court declined to do so. Counsel must, therefore, reiterate that because Applicant is currently suing counsel in Richland County Court of Common Pleas for monetary damages, for which counsel has had to retain counsel to represent her, and which is ongoing, she has a conflict of interest. This Court mistakenly asserts that only a "little more action" is required of counsel, and this is simply incorrect, as reviewing the voluminous record and lengthy motions and orders in this case is not a "little action" under any definition. It is an error to allow counsel to remain as Applicant's counsel, against his wishes and when he retained her, under these circumstances."

Petitioner contends that this court has intentionally turned a "blind eye" to the criminal acts that were committed against him by Attorney Eleanor D. Cleary, and refused seek justice on his behalf, of which he still suffers from. This is now turning a "blind eye" to the criminal acts being committed against him, his mother, Gwendolyn B. Frasier, and his wife, LaQuesha Felder, by Attorney Yarborough and the appellate court. This is a reccuring matter, and is not a coincidence.

Petitioners contend that this court's order forces Attorney Yarborough to represent them on appeal, and, therefore, would be interfering with Petitioners fee agreement with Attorney Yarborough, which would amount to an unlawful seizure and deprivation of a liberty and property interest without due process; that liberty and property interest is Petitioners funds to retain another lawyer of choice. Petitioners contend that the court's order would allow the courts to unlawfully seize Petitioners money and award it to Attorney Yarborough, and force Petitioners to pay Attorney Yarborough for conflicting representation against their wishes. According to clearly established U.S. Supreme Court law, the court's decision constitutes an unconstitutional restraint on Petitioners assets which violates their Sixth

Amendment right to retain "counsel of choice." See: Louis v. U.S., 146 S. Ct. 1083 (2016), "The Supreme Court, Justice Breyer, held that pretrial restraints on defendant's assets needed to obtain counsel of choice violates the Sixth Amendment. The Sixth Amendment right to counsel grants a defendant " a fair opportunity to secure counsel of his own choice, Powell v. Alabama, 287 U.S. 45, 53 (1932), that he " can afford to hire," Caplin & Drysdal Chartered v. United States, 491 U.S. 617 (1989). "The Court has consistently referred to the right to counsel of choice as " fundamental." The right to select counsel of choice" is just, "the root meaning" of the Sixth Amendment right to counsel." U.S. v. Gonzalez- Lopez, 548 U.S. 140, 147-148 (2006)."

Petitioners contends that the S.C. Court of Appeals and the the S.C. Supreme Court order is contrary to the SCACR.

SCACR Rule 407, Rules of Professional Conduct, Rule 1.16, Comment {4} "A client has a right to discharge a lawyer at any time, with or without cause, subject to liability of payment for lawyer's services. Where future dispute may be anticipated, it may be advisable to prepare a written statement reciting the circumstances.

Petitioners objects to the court's order dismissing their appeal on the grounds that,

"Petitioner is represented by counsel in the appeal that remains pending in the court of appeals," citing Miller v. State, 388 S.C. 347 (2010); Jones v. State, 348 S.C. 13 (2002); State v. Stuckey, 333 S.C. 56 (1998); Foster v. State, 298 S.C. 306 (1989).

Petitioners contend that these case only supports their case, on the grounds that, it clearly established in Foster v. State, 298 S.C. 306 (1989), that hybrid representation does not apply to pro se litigants filing a motion to relieve counsel. Therefore, it is clear that this court did not read Petitioners Memorandum of Law in Support of Immediate Appeal.

GWENDOLYN B. FRASIER AND LAQUESHA FELDER

Petitioners Gwendolyn B. Frasier and LaQuesha Felder objects to the court's order alleging that, "they are not parties to this matter and therefore are not entitled to appeal," citing Rule 201(b), SCACR. Petitioners contends that the the court's order is erroneous pursuant to the record, and contrary to the law, proof of which was provided in their Memorandum of Law in Support of Immediate Appeal, Fraud Upon the Court." The record proves that they have been parties in this matter since October 28, 2021, and have been appealing this matter pursuant every order issued, which were specifically addressed to them. The orders that Petitioners are appealing are from the court of appeals which alleges the same thing, that they are not parties to this appeal, and also states that nothing will be filed with thier names on it. Petitioners contend that such orders are not interlocutory, but, are intermediate, and are not only immediately appealable, but, " must" be immediately appealed pursuant to S.C. Code Ann. s 14-3-330, because, the order affects substantial rights, namely, their: (1) First and Fourteenth Amendment rights to familial association, Disabato v. South Carolina Ass'n of Schools Adm'rs, 404 S.C. 433 (2013), " The freedom of association implicit in the First Amendment is a fundamental right, and thus, like the freedom of speech, the First Amendment protection against the abridgment of the freedom of association applies against the state through the Fourteenth Amendment." Lee v. City of Los Angeles, 250 F. 3d 668 (2000); Santosky v. Kramer, 455 U.S. 745 (1982); (2) First and Fourteenth Amendment right to access the courts, and due process; (3) prevents a judgment from which an appeal might be taken and discontinues their action; (4) refuses an appeal; (5) strikes out an answer to a novel question of law; (6) dismantles Petitioners case, and allows "baseless," false allegations against them to become the law of their case, pursuant to an "appealable" order from the Honorable Judge Culbertson, of which Petitioners were aggrieved; and (7) violates their Sixth Amendment rights to counsel of choice. See: Hagwood, supra, 362 S.C. 191 (2005).

RIGHT TO APPEAL

Petitioners contend that according to clearly established state statutory laws, and rules of court of South Carolina, Petitioners have a right to appeal the Honorable Judge Culbertson's order pursuant to their case. See: State v. Rearick, citing " State v. Wilson, 387 S.C. 597, 599 (2010) ("The right to appeal arises from and is controlled by statutory law."). To appeal, a defendant must be "aggrieved" by a decision that is statutorily classified as one that is appealable, which generally involves a final judgment. S.C. Code Ann. sec. 18-1-30. ("Any party aggrieved may appeal in the cases prescribed in this title."); Rule 201(b), SCACR, ("Only a party aggrieved by an order, judgment, sentence or decision may appeal."): See Rule 201(a), SCACR ("Appeal may be taken, as provided by law, from any final judgment, appealable order or decision.").

Petitioners contend that the Honorable Judge Culbertson's November 17, 2022, order denying their mmergency motion pursuant their First and Fourteenth Amendment rights to familial association on the grounds alleging that they were "individuals practicing law without a license," is a final order within the meaning of the above statutes and rules of South Carolina which gives them the right to appeal Judge Culbertson's order.

Petitioner contends that the S.C. Court Appeals abused its discretion pursuant to its order granting the Attorney General's request to hold their Emergency Exparte and Proposed Motions for Immediate Release, Double Jeopardy, False Imprisonment, Lack of Trial Court's Jurisdiction to Impose Sentence, First and Fourteenth Amendment Rights to Familial Association in abeyance and remanding their case back to the Circuit Court. Petitioners contend that were, and are still agreived by the S.C. Court of Appeals August 12, 2022, order granting the Attorney General's request to hold their case filed in the S.C. Court Appeals in abeyance, and the remand of their case back to the circuit court. This was an error of law, and caused them to suffer "irreparable harm," of which they are still suffering from, which has

now been held in abeyance for 10 months, which violates their rights to due process. Petitioners contend that their Emergency Motions were filed pursuant to their right to raise subject matter jurisdiction at any time, even for the first time on appeal.

SUBJECT MATTER JURSIDITION

Petitioners contend that according to clearly established S.C. Supreme Court law, See: ; State v. Guthrie, 358 S.C. 102 (2002), "The lack of subject matter jurisdiction can be raised at any time, can be raised for the first time on appeal, and can be raised sua sponte by the court. Furthermore, lack of subject matter jurisdiction may not be waived, even by consent of the parties, and should be taken notice of by this Court. State v. Funderburk, 259 S.C. 256 (1972), "It is elementary that lack of jurisdiction of the court or subject matter can be raised at any time, including for the first time on appeal in this Court. Accordingly, it is immaterial that the defendant failed to appeal from the earlier ruling of Judge Baker or the intermediate ruling of Judge Weatherford, even if it be assumed that he had the right to."

Therefore, as stated in *Funderburk*, a ruling from the circuit court was "immaterial" pursuant to Petitioners right to challenge subject matter jurisdiction in the Appellate Court, and the S.C. Court of Appeals should have taken notice of Appellants "Emergency Motions for Immediate Release..." Tatnall v. Gardner, 350 S.C. 135 (2002), " An appellate court must, on its own motion, raise issue of subject matter jurisdiction to ensure orderly administration of justice." State v. Castleman, 219 S.C. 136 (1951), " Where defendant, convicted of first offense of unlawful possession of intoxicating liquor, failed to question the courts jurisdiction either in the trial court or on appeal, the Supreme Court on its own motion, raised the question of jurisdiction to prevent the punishment of defendant under a sentence imposed by court without jurisdiction."

HOLDING CASE IN ABEYANCE, IRREPARABLE HARM

Petitioners contend that they filed a Motion for Update and Request for Conditional order addressing the fact that they would suffer "irreparable harm" by holding their case in abeyance, and that under such circumstances, the court's order was contrary to the law. See: Gilliam v. Foster, 63 F. 3d 287

(4th Cir. 1995), "Balance of harm with respect to state's request for stay pending appeal of order granting writ of habeas corpus precluding State from proceeding with retrial tipped decidedly in favor of petitioner, even though State claimed irreparable harm from delay in completing the trial, which had already started, as petitioners' loss of right not to be placed twice in jeopardy would be irreparable and, in view of likelihood of petitioners' success, as indicated by district Court's grant of the writ, stay would be denied." Petitioners never received a ruling on their Motion For Update and Request for Conditional Order, which would toll the time to appeal.

STATEMENT OF ISSUES CHALLENGING SUBJECT MATTER JURSIDITION RAISE IN APPELLANTS INITIAL EMERGENCY EXPARTE AND PROPOSED MOTIONS FOR IMMEDIATE RELEASE, AND ISSUES PRESERVED FOR APPEAL FROM THE NOVEMBER 17, 2022 HEARING THAT CANNOT BE WAIVED AND MUST BE TAKEN NOTICE OF BY THE APPELLANT COURT ON OWN MOTION TO ENSURE THE ADMINISTRATION OF JUSTICE AND PROTECT APPELLANT FROM BEING HELD FALSELY IMPRISONED PURSUANT TO A SENTENCE IMPOSED WITHOUT JURISDICTION

I. Whether the Circuit Court Judge erred in his ruling at the November 17, 2022, hearing that trial judge's ruling at Appellant's first trial of 2012, discharging Appellant's jury on the grounds that the state failed to meet their burden of proof to convict Appellant was not a judgment of acquittal for purposes of double jeopardy which barred Appellant's second trial of 2014 because of the label place on trial court's ruling as a mistrial ?

II. Whether the Circuit Court Judge stated an error of law in his ruling at the November 17, 2022, hearing and acquit Appellant again when he stated that the trial judge's ruling in Appellant's first trial of 2012, which was a jury trial, discharging Appellant's jury on the grounds that the prosecution failed to meet their burden of proof to convict Appellant was a judgment of acquittal, but judgments of acquittals only applies to bench trials and not jury trials?

III. Whether the trial judge's sua sponte declaration of a mistrial was dictated by a manifest necessity or ends of public justice and violated Appellants Fifth Amendment rights under the Double Jeopardy Clause?

IV. Whether the affidavit in Appellant's arrest warrant provided by arresting officer, Investigator, Melvin Garrett, which does not provide any information to enable a magistrate to determine probable cause, and made false declarations to the magistrate to obtain Appellant's arrest warrant result in a constitutionally deficient arrest warrant which violated Appellant's Fourth and Fourteenth Amendment rights to due process, result in an unlawful seizure, false imprisonment, and tainted the entire judicial process, and resulted in an unlawful prosecution and conviction without jurisdiction?

V. Whether The trial court exceeded its jurisdiction by holding Appellant to answer for an infamous crime and sentencing Appellant to imprisonment without indictment or presentment by grand jury?

VI. Whether the Circuit Court Judge and the Attorney General's false accusations made at the November 17, 2022, hearing that Appellants Gwendolyn B. Frasier and LaQuesha Felder were 'individuals practicing law without a license" for exercising their First and Fourteenth Amendment rights to familial association, to prevent Appellants from prosecuting their case and testifying amount to intimidation and threatening Appellants and result in prosecutorial misconduct and an abuse of discretion and violated their right to due process?

VII. Whether the Circuit Court Judge erred by refusing to allow Appellant to testify in his defense and denying him his right to self-representation at Appellant's November 17, 2022, pursuant to his Emergency Motion for Immediate Release, Double Jeopardy, False Imprisonment, Lack Of Trial Court's Jurisdiction to Impose Sentence?

VIII. Whether Circuit Court Judge abused his discretion by allowing the Attorney General to argue at Appellant's November 17, 2022, hearing challenging the trial court's jurisdiction to sentence him because his sentence violated the Fifth Amendment Double Jeopardy Clause

Appellants respectfully request that this Honorable Court issues an order to the S.C. Court of Appeals to, own it's own motion, as required by law, raise the issue of jurisdiction pursuant to the merits of all of Appellants issues to ensure the administration of justice, and to prevent Appellant, Terron Dizzley, from being further punished, falsely imprisoned, pursuant to a sentence without jurisdiction.

For the foregoing reasons, Petitioners respectfully request that this Honorable Court issues an order to vacate the S.C. Court of Appeals order denying their Emergency Motion to Relieve Counsel and Proceed Pro, and also order the S .C. Court of Appeals to cease from violating Petitioners Gwendolyn B. Frasier and LaQuesha Felder's First and Fourteenth Amendment rights to access the court, due process, and their state statutory right to appeal. Petitioners also respectfully request that this Honorable Court issue an order that the S.C. Court of Appeals docket their March 28, 2023, filings and adjudicate their case on the merits. Petitioners contend that they have a right to file their March 28, 2023, filings, and the time and money that it cost them to make copies, etc., to not docket their filings would place an additional financial burden on them aside from the $15,000 loss to Attorney Yarborough, pursuant to a contract that he breached and to not file Petitioners case and allow a ruling to be made on the merits of all the of their issues would amount to "extrinsic fraud"/"fraud upon the court," and obstruction of justice. Incorporate "Memorandum of Law in Support of Immediate Appeal, Fraud Upon the Court."

For the foregoing reasons this immediate appeal should be granted.

Date: June 20, 2023

Respectfully submitted,

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