

IN THE STATE OF SOUTH CAROLINA
In The Supreme Court

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APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

SEP 21 2023

The Honorable Roger M. Young, Circuit Court Judge

S.C. SUPREME COURT

Appellate Case No. 2023-001382

Terrell McCoy, #256070 Petitioner

v.

State of South Carolina Respondent

MOTION FOR LEAVE

Petitioner filed a timely notice of appeal on 8-3-23 regarding the lower court denying the above Petitioner's Rule 60(B)(3)(4)(5). Upon review of Order the lower court drafted by the attorney general, the lower court failed to properly address Petitioner's Rule 60(B)(1) based on mis-fake pursuant Kemp v. United States --- U.S. --- 142 S.Ct. 1856, 213 L.Ed. 2d 90, 2022 which held that legal error made by judges are properly addressed by Rule 60(B)(1). My Rule 60(B)(1) was mailed to the Clerk of Court on 1-20-23, and the Clerk of Court returned a clock stamp filed date 1-23-23. Petitioner filed a timely SCRPC Rule 59(e) on August 11, 2023, memorandum of law to support Rule 59(e), and Supplement(s) motion to reconsider. To preserve appellate review Petitioner filed a notice of appeal. Petitioner now request leave to return back to the lower court, for the judge to rule on the pending Rule 59(e), because the lower court has lost jurisdiction based on the appeal. See Bradley v. Hullander, 266 S.C. 188, 222 S.C. 2d 283 (1976) Andrick Development Corp. v. MacCarra, 280 S.C. 103, 311 S.C. 2d 95 (Ct. App. 1984) If this matter does not affect this appeal under Rule 204. Petitioner would ask this court denies this motion. Petitioner clearly states, the SCRPC Rule 60(B)(1) should be addressed along with the pending appeal regarding the denial of SCRPC Rule (2)(3)(4)(5). The SCRPC Rule 60(B)(1) is dated January 26, 2023 & caption as Rule 60(B)(1)(2)(3)(4)(5)(6)

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Petitioner also request that this court issue an order for the lower court to Rule on the pending SCRPC Rule 60(B)(1), and the 59(e) SCRPC motion.