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Oct 02 2023

SC Court of Appeals

STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from Florence County
Honorable D. Craig Brown, Circuit Court Judge

GREGORY DANIELS, #297449,

Appellant,

v.

STATE OF SOUTH CAROLINA,

Respondent.

Appellate Case No. 2021-001298

MOTION TO VACATE AND DISMISS

Appellant Gregory Daniels is attempting to appeal an order entered in his post-conviction relief (PCR) action. (NOA filed November 4, 2021). Respondent submits the order, which ruled upon Daniel's motion for a new general sessions trial, was an order addressing a matter that could be addressed in PCR. *See* Rule 71.1(c), SCRCP; S.C. Code § 17-27-20 (B). Further, the PCR judge was without authority to act on the motion within the PCR as the matter had ended. Consequently, the order denying the motion for new trial should be vacated. It then follows that the appeal should be dismissed.

In support of the motion, Respondent would respectfully show the Court:

1. On April 16, 2010, a Florence County jury convicted Daniels of the murder of Corey Byrd and possession of a weapon during the commission of a violent crime. The Honorable Thomas A. Russo sentenced him to life in prison for the murder and imposed a

concurrent five year sentence on the weapon possession charge. Our Supreme Court filed a published Opinion affirming his convictions and sentence on October 10, 2012. *See State v. Daniels*, 401 S.C. 251, 737 S.E.2d 473 (2012). Daniels sought post-conviction relief by filing an application in common pleas on February 1, 2013. After Daniels was afforded a full evidentiary hearing with the assistance of counsel, the Honorable D. Craig Brown denied relief. This Court denied the petition for writ of certiorari on August 14, 2018, and issued the remittitur on August 30, 2019. *See* Appellate Case No. 2015-002033. Daniels then turned to the federal courts. The District Court of South Carolina denied federal habeas corpus relief on August 6, 2019. *See* C/A No. 5:18-3064-RMG. Daniels filed a motion for new trial in his PCR action on September 10, 2021. He is presently attempting to appeal the order filed on October 27, 2021, that denied his motion. *See* C/A 2013-CP-21-00280.¹

2. The notice of appeal was filed by counsel on November 4, 2021. It is styled in the fashion of a direct appeal, but clearly shows “Case No. 2013-CP-0280,” Petitioner’s PCR action filed in Florence County Court of Common Pleas. On November 9, 2021, this Court transferred this appeal from the PCR action to the Supreme Court.

3. After counsel cured a defect regarding the certificate of service, the Supreme Court accepted the filing and assigned Appellate Case No. 2021-001298. Notably, the caption was changed to *Gregory Daniels v. State*, in the style of a PCR appeal. (*See* Letter, November 16, 2021, Appellate Case No. 2021-001298). However, on January 6, 2022, counsel, in responding to the Court’s request for an update on the transcript, advised that after filing the

¹ The full listing of filings in the PCR action may be found in the public index at: <https://publicindex.sccourts.org/Florence/PublicIndex/CaseDetails.aspx?County=21&CourtAgency=21002&Casenum=2013CP2100280&CaseType=V&HKey=1198610511811997496710210984111981081105788431077286978171109728054120761211110367111117981095347574777> (Florence County).

initial notice, counsel “subsequently declined representation (because, in [counsel’s] estimation, an appeal would be frivolous).” (Email of January 6, 2022, Appellate Case No. 2021-001298).

On January 18, 2022, counsel moved to withdraw from representation, submitting that:

When counsel initially became involved in the case, it was with the understanding Petitioner’s denied motion for a new trial was pursuant to Rule 29(b). That was inaccurate. In light of that realization, I sent a letter to Mr. Daniels on November 12, 2021 indicating why I could not assist him in the matter. Attached is a copy of that letter. Petitioner has not objected to my being relieved as counsel. Our firm refunded money to the family on December 16, 2021.

(Motion to Withdraw as Counsel, Appellate Case No. 2021-001298). On February 2, 2022, the Supreme Court of South Carolina transferred the case back to this Court pursuant to Rule 204, SCACR (allowing transfer between appellate courts if a matter “is filed in the wrong appellate court”). On July 21, 2022, this Court granted the motion, and allowed 30 days “to procure [new] counsel.” (Order, July 21, 2022, Appellate Case No. 2021-001298). On January 12, 2023, this Court contacted Daniels and, noting Daniels had not obtained counsel, advised that it must assume Daniels would represent himself, then directed him to file an initial brief within 30 days. (Letter, January 12, 2023, Appellate Case No. 2021-001298). Daniels, with some corrections in the interim, filed his initial brief. Notably, he continued to cite the PCR civil action number, (2013-CP-21-280), and even the former PCR appeal appellate case number, (2015-002033). (Initial Brief, at 1, Appellate Case No. 2021-001298).

4. The initial brief of respondent is now due, but, noting the length of this pending matter, Respondent submits that the dispositive question is whether there is a viable order to appeal and that such question may be brought to the Court’s attention more quickly by this motion. In response to that dispositive question, Respondent submits that the answer is no.

5. “[S]ubject matter jurisdiction is the power of a court to hear and determine cases of the general class to which the proceedings in question belong....” *State v. Gentry*, 363 S.C. 93, 100, 610 S.E.2d 494, 498 (2005); *Dove v. Gold Kist, Inc.*, 314 S.C. 235, 237–38, 442 S.E.2d 598, 600 (1994) (same). “The circuit court is made up of the court of common pleas, which hears civil actions, and the court of general sessions, which hears criminal cases.” *Dove*, at 238, 442 S.E.2d at 600. PCR actions are separate civil actions as opposed to general sessions where the trial is conducted. Rule 71.1(c), SCRPC (describing PCR actions as “an independent civil action”); *State v. Smalls*, 364 S.C. 343, 346, 613 S.E.2d 754, 756 (2005) (“The court of general sessions has subject matter jurisdiction to try criminal cases.”). Further, the jurisdictional limitations of PCR actions are set out in S.C. Code § 17-27-20, and, notably, the Legislature provided that PCR would not supplant “any remedy incident to the proceedings in the trial court....” S.C. Code § 17-27-20 (B). While there is a provision for a constitutional challenge in PCR other than an ineffective assistance of counsel claim, that is reserved generally for rare instances when the issue could not otherwise be reviewed. *Fortune v. State*, 428 S.C. 545, 559, 837 S.E.2d 37, 45 (2019); *see also Al-Shabazz v. State*, 338 S.C. 354, 363, 527 S.E.2d 742, 747 (2000) (“when asserting the erroneous admission of evidence, a violation of a constitutional right, or other errors in a proceeding, the applicant generally must frame the issue as one of ineffective assistance of counsel”); *Drayton v. Evatt*, 312 S.C. 4, 9, 430 S.E.2d 517, 520 (1993) (“Issues that could have been raised at trial or on direct appeal cannot be asserted in an application for post-conviction relief absent a claim of ineffective assistance of counsel.”).

Relatedly, a circuit court judge loses jurisdiction to act in a matter in which he has previously presided absent a timely filed post-trial motion. *State v. Slocumb*, 412 S.C. 88, 92, 770 S.E.2d 436, 438 (Ct. App. 2015); *see also State v. Best*, 257 S.C. 361, 368, 186 S.E.2d 272,

275 (1972) (“Under our judicial system the presiding judge in the Circuit Court loses jurisdiction with the adjournment of the term.”). Though not “jurisdictional” the lack of a power to act will lead to an appellate court vacating an order where the judge does not have the authority to hear and rule upon a subsequent motion. *State v. Campbell*, 376 S.C. 212, 216, 656 S.E.2d 371, 373 (2008); *see also Boone v. Goodwin*, 314 S.C. 374, 375, 444 S.E.2d 524, 525 (1994) (reversing grant of a new trial in common pleas where counsel failed to timely make the post-trial motion); Rule 59(b), SCRCPP (“In non-jury actions [a new trial] motion shall be made not later than 10 days after the receipt of written notice of the entry of judgment or of the filing of an order disposing of the action, if no judgment has been entered.”); Rule 59(e), SCRCPP (“A motion to alter or amend the judgment shall be served not later than 10 days after receipt of written notice of the entry of the order.”).

6. Even though a new trial motion under Rule 29, SCRCrimP is separate and distinct from a PCR allegation presented under Section 17-27-20, the order that is the subject of this appeal was solely entered in the civil PCR action. Both Rule 29, SCRCrimP and Rule 59, SCRCPP are referenced. (Oct. 27, 2021, Order, 2013-CP-21-280, at 2). However, the basis for denying the motion was that the motion “was filed over eleven years after applicant was convicted.” (Oct. 27, 2021, Order, 2013-CP-21-280, at 2). Thus, it appears that the new trial motion was construed to be a Rule 29 motion. Such motion could not be acted upon within the PCR action. *See generally* Section 17-27-20. *See also* Rule 29(b), SCRCrimP (“A motion for a new trial based on after-discovered evidence must be made within one ... year after the date of actual discovery of the evidence *by the defendant* or after the date when the evidence could have been ascertained by the exercise of reasonable diligence.”) (emphasis added); *Slocomb, supra, Campbell, supra*. Respondent submits that the right result was reached – the motion was

certainly not timely especially considering the full PCR proceedings afforded during which Daniels, with assistance of counsel, raised a number of different claims² – but by a court of common pleas instead of general sessions and after the authority to act had ended. This is error.

7. Further, the error appears directly attributable to Daniels for filing in the wrong case. The Public Index shows that Daniels has had subsequent-to-trial litigation regarding a DNA testing request. (Florence County Public Index, *supra*. at Case No. J398790 and J398791). If he wished to file anything in general sessions regarding his request for a new trial, Daniels certainly could have done so. He did not. That failing is Daniels' failing.

CONCLUSION

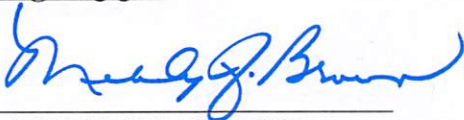
Respondent submits that this Court should vacate the order and dismiss the appeal for all the above asserted reasons.

Respectfully submitted,

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By: 
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² Petitioner's basis for new trial rest on allegations related to an agreement with Andre Bradley; prosecutorial misconduct by failing to disclose evidence; improper closing arguments; asserting facts not in evidence, and admission of false statements/testimony. The 2013 PCR action raised issues with allegations that counsel failed to disclose/make clear the Bradley agreement; failed to review statements by Bradley and Jasmine Barrett; and prosecutorial misconduct regarding disclosure of Gary Bostic interview. Not only would the information been available, it was already available and tested through the PCR action. Daniels simply lost. *See* Appellate Case No. 2015-002033, PCR App. at 1170-97).

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ATTORNEYS FOR RESPONDENT

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CERTIFICATE OF SERVICE

I, Melody J. Brown, hereby certify that the Motion to Vacate and Dismiss, and Certificate of Service has been forwarded to Appellant via US mail today, October 2, 2023 addressed to Gregory Daniels, #297449, Lee Correctional Institution, 990 Wisacky highway, Bishopville, South Carolina 29010.

I further certify that all parties required by Rule to be served have been served.

This 2nd day of October, 2023.



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