

The Supreme Court of South Carolina

Joey Lynn Clark, Petitioner,

v.

State of South Carolina, Respondent.

RECEIVED

JAN 18 2024

S.C. SUPREME COURT

Appellate Case No. 2024-000002

MOTION FOR RECONSIDERATION

By Order dated January 04, 2024, the Supreme Court of South Carolina dismissed the Petitioner's petition for a writ of certiorari. This Court denied certiorari stating:

The South Carolina Court of Appeals sent the remittitur in this case on November 28, 2023. The sending of the remittitur ended appellate jurisdiction in this matter. *Stogsdill v. S.C. Dep't of Health & Human Servs.*, 415 S.C. 568, 784 S.E.2d 669 (2016); *Wise v. S.C. Dept. of Corr.*, 372 S.C. 173, 642 S.E.2d 551 (2007). Accordingly, this Court will take no action on your notice of appeal, which we construe as a petition for a writ of certiorari, and the petition is stricken and dismissed.

The Petitioner comes before the Supreme Court of South Carolina with his motion for reconsideration concerning this Court's January 04, 2024, Order. In support of this the Petitioner presents the following:

1st

This Court dismissed certiorari to review the S.C. Court of Appeal's clear error in affirming the Petitioner's conviction because the remittitur had already been sent by the South Carolina Court of Appeals. When a incarcerated defendant, Petitioner, appellat, is represented by counsel, no action will be taken on a pro se filing. See Miller v. State, 388 S.C. 347, 347, 697 S.E.2d 527, 527 (2010) ("since there is no right to 'hybrid representation' that is partially pro se and partially by counsel, substantive documents, with the exception of motions to relieve counsel, filed pro se by a person represented by counsel are not to be accepted unless submitted by counsel."). So under state law the petitioner could not legally file for writ of certiorari to the Supreme Court him self until after he was no longer represented by counsel. According to S.C. Court procedures the Petitioner is under court appointed counsel's representation until the remittitur is sent to the lower court. The remittitur was sent the same day the petitioner was released of counsel's representation.

So in light of the case law presented by the Supreme Court of South Carolina in their January 04, 2024 Order there is no appellate jurisdiction after the remittitur has been sent. See Stogsdill v. S.C. Dep't of Health & Human Servs., 415 S.C. 568, 784 S.E.2d 669 (2016); Wise v. S.C. Dept. of Corr., 372 S.C. 173, 642 S.E.2d 551 (2007).

When considering all of the above, the only way that the Petitioner's writ of certiorari to the Supreme Court of S.C. seeking review and correction of the S.C. Court of Appeals ruling made in clear error, could have been properly filed under state law is if counsel had done so prior to the sending of the remittitur. Since Petitioner's Court appointed counsel failed to act and file for writ of certiorari to the Supreme Court of S.C. and state law that prohibits the Petitioner from doing so while represented by counsel, the Petitioner has grounds for belated review similar to Mack v. State, 433 S.C. 267, 858 S.E.2d 160 (2021); see also Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991).

2nd

Due to the S.C. Court of Appeal's clear error in their order affirming the Petitioner's conviction and their improper review of the evidence presented at the Petitioner's trial, the Supreme Court must reconsider Petitioner's

writ of certiorari in the interest of justice. The Petitioner is innocent and there is substantive evidence of the guilt of an unidentified third party. To not do so would continue to compound violations to the Petitioner's 5th and 14th U.S. Const. Amend. rights to due process and equal protection.

3rd

As this Court will find upon review of the Petitioner's notice of appeal that he has been extremely diligent in seeking review and correction of the S.C. Court of Appeals clear error in both the S.C. Court of Appeals and in filing appeal to the Supreme Court of S.C. As well as provided clear evidence and trial testimony supporting the Petitioner's claim that the Court of Appeals ruling was made in clear error. At each attempt the Petitioner has been denied review by state law that prevents him from obtaining review by his own efforts in the state court, which we all know prevents him from exhausting his claims to the highest state court barring him from federal review. So it is either state laws that are violating the Petitioner's Constitution rights as an American to due process or appellate counsel has violated the Petitioner's U.S. Constitutional 6th Amend. rights to effective assistance of counsel

for failing to file for certiorari nor any other motion to correct the Appeal Court's clear error or a combination of both. The Supreme Court of S.C. can fix all this by accepting, reviewing, and ruling on the Petitioner's writ of certiorari. A clear error has been made by the S.C. Court of Appeals if the Supreme Court of S.C. is not going to correct it, who will?

Conclusion

WHEREFORE, in light of the above mentioned laws and facts, the Petitioner pleads with this Court to reconsider review and acceptance of his appeal to the Supreme Court of South Carolina concerning the S.C. Court of Appeal's clear error. Thank you for your time and help.

This the 14th day of January, 2024.

Respectfully Submitted,

Joey Lynn Clark

Joey Lynn Clark

SCCC # 187595

B.R.C.I. Marion-211

4460 Broad River Rd.

Columbia, S.C. 29210

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PROFF OF SERVICE

The undersigned, hereby certifies that he has served his Motion For Reconsideration on the State of S.C. through the Clerk of the Supreme Court of S.C. (Patricia A. Howard; P.O. Box 11330, Columbia, S.C. 29211) and the S.C. Attorney General's Office (P.O. Box 11549; Columbia, S.C. 29211) by placing said same in the U.S. Mail to the foregoing addresses.

This the 14th day of January, 2024.

Respectfully submitted,


Joey Lynn Clark

SCCC # 187595

B.R.C.J. Marion-211
4460 Broad River Rd.
Columbia, S.C. 29210

S.C. Attorney Generals Office
P.O. Box 11549
Columbia, S.C. 29211

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JAN 18 2024

S.C. SUPREME COURT

01-14-2024

RE: Joey Lynn Clark v. State; Appellate Case No.
2024-000002

Dear Attorney General,

Enclosed please find a copy of my
Motion for Reconsideration in the above
referenced case. Thank you for your time and
help.

Also: certificate of
service

Sincerely,
Joey Clark

Joey Lynn Clark
SCBC# 187595

B.R.C.I. Marion-211

4460 Broad River Rd.

Columbia, S.C. 29210