

# The Supreme Court of South Carolina

The State, Respondent,

v.

Robert H. Koon, Petitioner.

Appellate Case No. 2013-001356

Lower Court Case No. 1986-GS-11-00289

**RECEIVED**

JUL 29 2013

**SC Court of Appeals**

---

## ORDER

---

By order dated January 30, 2013, the South Carolina Court of Appeals denied petitioner's request to proceed *pro se* in this matter, and it prohibited him from filing any further *pro se* motions or requests in this matter.<sup>1</sup> Subsequently, the Court of Appeals affirmed the denial of petitioner's motion for a new trial based on alleged after discovered evidence regarding his 1986 guilty plea in 1986-GS-11-00289. *State v. Koon*, Op. No. 2013-UP-216 (S.C. Ct. App. filed May 22, 2013).

Thereafter, the Court of Appeals refused to accept a motion to proceed *pro se* and a *pro se* petition for rehearing. This rejection was based on the earlier order of January 30, 2013. When no petition for rehearing was filed by petitioner's counsel, the Court of Appeals sent the remittitur on June 7, 2013.<sup>2</sup>

Under Rule 242(a) of the South Carolina Appellate-Court Rules (SCACR), this Court will only review a final decision of the Court of Appeals, and a decision is not final for the purposes of review until a petition for rehearing or reinstatement

---

<sup>1</sup> See *State v. Roberts*, 364 S.C. 583, 614 S.E.2d 626 (2005) (finding that neither the federal or state constitution create a right to proceed *pro se* in an appeal from a criminal conviction).

<sup>2</sup> Before the Court of Appeals, this matter was assigned Appellate Case No. 2011-200608.

has been acted on by the Court of Appeals. Rule 242(c), SCACR. Since no proper petition for rehearing or reinstatement has been made and ruled on by the Court of Appeals in this matter,<sup>3</sup> there is no final decision for this Court to review.

Further, when no petition for rehearing from counsel was received by the Court of Appeals, the Court of Appeals properly sent the remittitur. Rule 221, SCACR. The sending of the remittitur ended appellate jurisdiction over this case. *Wise v. S.C. Dept. of Corr.*, 372 S.C. 173, 642 S.E.2d 551 (2007). Accordingly, the petition for a writ of certiorari is dismissed.

 C.J.  
FOR THE COURT

Columbia, South Carolina  
July 26, 2013

cc: Mr. Robert Holland Koon, #227826  
David A. Spencer, Esquire  
Robert M. Pachak, Esquire  
The Honorable Jenny Abbott Kitchings  
The Honorable Brandy W. McBee

---

<sup>3</sup> Since he was represented by counsel, his *pro se* petition for rehearing was effectively a nullity which did not prevent the remittitur from being sent. *Miller v. State*, 388 S.C. 347, 697 S.E.2d 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. [citations omitted]. Because petitioner was represented by counsel, the *pro se* motion was not proper, should not have been accepted, and should not have been ruled upon. The motion was essentially a nullity. . . . We also take this opportunity to remind judges and clerks of court of our directive in *Foster* not to accept substantive documents, with the exception of motions to relieve counsel, filed *pro se* by a party who is represented by counsel."); see also *Jones v. State*, 348 S.C. 13, 558 S.E.2d 517 (2002)(no right to hybrid representation); *State v. Stuckey*, 333 S.C. 56, 508 S.E.2d 564 (1998)(same); *Foster v. State*, 298 S.C. 306, 379 S.E.2d 907 (1989) (same).