

The South Carolina Court of Appeals

The State, Respondent,

v.

Randolph Ashford, Appellant.

Appellate Case No. 2023-001463

ORDER

Appellant has filed a motion with this court requesting leave to file a motion pursuant to "Rule 60(b)(5)" in the lower court. No such rule exists in the South Carolina Rules of Criminal Procedure, and because this is a criminal case, Rule 60(b)(5) of the South Carolina Rules of Civil Procedure has no application to this case. Accordingly, we construe Appellant's motion as a request to file a motion for a new trial pursuant to Rule 29, SCRCrimP. The order on appeal here is the circuit court's order denying Appellant's motion for a new trial based on after-discovered evidence. The circuit court determined Appellant "failed to make a prima facie showing that allegations of purported after-discovered evidence would necessitate an evidentiary hearing." The circuit court was not required to hold a hearing on Appellant's motion. *See* Rule 29, SCRCrimP ("The motion may, in the discretion of the court, be determined on briefs filed by the parties without oral argument."). Based on the foregoing, Appellant's motion is denied.

Appellant has also requested a 90-day extension to serve and file his initial brief and designation of matter. Appellant shall serve and file his initial brief and designation of matter within 45 days of the date of this order.



FOR THE COURT

Columbia, South Carolina

FILED
Jan 24 2024

cc:

Randolph Ashford, 00256638

John Walter Whitmire, Esquire

Alan McCrory Wilson, Esquire

Mark Reynolds Farthing, Esquire