

Apr 05 2024

STATE OF SOUTH CAROLINA

COUNTY OF ORANGEBURG

State of South Carolina

v.

Kenneth Henry Eastwood,

Defendant.

FILED FOR RECORD
WINNIFER B. CLARK
2024 MAR 25 P 1:08
CLERK OF COURT
ORANGEBURG, SC

IN THE COURT OF GENERAL SESSIONS
FIRST JUDICIAL CIRCUIT
INDICTMENT NO.: 2020-GS-38-0943

SC Court of Appeals

**ORDER DENYING
MOTION TO RECONSIDER**

THIS MATTER came before the Court on the Defendant's Motion and Memorandum to Reconsider, by and through his retained counsel, filed on March 7, 2024. The Court has reviewed all filings on this matter and reached the following findings of fact and conclusions of law:

PROCEDURAL HISTORY

On December 16, 2019, Kenneth Henry Eastwood was arrested and charged with Murder in the above-captioned matter. Bond was denied and he remained in custody. Eastwood did not apply for the appointment of counsel. Between the date of arrest and February 24, 2020, Eastwood retained attorney James Falk to represent him in this case. Falk continued to be the attorney of record until his death on May 9, 2023. Because of the nature of the charge, his retained counsel's death, and the fact that Eastwood was in custody, a public defender was appointed to represent him on May 18, 2023. On or about June 15, 2023, Eastwood retained Attorney Ashley Cornwell, and the public defender was relieved. On or about September 19, 2023, Cornwell submitted to this Court an Ex Parte Motion and proposed Ex Parte Order for Funding for a False Confession Expert. No hearings on the motion were held. The Court signed the proposed order on October 13, 2023. On or about November 1, 2023, Cornwell submitted another Ex Parte Motion and a proposed Ex Parte Order for Funding for a Forensic Pathologist Expert to this Court. No hearings on the motion

were held and the Court signed the proposed order on November 2, 2023. Cornwell filed the orders with the Clerk of Court under seal but did not submit the orders to SCCID. A jury trial was held in this case on November 8 – 9, 2023, and both experts testified for the defense. On November 9, 2023, the jury found Eastwood guilty, and the Court sentenced him to life in prison.

Cornwell submitted the funding orders and expert invoices to SCCID on December 12, 2023. SCCID discussed the submissions with Cornwell and informed her that the Agency did not have authority to provide indigent funds for retained counsel and would raise an objection with the Court. Following that conversation, on December 19, 2023, Cornwell preemptively filed a Rule to Show Cause in an effort to have the court compel SCCID to pay the experts. SCCID served its written objection with the Court and Cornwell on December 20, 2023. A virtual hearing was held on January 18, 2024, and the parties submitted written arguments and proposed orders for the Court's consideration.

The Court issued its Order Denying Defendant's Rule to Show Cause on February 26, 2024, and filed the same with the Clerk of Court on February 28, 2024. The Defendant filed a Motion and Memorandum to Reconsider on March 7, 2024. SCCID filed a Reply on March 14, 2024.

ISSUES RAISED IN MOTION TO RECONSIDER

The Defendant raised the following grounds in the Motion and Memorandum to Reconsider:

- (1) The Court lacked jurisdiction to hear SCCID's objections to the funding orders or its request to vacate the same; and
- (2) The Court's finding that indigent defendants who retain counsel are statutorily prohibited from receiving funds from SCCID was an error in law.

I. JURISDICTION

A. Procedures to Hear SCCID's Funding Objections

The S.C. Supreme Court, by Order dated September 29, 2006, established the procedures for the processing of indigent vouchers to include the ability of SCCID to file objections. The Supreme Court issued this Order under the authority granted by the General Assembly in S.C. Code § 17-3-110, authorizing "the Supreme Court to establish such rules and procedures as may be necessary for proper administration of Chapter 3 of Title 17 pertaining to indigent defense." The Court further stated that, "accordingly pursuant to S.C. Code § 17-3-110, and Article V, Section 4 of the S.C. Constitution, the procedures outlined herein are adopted for the processing of indigent defense vouchers."

The procedures established by the Court provide that if there are objections by SCCID to submitted vouchers, then the "Office of Indigent Defense shall notify the trial court and counsel of any objection and shall forward any necessary materials to the trial court in writing or electronically." This is exactly the process SCCID followed with its written objection filed with both the Trial Court and Counsel on December 20, 2023.

The Order further provides that "the trial court may determine the matter with or without a hearing, as may be appropriate, or upon submission of written materials." In this matter, this Court granted the Agency's request to be heard, thus the hearing on January 18, 2024.

The Order also states that the procedures outlined "shall remain in effect until altered or changed by subsequent order or legislation." This Court is not aware of any subsequent orders or legislation that altered or changed this procedure.

Also, pursuant to the authority granted by the General Assembly, in SC Code §§ 17-3-310 and 17-3-340, SCCID developed a Voucher Payment Policy that includes the Court's procedure

regarding objections in the processing of indigent defense vouchers. The Voucher Payment Policy was amended in 2021 to require attorneys to submit funding orders to SCCID within 15 days of a court signing such orders. This procedure allows for issues and objections to be raised in a timely manner. The trial court can immediately consider any Agency objections, hear from both parties, and avoid the exact scenario that has occurred in this matter where work is completed before the Agency is even aware of the orders to be able to object.

B. Procedural Motion or Notice of Appeal

The Defendant argued that "SCCID's objection letter is not a properly filed procedural motion or notice of appeal under our rules of procedure and therefore cannot be considered good cause for failing to comply with the entered orders." However, as outlined in Section I.A of this Order, the procedure established by our Supreme Court does not require procedural motions pursuant to the Rules of Court nor a notice of appeal at this stage of the matter.¹ The ex parte funding orders were not final until such time as SCCID had the opportunity to file any objections and this Court ruled on those objections. That ruling did not occur until this Court's Order of February 26, 2024.

The Supreme Court only requires SCCID to notify the trial court and counsel of the objection in "writing or electronically." While not captioned as a formal motion, SCCID's filing (written objection) on December 20, 2023, was within 10 days of the Agency receiving written notice of the filed orders on December 12, 2023, and requested that the trial court rescind (vacate, alter, or amend) the funding orders.

¹ The filing of a Notice of Appeal pursuant to Rule 203(b)(2) would have transferred jurisdiction to the appellate court.

II. ERROR IN LAW

In the Order dated February 26, 2024, this Court closely reviewed the issue regarding retained counsel having access to the Defense of Indigents funds. Specifically, this Court examined the argument now raised by the Defendant that § 17-3-50(B) and (C) do not specify that counsel be appointed. This Court found that SCCID's interpretation of the statute, based on the statutory language and legislative intent, is that the Defense of Indigents Fund is limited to cases where the courts have appointed private counsel or a public defender. This Court gives deference to that interpretation.²

Also, § 17-3-50 must be read and construed as a whole, and not on isolated words or phrases.³ The section addresses fees and expenses for appointed counsel and public defenders. Read in this context it is this Court's interpretation that the "defendant" referenced in the statute is the indigent defendant and the attorney the statute references is the appointed attorney, or the public defender appointed to represent that defendant.

Further authority that reimbursement shall not be had from indigent funds is the unambiguous language of Rule 602(c), SCACR, which provides that "if counsel shall have been retained and partially paid for his services in either the trial or appeal stages, no reimbursement may be had from indigent funds."

² See *Doe v. Keel*, 440 S.C. 427, 431, 892 S.E.2d 427, 284 (2023) ("[T]he Court generally gives deference to an administrative agency's interpretation of an applicable statute or its own regulation. . . . If the statute or regulation 'is silent or ambiguous with respect to the specific issue,' the court then must give deference to the agency's interpretation of the statute or regulation, assuming the interpretation is worthy of deference.") (citations omitted).

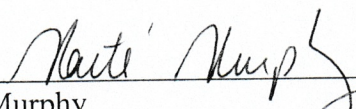
³ See *CFRE, LLC v. Greenville County Assessor*, 395 S.C. 67, 716 S.E.2d 877 (2011) ("[T]he statute must be read as a whole and sections which are part of the same general statutory law must be construed together and each one given effect. . . . We therefore should not concentrate on isolated phrases within the statute. . . . Instead, we read the statute as a whole and in a manner consonant and in harmony with its purpose.") (citations omitted).

CONCLUSION

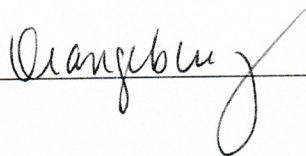
This Court has had the opportunity to review the record before it, including the Defendant's Motion and the Reply of SCCID. After careful review, this Court finds that it had jurisdiction to consider the objection raised by SCCID and that ruling of the Court was not in error of law. Therefore, the Defendant's Motion to Reconsider is hereby denied.

IT IS THEREFORE ORDERED that the Defendant's Motion to Reconsider is denied.

AND IT IS SO ORDERED this 25 day of March, 2024.



Maite Murphy
Circuit Court Judge, First Judicial Circuit


_____, South Carolina