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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Chester County
Honorable Brian M. Gibbons, Circuit Court Judge
Appellate Case No. 2022-001104

THE STATE,

Respondent,

vs.

JAMES B. CURRY,

Appellant.

FINAL BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

MARK R. FARTHING
Senior Assistant Deputy Attorney General

Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

RANDY E. NEWMAN, JR.
Solicitor, Sixth Judicial Circuit

Post Office Box 607
Lancaster, SC 29721
(803) 416-9367

ATTORNEYS FOR RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

I.

"Did the circuit court err in ordering that pursuant to S.C. Code Ann. § 24-27-200 Appellant forfeited any earned work, education, and good conduct credits he had accumulated due to his allegedly frivolous filings, where S.C. Code Ann. § 24-27-100 to -500 only applies to civil actions filed by inmates and not to collateral criminal proceedings in which an inmate challenges his convictions?"

II.

"Did the circuit court err in denying Appellant's motion to recuse where the court's factual findings are not supported by the record?"

COUNTER-STATEMENT OF ISSUES ON APPEAL

I.

Was Curry's current argument concerning the supposed inapplicability of Section 24-27-200 of the South Carolina Code of Laws properly preserved for appellate review when it was neither raised to nor ruled upon by the circuit court judge? Furthermore, notwithstanding any issue preservation concerns, did the circuit court judge abuse his discretion or otherwise err by applying Section 24-27-200 to Curry's case when—just as the circuit court judge found—Curry violated that statutory provision by incessantly submitting numerous frivolous filings, including a recent frivolous lawsuit demanding a civil award of $1,000,000 for things such as his pain and suffering unless his other demands were met?

II.

Did the circuit court judge somehow err by declining to recuse himself based purely on a claim he had supposedly made an erroneous ruling when: (1) the making of an incorrect ruling would not and does not ordinarily constitute evidence of a judge's bias or partiality or provide a sufficient basis for recusal; (2) no other evidence was presented to suggest the circuit court judge could not be fair and impartial to Curry; and (3) the circuit court judge did not truly make any erroneous rulings or factual findings in Curry's case?

STATEMENT OF THE CASE

Appellant James B. Curry's current appeal stems from an August 2022 order issued in response to his submission of numerous pro se filings subsequent to his 2008 criminal convictions. Under the circumstances involved, the procedural history of Curry's case is quite lengthy, and the State has included as many details as possible after attempting to piece together what has occurred so far to the greatest extent it could.[1]

In June of 2007, Curry was arrested following an investigation into a violent home invasion in which an elderly man was attacked and robbed inside his own residence. In July of 2007, the Chester County Grand Jury indicted Curry for first-degree burglary, armed robbery, kidnapping, and assault and battery of a high and aggravated nature ("ABHAN"). On February 12, 2008, a jury trial was commenced in the Chester County Court of General Sessions with the Honorable Brooks P. Goldsmith, circuit court judge, presiding. At the conclusion of the three-day trial, the jury convicted Curry, who exercised his right to self-representation, as indicted. Following the verdict, the trial judge sentenced Curry to three concurrent twenty-five-year terms of imprisonment for first-degree burglary, armed robbery, and kidnapping along with a concurrent ten-year term of imprisonment for ABHAN.

Subsequent to trial, Curry appealed, but he later withdrew that appeal. On July 29, 2008, Curry then filed several post-trial motions, including a motion seeking a new trial based on after-discovered evidence. In response, counsel was appointed to Curry, and a hearing was conducted to address his motions on February 9, 2009, with Judge Goldsmith again presiding. At the

[1] The State's procedural history does *not* delve into Curry's many related—and unrelated—federal filings. See, e.g., Curry v. South Carolina, 578 U.S. 992 (2016) (denying Curry's petition for rehearing from the denial of his petition for a writ of certiorari); Curry v. South Carolina, 578 U.S. 910 (2016) (denying a petition for a writ of certiorari to the South Carolina Supreme Court).

conclusion of the hearing, Judge Goldsmith orally denied Curry's motions, including the one raising his after-discovered evidence claim.

Again, Curry initiated an appeal, but, once again, he withdrew it. Then, on April 7, 2009, Curry filed another motion seeking a new trial based on after-discovered evidence. Once again, counsel was appointed to Curry, and Curry's counsel filed an amended version of the motion on his behalf. Thereafter, a hearing was held on the motion on October 5, 2009, with the Honorable Howard P. King, circuit court judge, presiding. Through an order dated October 13, 2009, Judge King denied it.

Yet again, Curry initiated an appeal, but—consistent with his previous ones—he withdrew it. Following that, Curry submitted yet another motion seeking a new trial based on after-discovered evidence on December 21, 2009, and apparently submitted several more similar motions after that. Amongst the allegations raised through his latest after-discovered evidence claim, Curry alleged one of the jurors from his trial—Juror # 38—had purportedly failed to disclose or concealed information during the voir dire process. Through an order issued on March 18, 2010, Judge Goldsmith denied Curry's motions without a hearing.

Shortly after that, Curry—on May 14, 2010—submitted an application for post-conviction relief ("PCR"), and the State filed a return in response. On February 23, 2011, an evidentiary hearing was conducted on the matter with the Honorable J. Ernest Kinard, Jr., circuit court judge, presiding. During the hearing, testimony was presented—including from Juror # 38—to address Curry's various claims, which included one alleging Curry had purportedly discovered after trial Juror # 38 had intentionally concealed and failed to reveal some information. Through an order dated April 19, 2011, Judge Kinard denied and dismissed Curry's PCR application with prejudice. Following that, Curry timely submitted a motion seeking

reconsideration of that ruling, and, through an order dated May 9, 2011, Judge Kinard denied Curry's motion without a hearing.

On March 28, 2012, Curry submitted another PCR application and again raised an allegation of after-discovered evidence. More specifically, Curry now alleged he had received a signed confession in the mail from the true perpetrator of the crimes for which he had been convicted. In response, the State filed a return seeking for the application to be dismissed. Through an order dated October 1, 2012, Judge Goldsmith conditionally dismissed Curry's successive application without a hearing. Following that, Curry objected to Judge Goldsmith's ruling. Based on Curry's objection, a hearing was conducted on the matter on August 6, 2013, with the Honorable Clifton Newman, circuit court judge, presiding. Through an order dated December 19, 2013, Judge Newman rejected Curry's latest after-discovered evidence claim and denied and dismissed his second PCR application with prejudice. Following that, Curry submitted several motions, including two different motions seeking for the judgment to be altered or amended. Through an order dated February 21, 2014, Judge Newman denied all Curry's motions.

Once again, Curry initiated an appeal, and, unlike with his previous ones, Curry did not seek to withdraw it.[2] Nevertheless, on May 7, 2014, the Supreme Court dismissed Curry's appeal pursuant to Rule 243(c) of the South Carolina Appellate Court Rules. Following that, Curry filed a petition for reinstatement along with a number of other filings, including one asking for the Supreme Court to initiate an investigation of Judge Newman based on purported acts of judicial misconduct and perjury. On June 12, 2014, the Supreme Court construed Curry's

[2] The records from the appellate proceedings in the Supreme Court in connection to Curry's 2014 appeal are presently available through the South Carolina Appellate Public Index. Appellate Records for James B. Curry v. State, South Carolina Appellate Court Public Index, https://ctrack.sccourts.org/public/caseView.do?csIID=56240.

petition for reinstatement as a petition for rehearing and denied it. Furthermore, the remittitur was issued on the same date.

At some point after that (or possibly before), Curry submitted a motion seeking relief from judgment pursuant to Rule 60(b) of the South Carolina Rules of Civil Procedure in connection to the earlier unsuccessfully-appealed ruling on his second PCR application. Through an order dated July 21, 2014, the Honorable Brian M. Gibbons, circuit court judge, rejected Curry's motion as improper and dismissed it with prejudice.

Following that, Curry submitted yet another motion seeking a new trial based on after-discovered evidence. Through the latest motion, Curry alleged the transcript from his trial demonstrated a witness had purportedly lied and the solicitor had supposedly colluded with that witness to present false testimony. Following a hearing on the matter, Judge Gibbons—through an order issued on December 4, 2014—denied Curry's motion seeking a new trial. Furthermore, through the same order, Judge Gibbons imposed restrictions on Curry's future filing due to their "repetitive and frivolous nature."

After that, Curry once again appealed.[3] However, through an order dated July 1, 2015, the Court of Appeals dismissed Curry's appeal based on his failure to comply with the requirements of the South Carolina Appellate Court Rules. On September 17, 2015, the remittitur was issued by the Court of Appeals.

Meanwhile, before the Court of Appeals issued the remittitur ending Curry's latest appeal, Curry submitted—amongst other things—a petition for a writ of habeas corpus to the

[3] The records from the appellate proceedings in the Court of Appeals in connection to Curry's appeal of Judge Gibbons's 2014 order are presently available through the South Carolina Appellate Public Index. Appellate Records for State v. James B. Curry, South Carolina Appellate Court Public Index, https://ctrack.sccourts.org/public/caseView.do?csIID=58339.

Supreme Court on July 21, 2015. Through an order dated August 21, 2015, the Supreme Court denied that petition.

Undeterred, Curry then submitted a second petition for writ of habeas corpus to the Supreme Court on September 9, 2015, and later supplemented that petition with an additional filing not long after the Court of Appeals issued its remittitur. Through an order dated October 8, 2015, the Supreme Court denied that petition. Curry then submitted a petition for rehearing, and the Supreme Court denied that petition on November 4, 2015. Shortly after that, Curry submitted another petition for rehearing, and the Supreme Court likewise denied that petition through an order issued on December 3, 2015.

Following that, Curry attempted to appeal the Supreme Court's most-recent order to the Court of Appeals.[4] However, because no valid legal basis would allow such an appeal, the Court of Appeals declined to accept Curry's filings.

Subsequently, on September 20, 2021, Curry submitted another motion seeking a new trial. Through his latest motion, Curry again targeted Juror # 38 and now alleged she concealed during the voir dire process the fact she was supposedly employed at the Chester County Courthouse at the time of his trial. On November 3, 2021, a hearing was held on Curry's motion with the Honorable Eugene C. Griffith, Jr., circuit court judge, presiding. Thereafter, through an order dated November 5, 2021, Judge Griffith ruled Curry's motion was meritless, further determined it was improperly filed, and reiterated the restrictions that had previously been imposed on Curry's filings. Following that, Curry submitted a motion seeking reconsideration.

[4] The records from Curry's attempted appeal of a Supreme Court order in the Court of Appeals are presently available through the South Carolina Appellate Public Index. Appellate Records for State v. James B. Curry, South Carolina Appellate Court Public Index, https://ctrack.sccourts.org/public/caseView.do?csIID=61089.

Through an order dated December 10, 2021, Judge Griffith denied Curry's reconsideration motion and once again reiterated the restrictions that had been imposed on Curry's filings.

Again, Curry initiated an appeal.[5] And, after initiating it, Curry submitted numerous filings to the Court of Appeals, including a request for a new trial. On March 3, 2022, the Court of Appeals dismissed Curry's appeal based on his failure to establish he timely served his notice of appeal upon the State. Following that ruling, Curry submitted a petition for reinstatement through which he sought for the Court of Appeals to: (1) reinstate his appeal; and (2) grant him a new trial within ten days due to his belief the Court of Appeals had committed an error in its order dismissing his appeal. Curry submitted several more filings after that, including one seeking a "default judgment." On April 19, 2022, the Court of Appeals construed Curry's petition for reinstatement as a request for rehearing and denied the request. Following that, Curry submitted a variety of filings, including one requesting an investigation be conducted by the Clerk of Court. On June 2, 2022, the remittitur was issued. Thereafter, Curry sent a letter to the Court of Appeals threatening to initiate a lawsuit against it for $1,000,000 unless it voided the remittitur within ten days and granted him the relief he had been seeking through his appeal. The remittitur was not voided, though.

Meanwhile, while that appeal was still pending, Curry submitted a motion at the circuit court level on April 5, 2022, requesting another hearing on his allegation Juror # 38 concealed information during the voir dire process. Through his latest motion and accompanying affidavit, Curry alleged he discovered on January 11, 2022, that Juror # 38 was "100% employed within the walls of law enforcement or gov. at the time of [his] trial" and had failed to disclose that fact

[5] The records from the appellate proceedings in the Court of Appeals in connection to Curry's appeal of Judge Griffith's 2021 orders are presently available through the South Carolina Appellate Public Index. Appellate Records for State v. James B. Curry, South Carolina Appellate Court Public Index, https://ctrack.sccourts.org/public/caseView.do?csIID=74622.

to either the trial judge or him. Through an order dated April 15, 2022, Judge Gibbons denied Curry's motion. On the following day, Curry submitted a motion seeking rehearing along with Judge Gibbons's recusal. Shortly after that, Curry submitted a filing entitled "Lawsuit" to the Chester County Court of Common Pleas on May 2, 2022. Through it, Curry alleged the Chester County Clerk of Court was a "key player" in a cover-up related to Juror # 38 and demanded to either be granted the hearing he had previously requested or be awarded $1,000,000. On May 16, 2022, Judge Gibbons issued an order denying Curry's motion for rehearing and granting a hearing on Curry's request for recusal. Thereafter, on July 20, 2022, a hearing was conducted before Judge Gibbons. During the hearing, Judge Gibbons orally denied Curry's request for recusal and ordered Curry's sentencing credits be rescinded based on his willful violation of Section 24-27-200 of the South Carolina Code of Laws.[6] Following that, Curry submitted a motion for reconsideration that included a threat aimed at Judge Gibbons's pension. Curry then initiated an appeal before Judge Gibbons was able to issue an order memorializing his oral rulings or otherwise rule, and the Court of Appeals promptly dismissed it. However, on August 10, 2022, Judge Gibbons confirmed his rulings through the issuance of a written order, and, once the Court of Appeals discovered that had occurred, the Court of Appeals reinstated Curry's appeal and permitted it to proceed forward.

[6] Prior to that point, Curry had filed no less than five prior lawsuits that had been dismissed. (R. p. 93).

STATEMENT OF RELEVANT FACTS

Since Curry was convicted of numerous serious criminal offenses in February of 2008, he has repeatedly inundated courts in South Carolina at all levels with various filings. (R. pp. 92-96; pp. 98-100; pp. 116-119). Amongst those filings, Curry has submitted at least six or seven different motions seeking a new trial based on after-discovered evidence he repeatedly claims to have uncovered. (R. pp. 92-96; pp. 116-119). And, in addition to those motions, he has also raised after-discovered evidence claims in two separate post-conviction relief actions. (R. pp. 62-70; pp. 73-87).

Each time one of Curry's after-discovered evidence claims has been rejected, Curry has simply pivoted to a new claim of something else he purportedly uncovered. (R. pp. 98-100; pp. 116-119). To date, Curry has alleged he has discovered evidence establishing: (1) the police chief of the Great Falls Police Department was under investigation for stealing money at the time of his trial; (2) another individual—Tramell Richardson—must have been guilty of the charged crimes due to his conviction for similar offenses; (3) the solicitor and other witnesses lied to the trial judge; (4) he suffered from an undiagnosed mental disorder that prevented him from being able to validly waive his rights; (5) another now-deceased individual—Lamario Ford—sent a handwritten confession to him that was dated before the trial, mailed out after the trial, and only miraculously discovered by chance tucked away in a prison facility several years later;[7] (6) his

[7] In one of his earlier appellate filings, Curry included a copy of the handwritten letter supposedly drafted by Ford along with a newspaper article about Ford's death. Appellate Records for James B. Curry v. State, South Carolina Appellate Court Public Index, https://ctrack.sccourts.org/public/caseView.do?csIID=56240. In that letter, Ford—who appeared to have misspelled his own first name several times—purportedly wrote: "Dear Bernard, Hey Homie! How are you? This is Mario Ford[.] I just want to apologize that you got arrested for the crime I committed on June 4th 2007 on Pine Street, I've changed and want to get right with god, and what I mean is that I'm willing to come testify and accept responsibility for my own actions. I'm sorry I didn't come forth sooner and I'm sorry you got charged for something that I

elderly victim perpetrated a fraud upon the court along with others; and (7) the solicitor colluded with a witness to present false testimony. (R. pp. 50-55; pp. 60-61; pp. 80-87; pp. 90-96).

Moreover, through his submissions, Curry has—for more than a decade now—centered many of his after-discovered evidence claims on Juror # 38, one of the citizens who served on the jury that decided his case. (R. pp. 56-59). So far, Curry has accused her of committing a voir dire violation: (1) in some totally-unspecified way; (2) by failing to disclose her past employment; (3) by concealing the fact she worked "within the Chester County Courthouse" at the time of trial; and (4) by failing to reveal she worked "within the walls" of law enforcement or government at the time of trial. (R. pp. 60-70; pp. 98-100; pp. 104-105). Furthermore, after raising his claims about Juror # 38, Curry has been afforded several evidentiary hearings to attempt to prove them, including one in which Juror # 38 testified under oath and Curry—with the assistance of and through counsel—was able to question her about her past employment and purported partiality at the time of his trial. (R. pp. 62-70). Notably, during her sworn testimony, Juror # 38 confirmed she had been employed by a sheriff's office "almost twenty years prior to [Curry]'s trial" and "held no bias or prejudice against him at the time of trial," and the circuit court judge—who heard her testimony and was also able to review the trial transcript to see what questions were actually asked of her and the other jurors during voir dire—concluded there was no evidence of intentional concealment on her part. (R. p. 62; pp. 68-69).

Based on the prolific, disruptive, and frivolous nature of Curry's filings, Judge Gibbons elected to place restrictions on Curry's future filings in 2014. (R. pp. 92-96). Unfortunately, that did not dissuade Curry, and Judge Griffith was forced to reiterate those restrictions *twice* in 2021. (R. pp. 92-96; pp. 98-101).

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did, I hate it went down the way it did cause you really had nothing to do with that incident[.] Sorry Homie 4 real. Peace[,] Mario Ford" Id.

Following the second of Judge Griffith's orders cautioning Curry about his frivolous filings, Curry sent a handwritten letter to the Chester County Clerk of Court threatening her if she did not get him before the court within ten days to receive the relief he had previously been denied. (R. pp. 102-103). More specifically, Curry advised the clerk her "ass [wa]s grass and [he was] the lawn mower" if she did not meet his demands, and he further warned a law enforcement agency would be at her office or "something else within the law" would occur if she did not comply. (R. pp. 102-103).

When his hostile demands went unmet, Curry did not stop there and, instead, submitted another motion seeking yet another hearing to address an alleged voir dire violation committed by Juror # 38. (R. pp. 104-105). And, to support that motion, Curry claimed he had just learned on *January 11, 2022*, Juror # 38 was employed "within the walls of law enforcement" but she had failed to disclose that fact.[8] (R. pp. 104-105). He also included a notarized affidavit from himself, and, in that affidavit, Curry claimed Juror # 38 was employed "within the walls" of *either* law enforcement *or* government at the time of his trial roughly fourteen years earlier. (R. pp. 104-105).

Following Curry's submission of that motion, Judge Gibbons promptly issued an order denying it without a hearing. (R. p. 106). In denying the motion, Judge Gibbons explained Curry's asserted issue "ha[d] been litigated numerous times, and no new evidence ha[d] been alleged or submitted" by Curry. (R. p. 106). Judge Gibbons further noted Curry appeared to

[8] Prior to that point, Curry had continued to submit filings to the Court of Appeals in one of his previously-dismissed appeals. Appellate Records for State v. James B. Curry, South Carolina Appellate Court Public Index, https://ctrack.sccourts.org/public/caseView.do?csIID=58339. Notably, in a filing dated *July 15, 2020*, Curry accused Juror # 38 of concealing during voir dire the fact "she was employed by the Sixth Circuit Judicial or, Sixth Circuit or law enforcement during [his] trial[.]" Id.

simply wish to rehash matters that had previously been thoroughly vetted by South Carolina courts. (R. p. 106).

Curry responded to that order by quickly submitting several more filings. (R. pp. 107-113). First, Curry moved for rehearing along with the recusal of Judge Gibbons. (R. pp. 107-110). As support for such relief, Curry—amongst other things—maintained Judge Gibbons's ruling was erroneous because the specific new claim he was making in regard to Juror # 38 had not, in fact, previously been addressed. (R. pp. 107-110). He further threatened to have Judge Gibbons held in contempt of court for misconduct in office and warned about an imminent law enforcement investigation that was to be conducted into the matter. (R. pp. 107-110). Second, Curry submitted a document entitled "Lawsuit" to the Chester County Court of Common Pleas. (R. pp. 111-113). Through it, Curry—while identifying himself as "Plaintiff"—sought either another hearing in which he would be able to question Juror # 38 about her employment history *or* an award of $1,000,000 for a violation of his rights and his "pain an[d] suff[e]ring." (R. pp. 111-113). As support for such relief, Curry accused the Chester County Clerk of Court of committing a "corrupt act" and being a key conspirator in a cover-up related to Juror # 38. (R. pp. 111-113).

Upon receiving Curry's latest submissions, Judge Gibbons denied Curry's request for rehearing while again reiterating the issue Curry was seeking to raise "ha[d] been litigated numerous times" already. (R. p. 114). However, Judge Gibbons elected to grant a hearing to Curry on his request for recusal. (R. p. 114).

Thereafter, at the outset of the ensuing July 2022 hearing, Judge Gibbons advised Curry he intended to primarily address Curry's recusal motion but also intended to address the applicability of Section 24-27-200 in light of Curry's "excessive filings." (R. p. 3). He then

allowed Curry to present the basis for his recusal motion. (R. pp. 3-4). At that point, Curry claimed Juror # 38 failed to disclose she was formerly employed with the Great Falls Police Department. (R. pp. 4-5). In response, Judge Gibbons indicated he had already addressed that particular issue, and Curry quickly tried to refute that by pointing out it was actually Judge Kinard who had "dealt with" it in 2011. (R. p. 5). However, Judge Gibbons responded he also had personally addressed it through his May 2022 order. (R. p. 5).

Following that discussion, Judge Gibbons reminded Curry the current purpose of the hearing was to address the recusal motion. (R. pp. 5-6). In response, Curry claimed he did not find out until 2022 that Juror # 38 was employed with law enforcement in Chester, which allegedly was something different from the issue of what Juror # 38's earlier employment had been. (R. p. 6). Based on that, Curry explained he was now accusing Judge Gibbons of perjury since Judge Gibbons had stated the issue had already been litigated numerous times, which Curry maintained was incorrect. (R. p. 6). Moreover, Curry alleged his latest claim related to Juror # 38 also could not properly be considered to have been previously litigated during the 2021 proceedings before Judge Griffith because the claim he raised during those proceedings—Juror # 38 purportedly worked in the courthouse at the time of his trial—was simply the result of a mistaken mix-up on his part as he truly meant to allege she worked for the city police department at that time. (R. pp. 10-11). As a result, Curry alleged Judge Gibbons's order was erroneous, which he identified as the basis upon which he was seeking recusal. (R. pp. 11-14).

At that point, Judge Gibbons declined to recuse himself and denied Curry's motion. (R. p. 14). He then noted Curry had been repeatedly warned about frivolous filings and still had continued to inundate the Chester County Clerk of Court with submissions, including ones like the letter threatening the clerk's "ass was grass." (R. pp. 14-18). Based on the "motions" and

"papers" Curry had continued to file, Judge Gibbons then sua sponte found Curry had willfully violated Section 24-27-200 by continuing to file "frivolous actions, frivolous documentation, frivolous *lawsuits*, letters," and other matter. (R. p. 19) (emphasis added). As a result, Judge Gibbons ordered Curry's sentencing credits were to be rescinded pursuant to the statute, and he confirmed a written order on the matter would be forthcoming. (R. pp. 19-21; p. 31).

Thereafter, before Judge Gibbons was able to issue his written order, Curry submitted two documents: (1) a motion seeking reconsideration, the quashing of Judge Gibbons's orders from April of 2022 and May of 2022, Judge Gibbons's recusal, and the grant of a new trial; and (2) a premature notice of appeal. (R. pp. 120-125). Through his latest motion, Curry threatened Judge Gibbons's pension and again accused him of perjury. (R. pp. 120-121). Importantly though, Curry did *not* at any point challenge the applicability of Section 24-27-200 to his case based on the circumstances involved. (R. pp. 120-121).

Subsequently, on August 10, 2022, Judge Gibbons issued his written order. (R. pp. 116-119). Through it, Judge Gibbons—consistent with his prior ruling—denied Curry's motion for recusal and further directed the Department of Corrections to "remove Curry's earned work, education, or good conduct credits in accordance with Section 24-27-200." (R. pp. 116-119) (footnote omitted). After that, Curry again filed a notice of appeal, and, by that point, his second one was no longer premature. (R. pp. 129-131).

ARGUMENT

I.

Curry's current argument concerning the supposed inapplicability of Section 24-27-200 of the South Carolina Code of Laws was not properly preserved for appellate review because it was neither raised to nor ruled upon by the circuit court judge. However, notwithstanding any issue preservation concerns, the circuit court judge did not abuse his discretion or otherwise err by applying Section 24-27-200 to Curry's case because—just as the circuit court judge found—Curry violated that statutory provision by incessantly submitting numerous frivolous filings, including a recent frivolous lawsuit demanding a civil award of $1,000,000 for things such as his pain and suffering unless his other demands were met.

Standard of Review

When conducting appellate review of an issue hinging on interpretation of a statute, the appellate court will review the matter de novo. State v. Whitner, 399 S.C. 547, 552, 732 S.E.2d 861, 863 (2012). And, in doing so, the appellate court is free to decide the matter without affording any deference to the circuit court judge because questions of statutory interpretation are questions of law. Id. Meanwhile, when reviewing a circuit court judge's ruling exercising statutory authority to direct the revocation of sentencing credits, an appellate court should not reverse such a discretionary ruling on appeal absent an abuse of discretion or the commission of some legal error. Cf. State v. Archie, 322 S.C. 135, 136-137, 470 S.E.2d 380, 381 (Ct. App. 1996) ("This court will not disturb the circuit court's decision to revoke probation unless the decision was influenced by an error of law, was without evidentiary support, or constituted an abuse of discretion.").

Analysis

A. Curry's Failure to Properly Preserve His Current Issue with Judge Gibbons's Ruling Pursuant to Section 24-27-200 for Appellate Review

In South Carolina, issue preservation requirements are a fundamental component of appellate procedure. Gaddy v. Douglass, 359 S.C. 329, 350, 597 S.E.2d 12, 23 (Ct. App. 2004).

The key purpose of those requirements is "to give the trial court a fair opportunity to rule on the issues, and thus provide [the appellate court] with a platform for meaningful appellate review." Queen's Grant II Horizontal Prop. Regime v. Greenwood Dev. Corp., 368 S.C. 342, 373, 628 S.E.2d 902, 919 (Ct. App. 2006). Through their enforcement and application, the trial court is guaranteed a chance "to rule properly after it considered all relevant facts, law, and arguments[,]" and the appellate court is provided with everything needed to properly review whatever ruling is made within the limits of the applicable standard of review. I'On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000); see State v. Stone, 376 S.C. 32, 36, 655 S.E.2d 487, 488-489 (2007) ("If a pitch was never thrown at trial, we cannot review whether the trial court made the proper call.").

For an issue to be preserved for appellate review pursuant to our issue preservation requirements, the issue must have been: (1) raised to and ruled upon by the trial court; (2) raised by the appellant; (3) raised in a timely manner; and (4) raised to the trial court with sufficient specificity. State v. Rogers, 361 S.C. 178, 183, 603 S.E.2d 910, 912-913 (Ct. App. 2004). Thus, based on those requirements, an issue—including even a constitutional one—cannot ordinarily be raised or considered on appeal unless it was first presented to and ruled upon by the trial judge. State v. Freiburger, 366 S.C. 125, 135, 620 S.E.2d 737, 742 (2005); see State v. Patterson, 324 S.C. 5, 19, 482 S.E.2d 760, 767 (1997) ("Appellant is limited to the grounds raised at trial."); In re Care and Treatment of Corley, 365 S.C. 252, 258, 616 S.E.2d 441, 444 (Ct. App. 2005) ("Constitutional issues, like most others, must be raised to and ruled upon by the trial court to be preserved for appeal.").

In the case sub judice, Curry contends on appeal Judge Gibbons's order must be reversed. As support for that contention, Curry now maintains—for the first time—Section 24-27-200

could not and cannot properly be applied to his case because: (1) he purportedly "has only filed PCR actions or motions in the Court of General Sessions" since five earlier non-PCR civil cases he filed were dismissed; and (2) Section 24-27-200 does not apply to matters filed in the Court of General Sessions.

Critically though, Curry—who admittedly had been warned in the past about the potential for Section 24-27-200 to be utilized based on his repetitive frivolous filings—did *not* raise such a contention to Judge Gibbons at any point during the hearing or at any point after it. See Patterson, 324 S.C. at 19, 482 S.E.2d at 767 (instructing an appellant is limited on appeal solely to the grounds raised at trial). As a result, Curry's current appellate argument was neither raised to nor ruled upon by Judge Gibbons.[9] See In re Walter M., 386 S.C. 387, 392, 688 S.E.2d 133, 136 (Ct. App. 2009) ("Generally, an issue must be both raised to and ruled upon by the trial court in order to be preserved for appellate review."); cf. State v. Baker, 390 S.C. 56, 65, 700 S.E.2d 440, 444 (Ct. App. 2010) ("Baker cannot now add a constitutional claim on appeal because he cannot raise one ground to the trial court and a different ground on appeal.").

Accordingly, to the extent Curry is now arguing Section 24-27-200 was inapplicable to his case for the first time on appeal, that argument must be rejected as it was simply not properly preserved for appellate review pursuant to our well-established issue preservation requirements, which—significantly—apply to represented and unrepresented parties alike. See State v. Head, 330 S.C. 79, 87, 498 S.E.2d 389, 393 (Ct. App. 1997) (instructing an appellate court "cannot address unpreserved errors"); see also McCall v. A-T-O, Inc., 276 S.C. 143, 146, 276 S.E.2d 529, 530 (1981) ("This Court has never held a layman to a lesser standard than attorneys.");

[9] Despite Curry's failure to raise his current argument during the circuit court proceedings, Judge Gibbons was nonetheless aware our Supreme Court previously found Section 24-27-200 did not apply to PCR actions. (R. p. 119).

Goodson v. Am. Bankers Ins. Co. of Fla., 295 S.C. 400, 403, 368 S.E.2d 687, 689 (Ct. App. 1988) (instructing "the court will not hold a layman to any lesser standard than is applied to an attorney"); cf. State v. Charron, 351 S.C. 319, 328, 569 S.E.2d 388, 393 (Ct. App. 2002) (finding allegations of due process and equal protection violations were not preserved for appellate review when there was no indication those issues were raised to the trial judge). The circuit court judge's ruling should be affirmed.

B. Propriety of Judge Gibbons's Ruling Based on Section 24-27-200 Under the Circumstances Involved

In 1996, the South Carolina General Assembly enacted the Inmate Litigation Act ("the Act") and, as part of that legislation, included a statute allowing for the revocation of inmate sentencing credits under certain circumstances. Wade v. State, 348 S.C. 255, 260, 559 S.E.2d 843, 845 (2002). Specifically, pursuant to the revocation statute, an inmate in South Carolina:

> shall forfeit all or part of his earned work, education, or good conduct credits in an amount to be determined by the Department of Corrections upon recommendation of the court if the court finds that the prisoner has done any of the following in a case pertaining to his incarceration or apprehension filed by him in state or federal court or in an administrative proceeding while incarcerated:
>
> (1) submitted a malicious or frivolous claim, or one that is intended solely to harass the party filed against;
>
> (2) testified falsely or otherwise presented false evidence or information to the court;
>
> (3) unreasonably expanded or delayed a proceeding; or
>
> (4) abused the discovery process.

S.C. Code Ann. 24-27-200. And, notably, a court in our state is permitted to make the findings required by the broad language of that provision "on its own motion[.]" Id.

However, subsequent to the enactment of that legislation, our Supreme Court analyzed the Act as a whole and concluded the General Assembly intended for its application to be "limit[ed] . . . to civil cases." Wade, 348 S.C. at 263, 559 S.E.2d at 846. Furthermore, after reaching that conclusion, the Supreme Court determined "Section 24-27-200 does not apply to PCR hearings" despite the fact PCR actions are civil in nature. Id. at 264, 559 S.E.2d at 847.

In the case at bar, Curry—while relying heavily on the decision in Wade—maintains Judge Gibbons erred by applying Section 24-27-200 to his case. In so maintaining, Curry argues the provision could not be applied to him because he had purportedly only filed PCR actions or general sessions motions prior to being sanctioned and stripped of his sentencing credits.

Significantly though, Curry's claim about the nature of his incessant filings is highly inaccurate, and Judge Gibbons did *not* apply Section 24-27-200 to Curry's case purely based on his continuous submission of general sessions motions like his many, many filings seeking the grant of a new trial based on alleged after-discovered evidence. To the contrary, Judge Gibbons specifically elected to apply Section 24-27-200 under the circumstances involved because Curry—after having multiple earlier civil cases dismissed and despite repeated warnings to curtail his behavior—continued to submit frivolous filings, *including* frivolous "lawsuits." Indeed, just two months before the hearing in which Judge Gibbons sanctioned Curry pursuant to Section 24-27-200, Curry submitted a filing entitled "Lawsuit" through which he—as a self-identified plaintiff in the Chester County Court of Common Pleas—demanded a civil award of $1,000,000 for things such as his pain and suffering unless his other demands were met. Under such circumstances, Judge Gibbons had a legitimate basis upon which to revoke Curry's sentencing credits pursuant to the plain language of Section 24-27-200, and he did not abuse his discretion or otherwise err by doing just that after Curry submitted—in addition to many other

vexatious filings—yet another frivolous lawsuit in a South Carolina court. See S.C. Code Ann. 24-27-200 (setting out the procedure by which a prisoner's sentencing credits can be forfeited and allowing for such forfeiture when the prisoner—amongst other things—submits a frivolous or malicious claim). Judge Gibbons's ruling should be affirmed.

II.

The circuit court judge properly declined to recuse himself based purely on a claim he had supposedly made an erroneous ruling because: (1) the making of an incorrect ruling would not and does not ordinarily constitute evidence of a judge's bias or partiality or provide a sufficient basis for recusal; (2) no other evidence was presented to suggest the circuit court judge could not be fair and impartial to Curry; and (3) the circuit court judge did not truly make any erroneous rulings or factual findings in Curry's case.

Standard of Review

Regardless of the venue involved, decisions regarding recusal rest in the sound discretion of the circuit court judge. Ness v. Eckerd Corp., 350 S.C. 399, 404, 566 S.E.2d 193, 196 (Ct. App. 2002); see State v. Howard, 384 S.C. 212, 218, 682 S.E.2d 42, 45 (Ct. App. 2009) (instructing a circuit court judge should exercise sound discretion in determining whether the judge's partiality might reasonably be questioned under the circumstances involved). In reviewing a circuit court judge's decision not to recuse on appeal, an appellate court will not reverse the judge's failure to recuse absent evidence of judicial bias or prejudice. State v. Jackson, 353 S.C. 625, 627, 578 S.E.2d 744, 745 (Ct. App. 2003); see Simpson v. Simpson, 377 S.C. 519, 522, 660 S.E.2d 274, 276 (Ct. App. 2008) ("Under South Carolina law, if there is no evidence of judicial prejudice, a judge's failure to disqualify [herself] will not be reversed on appeal." (citation and internal quotations omitted)).

Analysis

Unquestionably, every criminal defendant—along with any other party to a case—has a right to a fair proceeding presided over by a fair and impartial judge. State v. Langford, 400 S.C. 421, 437, 735 S.E.2d 471, 479 (2012). In order to safeguard such a right, "a judge should disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned." Jackson, 353 S.C. at 627, 578 S.E.2d at 745. However, recusal is a *drastic* remedy, and, unless a valid reason requiring disqualification truly exists, a circuit court judge has

a *duty* to preside over the case. Simpson, 377 S.C. at 525-526, 660 S.E.2d at 278; see Cannon 3, CJC, Rule 501, SCACR ("A judge shall hear and decide matters assigned to the judge except those in which disqualification is *required*." (emphasis added)); see also Belue v. Leventhal, 640 F.3d 567, 575 (4th Cir. 2011) (characterizing recusal as a "drastic remedy").

Importantly, judges are presumed to be unbiased, and that presumption is "more than a pious hope." Langford, 400 S.C. at 438, 735 S.E.2d at 480 (citation and internal quotation marks omitted). "It is not enough for a party seeking disqualification to simply allege bias or prejudice." Jackson, 353 S.C. at 627, 578 S.E.2d at 745. Instead, the burden is upon the party seeking recusal to show some evidence of that bias or prejudice. Id. Furthermore, "[t]he alleged bias or prejudice must stem from an *extra-judicial* source and result in a decision based on information other than what the judge learned from his or her participation in the case as a judge." Id. (emphasis added); see United States v. Grinnell Corp., 384 U.S. 563, 583 (1966) ("The alleged bias and prejudice to be disqualifying must stem from an extrajudicial source and result in an opinion on the merits on some basis other than what the judge learned from his participation in the case."); Howard, 384 S.C. at 217, 682 S.E.2d at 45 (instructing the alleged bias must be personal—as opposed to judicial—in nature in order to warrant recusal). Standing alone, judicial rulings *almost never* constitute a valid ground for recusal. Liteky v. United States, 510 U.S. 540, 555 (1994); see Belue, 640 F.3d at 575 ("Dissatisfaction with a judge's views on the merits of a case may present ample grounds for appeal, but it rarely—if ever—presents a basis for recusal.").

In the present case, Curry contends Judge Gibbons reversibly erred by refusing to recuse himself. As support for that contention, Curry maintains Judge Gibbons's impartiality could fairly be questioned and he was required to recuse himself because—in denying the request for

recusal—he purportedly made an unsupported factual finding. More specifically, Curry alleges Judge Gibbons erroneously determined his claim related to Juror # 38 had already been litigated when it supposedly had not due to the fact only *some* of the various theories he had previously advanced regarding the juror's purported background had been addressed on the merits.

Contrary to Curry's current contention, Judge Gibbons did not commit any error—factual or otherwise—by refusing to recuse himself. Instead, just as Judge Gibbons's recognized, Curry sought his recusal not based on any actual bias or prejudice on the judge's part but purely because the judge—like many judges before him—had issued a ruling with which Curry did not agree, which most certainly did *not* a constitute a valid basis for recusal. See Langford, 400 S.C. at 439, 735 S.E.2d at 480 ("The contention that a judge was biased *solely* because he ruled against a defendant is untenable and insulting towards the court, and it would set a dangerous precedent were we to sanction it."); see also Liteky, 510 U.S. at 555-556 ("*Not* establishing bias or partiality . . . are expressions of impatience, dissatisfaction, annoyance, and even anger, that are within the bounds of what imperfect men and women, even after having been confirmed as federal judges, sometimes display. A judge's ordinary efforts at courtroom administration—even a stern and short-tempered judge's ordinary efforts at courtroom administration—remain immune."); Grinnell Corp., 384 U.S. at 583 ("The alleged bias and prejudice to be disqualifying must stem from an extrajudicial source and result in an opinion on the merits on some basis other than what the judge learned from his participation in the case."); Howard, 384 S.C. at 218, 682 S.E.2d at 54 ("[T]he alleged bias must be personal, as distinguished from judicial, in nature." (citation and internal quotation marks omitted)); cf. Srivastava v. Srivastava, 411 S.C. 481, 500, 769 S.E.2d 442, 452-453 (Ct. App. 2015) ("The fact that a family court judge ultimately rules against a litigant is not proof of prejudice by the judge, *even if it is later held the judge*

committed error in his rulings." (emphasis added and citations, brackets, and internal quotations omitted)).

Moreover, accepting Curry's inaccurate claim of an erroneous ruling as true, Judge Gibbons proceeded with giving Curry a full opportunity to be heard on his request for recusal before denying it. See Shaw v. State, 276 S.C. 190, 192-193, 277 S.E.2d 140, 141 (1981) ("[W]e conclude that as a general rule the judge, in determining whether to proceed, must accept as true the factual allegations of a motion to disqualify. However, *this does not prevent the judge from exercising his right to consider the legal sufficiency of those facts*." (emphasis added)). And, notably, during the hearing on the matter, Curry did *not* identify anything truly demonstrating Judge Gibbons—or any of the other judges who had reached a similar conclusion—was wrong by concluding Curry's claim of a voir dire violation by Juror # 38 had already previously been litigated and no new evidence on the matter had been presented. Significantly, demonstrating that fact, Curry previously had a full and fair opportunity to explore whether Juror # 38 committed any voir dire violations by virtue of the PCR evidentiary hearing in which she testified, and the fact Curry had subsequently—and repeatedly—come up with new theories about her background after his initial ones did not pan out did *not* mean his claim concerning that juror had not already been previously litigated. See Mallett v. Mallett, 323 S.C. 141, 147, 473 S.E.2d 804, 808 (Ct. App. 1996) (stating a judge's impartiality might reasonably be questioned when the judge's factual findings are not supported by the record but nevertheless rejecting the suggestion the trial judge's findings in the Malletts' case were "so unsupported by the record as to manifest impartiality"); cf. Commonwealth v. Bond, 819 A.2d 33, 39 (Pa. 2002) (instructing "it is well-settled that a PCRA petitioner cannot obtain review of claims that were previously

litigated by presenting *new theories of relief* . . . to relitigate previously litigated claims" (emphasis added)).

Resultantly, since no valid basis for recusal existed in Curry's case, Judge Gibbons had a *duty* to preside over the matter and to not recuse himself under the circumstances involved. Cannon 3, CJC, Rule 501, SCACR; see Liteky, 510 U.S. at 555 ("[J]udicial rulings alone almost never constitute a valid basis for a bias or partiality motion."). Therefore, Judge Gibbons committed no conceivable error by doing just that, and there are no legitimate grounds upon which his decision not to recuse could be reversed on appeal. See Simpson, 377 S.C. at 525-526, 660 S.E.2d at 278 ("When disqualification is not required, the South Carolina Code of Judicial Conduct holds, 'A judge *shall* hear and decide matters assigned to the judge[.]' " (citation omitted)); see also Jackson, 353 S.C. at 627, 578 S.E.2d at 745 ("If there is no evidence of judicial bias or prejudice, a judge's failure to disqualify himself will not be reversed on appeal."). The circuit court judge's ruling should be affirmed.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted the judgment and ruling of the lower court be affirmed.

Respectfully submitted,

ALAN WILSON
Attorney General

MARK R. FARTHING
Senior Assistant Deputy Attorney General

RANDY E. NEWMAN, JR.
Solicitor, Sixth Judicial Circuit

BY:_____
Mark R. Farthing
S.C. Bar Number 76901

ATTORNEYS FOR RESPONDENT

April 23, 2024

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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Chester County
Honorable Brian M. Gibbons, Circuit Court Judge
Appellate Case No. 2022-001104

THE STATE,

Respondent,

vs.

JAMES B. CURRY,

Appellant.

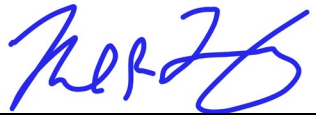
CERTIFICATE OF COUNSEL

The undersigned certifies this Final Brief of Respondent complies with Rule 211(b), SCACR, and the April 15, 2014, order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

ALAN WILSON
Attorney General

MARK R. FARTHING
Senior Assistant Deputy Attorney General

RANDY E. NEWMAN, JR.
Solicitor, Sixth Judicial Circuit

BY: 
Mark R. Farthing
S.C. Bar Number 76901

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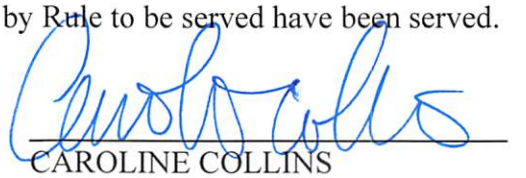
PROOF OF SERVICE

I, Caroline Collins, certify I have served the within Final Brief of Respondent on Appellant by sending an electronic copy via email to the address listed in AIS for the following individual:

Jessica M. Saxon, Esq.
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, SC 29211

I further certify all parties required by Rule to be served have been served.
This 23rd day of April, 2024.



CAROLINE COLLINS
Administrative Coordinator
Office of the Attorney General