

The South Carolina Court of Appeals

The State, Respondent,

v.

Bernard Bagley, Appellant.

Appellate Case No. 2024-000666

ORDER

This appeal arises out of the circuit court's order denying the appellant's motion to modify his sentence under the Omnibus Crime Reduction and Sentencing Reform Act. *See* Act No. 273, 2010 S.C. Acts 1937.

The appellant was sentenced on April 12, 1991. We affirmed the appellant's murder conviction and sentence on December 10, 1992. *See State v. Bagley*, Op. No. 92-UP-165 (S.C. Ct. App. filed December 10, 1992). The appellant filed the motion to modify sentence on December 27, 2023. The circuit court denied the motion to modify sentence on March 14, 2024, finding the appellant's motion was not timely made under Rule 29(a), SCRCrimP. Rule 29(a), SCRCrimP ("Except for motions for new trials based on after-discovered evidence, post-trial motions shall be made within ten (10) days after imposition of the sentence."). Although the appellant timely served his notice of appeal from the March 14, 2024 order, the time for serving the notice of appeal was not tolled because the Rule 29(a) motion was not timely made. *See* Rule 203(b)(2) ("When a timely post-trial motion is made under Rule 29(a), SCRCrimP, the time to appeal shall be stayed and shall begin to run from receipt of written notice of entry of an order granting or denying such motion."); *State v. Devore*, 416 S.C. 115, 119, 784 S.E.2d 690, 692 (Ct. App. 2016) ("[I]n the absence of a timely served notice of appeal, this court has no jurisdiction.").

To the extent the appellant claims he was filing a motion pursuant to section 17-25-65 of the South Carolina Code (2014), as noted by the circuit court, the motion was not properly before the circuit court because it was not filed by the State. *See*

S.C. Code Ann. §17-25-65 (setting forth the conditions under which the State may make a motion to reduce a sentence); *State v. Price*, 441 S.C. 423, 437, 895 S.E.2d 633, 640 (2023) ("It is clear, therefore, that section 17-25-65 requires the circuit solicitor to *file a written motion* before the circuit court is empowered to consider reducing an inmate's sentence.") (emphasis in original). The Supreme Court issued an order on February 5, 2013, prohibiting the appellant from "filing any further collateral actions in the circuit court, including PCR actions and habeas corpus actions, challenging his convictions from 1991 without first obtaining permission from [the Supreme Court]." See *Bagley v. State*, S.C. Sup. Ct. Order dated Feb. 5, 2013. Upon our review of the records of the Supreme Court, it does not appear the appellant requested permission to file a collateral attack of his sentence prior to filing this motion in the circuit court.¹ Thus, the appellant was not allowed to collaterally attack his 1991 sentence pursuant to section 17-25-65. As noted in the circuit court's order, the appellant has exhausted all avenues of appellate relief.

For the foregoing reasons, this appeal is dismissed. The remittitur will be sent as provided by Rule 221(b), SCACR.


_____, C.J.
FOR THE COURT

Columbia, South Carolina

cc:

Bernard Bagley, 175851
Alan McCrory Wilson, Esquire
Melody Jane Brown, Esquire
Daniel Ryan Goldberg, Esquire
The Honorable Daniel Coble

FILED
May 23 2024

¹ On April 29, 2024, the Clerk's office sent a deficiency letter to the appellant asking for proof of having received permission from the Supreme Court to file the motion for modification of sentence in the circuit court. In response, the appellant filed a motion to hold the appeal in abeyance to permit him to ask whether it was appropriate to file a motion for modification of sentence pursuant to other sections of the Omnibus Crime Reduction and Sentencing Reform Act of 2010, but not §13, which enacted §17-25-65. The appellant's request to hold the appeal in abeyance to seek permission to file the motion after-the-fact is denied.