

THE STATE OF SOUTH CAROLINA

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IN THE COURT OF APPEALS

JUL 03 2024

SC Court of Appeals

Appeal From Horry County

Larry B. Hymad, Circuit Court Judge
William Seals, Circuit Court Judge
R. Ferrell Cottraw Jr., Circuit Court Judge

Appellate Case No. 2020-201497
Unpublished Opinion 2024-UP-221

STATE

Respondent

v.

Theodore J. Bolick

Appellant

THE APPELLANT'S MOTION FOR REHEARING

The appellant, Theodore Bolick pursuant to Rule 221, SCACR moves the court to reconsider and modify the unpublished opinion entered June 26, 2024 in his appeal. In support of this motion, the

appellant shows the following

I. This Court overlooked the material fact that appellant's motion for mistrial and new trial were filed and granted under Rule 4, SCRCrimP., and is doing so completely misapplied the law as to the state's motion to reconsider being properly before the circuit court, or the circuit court having authority to consider it.

(a) As this court correctly found the appellant prior to having his sentence unsealed and imposed on September 16, 2020 filed pro se motions for a mistrial and new trial. Because a trial is not complete until a defendant's sentences have been unsealed and read to the defendant pursuant to Lytle v. Miller, 157 S.C. 332 (1930), the only statute which the appellant's motion for mistrial and new trial were allowed was Rule 4, SCRCrimP.. The state in its Final Brief concedes appellant's motion for mistrial and new trial were not post-trial motions under Rule 29, SCRCrimP.

As this Court also correctly found on September 16, 2020 when the circuit court unsealed appellant's sentences it refused and failed to consider appellant's motion for mistrial and new trial.

This Court also correctly found that the circuit court granted the appellant's Rule 4, SCRCrimP motions for mistrial and new trial. Although this Court found the appellant's motions were not granted until April 19, 2021, the transcripts from April 15, 2021 show the motions were granted on April 15, 2021 in open court by circuit court judge R Ferrell Cothran Jr who left the fifteenth circuit on April 16, 2021 and returned to his circuit.

However, this Court in reaching its decision that the state's motion to reconsider was proper and timely under Rule 29, SCRCrimP has completely overlooked the plain and unambiguous language of Rule 4(b) SCRCrimP, which states,

"Subsequent Applications for Order After Refusal. If any motion be made to any judge and be denied in whole,

or in part, or be granted conditionally, no subsequent motion upon the same set of facts shall be made to any other judge in that action. If upon such subsequent motion any order be made, it shall be void (Emphasis Added)

This plain unambiguous language of Rule 4 (b) SCRCrimP not only prohibited any motion to change an order decided under this rule, but it also voids any order issued as a result of the prohibited motion, Rule 29 motions included.

In overlooking Rule 4 (b) this court decided that the state's motion to reconsider under Rule 29, SCRCrimP filed on April 23, 2021, seven months after appellant was sentenced on September 16, 2020, which challenged orders granting a mistrial and a new trial were proper and timely, and that the circuit court had authority and jurisdiction to consider them.

Not only does Rule 4 (b) SCRCrimP completely disprove this finding, but the

plain and unambiguous language of Rule 29, SCRCrIMP would demonstrate this court has plainly misapplied the law, pursuant to Rule 29, SCRCrIMP,

"Generally, Except for motions for new trials based on after discovered evidence, post-trial motions shall be made within ten (10) days after the imposition of the sentence."

This plain language establishes two simple requirements for filing a post-trial motion under Rule 29, neither of which the state has met. First, the state's motion to reconsider filed under Rule 29 was filed on April 23, 2021 over seven months after the appellant's sentences were imposed on September 16, 2020.

Second, the state's motion to reconsider did not challenge an imposed sentence, but rather challenged orders granting a mistrial and new trial, not a sentence.

Therefore, the state's motion to reconsider under Rule 29 was completely inappropriate as they could not meet

either of the two simple requirements for said motion. The motion was filed seven months after appellants sentence was imposed, and it challenged orders granting mistrial and new trial under Rule 4, SCRCrimP.

Further, in deciding the states motion to reconsider was proper the court misapplied State v. Pfeiffer, 427 S.C. 10 (2019). As established by the stamped filed dates on the motion for mistrial and new trial, and the states own admission in the Trial Brief, appellants motion for mistrial and new trial were not post-trial motions. Because appellants motions were not post-trial motions Pfeiffer has no logical or reasonable application to this case. The states motion to reconsider was the only attempt at a post-trial motion, appellants motions for mistrial and new trial were motions under Rule 4, SCRCrimP.

Not only do the Rules of Criminal Procedure as promulgated by South Carolina General Assembly demonstrate that the

states motion to reconsider was not properly before the circuit court, but Rule 4 (b) SCR CrimP establishes it was not allowed by law, and any order granting it was void.

II The fact that appellants motion for mistrial and new trial were filed and granted pursuant to Rule 4, SCR CrimP requires a different decision from that rendered by the Court of Appeals.

III The Court of Appeals should have decided the states motion to reconsider was not allowed, and the order which granted it was void in accordance with the ~~and~~ mandatory language of Rule 4 (b), SCR CrimP.

WHEREFORE, the appellant respectfully requests this Honorable Court recognize appellant has been wrongfully incarcerated by an order that is void on its face by the mandatory language of Rule 4 (b) SCR CrimP which was obtained by a motion not allowed under Rule 4 (b)

since June 10, 2021 and modify its opinion
dated June 26, 2024 and rule in favor of
the appellant.

June 26, 2024

Theodore Bolick pro se
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MEMORANDUM OF AUTHORITY

Appellant, Theodore Bolick in support of his Motion For Rehearing submits this Memorandum of Authority

Motions In Circuit Court

There are only two rules that allow

motions to be filed in the circuit courts. The first is Rule 4, SCRCrIMP. The second is Rule 29, SCRCrIMP. There are no other rules which allow or govern motions in the circuit courts.

RULE 4, SCRCrIMP

Rule 4. Motions In General

(a) Form of Motions. An application to the court for an order shall be by motion which, unless during a hearing or trial in open court with a court reporter present, shall be made in writing, shall state with particularity the grounds thereof, and shall set forth the relief or order sought. The requirement of writing is fulfilled if the motion is stated in a written notice of the hearing of the motion.

(b) Subsequent Applications for Order After Refusal. If any motion be made to any judge and be denied, in whole or in part, or be granted conditionally, no subsequent motion upon the same set of facts shall be made to any other judge in that action. If upon such subsequent motion any order be

made, it shall be void.

This simplistically plain, easy to follow, unambiguous language of Rule 4, SCRCrimP is clear in its legislative intent. Appellant's Motion For Mistrial and Motion For New Trial were filed months before appellant was sentenced under Rule 4, SCRCrimP. The Appellant's Motion For Mistrial and Motion For New Trial were granted pursuant to Rule 4, SCRCrimP. Therefore, Rule 4 (b) SCRCrimP by the plain language does not allow a motion to change the order of a mistrial or new trial, and voids any order made upon such prohibited motion.

A TRIAL'S CONCLUSION

A trial is not concluded until defendant's sentence is unsealed and read to him. See Lytle v. Miller, 157 S.C. 332 (1930).

The only rule which allows motions to be filed during the course of a trial is Rule 4, SCRCrimP. Post-trial motions are governed by Rule 29 SCRCrimP.

EXHIBIT 7

RULE 29, SCRCRIMP.

Rule 29. Post Trial Motions

(a) Generally, Except for motions for new trials based on after discovered evidence, post-trial motions shall be made within ten (10) days after the imposition of the sentence.

This is the only pertinent part of Rule 29 which applies to appellant's case. As plainly demonstrated on the face of appellant's Motion for Mistrial and Motion for New Trial and the stamped filed dates thereon, along with the states admission on Page 12, footnote 2, states' Final Brief, appellant's motions for mistrial and new trial were not post-trial motions.

STATE V PFEIFFER

The case of State v Pfeiffer, 427 S.C. 10 (2019) involves a case where the defendant plead guilty to criminal conspiracy and securities fraud. After sentencing the

defendant filed a post-trial motion under Rule 29, SCRCrimP challenged the validity of his sentence. The motion was allowed. Then defendant filed second post-trial motion. The Supreme Court, Kittredge J. held that circuit court lacked jurisdiction over second post-trial motion, which was not related to ruling of first post-trial motion, that was filed more than ten day after sentencing.

This case has no bearing or similarity to appellant's case. Appellant did not file a post-trial motion. Appellant filed Rule 4, motions which were granted.

The state, seven months after the appellant was sentenced on September 16, 2020 filed a motion for reconsideration on April 23, 2021 challenging motions for mistrial and new trial and the orders granting them which were filed under Rule 4, SCRCrimP. The only ruling this court should get from Pfeiffer is that after ten days of the sentencing a post-trial motion is not allowed. Instead this court has

cited Wetter in deciding the state was proper in filing a Rule 29 motion over seven months after appellant's sentence was imposed challenging orders that granted a mistrial and new trial under Rule 4, 38 CrimP. There could not possibly be a more misapplied authority.

WHEREFORE, Appellant prays this court will follow the statutory language of Rule 4 (b) and modify its unpublished opinion of June 26, 2024 and rule in the appellant's favor

This 26th day of June, 2024

Theodore Bohick prose
610 Highway #9 West
Bennettsville S.C. 29512

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IN THE COURT OF APPEALS

Appeal From Horry County

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SC Court of Appeals

Larry B. Hymad, Circuit Court Judge
William Seals Jr, Circuit Court Judge
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State

Respondent

v.

Theodore J. Bolick

Appellant

PROOF OF SERVICE

I hereby certify that I served the Respondent a copy of Appellant's Motion For Rehearing and Memorandum of Authority in the U.S. Mail, postage pre-paid and addressed as follows,

Assistant Attorney General
Mark Farthing
P.O. Box 11549
Columbia, S.C. 29211-1549

This 26th day of June, 2024
Theodore Bolick
610 Highwayth 9 West
Bennettsville, SC 29512

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Unpublished Opinion 2024-DP-221

State

Respondent

v.

Theodore J. Bolick

Appellant

AFFIDAVIT OF THEODORE J. BOLICK

I Theodore J. Bolick do hereby affirm and declare under penalty of perjury that the following statements of fact are true and accurate, and they are made in attempt to make

Appellate Court Justices Williams, C.J.; Keaduros, and Turner JJ recognize the truth of these matters, and to help remedy some of the corruption in the South Carolina Judiciary among judges.

1. That on April 22, 2020 pursuant to Rule 4 SCRCrimP I filed a Motion For Mistrial in my criminal cases. That this document is stamped with the Clerk's stamp and dated 4/22/20. This document can be found in the Amended Record on Appeal at page 23.

2. That on June 15, 2020 pursuant to Rule 4, SCRCrimP I filed a Motion For New Trial in my criminal cases. That this document is stamped with the Clerk's stamp and dated 6/15/20. This document can be found in the Amended Record on Appeal at page 40

3. That both the motion for mistrial and new trial were filed months before I was sentenced on September 16, 2020. The transcript of the sentencing

hearing can be found in the Amended Record on Appeal at page 294

4 That Rule 4, SCR CrimP governs all motions filed during the course of a trial.

5 That Rule 29, SCR CrimP governs all post-trial motions. That pursuant to Rule 29 and its plain statutory language a post-trial motion must be filed within ten (10) days of the imposition of the sentence.

6 That on April 15, 2021 circuit court judge, R Ferrell Cothran granted both the motion for mistrial and new trial filed pursuant to Rule 4, SCR CrimP. The orders granting those motions can be found in the Amended Record on Appeal at pages 10 through 13. Both orders on their face state "This order ends the case."

7. That Rule 4(b) SCR CrimP plainly state that a motion denied or granted under Rule 4, SCR CrimP cannot be

be changed and that any motion attempting to change an order that has been granted or denied is not allowed. Further, Rule 4 (b) SCR CrimP voids any order granted as a result of any prohibited motion.

8. That when I was sentenced on September 16, 2020 the circuit court judge William Seals Jr blatantly abused his discretion by refusing to consider my lawfully filed Motion For Mistrial and New Trial filed pursuant Rule 4, SCR CrimP. Again the transcript of the sentencing hearing can be found in the Amended Record on Appeal.

9. As a matter of ^{fact} neither the state or me filed any motion within ten days of me being sentenced in this case.

10. The state's motion to reconsider was filed on April 23, 2021, over 210 days after my sentence was imposed, and therefore was not appropriate or allowed.

11. In deciding my case the Court of Appeals has overlooked Rule 4 (b) SERCRIMP either accidentally, or intentionally.

12. The fact that my Motion for Mistrial and Motion for New Trial were not post-trial motions under Rule 29 is supported by the states own admission on page 12, Footnote 2, of the States Final Brief.

I declare under penalty of perjury the foregoing statements are true and correct

Theodore Bahik

Sword And Subscribed

Before Me

Date 7/1/24

Notary Sarane Oulain

My Commission Expires 2/28/34

Theodore L. Owen 384010
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Legal Mail



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