RECEIVED
Jul 10 2024
SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

On Writ of Certiorari to the Court of Common Pleas
Appeal from Colleton County
Honorable William H. Seals, Jr., Circuit Court Judge
Appellate Case No. 2020-001106

MAURIO D. RIVERS,

Petitioner,

vs.

STATE OF SOUTH CAROLINA,

Respondent.

REPLY TO
RETURN IN OPPOSITION TO
MOTION TO STRIKE
AND
REQUIRE FILING OF
AMENDED APPENDIX AND BRIEF OF PETITIONER

Respondent ("the State"), through its undersigned counsel, would respectfully show unto the Court as follows:

I.

On July 17, 2024, the State filed a motion to strike in Petitioner Maurio D. Rivers's pending post-conviction relief ("PCR") appeal. Through it and for the fundamental reasons identified within it, the State asked this Court to: (1) strike the appendix that has been filed by Rivers; (2) require the filing of an amended appendix that includes all the matter that was part of the lower court record—including a filed-*but-previously-omitted* motion to alter or amend that was submitted by PCR counsel and a return submitted by State—as required by our appellate

court rules and that omits an unfiled pro se motion to alter or amend that was not before the PCR judge; (3) strike the portions of Rivers's Brief of Petitioner citing to, referencing, and relying upon the contents of the unfiled pro se motion to alter or amend; and (4) require Rivers to serve and file an Amended Brief of Petitioner that contains no references to such matter since it was not validly before the PCR judge and, thus, plainly could not and cannot appropriately be considered on appeal. See Rule 243(f), SCACR (identifying the proper and required contents of a PCR appendix); see also Jamison v. State, 410 S.C. 456, 467, 765 S.E.2d 123, 128 (2014) (explaining a PCR appendix can only contain matter that was presented to the PCR court); Tant v. Guess, 37 S.C. 489, 512-513, 16 S.E. 472, 480 (1892) (instructing an appellate court reviewing a lower court decision has long been prohibited from considering matter not before the lower court when resolving the appeal).

II.

On July 27, 2024, Rivers filed a return in opposition to the State's motion through which he: (1) asks this Court to deny the State's motion to strike; and (2) proposes this Court remedy the serious issues identified in the State's motion to strike by requiring the filing of both an amended brief and a supplemental appendix containing the improperly-omitted matter *without* striking any of the matter that has so far been included in the appendix as presently filed. As support for his requests in that regard, Rivers raises numerous contentions, including several substantive ones concerning his views on the merits of the issue he has elected to raise on appeal and on the merits of currently-entirely-theoretical procedural bars the State may or *may not* ultimately raise in its brief. Importantly though, the limited questions raised to this Court by the State's motion to strike are very narrow ones and are much narrower than what Rivers seems to want this Court to now address when ruling on the State's motion. Specifically, those narrow

question are: (1) whether the appendix as presently filed contains matter it cannot properly contain pursuant to the plain mandates of our appellate court rules and also fails to contain other matter those same rules require it to contain; and (2) whether the Brief of Petitioner as presently filed contains improper references to matter not properly before this Court. Significantly, the unequivocal answer to both those questions is "yes," and nothing Rivers has asserted in his return supports a conclusion to the contrary. Therefore, the State's motion to strike should be granted to ensure proper appellate review is conducted in Rivers's case in a manner faithful to the mandates of the South Carolina Appellate Court Rules. Rule 243(f), SCACR; Jamison, 410 S.C. at 467, 765 S.E.2d at 128; see Henning v. Kaye, 307 S.C. 436, 437, 415 S.E.2d 794, 794 (1992) ("[T]he South Carolina Appellate Court Rules are not mere technicalities but provide the parties and this Court with an orderly mechanism through which to guide appeals in this State. It is incumbent upon counsel to provide material that complies with the Rules and facilitates appellate review."). However, there are several points that have been raised in Rivers's return that the State believes warrant additional responses.

III.

First, although Rivers appears to concede—quite accurately—the pro se motion to alter or amend that is contained in the appendix as presently filed was not actually filed with the circuit court in his case, Rivers seems to now suggest the pro se motion's absence from the circuit court file must have somehow resulted from an error on the part of the clerk of court. It did not. Instead, if the clerk of court was following South Carolina law, the reason the pro se motion was not filed in Rivers's case is a simple one: Rivers tried to file his substantive pro se motion to alter or amend *while represented by counsel*, which is expressly not permitted in our state due to the prohibition on hybrid representation. Cf. Miller v. State, 388 S.C. 347, 347, 697

S.E.2d 527, 527 (2010) (unambiguously holding a pro se "59(E)/60(B) Motion" filed by a PCR applicant just like Rivers while that applicant was represented by counsel just like Rivers was "not proper, should not have been accepted, and should not have been ruled upon" and classifying that improper pro se motion as "essentially a nullity"). Accordingly, the Colleton County Clerk of Court appears to have correctly rejected Rivers's improper pro se motion in a manner totally consistent with our Supreme Court's unmistakable directives, and that invalid motion could not properly have been considered or ruled upon at the circuit court level in Rivers's case just as it cannot now properly be considered on appeal. See id. ("We . . . take this opportunity to remind judges and clerks of court of our directive in Foster *not to accept substantive documents*, with the exception of motions to relieve counsel, *filed pro se by a party who is represented by counsel*." (emphasis added)). And, that remains true regardless of whether our clerks of court have been instructed in *other* contexts not applicable here not to reject litigants' filings merely due to technical deficiencies. See Barnes v. State, 433 S.C. 399, 859 S.E.2d 260 (2021) (instructing—in a case in which a clerk of court had rejected an unrepresented litigant's PCR application due to it purportedly being on the wrong form—a clerk of court "may not reject a pleading for lack of conformity with requirements of form; only a judge may do that"); Miller v. State, 377 S.C. 99, 102, 659 S.E.2d 492, 493 (2008) ("[A]lthough a habeas corpus petition may be flawed on a number of procedural or substantive grounds, it is not within the Clerk of Court's authority to refuse to perform her duty based on her opinion that a filing lacks legal merit or is untimely.").

IV.

Second, as support for his request for this Court to deny the State's motion to strike, Rivers has referenced, discussed, and quoted from a *second* unfiled pro se motion to alter or

amend, and he has gone so far as to include that pro se motion as an attachment to his return along with a letter he sent to his PCR counsel. Critically though, in doing so, Rivers does *not* contend those documents were properly before the PCR judge in his case, and he likely could not so contend because nothing suggests those documents—like the pro se motion to alter or amend he included in the appendix as presently filed—were actually filed with the circuit court or otherwise presented to the PCR judge. Records for Maurio D. Rivers, Colleton County Fourteenth Judicial Circuit Public Index, https://publicindex.sccourts.org/colleton/publicindex. As a result, those documents likewise cannot properly be considered on appeal and should not be given any consideration by this Court, and Rivers's troubling attempt to convince this Court not to strike improper matter from the appendix by providing *even more* improper matter that was not before the PCR judge should not be countenanced or indulged.[1] See State v. Williams, 439 S.C. 620, 623, 889 S.E.2d 562, 563 (2023) (emphasizing appellate courts are courts of review as opposed to of first view and declining to consider a matter "[t]he trial court never had the chance to consider" when conducting appellate review); cf. State v. White, 372 S.C. 364, 387, 642 S.E.2d 607, 619 (Ct. App. 2007) ("Morris' statement was not presented to the lower court and cannot properly be included in the Record on Appeal.").

V.

Third, in seeking a denial of the motion to strike, Rivers argues this Court should deny the State's motion due to the lengthy period of delay that elapsed before the State discovered the error and was able to call it to the Court's attention, albeit late in the appellate process. As was readily acknowledged in the State's motion to strike, the State unquestionably contributed to the

[1] Notably, if Rivers truly believed the documents he has attached to his return could properly be considered by this Court in deciding his appeal, it remains unclear why he did not previously include them in the appendix along with the *other* pro se motion to alter or amend he did include.

error that has occurred with the current contents of the appendix in Rivers's case just as Rivers himself did. Indeed, it is highly regrettable that it took so long for any of the parties to discover an error that could be uncovered—or even avoided altogether—through a simple review of the records contained in Colleton County's readily-available public index. Records for Maurio D. Rivers, Colleton County Fourteenth Judicial Circuit Public Index, https://publicindex.sccourts.org/colleton/publicindex. However, since that error has fortunately now been discovered, it was and is incumbent upon the parties to call it to this Court's attention and attempt to correct it as soon as possible, which is exactly what the State has done through the filing of its motion to strike. See Rule 3.3(a)(1), RPC, Rule 407, SCACR (instructing lawyers have a duty not to knowingly "fail to correct" misstatements of law or fact made to a court); Rule 3.3(c), RPC, Rule 407, SCACR (explaining a lawyer's duty of candor "*continue[s]* to the conclusion of a proceeding" (emphasis added)). And, by responding to and remedying that error now, this Court will finally be properly equipped to conduct *accurate* appellate review in Rivers's case, which will ensure the integrity of the proceedings is maintained and a correct result is ultimately reached at the end of the appellate process. See State v. Thompson, 68 S.C. 133, __, 46 S.E. 941, 943 (1904) (recognizing the longstanding rule a court in South Carolina should correct a mistake at the earliest opportunity when and if it is possible to do so). For those reasons coupled with the reasons previously advanced by the State, this Court should grant the State's motion to strike.

WHEREFORE, the State again prays this Court will strike Petitioner's Appendix and Brief of Petitioner as presently filed; require the service and filing of an Amended Appendix and Amended Brief of Petitioner that comply with the requirements of the South Carolina Appellate Court Rules; hold the time period for service and filing of the Brief of Respondent in abeyance

pending a ruling on this motion; and for such other and further relief as the Court may deem just and proper.

Respectfully submitted,

ALAN WILSON
Attorney General

MARK R. FARTHING
Senior Assistant Deputy Attorney General

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

July 10, 2024

RECEIVED
Jul 10 2024
SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

On Writ of Certiorari to the Court of Common Pleas
Appeal from Colleton County
Honorable William H. Seals, Jr., Circuit Court Judge
Appellate Case No. 2020-001106

MAURIO D. RIVERS,

Petitioner,

vs.

STATE OF SOUTH CAROLINA,

Respondent.

PROOF OF SERVICE

I, Caroline Collins, certify I have served the within Reply to Return in Opposition to Motion to Strike and Require Filing of Amended Appendix and Brief of Petitioner on Petitioner by sending an electronic copy via email to the address listed in AIS for the following individual:

Kathrine H. Hudgins, Esquire
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, South Carolina 29211

I further certify all parties required by Rule to be served have been served.
This 10th day of July, 2024.

CAROLINE COLLINS
Administrative Support Manager
Office of the Attorney General