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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY

Larry B. Hyman, Jr., Circuit Court Judge (Trial *in absentia*)
William H. Seals, Circuit Court Judge (Unsealing of sentence)
R. Ferrell Cothran, Jr., Circuit Court Judge (Motions on remand)

Appellate Case No. 2020-001497

THE STATE, ...RESPONDENT,

v.

THEODORE JERRY BOLICK, ...APPELLANT.

RETURN TO PETITION FOR REHEARING

On June 26, 2024, this Court issued an unpublished opinion that affirmed Appellant Theodore Jerry Bolick's convictions and concurrent sentences of twelve years' imprisonment for three counts of second-degree burglary. *State v. Bolick*, Op. No. 2024-UP-221 (S.C. Ct. App. filed June 26, 2024). On July 3, 2024, Appellant filed a "Motion for Rehearing" pursuant to Rule 221(a), SCACR. By letter dated July 11, 2024, this Court asked the State to file a return to the motion. This "Return to Petition for Rehearing" now follows. The State respectfully asks this Court to deny the petition for rehearing pursuant to Rule 221(a), SCACR, because the Court did not overlook or misapprehend any points that would warrant further consideration of this matter. To the extent they relate to the single argument raised in this petition for rehearing, the

substantive arguments recited in the Final Brief of Respondent are hereby incorporated by reference.

Procedural History

This case has a long procedural history with numerous *pro se* filings at every level; therefore, only a portion of it will be summarized below. During the October and November 2016 terms of court, the Horry County Grand Jury indicted Appellant for three counts of second-degree burglary. (R.p.406-p.411). After several pretrial hearings, Appellant's trial proceedings commenced on July 22, 2019. (R.p.131; p.138). After the first day of pretrial motions, Appellant failed to return and his trial proceeded in his absence before the Honorable Larry B. Hyman and a jury. (R.p.154-p.161). On July 24, 2019, the jury convicted him on all three charges, and he was sentenced to concurrent sentences of twelve years in prison. Appellant's sentence was sealed, and a bench warrant was issued for his arrest. Appellant was eventually apprehended in North Carolina on the bench warrant. (R.p.286-p.287; p.291-p.292; p.54).

On or about April 22, 2020, Appellant filed a Motion for Mistrial in the circuit court. (R.p.23-p.39). Thereafter in June 2020, he served and filed a Motion for New Trial. (R.p.40-p.47). It appears several other motions were also served and filed by Appellant prior to him being returned to court for imposition of his sealed sentence. On September 16, 2020, Judge William H. Seals read Appellant's sentence of twelve years on each charge with the sentences to run concurrently. At that hearing, Appellant noted he had filed motions for a mistrial and for a new trial and asked the court to rule on those motions; however, the court denied the request over Appellant's objection. (R.p.294-p.299).

It appears Appellant then timely served a Notice of Appeal, Request for Transcripts, Motion for Appointment of Counsel, and Motion to Reconsider on the solicitor's office and filed

all with the Horry County Clerk of Court. After filing of the Notice of Appeal, the Honorable Steven H. John dismissed a number of outstanding motions, including Motion for Mistrial, Motion for New Trial, Motion for Standing and Continued Objections, Motion for Appointed Counsel, Motion for Transcripts, and a Motion to Reconsider. The motions were dismissed “until the jurisdiction is returned to the Court by the Appellate Court.” (R.p.8). It appears the Notice of Appeal and other documents were forwarded to the South Carolina Supreme Court by the Horry County Clerk of Court. The appeal was subsequently transferred to this Court for consideration.

This Court requested memoranda regarding the appealability of the underlying appeal. After receiving responses from both Appellant and the State, this Court issued an Order on February 5, 2021, holding the appeal in abeyance and remanding to the circuit court for “consideration of all outstanding motions, including the Motion to Reconsider, Motion for Mistrial, and Motion for Appointment of Counsel.” This Court required the State to provide updates “until the motions are resolved.”

On April 15, 2021, the Honorable R. Ferrell Cothran, Jr., held a hearing regarding Appellant’s outstanding motions, including the Motion for Mistrial and Motion for New Trial. (R.p.300-p.335). The circuit court issued orders granting some of Appellant’s outstanding motions on April 16, 2021. (R.p.10-p.13). The State served and filed a Motion to Reconsider along with a memorandum on April 23, 2021. (R.p.51-p.68). The circuit court held a hearing on the State’s Motion on June 8, 2021. (R.p.336-p.402). As a result of the hearing, the circuit court granted the State’s Motion to Reconsider and ultimately denied all of Appellant’s outstanding motions. (R.p.15-p.22).

Appellant timely filed a Notice of Appeal from the denial of his motions. This Court relieved Appellant's counsel and allowed him to proceed *pro se* in this appeal. The parties filed briefs arguing their respective positions and the case was submitted for consideration on June 13, 2024, without oral arguments. As noted above, this Court filed its unpublished opinion affirming Appellant's convictions on June 26, 2024, and Appellant filed his petition for rehearing on July 3, 2024. This return submitted on behalf of the State now follows.

Argument on Appeal

In his appellate brief, Appellant raised five issues, including the argument that the circuit court erred in considering and granting the State's motion to reconsider because it "lacked jurisdiction or authority" over the motions once the term of court ended.¹ The State responded by arguing the circuit court had jurisdiction to consider the State's motion to reconsider from the court's grant of Appellant's motions for a mistrial and a new trial. Specifically, the State argued its motion to reconsider was not an inappropriate successive motion and was filed within the time limits required by Rule 29, SCRCrimP, and that as a result, the end of the term of court did not preclude the circuit court from having jurisdiction over the State's motion. This Court agreed, ruling:

We hold the State's motion to reconsider the circuit court's grant of Bolick's motions for mistrial and a new trial was filed within the time limits required by Rule 29 of the South Carolina Rules of Criminal Procedure. . . . Specifically, the circuit court filed its Form 4 orders granting Bolick's motions on April 19, 2021, and the State filed its motion for reconsideration on April 23, 2021—four days later.

(Op. No. 2024-UP-221, p.5).

Petition for Rehearing

¹ Of the five arguments addressed by this Court, the only issue raised in this petition for rehearing is Appellant's challenge to how this Court denied his claim that: "the circuit court erred by considering the State's motion to reconsider its grant of a new trial because the motion to reconsider was filed after the term of court had expired."

In his petition for rehearing, Appellant argues this Court: “overlooked the material fact that [his] motion[s] for mistrial and new trial were filed and granted under Rule 4, SCRCrimP, and in 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.” (Pet.p.2). The State disagrees and submits that if anyone has overlooked something important on this issue, it is Appellant.

First, Rule 4 of the South Carolina Rules of Criminal Procedure falls under the “Pretrial Matters” section of the Rules. Appellant served and filed both motions at issue **after** he was convicted by the jury and **after** the trial judge issued the sealed sentence in his case. Thus, by its clear and unambiguous terms, Rule 4 has no application to the motions Appellant filed well after both the commencement **and** conclusion of his trial.

Second, and more importantly, Appellant’s position regarding the trial court’s authority and jurisdiction is woefully incoherent. On one hand, Appellant would have this Court accept the lower court’s jurisdiction and authority to issue its initial (and as demonstrated by this Court’s decision—flawed) rulings granting his motions for a new trial and a mistrial, even though those rulings occurred after imposition of his sentence.² On the other, Appellant asks this Court to invalidate the lower court’s consideration of the State’s motion to reconsider its post-trial orders on grounds that they were not really post-trial orders. The State submits this Court correctly concluded Appellant cannot have it both ways. If the lower court lacked jurisdiction and authority to address the State’s motion to reconsider because it was heard after the term of court ended, then it also lacked jurisdiction and authority over Appellant’s motions, which were

² As noted in the State’s final brief, it was questionable whether the motions were proper, especially the Motion for New Trial, since they were both filed prior to Appellant being returned to court to be sentenced after he absconded prior to trial. As a result, arguably neither motion was actually a post-trial motion under Rule 29, SCRCrimP. Nevertheless, to the extent the lower court did address those motions under the authority given by this Court on remand, it necessarily also had the authority to address the State’s timely motion to reconsider Appellant’s motions.

also heard after the term of court ended. If instead it was appropriate to rule on Appellant's motions after remand (which this Court determined it was), then it certainly was also appropriate for the lower court to reconsider those interlocutory rulings pursuant to a timely filed motion to reconsider, which the State submitted in this matter. *See S.C. Pub. Interest Found. v. Wilson*, 437 S.C. 334, 340, 878 S.E.2d 891, 894 (2022) (“[I]nterlocutory orders ‘may be reconsidered and corrected by the court before entering a final order on the merits’”). There is simply no valid basis for reconsidering this Court's decision on this issue.

“It is a long-standing rule of law that a trial judge is without jurisdiction to consider a criminal matter once the term of court during which judgment was entered expires.” *State v. Hinson*, 303 S.C. 92, 94, 399 S.E.2d 422, 422 (1990) (citing *State v. Mixon*, 275 S.C. 575, 274 S.E.2d 406 (1981); *State v. Patterson*, 272 S.C. 2, 249 S.E.2d 770 (1978); *State v. Best*, 257 S.C. 361, 186 S.E.2d 272 (1972)). The rule has two exceptions: a timely post-trial motion and a motion for a new trial based on after-discovered evidence. *State v. Campbell*, 376 S.C. 212, 215, 656 S.E.2d 371, 373 (2008) (citing Rule 29, SCRCrimP). Rule 29 provides: “The time within which to make the motion shall not be affected by the ending of a term of court or departure of the judge from the circuit, and the circuit judge shall retain jurisdiction of the action for the purpose of hearing and disposing of the motion if not heard and disposed of during the term.” As a result, a party may make a timely post-trial motion even after a term of court has ended and the circuit court retains jurisdiction until completion and final ruling on the timely filed post-trial motion. Additionally, the Supreme Court has explained:

Successive Rule 29(a) motions are generally not permitted. However, where a second Rule 29(a) motion is related to the disposition of the first Rule 29(a) motion, the trial court retains authority to hear and dispose of the subsequent motion, provided

the subsequent motion is filed within ten days of the disposition of the prior post-trial motion.

State v. Pfeiffer, 427 S.C. 10, 13, 828 S.E.2d 764, 766 (2019).

Conclusion

In the instant case, the State's motion to reconsider was in **response** to the trial court's ruling on Appellant's motions **after** the end of the term of court. It was properly made within ten days of the circuit court's ruling on Appellant's motions. As a result, the circuit court could properly consider the State's motion to reconsider pursuant to *Pfeiffer* even though the consideration **also** occurred after the end of the term of court. Alternatively, the lower court simply reconsidered and corrected its interlocutory orders before entering a final order on the merits. It had the jurisdiction and authority to do so pursuant to *Wilson*. This Court appropriately affirmed the lower court's consideration of the State's motion to reconsider, and it appropriately affirmed the trial court's denial of Appellant's motions for a mistrial and for a new trial. There is no basis for granting rehearing.

WHEREFORE, based on the foregoing argument and the arguments raised in the Final Brief of Respondent, the State respectfully requests that this Court deny Appellant's petition for rehearing and let stand the unpublished opinion affirming Appellant's convictions and sentence.

Respectfully submitted,

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Columbia, South Carolina
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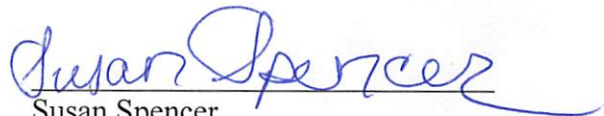
THEODORE JERRY BOLICK, ...APPELLANT.

PROOF OF SERVICE

I, Susan Spencer, Legal Assistant, hereby certify that I have served the *Return to Petition for Rehearing*, dated July 22, 2024, on *pro se* Appellant by depositing a copy of the same in the United States mail, postage prepaid, addressed to his address of record:

Theodore Jerry Bolick, *Pro Se* Appellant
#384070, 3A-0176-A
Evans Correctional Institution
610 Highway 9 West
Bennettsville, South Carolina 29512

I further certified that all parties required by Rule to be served have been served. This 22nd day of July, 2024.


Susan Spencer
Legal Assistant

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