IN THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Horry County
Larry B. Hyman Jr., Circuit Court Judge
William H. Seals Jr., Circuit Court Judge
Ferrell Cothran Jr., Circuit Court Judge

Appellate Case No. 2020-001497

The State, Respondent

V.

Theodore J. Bolick, Appellant

MOTION TO RESPOND AND RESPONSE

Appellant, Theodore Bolick hereby moves to respond to the Return To Petition For Rehearing, (RTPFR) filed by respondent on July 22, 2024, and if so granted, hereby argues and demonstrates as follows.

CONCLUSION OF TRIAL ISSUE

In the RTPFR respondents create a new issue by arguing that appellant's trial was concluded when the circuit court sealed appellant's sentences. (RTPFR, pgs). Respondents make a vague and conclusory argument referencing Rule 4, SCRCrimP as the legal authority to support this erroneous assumption.

It has been well established law in South Carolina just shy of 100 years that a sealed sentence does not become the judgment of the court until it is unsealed and imposed on the defendant. Lytle v. Miller, 157 SC 332 (1930), State v. Smith, 276 SC 494 (1981)

A trial is not concluded until the sentence has been imposed on the defendant. "In the criminal context, a judgment is final and appealable when the sentence is imposed." State v. Looper, 421 SC 384 (2017)

The clearly established law prescribed by the South Carolina Supreme Court pursuant to Lytle, Smith, ~~Looper~~ and Looper that a criminal trial is not concluded until the sentence has been unsealed and imposed, is certainly more valid than the vague and conclusory arguments proffered by the respondents while making references to

Rule 4 that a trial is concluded when a sentence is sealed. Because the respondents legal assumptions are slightly askew and lack any credible legal support, appellant pray this court will follow the correct legal precedent and find appellant's trial was not concluded when his sentences were sealed, but rather when they were unsealed and imposed on September 16, 2020. (R.p. 294 – p. 299)

APPELLANT'S RULE 4 MOTIONS.

Respondents also create another issue by arguing for the very first time in the RTPFR, pg. 5 fn 2 that appellant's motions (emphasis added) for mistrial were not Rule 4 motions. Most interestingly enough, this creates a conundrum of sorts as the respondents have previously admitted and argued that appellants motions for mistrial were not Rule 29 post-trial motions (Respondents Final Brief, pg. 12 fn 2) and (RTPFR, pg. 5 fn. 2) The ~~the~~ dilemma respondents must now face is exactly just under what rule and jurisdiction is it they allege appellant's motions for

mistrial were made, considered and argued, and then granted. (R.p. 23-p. 31) (R.p. 294-p. 299) (R.p. 300-p. 335) The COA should reasonably be concerned as the motions were definately made, heard, and granted by a Rule 4, SCRCrimP Form 4c order form, pursuant Rule 36 SCRCrimP (R.p. 12-p13). Now just exactly what rule do respondents contend the COA should state the motions were granted under.

Respondents having previously admitted and argued appellants motions for mistrial were not Rule 29 post trial motions, now also argue appellants motions for mistrial are not Rule 4 motions. Because South Carolina Rules of Criminal Procedures only has two rules that specifically designate and authorize motion filing in criminal matters, Rule 4 and Rule 29, respondents say anything to win mentality has left them in a conundrum. (RTPFR, pg. 5)

Despite respondents bold denial the record overwhelmingly establishes that appellants motions for mistrial were made and filed pursuant to Rule 4, SCRCrimP.

First, appellants written motion for

mistrial was filed on April 22, 2020, six months prior to the conclusion of the appellant's trial. (R. p. 23 – p. 31),

Second, appellant's verbal Rule 4 motion for mistrial was attempted on September 16, 2020 prior to his sentence being unsealed. (R. p. 294 – p. 299),

Third, appellant's Rule 4 motions for mistrial were considered and decided under Rule 4, SCRCrimP. (R. p. 300 – p. 335),

Fourth, pursuant to Rule 4 and Rule 36, SCRCrimP. the circuit court issued a Form 4C order form granting a mistrial. (R. p. 12 – p. 13). The Supreme Court pursuant to Rule 36 SCRCrimP mandates Form 4C Order forms be used when deciding Rule 4 motions,

Fifth, Rule 4 is the only rule that statutorily authorizes motions in a criminal matter prior to the conclusion of the trial, and

Sixth, respondents have previously stipulated appellant's motions for mistrial were not Rule 29 motions. (Respondent's Final Brief pg. 12, fn 2) (RTPFR. pg. 5 fn 2).

These facts in their cumulative manner

certainly outweigh respondent's self-serving denials. Moreover, how does it reflect on the circuit court and the solicitor's office if the circuit court is issuing orders for mistrial in criminal matters without any statutorily authorized jurisdiction. (R.p. 10-p13)

Respondent's arguments and contentions appellant's motions for mistrial are not Rule 4 motions are suspect and self-serving with no evidence to support them. Furthermore, they are made on the erroneous legal assumption that a trial is concluded when a sentence is sealed, and not when the sentence is unsealed and imposed. (RTPFR pg 5)

RULE 29, SCRCrimP, ISSUE

Respondents have stipulated and even argued appellant's motions for mistrial are not Rule 29 motions. (Respondent's Final Brief, pg 12 fn. 2) (RTPFR, pg. 5 fn 2). The full record establishes the same.

Because appellant did not file a Rule 29 post-trial motion for mistrial, the

respondents Rule 29 Motion For Reconsideration is inappropriate. Because appellants mistrials were made and granted pursuant Rule 4, SCRCrimP, and not Rule 29 the respondents cannot logically demonstrate how the circuit court had any jurisdiction to consider respondent's Rule 29 motion for reconsideration. (R.p. 51-p 68) Because appellant's motions for mistrial were not Rule 29 motions, State v. Pfeiffer, ~~827~~ 427 SC 10 (2019) cannot be logically applied to appellant's case. In order for Pfeiffer to be logically applied to the appellant's case the COA must first find appellants motions for mistrial were filed pursuant to Rule 29 ~~motions~~, and granted pursuant to Rule 29 Orders. However, because all parties have stipulated appellant's motions for mistrial were not Rule 29 motions, then the COA should logically conclude respondent's Rule 29 motion for reconsideration was inappropriate and not allowed. The COA should also acknowledge that Pfeiffer has absolutely no reasonable or logical application to appellant's

case.

RESPONDENTS RULE 29 MOTION FOR RECONSIDERATION

Both Respondents and the COA seem a little confused about the original jurisdiction of respondent's Rule 29 motion for reconsideration. Because appellant did not file a Rule 29 motion for mistrial (Respondent's Final Brief pg 12, fn 2) (RTFFR, pg. 5 fn 2), the respondent's Rule 29 motion was in the stage of it's original jurisdiction, therefore, respondents must demonstrate, ... 1) a sentence was imposed, and ... 2) the Rule 29 motion was filed ten days within the imposition of the sentence.

Appellant's sentences were imposed on September 16, 2020 (R.p. 294 – p 299)

Respondents filed an original Rule 29 motion in its original jurisdiction on April 23, 2021 (R.p. 51 – p. 68). This was over 200 days after appellant's sentences were imposed (R.p. 294 – p. 299) Respondent's Rule 29 motion was not in response to a Rule 29 motion. It was

a motion is its original jurisdiction and susceptible to the terms of Rule 29 SCR Crim P, as originally prescribed by the South Carolina General Assembly. It did not challenge any order previously made by a Rule 29 motion. (emphasis added) Therefore, respondents Rule 29 motion was filed 200 days after appellant was sentenced, and it challenged a Rule 4, SCRCrimP ~~Rule~~ Form 4C Order form (R.p. 12-p13) granting a mistrial. It was a travisty of justice is itself.

ORIGINAL JURISDICTION OF RULE 4 SCRCrimP MOTIONS FOR MISTRIAL

Appellant's Rule 4 motions for mistrial were made prior to the conclusion of appellant's trial (R.p. 23-p.31) (R.p. 294-p 299) Thus, the only jurisdiction the circuit court had was the original jurisdiction by Rule 4, SCRCrimP.

On September 16, 2020 the circuit court willfully, over appellant's objections, abused its discretion and staunchly refused to consider appellant's Rule 4,

motions for mistrial (R.p. 294-p299)

"It is just as much an abuse of discretion to refuse to exercise judicial authority when it is warranted as it is to exercise judicial discretion improperly." State V. Smith, 276 SC 494 (1981)

Because the circuit court abused its discretion by failing to consider appellant's lawfully made Rule 4 motions, on February 5, 2021 the COA remanded appellant's case back to the circuit court for consideration of all outstanding motions, appellant's Rule 4, motions for mistrial included. (R.p-9). The COA did not extend or modify the circuit court's jurisdiction on considering those motions, nor was the COA statutorily authorized to change the circuit court's jurisdiction over the appellant's Rule 4, motions.

Therefore, respondent's self serving arguments in RIPFR, pg 6 that the COA could extend or modify the circuit court's jurisdiction when considering appellants Rule 4 motions on remand defy law, logic, and manifest the frivolousness of respondent's arguments.

RULE 4 (b), SCRCrimP AND THE TERM OF COURT RULE

Rule 4 (b), SCRCrimP strictly prohibited respondent's Rule 29 motion for reconsideration. (R.p. 51 – p. 68)

Rule 4 (b) SCRCrimP voids all orders changing the Rule 4, Form 4C Order form granting a mistrial (R.p. 12 – p.13) ~~(R.p. 51 – p. 68)~~ (R.p. 15 – p.22)

The term of court rule pursuant to Best and Campbell void all the orders used to change the Rule 4, Form 4C order form granting a mistrial, (R.p. 12 – p.13) and ~~(R.p. 51 – p. 68)~~ (R.p. 15 – p.22)

THE MILLION DOLLAR DILEMMA

Respondents are responsible for a very reprehensible act. In attempt to disguise their treachery respondents have adopted a say anything mentality, and in doing so, have made one of the most outrageous and ludicrous arguments in the South Carolina history taying to

to conceal the unprecedented act of changing the Rule 4, Form 4C order of a mistrial in a criminal case two months after the case was concluded and the term of court had expired. In an attempt to justify this treachery respondents make the novice mistake of applying civil law to criminal matters, or offer no law at all, and make snide conclusory comments as to what they want or think the law should be.

Although the record establishes appellants Rule 4 motions (emphasis added) were granted, and Rule 4, Form 4C Order forms were entered to that effect pursuant Rule 36 SCRCrimP. (R.p. 10-p13) respondents refuse to acknowledge this cold hard fact that is overwhelmingly supported by the record. To do so is to admit appellant has been wrongfully incarcerated since June 10 2021 by an Order of Reconsideration (R.p. 15 -p 16) that is void by Rule 4 (b) on its face, and was obtained by a motion that was strictly forbidden by Rule 4 (b).

In the three plus years respondents

~~brute~~ by means of three seperate attorney's have not submitted to the court one single case to support the claim appellants incarceration is legal. This court mistakenly applied Pfeiffer to appellants case at the suggestion of the respondents so to make a legal conclusion that appellants incarceration was legal. Ironically, at the same time respondents were arguing appellants motions for mistrial were not Rule 29 motions (Respondents Final Brief pg 12 fn 2) (RTPFR pg. 5 fn 2). The fact appellants motions for mistrial were not Rule 29 motions logically precluded the COA from applying Pfeiffer to appellants case. Then why was it applied.

Appellant for three years has attempted to get the respondents to exercise the slightest of common sense and courtesy to no avail. In respondents latest frivolous argument respondents argue appellants motions were neither Rule 4 or Rule 29 motions. Thus, the million

dollar question becomes, what role do the respondents wish this court to decide appellants motion for mistrial was granted under. (R.p.10-p.13)

CONCLUSION

WHEREFORE Appellant pray's the COA will recognize the record for what it is, the travisty of justice and abuse of discretion and authority it demonstrates, and grant appellants Petition for Rehearing

Respectfully submitted
this 2nd day of August 2024
Theodore Bolick pro se
610 Highway # 9 West
Bennettsville S.C. 29512
Theodore Bolick

STATE OF SOUTH CAROLINA

COURT OF APPEALS

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Appellate Case No 2020-001497

The State — Respondent

v

Theodore J. Bolick — Appellant

PROOF OF SERVICE

I Theodore Bolick certify I have served on the Respondents a copy of the Motion To Respond And Response by placing same in the U.S Mail postage pre-paid addressed

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