

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Aug 19 2024

S.C. SUPREME COURT

COLLETON COUNTY
Court of General Sessions
The Honorable Clifton B. Newman, Circuit Judge

Appellate Case No. 2023-000392

The State..... Respondent,

v.

Richard Alexander Murdaugh Appellant.

STATE OF SOUTH CAROLINA’S RESPONSE IN OPPOSITION TO
APPELLANT’S MOTION TO STAY BRIEFING
AND
RESPONDENT’S MOTION FOR CONSOLIDATION WITH APPELLATE
CASE NO. 2024-000576 PURSUANT TO RULE 214, SCACR.

The Respondent State of South Carolina opposes Appellant Murdaugh’s request to stay and prevent briefing and resolution in the appeal from the murder conviction and life sentence until completion of the companion certified appeal before this Court involving the denial of the intervening motion for new trial. The Respondent alternately moves to consolidate pursuant to Rule 214, SCACR to insure that the judgment of conviction and sentence is not handled piecemeal and with a full understanding of the entire record.

On August 13, 2024, this Court entered an order that this case pending before the Court of Appeals be certified to this Court and directed that the Initial Brief of Appellant in this appeal

be filed in 30 days as set forth by Rule 208(a)(1), SCACR.¹ On this same date, moments before, the Court also entered an order certifying the pending appeal related to the motion for new trial from the Court of Appeals in Appellate Case No. 2024-000576. On the same day, the Appellant filed his Initial Brief of Appellant in this Court in Appellate Case No. 2024-000576.

OPPOSITION TO REQUEST TO STAY BRIEFING UNTIL CONCLUSION OF NEW TRIAL MOTION APPEAL

First, the State opposes the Appellant’s request to hold this matter in abeyance pending resolution of the appeal in the new trial proceeding which would serve no purpose but to delay the resolution of the merits of Mr. Murdaugh’s murder conviction. Under Appellant’s request, the murder appeal would be held in abeyance until the new trial motion is finally resolved by this this Court and implicitly by the United States Supreme Court. As a cursory review of the Appellant’s Initial Brief of Appellant reveals, their position for relief includes an assertion that the trial judge in the motion for new trial guided by this Court’s opinion State v Green, 432 S.C. 87, 851 S. E.2d 440 (2020) and its reliance on Smith v. Phillips, 455 U.S. 209 (1982) and U.S. v. Olano, 507 U.S. 725 (1993) offends federal law. In doing so, the Appellant acknowledged that there was a split in authority concerning the vitality of Remmer v. United States, 347 U.S. 227 (1954) with at least a number of states and federal circuits applying the same principal as former Chief Justice Toal did in requiring a defendant to prove prejudice. See Initial Brief of Appellant, p. 14-15. This strongly suggests an additional intent by counsel for Murdaugh to pursue certiorari in the United States Supreme Court due to the conflict among various federal circuits and state court on the treatment and vitality of both Remmer, Smith, and Olano.

¹ On August 6, 2024, the South Carolina Court of Appeals issued an order extending the time for filing the Initial Brief of Appellant in Appellate Case No. 2024-000392 until December 10, 2024.

Under the Appellant’s newly suggested fragmentary approach, briefing on the merits of the murder trial case may be delayed until resolution in the United States Supreme Court on the new trial claim. This suspension of the initial briefing by the parties could be for well over a year or more if this approach is adopted. Such an unnecessary postponement and delay is unwarranted and not in the interest of justice. Current staff have been involved in this matter with anticipatory preparation for issues that may arise in the Appellant’s appeal based upon the position already taken in court and publicly by Appellant’s counsel. Timely filed new trial motions are routinely and appropriately consolidated with the merits in a direct appeal. Both parties have a right to a resolution of the merits. Such consolidation avoids the type of piecemeal litigation that the Appellant’s position is encouraging. See State v. Rearick, 417 S.C. 391, 401, 790 S.E.2d 192, 197 (2016) (Court opposition to the practice of piecemeal appeals).²

In a number of criminal and PCR appeals before the appellate courts in the past, similar juror misconduct claims were included in a combined appeal after evidentiary hearings. See State v. Zeigler, 364 S.C. 94, 610 S.E.2d 859 (Ct. App. 2005) (misconduct and sufficiency of the evidence); State v. Kelly, 331 S.C. 132, 502 S.E.2d 99 (1998) (misconduct and penalty issues); State v. Pittman, 373 S.C. 527, 647 S.E.2d 144 (2007) (multiple guilt issues in addition to juror misconduct); State v. Hunter, 320 S.C. 85, 463 S.E.2d 314 (1995) (juror misconduct and unrelated issues). This case is not extraordinary, only lengthy.

Further, the suspension request is interesting because the Appellant implicitly has already begun their initial briefing in this matter. The transcript of the trial was delivered from the court

² “The rule in restriction of piecemeal appellate procedure, dating back to the common law, is based upon sound reason and practical utility. If it were otherwise, endless delays would be encountered - delays which are unnecessary in cases similar to the one now before us, which can be decided upon an appeal from such final judgment as may later be entered by the trial Court.” Good v. Hartford Acc. & Indem. Co., 201 S.C. 32, 21 S.E.2d 209, 213 (1942). The concept remains true in this setting.

reporters to the Appellant's counsel on October 17, 2023. After the new trial proceeding, the Court of Appeals set the initial deadlines on April 12, 2024 for thirty days. The Appellant was awarded a generous first extension request of 90 days by the Court of Appeals on May 14, 2024, until August 12, 2024, for a defense team that participated in the proceedings in the trial court. Further, they sought and were awarded an additional 120 day extension in the Court of Appeals until December 10, 2024, on August 6, 2024. At no time in the Court of Appeals did the Appellant seek a similar delay of any briefing until the appellate resolution of the new trial appeal. To the contrary, the Appellant sought two separate long requests and extensions covering a total of seven months. Why wait until the new trial is affirmed before the merits of the trial itself can be started. Justice should demand an expeditious resolution for both the State and defense.

The Respondent acknowledges that the murder trial was an extremely long trial with a number of exhibits and lengthy transcript of record. The Respondent submits that extensions covering a total period of six months to seven months are not unique in appellate criminal matters, although discouraged and restricted by both appellate courts to extraordinary circumstances. Respondent did not oppose the Appellant's request of August 2, 2024, in the Court of Appeals for the extension because of our own understanding about this case and its length. However, we also acknowledge that the setting of extensions in this Court is subject to the Court's approval and discretion and not agreement of counsel.

REQUEST FOR CONSOLIDATION

Respondent further moves to consolidate Appellate Case No. 2023-000392 with Appellate Case No. 2024-000576 pursuant to SCACR Rule 214. As we previously stated to the informal return to Court of Appeals:

Importantly should this Court or the Supreme Court deem certification appropriate on 2024-000576, it would necessarily follow that certification and consolidation would additionally be appropriate under SCACR Rule 214 on the underlying murder appeal – State v Murdaugh 2023-000392. That matter is presently pending before the South Carolina Court of Appeals with the Initial Brief of Appellant due August 12, 2024 arising from the same judgment of conviction. As noted this also is subject to this Court’s discretion should certification be granted or occur.

See Rule 214, SCACR (“Where there is more than one appeal from the same order, judgment, decision or decree, or where the same question is involved in two or more appeals in different cases, the appellate court may, in its discretion, order the appeal to be consolidated.”); Crawford v. Cent. Mortg. Co., 404 S.C. 39, 44, 744 S.E.2d 538, 540 (2013).

By consolidation, these two companion cases arising from the same judgment of conviction and sentence will be reviewed together. Consolidation of the case would allow the Court to address all the issues raised by the Appellant’s judgment of conviction in tandem with each other rather than following inefficient procedural appellate paths. Cf. , State v. Isaac, 405 S.C. 177, 185, 747 S.E.2d 677, 681 (2013) (holding the denial of a request for immunity under the Act is interlocutory and therefore is not immediately appealable).

The Respondent submits that its request for consolidation should be granted.

CONCLUSION

The State of South Carolina request the motion to stay briefing be denied. Respondent further urge the court under Rule 214, SCACR, to grant consolidation. We leave it to the discretion of this Court on whether to grant an extension of 120 days or the


usual 30 days as normally done in criminal appeals for the parties in light of the Court's 30 day order entered in this case on August 13, 2024.

Respectfully submitted,

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August 19, 2024