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THE STATE OF SOUTH CAROLINA

S.C. SUPREME COURT

IN THE SUPREME COURT

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

Unpublished Opinion No. 2024-UP-221  
Filed June 26, 2024

The State

Respondent

v.

Theodore Jerry Bolick,

Appellant

PETITION FOR WRIT OF CERTIORARI

Theodore J. Bolick, pro se  
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Beaufortville, S.C. 29512

Benjamin Aplin, Assistant Attorney General  
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II. The Court of Appeals should have held that Rule 4 (b) SCRCrimP voided the June 10, 2021 order of Reconsideration issued by Judge Ferrell Cothran Jr. \_\_\_\_\_ 10

III. The Court of Appeals should have held that the term of court rule pursuant to State v. Best 257 S.C. 361 (1972) and State v. Campbell, prohibited the circuit court judge from changing the Rule 4, Form 4C Order form granting a mistrial dated April 16, 2021 after the term of court in which it was entered had expired. \_\_\_\_\_ 10

IV The Court of Appeals should have held that State v. Pfeiffer, 427 S.C. 10 (2019) could not logically be applied to justify the state's Rule 29 Motion For Reconsideration because of the state's very own arguments and admissions that Appellant's motions for mistrial and new trial were not Rule 29 post-trial motions. \_\_\_\_\_ 10

V The Court of Appeals should have held that Appellant's Motion For Mistrial was a Rule 4 motion subject to the strict terms of Rule 4(b) SCRCrP. \_\_\_\_\_ 11

VI The Court of Appeals should have

Held That Appellant's trial was not concluded until Appellant's sealed sentences was unsealed and imposed pursuant to Lytle v. Miller, 157 S.C. 332 (1930), State v. Smith, 276 S.C. 494 (1981), State v. Looper, 421 S.C. 384 (2017), and United States v. Hammond, 588 U.S. 634 (2019). \_\_\_\_\_ 11

VII. The Court of Appeals should have held that pursuant to the South Carolina Rules of Criminal Procedure there is only one rule which governs motions in criminal matters prior to a sentence being imposed, and that is Rule 4. \_\_\_\_\_ 11

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## CERTIFICATE OF APPELLANT

The Appellant hereby certifies that a petition for rehearing was made and ruled upon by the Court of Appeals on August 12, 2024, and that Appellant received said order on August 19, 2024.

## QUESTIONS PRESENTED

1. Did the Court of Appeals err in holding the State's Rule 29 Motion For Reconsideration was proper when it challenged a Rule 4, Form 4C Order granting a mistrial pursuant to a Rule 4 Motion For Mistrial.

2. Did the Court of Appeals err in holding that State v. Pfeiffer, 427 S.C. 10 (2019) could logically be applied to the Appellant's case when the state twice admitted that Appellant's Motion For Mistrial was not a Rule 29 post-trial motion.

## STATEMENT OF THE CASE

During the October and November 2016 terms of court, the Harry County Grand Jury indicted Appellant for three separate unrelated counts of second degree burglary in three separate indictments. (R.p. 406-p.411). After several pretrial hearings with Appellant proceeding pro-se, on July 22, 2019 Judge Hymaw gave Appellant Faretta warnings, and in response, Appellant requested the assistance of counsel. Judge Hymaw then specifically appointed public defender, Martin Sprattin to assist Appellant, and informed Appellant that he would finish hearing pretrial motions in the morning. (R.p. 131-p.154). It was previously ruled Appellant's Rule 4 Motion To Sever would be decided at least seven days before the commencement of the trial by Honorable Steven John. (R.p. 93-p.100)

On July 23, 2019 Judge Hymaw summarily found Appellant waived his right to counsel. (R.p. 154-p.156). Judge Hymaw also found Appellant waived his right to be present. (R.p. 158-p.159). Judge Hymaw also found Appellant waived his right to a decision on the Rule 4 Motion To Sever

(R.p. 161, 125, 2-6). Judge Hyman allowed the state to join all three separate and unrelated indictments for one trial. As a result on July 24, 2019 the jury found Appellant guilty on all three counts, and Judge Hyman sealed a sentence. (R.p. 291-p. 292)

Because Appellant did not knowingly and willfully waive his right to counsel, his right to be present, or his right to a decision on the Rule 4, Motion To Sever, six months prior to the conclusion of the trial, on April 22, 2020 Appellant filed a Rule 4, SCRCrimP. Motion For Mistrial. (R.p. 23-p. 39)

Because Appellant's trial was still not concluded on June 15, 2020, Appellant filed a Rule 4, Motion For New Trial (R.p. 40-p. 50)

On September 16, 2020 Honorable William Seals blatantly refused to consider the Appellant's lawfully filed Rule 4 motions for mistrial and new trial over Appellant's objections. Judge Seals instead abused his discretion by not considering the Rule 4 motions for mistrial and new trial and unsealed the sentences and imposed

them. (R.p. 294 - p. 299)

Because the trial had not been properly concluded due to an abuse of discretion, on February 5, 2021 the Court of Appeals remanded the case back to circuit court for consideration of all outstanding motions, the Rule 4 Motion For Mistrial included. (R.p. 9)

On April 15, 2021, the Honorable R. Ferrell Cothran Jr. held a hearing on the Appellant's outstanding motions, the Rule 4 Motion For Mistrial included. Judge Cothran granted Appellant's motion for mistrial in open court. (R.p. 300 - p. 335)

On April 16, 2021, the last day of the term of court, Judge Cothran pursuant to Rule 36, SCR CrimP entered a Rule 4, Form 4C Order form granting the Rule 4 Motion For Mistrial. (R.p. 12 - p. 13)

On April 23, 2021, eight days after the term of court expired, the state by and through Thomas Terrell III filed a Rule 29 post-trial Motion For Reconsideration (R.p. 51). In this motion the state fraudulently alleges that the Rule 4 motion for mistrial was filed

subsequent to Appellant's sentences being imposed. (R.p. 51)

On April 29, 2021 the State by and through Thomas Terrell III filed a supplemental pleading for reconsideration arguing the circuit court did not grant the mistrial (R.p. 52)

On June 1, 2021 the State by and through Thomas Terrell III filed a second supplemental Pleading For Reconsideration arguing the same set of facts previously heard and decided on April 15, 2021. (R.p. 53-p. 85)

On June 8, 2021 Honorable Ferrell Cothran Jr. heard the state's Rule 29 Motion For Reconsideration over the Appellant's objections and contrary to the clear unambiguous terms of Rule 4(b) SCRCrimP. (R.p. 336-p. 402)

On June 10, 2021 Judge Cothran issued an Order of Reconsideration pursuant to the state's Rule 29 Motion For Reconsideration which challenged a Rule 4, Form 4C Order form granting a mistrial pursuant to a Rule 4 motion. (R.p. 15-p. 22)

On April 11, 2023 the state by and through William M. Bitch Jr. argued and admitted that Appellant's Motion For Mistrial and Motion For New Trial were not Rule 29 post-trial motions. (Final Brief of Respondent, p.g. 12, fn. 2).

On July 22, 2024 the state again by and through Benjamin Aplin argued and admitted Appellant's motions for mistrial and new trial were not Rule 29 post-trial motions.

The Court of Appeals affirmed the judgment of the circuit court State v. Theodore Jerry Bolick Opinion No 2024-UP-221 S.C. Ct. App. June 26, 2024. The Appellant seeks a writ of certiorari to review that decision.

## ARGUMENTS

1. The Court of Appeals should have held that Rule 4(b), SCRCrimP prohibited the state from filing a Rule 29 Motion For Reconsideration arguing the same set of facts that had been previously

heard and decided in the Rule 4 Motion For Mistrial which was granted on April 16, 2021 by a Rule 4, Form 4C Order.

II. The Court of Appeals should have held that Rule 4 (b), SCRCrimP voided the June 10, 2021 Order of Reconsideration issued by Judge Ferrell Cothran Jr.

III. The Court of Appeals should have held that the term of court rule pursuant to State v. Best, 257 S.C. 361 (1972) and State v. Campbell, 376 S.C. 212 (2008) prohibited the circuit court judge from changing the Rule 4, Form 4C Order from granting a mistrial dated April 16, 2021 after the term of court in which it was entered had expired.

IV. The Court of Appeals should have held that State v. Pfeiffer, 427 S.C. 10 (2019) could not logically be applied to justify the state's Rule 29 Motion For Reconsideration because of the state's very own arguments and admissions that Appellant's motions

for mistrial and new trial were not Rule 29 post-trial motions.

V. The Court of Appeals should have held that Appellant's Motion for Mistrial was a Rule 4 motion subject to the strict terms of Rule 4(b), SCRCr.P.

VI. The Court of Appeals should have held that Appellant's trial was not concluded until Appellant's sealed sentence was unsealed and imposed pursuant to Lytle v. Miller, 157 S.C. 332 (1930), State v. Smith, 276 S.C. 494 (1981), State v. Lopper, 421 S.C. 384 (2017), and United States v. Hammond 588 U.S. 634 (2019).

VII. The Court of Appeals should have held that pursuant to the South Carolina Rules of Criminal Procedure there is only one rule which governs motions in criminal matters prior to a sentence being imposed, and that is Rule 4.

## CONCLUSION

For the reasons stated Appellant asks the Honorable Court to grant petition for writ of certiorari.

Respectfully Submitted  
This 19<sup>th</sup> day of August, 2024  
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