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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM HORRY COUNTY
Court of General Sessions

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)

Opinion No. 2024-UP-221 (S.C. Ct. App. filed June 26, 2024)
Appellate Case No. 2024-001369

The State,Respondent,

v.

Theodore J. Bolick,Petitioner.

RETURN TO PETITION FOR A WRIT OF CERTIORARI

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Petitioner

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QUESTION PRESENTED

1. Whether the Court of Appeals properly held that the State's motion to reconsider the circuit court's grant of Petitioner's motions for a mistrial and a new trial was filed within the time limits required by Rule 29 of the South Carolina Rules of Criminal Procedure where it was filed only four days after the circuit court filed its orders granting Petitioner's motions.

STATEMENT OF THE CASE

On June 26, 2024, the Court of Appeals issued an unpublished opinion that affirmed Petitioner Theodore Jerry Bolick's convictions and concurrent sentences of twelve years' imprisonment for three counts of second-degree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, Petitioner filed a motion for rehearing pursuant to Rule 221(a), SCACR, and on July 22, 2024, the State filed a return. By order filed August 12, 2024, the petition for rehearing was denied. Petitioner timely served and filed a petition for a writ of certiorari to the Court of Appeals. This Return to Petition for a Writ of Certiorari, submitted on behalf of the State, now follows.

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 Petitioner for three counts of second-degree burglary. (R.p.406-p.411). After several pretrial hearings, Petitioner's trial proceedings commenced on July 22, 2019. (R.p.131; p.138). After the first day of pretrial motions, Petitioner 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. Petitioner's sentence was sealed, and a bench warrant was issued for his arrest. Petitioner 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, Petitioner 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 Petitioner prior to him

being returned to court for imposition of his sealed sentence. On September 16, 2020, Judge William H. Seals read Petitioner's sentence of twelve years on each charge with the sentences to run concurrently. At that hearing, Petitioner 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 Petitioner's objection. (R.p.294-p.299).

It appears Petitioner 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 this Court by the Horry County Clerk of Court. The appeal was subsequently transferred to the Court of Appeals for consideration.

The Court of Appeals requested memoranda regarding the appealability of the underlying appeal. After receiving responses from both Petitioner and the State, it 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." The Court of Appeals 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 Petitioner'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 Petitioner'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 Petitioner's outstanding motions. (R.p.15-p.22).

Petitioner timely filed a Notice of Appeal from the denial of his motions. The Court of Appeals relieved Petitioner'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, the Court of Appeals filed its unpublished opinion affirming Petitioner's convictions on June 26, 2024, and filed its order denying Petitioner's petition for rehearing on August 12, 2024. Petitioner has submitted a petition for a writ of certiorari and this return submitted on behalf of the State now follows.

CERTIORARI

In his petition for a writ of certiorari, as in his petition for rehearing, Petitioner takes issue with the Court of Appeals' rejection of 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." (Op. No. 2024-UP-221, p.2). He makes seven sub-arguments challenging specific aspects of the Court of Appeals' unpublished opinion ranging from challenges to how that court interpreted the South Carolina Rules of Criminal Procedure to the precedents relied upon by the court in reaching its decision; however, Petitioner fails to articulate any special or important reasons a writ of certiorari should be granted. Rule 242(b),

SCACR (“A writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special or important reasons.”). Indeed, he points to no novel questions of law, no dissent in the Court of Appeals, no conflicts with prior decisions of this Court, no constitutional issues, and no federal questions to elevate the opinion to anything more than a routine procedural decision concerning the lower court’s authority to hear and dispose of a timely post-trial motion. (Op. No. 2024-UP-221, p.5).

Here, the Court of Appeals employed the proper standard of review in concluding: “the State’s motion to reconsider the circuit court’s grant of Bolick’s motions for a mistrial and a new trial was filed within the time limits required by Rule 29 of the South Carolina Rules of Criminal Procedure.” (Op. No. 2024-UP-221, p.5). The decision is consistent with precedent in South Carolina including *State v. Pfeiffer*, 427 S.C. 10, 13, 828 S.E.2d 764, 766 (2019), and consistent with both the evidence in the record and the procedural posture of the case following the Court of Appeals’ prior remand for the circuit court to consider all outstanding motions until the motions were resolved.

Furthermore, as noted in the heading of the opinion, as an unpublished opinion it has no precedential value and should not be cited or relied upon as precedent. Therefore, it will neither directly nor materially impact other defendants in South Carolina. Indeed, the opinion was based on the specific facts and circumstances of Petitioner’s case, facts which are unusual, if not unique. It will not prohibit or prevent any other defendant from raising a timely challenge to a trial in absentia—an opportunity that was fully afforded to Petitioner in this matter. Thus, pursuant to Rule 242(b), SCACR, there are no “special and important reasons” for this Court to exercise its discretion to grant review of the decision of the Court of Appeals in this matter. Petitioner’s petition for a writ of certiorari should be denied and dismissed.

ARGUMENT

I.

The Court of Appeals properly held that the State’s motion to reconsider the circuit court’s grant of Petitioner’s motions for a mistrial and a new trial was filed within the time limits required by Rule 29 of the South Carolina Rules of Criminal Procedure because it was filed only four days after the circuit court filed its orders granting Petitioner’s motions.

In his appellate brief to the Court of Appeals, Petitioner 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 the court’s grant of Petitioner’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.

The Court of Appeals 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).

¹ Of the five arguments addressed by the Court of Appeals, the only issue raised in the petition for rehearing and the current petition for a writ of certiorari is Petitioner’s challenge to how the Court of Appeals 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.”

Petition for Writ of Certiorari

In his petition for a writ of certiorari, Petitioner argues the Court of Appeals should have held: (1) that Rule 4(b), SCRCrimP, prohibited the State from filing a Rule 29 Motion arguing the same set of facts that had been previously heard and decided; (2) that Rule 4(b), SCRCrimP, voided the order of reconsideration; (3) 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 order granting a mistrial after the term of court in which it was entered had expired; (4) that *State v. Pfeiffer*, 427 S.C. 10 (2019) could not logically be applied to justify the State's Rule 29 motion because of the State's very own arguments and admissions that Petitioner's motions were not post-trial motions; (5) that Petitioner's motion for a mistrial was a Rule 4 motion subject to the strict terms of Rule 4(b), SCRCrimP; (6) that Petitioner's trial was not concluded until his 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. Looper*, 421 S.C. 384 (2017), and *United States v. Hammond*, 588 U.S. 634 (2019); and (7) that pursuant to the SC 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. (Pet.p.9-p.11).

The State disagrees and submits all of these sub-arguments center around either a fundamental misunderstanding of the analysis employed by the Court of Appeals, or an attempt to employ a hyper-technical application of the Rules of Criminal Procedure in hopes of avoiding criminal responsibility despite the jury's determination that Petitioner was guilty beyond a reasonable doubt. The State recognizes the general rule that equity has no criminal jurisdiction, *State v. Plumer*, 439 S.C. 346, 351, 887 S.E.2d 134, 137 (2023); however, it submits Petitioner's continued pursuit of this endeavor should be precluded by principles similar to the equitable

doctrines of “unclean hands” and “bad faith.” See *Wachovia Bank, N.A. v. Coffey*, 389 S.C. 68, 75, 698 S.E.2d 244, 247 (Ct. App. 2010), aff’d as modified, 404 S.C. 421, 746 S.E.2d 35 (2013) (“The doctrine of unclean hands precludes a plaintiff from recovering in equity if he acted unfairly in a matter that is the subject of the litigation to the prejudice of the defendant.”); See also *Precision Instrument Mfg. Co. v. Automotive Co.*, 324 U.S. 806, 814, (1945) (“He who comes into equity must come with clean hands. It is far more than a mere banality. It is a self-imposed ordinance that closes the door of the court of equity to one tainted with inequity or bad faith relative to the matter in which he seeks relief.”). Indeed, the lower court’s decision denying Petitioner’s motions is supported by both legal principles and its inherent power to ensure the administration of justice. *State-Rec. Co. v. State*, 332 S.C. 346, 349, 504 S.E.2d 592, 593 (1998) (noting that a trial court, once having obtained jurisdiction of a cause of action, has inherent power to do all things reasonably necessary to the administration of justice in the case before it).

Standard of Review

In criminal cases, the appellate court sits to review errors of law only. *State v. Black*, 400 S.C. 10, 16, 732 S.E.2d 880, 884 (2012); *State v. Wilson*, 345 S.C. 1, 5, 545 S.E.2d 827, 829 (2001). The appellate court does not re-evaluate the facts based on its own view of the preponderance of the evidence but, instead, simply determines whether the trial judge’s ruling is supported by *any evidence*. *Wilson*, 345 S.C. at 6, 545 S.E.2d at 829 (emphasis added); see also *State v. Gracely*, 399 S.C. 363, 371, 731 S.E.2d 880, 885 (2012) (“The trial court will only be reversed when there is no evidence to support the ruling below.”). “[T]he trial court’s ruling will not be disturbed absent a prejudicial abuse of discretion amounting to an error of law.” *State v. Sheldon*, 344 S.C. 340, 342, 543 S.E.2d 585, 585-86 (Ct. App. 2001). An abuse of discretion

occurs only when the trial court's conclusions lack evidentiary support or are controlled by an error of law. *State v. Scott*, 414 S.C. 482, 486, 779 S.E.2d 529, 531 (2015) (quoting *State v. McDonald*, 343 S.C. 319, 325, 540 S.E.2d 464, 467 (2000)).

Discussion

As to the merits of Petitioner's claims, Rule 4 of the South Carolina Rules of Criminal Procedure falls under the "Pretrial Matters" section of the Rules. Petitioner 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 Petitioner filed well after both the commencement **and** conclusion of his trial.

More importantly, Petitioner's position regarding the trial court's authority and jurisdiction is incoherent. On one hand, Petitioner would have this Court accept the lower court's jurisdiction and authority to issue its initial (and as demonstrated by the Court of Appeals' 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, Petitioner 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 the Court of Appeals correctly concluded Petitioner 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 Petitioner's motions, which were also heard after the term of court ended. If instead it was appropriate to rule on

² As noted in the State's final brief before the Court of Appeals, it was questionable whether the motions were proper, especially the Motion for New Trial, since they were both filed prior to Petitioner 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 Petitioner's motions.

Petitioner's motions after remand (which the Court of Appeals 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 granting certiorari to review the Court of Appeals’ 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, this 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 Petitioner's motions **after** the end of the term of court. It was properly made within ten days of the circuit court's ruling on Petitioner'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*. The Court of Appeals appropriately affirmed the lower court's consideration of the State's motion to reconsider, and it appropriately affirmed the trial court's denial of Petitioner's motions for a mistrial and for a new trial. There is no basis for granting certiorari to review that decision.


Based on the foregoing reasons, the State submits this Court should deny the petition for a writ of certiorari and let stand the decision of the Court of Appeals. If the Court grants the petition for a writ of certiorari, the State would request permission under the rules to fully brief the issues contained herein.

Respectfully submitted,

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