

THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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S.C. SUPREME COURT

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

Opinion No. 2024-UP-221
Appellate Case No. 2024-001369

The State

Respondent

V.

Theodore J. Bolick

Appellant

REPLY BY PERMISSION

Theodore J. Bolick, pro se
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FACTS

On April 22, 2020 Appellant, having been denied counsel by the circuit court, prepared, properly filed, and properly served on the State a Rule 4 Motion For Mistrial. (R.p. 23 - p. 31). This fact is irrefutable.

The propriety of Appellant's April 22, 2020 Rule 4 Motion For Mistrial has never been properly raised and ruled upon by any court. This fact is irrefutable.

On September 16, 2020 the circuit court, acting in concert with the State, blatantly refused to consider Appellant's properly filed and served April 22, 2020 Rule 4 Motion For Mistrial, despite Appellant's repeated requests, and over Appellant's objections. (R.p. 294 - p. 299). This fact is irrefutable.

Instead, the circuit court acting in concert with the State, chose to impose a sentence on Appellant and send the Appellant to prison, before Appellant's trial was properly concluded, contrary to Appellant's due process and equal

protection rights protected by Art. 1, sec. 3, S.C. Const. (R.p. 294 - p. 299). This is an irrefutable fact.

The refusal of the circuit court to consider properly filed and served motions is an abuse of discretion pursuant to State v. Smith, 276 S.C. 494 (1981). This is an irrefutable conclusion of law and fact.

On February 5, 2021 the S.C. Court of Appeals remanded Appellant's case back to circuit court with specific instruction for the circuit court to consider Appellant's April 22, 2020 Rule 4 Motion For Mistrial. (R.p. - 9). This is an irrefutable fact.

On April 15, 2021 Third Judicial circuit court judge, Ferrell Cothran Jr. came to Horry County, the Fifteenth Judicial Circuit, and in open court, granted the Appellant's April 22, 2020 Rule 4 Motion For Mistrial. (R.p. 300 - p. 335) This is an irrefutable fact.

April 16, 2021 was the last day of the term of court for the April 12 through April 16, 2021 session of criminal court in Horry County. This is an irrefutable fact.

Pursuant to Rule 36, SCRCrimP, on April 16, 2021 circuit court judge, Ferrell Cothran Jr. signed and entered a Rule 4, Form 4C Order form granting a mistrial pursuant Appellant's April 22, 2020 Motion for Mistrial. (R.p. 12 - p. 13). This is an irrefutable fact.

On April 16, 2021 circuit court judge, Ferrell Cothran Jr. adjourned the April 12, - April 16, 2021 term of court for Horry County side die and left the circuit. This is an irrefutable fact.

When circuit court judge, Ferrell Cothran Jr. adjourned the April 12 - April 16, 2021 term of court side die he lost any authority to change, alter, or amend the Rule 4, Form 4C Order of mistrial pursuant to State v. Best, 257 S.C. 361 (1972), and State v. Campbell, 376 S.C. 212 (2011). This is an irrefutable fact and conclusion of law.

Rule 4 (b), SCRCrimP prohibits either party from filing any motion, (Emphasis Added) seeking to change any order, (Emphasis Added) entered as a result of a Rule 4, SCRCrimP motion. This is

an irrefutable fact and conclusion of law,

Rule 4 (b) SCRCrimP. is concert with the res judicata doctrine prohibit either party from raising the same set of facts that have been previously considered and decided in a Rule 4 motion. This is an irrefutable statement of fact and conclusion of law.

Rule 18, SCRCrimP is concert with the res judicata doctrine prohibit either party from continuing to argue a fact after it has been considered and decided. This is an irrefutable statement of law and fact.

Rule 4 (b) and Rule 18, SCRCrimP were promulgated by the S.C. General Assembly in concert with the res judicata doctrine. These rules by design prohibit either party from taking the proverbial second bite at the apple because it defies a universal sense of justice. This is a prolific statement of law and fact.

Despite Rule 4 (b), SCRCrimP, and the well established term of court rule pursuant to Campbell, the state acting with

Unclean hands on April 23, 2021 filed what the state alleges is a Rule 29 SCR-CrimP Motion For Reconsideration, that is a single paragraph, fraudulently alleged Appellant's April 22, 2020 Rule 4 Motion For Mistrial, "was filed subsequently to Appellant being sentenced." (R.p. - p. 51) This is an irrefutable fact.

On April 29, 2021 the state filed a Supplemental Motion For Reconsideration, and in a one page document fraudulently alleged with unclean hands, (emphasis added) "the circuit court did not grant defendant's motion for mistrial." (R.p. - p. 52). This is an irrefutable fact.

On June 1, 2021 the state filed an updated memorandum of law with an attached exhibit. (P.g. 53 - p. 85) The attached exhibit is a dated letter to Assistant Solicitor, Thomas Terrell from the Appellant making derogatory and insulting statements. This is an irrefutable fact.

The state's Memorandum of law filed June 1, 2021 argued the same set of facts

that had previously been heard and considered at the April 15, 2024 hearing on Appellant's April 22, 2020 Rule 4 Motion For Mistrial when Appellant's mistrial was granted. (R.p. 300-p.335). This is an irrefutable statement of fact.

None of the state's filings from April 23, 2021 through June 1, 2021 allege Appellant's Rule 4 Motion For Mistrial was improper, and they are riddled with fraudulent easily refuted arguments and statements of fact.

It is a stipulated statement of fact by both parties that Appellant's April 22, 2020 Rule 4 Motion For Mistrial was not a Rule 29 post-trial motion, and therefore, the state's April 23, 2021 Rule 29 Motion For Reconsideration was a Rule 29 motion filed in its original jurisdiction requiring the statutory obligations of Rule 29. This is an irrefutable statement of law and fact.

The state's April 23, 2021 Motion For Reconsideration allegedly filed under Rule 29 was not filed within ten days of the imposition of a sentence, and

it did not contain any after discovered evidence or new rulings in law as is plainly required and mandated under the complete, clear, and unambiguous language of Rule 29, SCR CrimP. This too is an irrefutable fact.

On June 8, 2021 circuit court judge, Ferrell Cothran Jr. considered the exact same set of facts he had previously heard and considered, contrary to the res judicata doctrine, Rule 4(b), SCR CrimP, and over Appellant's objections (R.p. 336 - p. 402). This is an undisputable fact.

Despite term of court rule pursuant to Campbell, Rule 4(b) SCR CrimP, the res judicata doctrine, and the circuit court's duty to apply a universal sense of fundamental fairness to all proceedings, on June 10, 2021 Judge Cothran changed the April 16, 2021 final Rule 4, Form 4C order granting a mistrial, and entered an order of Reconsideration prepared by the state (R.p. 15 - p. 16). This too was over Appellant's objections (R.p. 336 - p. 402). This is an irrefutable fact, and statement of events.

Circuit court judge, Ferrell Cothraw Jr's June 10, 2021 Order of Reconsideration is void on its very face pursuant to Rule 4 (b), SCR CrimP, and the term of court rule pursuant Campbell, and violates the Appellant's due process and equal protection rights provided ^{by} Rule 4 (b), SCR CrimP, and protected by Art. 1, Sec. 3, S.C. Const.

Because the state requested for and was granted an Order of Reconsideration on June 10, 2021 that was prohibited by statutory mandates of Rule 4 (b) and void by law, it was an abuse of process, done with unclean hands, and violated Appellant's due process and equal protection rights protected by Art. 1, Sec. 3, S.C. Const. This is an irrefutable fact.

Appellant was returned to the South Carolina Department of Corrections with nothing more than the void by statute June 10, Order of Reconsideration were Appellant's sentences were reinstated. This is an irrefutable fact.

Appellant's sentences had been vacated by the April 16, 2021 final

Rule 4, Form 4C Order and, Appellant on May 5, 2021 was released from the SCDC. The state's obtained Order of Reconsideration violated Appellants right to be free of illegal seizure clause of Art. 1, Sec. 10, S.C. Const, and the right not to be subjected to double jeopardy protected by the double jeopardy clause of Art. 1, Sec. 12, S.C. Const.

Not any unclear act in any proceeding can be fairly, logically, or reasonably attributed to the Appellant anywhere in the record.

I Theodore J. Bolick do hereby declare under penalty of perjury the foregoing statement of facts and conclusions in law are absolutely true and correct.

ARGUMENTS

I. The state's April 23, 2021 MOTION For Reconsideration Was Not Proper Under Any Rule, And It Was Strictly Prohibited By Rule 4(b), SCRCrimP.

Appellant, for purposes of being brief hereby moves to incorporate by reference the statements of fact and conclusions of law concerning the South Carolina Rules of Criminal Procedure into this argument.

Appellant pursuant to *State v. Whitesides*, 397 S.C. 313 (2012) requests this Honorable Court to interpret the SCRCrIMP with the harmonizing theory of res judicata, and the purpose of fundamental fairness as was intended by the General Assembly. That, "in interpreting the language of a court rule, courts should apply the same rules of construction used in interpreting statutes" pursuant to *State v. Benton*, 435 S.C. 250 (2024)

Pursuant to *State v. Sweat*, 386 S.C. 339 (2010) "courts should give words in a statute their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation."

Nothing in the language of Rule 29, SCRCrIMP authorizes the state

to change a final Rule 4, Form 4C Order granting a mistrial entered pursuant to a Rule 4 motion. A mistrial is not a sentence,

Rule 4(b), SCR CrimP by its clear and concise language prohibits any motion which seeks to change an order entered pursuant to a Rule 4 motion.

The legislative intent of Rule 4(b) is so clear and compelling that it voids any order issued as a result of said prohibited motion before it even exists. Thus, the clear legislative intent of Rule 4(b) is quite clear.

II State v. Pfeiffer, 427 S.C. 10 (2019)
Has Been Improperly Applied To
Appellant's Case.

There is not a single fact in Pfeiffer that is similar to or the same as any fact in Appellant's case. Case in point, Pfeiffer is a case where a defendant plead guilty, was sentenced, and subsequently filed a Rule 29 motion seeking to change his sentence. After being considered on his Rule

29 motion Pfeiffer filed a successive Rule 29 motion. The court in Pfeiffer ruled Pfeiffer was not entitled to the second successive Rule 29 motion because it was not filed within ten days of the first Rule 29 motion being decided. The state misapplied Pfeiffer to Appellant's case despite the fact there is not a single fact or concept of law that is remotely alike. The Court of Appeals followed suit applying Pfeiffer to Appellant's case without any logical explanation or reasoning, and continues to do so.

III The Unclean Hands Doctrine Can Logically Only Be Applied Against The Respondent.

The state without referencing any specific act makes a vague and conclusory allegation that Appellant has acted with unclean hands at some point in time in this action. This unsupported allegation has been completely fabricated in the age old smoke

and mirror tactic implemented with the intent to convolute the record and divert this Honorable Court's attention from the many suspect acts by both the state and circuit court. For the purposes of being brief, Appellant hereby moves to incorporate by reference the statement of facts contained in the foregoing Facts ~~contained in this~~ section of this brief, into this argument.

As part of the state's smoke and mirror tactics, the state argues that Appellant's case is unique, in an effort to disguise the debauched and unclean acts by the state and the circuit court. To state that Appellant's case is unique is an understatement of sublime nature, and here is why. Never before in the history of South Carolina has the state so poorly trained and supervised its solicitors that a solicitor could or would ignore the res judicata doctrine, the term of court rule which dates back to 1876 in *Ex parte Lilly*, 7 S.C. 372 (1876), and Rule 4(b), SCRCrIMP and file a Rule 29 post-trial motion

seeking to change a Rule 4 Form 4C order granting a mistrial after the term of court in which it was entered had expired. This kind of egregious behavior is unprecedented and actually shocking to any fair minded jurist that has been properly educated in the law and its application. This gross and egregious behavior by the State has violated Appellant's constitutional rights in broad and sweeping ways and is an affront to the universal sense of justice. That, simply put, is why the State cannot find any law or rules to support the State's arguments other than Pfeiffer, which plainly has no fact or concept of law that can legally and logically be applied to the Appellant's case.

CONCLUSION

WHEREFORE: Appellant prays this Honorable Court grant Appellant certiorari review in the name of truth, justice, and the equal protection of

law

10/7

Respectfully submitted

By Permission

This 30th day of September 2024

Theodore J. Bolick prose

Evads Correctional Inst.

610 Highway #9 West

Beddettville, S.C. 29512

VERIFICATION

I Theodore J. Bolick do hereby declare under penalty of perjury and affirm under oath that the Facts as stated in the foregoing Reply By Permission are completely true and accurate, and the arguments made therein are legally correct.

This 30th day of September
Theodore J. Bolick

Signed And Subscribed

Before Me

Date 9/30/24

Notary Saxche Oublan

My Commission Expires 2/28/34

CERTIFICATE OF SERVICE

I hereby certify that I placed a copy of the foregoing Reply By Permission in the U.S. Mail, postage pre-paid addressed as follows

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September 30, 2024
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