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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM
COLLETON COUNTY COURT OF GENERAL SESSIONS

Honorable Robert J. Bonds, Judge

Docket Nos. 2023A1510100220-222, 2023A1510100224-227, 2023A1510100226-268 & 2023A1510100277-288

Appellate Case No. 2024-001818

The State, Respondent,

v.

Ryan Lenard Manigo, Appellant.

GRAY MEDIA GROUP, INC.'S
RETURN TO APPELLANT'S WRIT OF SUPERSEDEAS

Pursuant to Rules 240(e) and 241 of the South Carolina Appellate Court Rules, Gray Media Group, Inc. ("Gray Media") files this return to Appellant's writ of supersedeas. Rule 241(c)(2), SCACR, establishes the grounds that Appellant must establish in order to obtain a writ of supersedeas. Other than a cursory and unsupported reference[1] to "irreparable harm," Appellant ignores his burden of proof and instead argues the merits of his appeal. But, the merits, if any, to Appellant's claims have no bearing on the grant of supersedeas.

[1] *See* Writ p. 2.

Appellant unequivocally failed to establish either of the grounds necessary to supersede the circuit court's order. As fully set forth herein, the Court should deny the request, lift the stay, and allow production of the public records at issue as directed by the circuit court.

ARGUMENT

I. Appellant failed to establish the requirements to obtain a grant a writ of supersedeas.

Appellant's writ of supersedeas fails to comply with the requirements of Rule 241, SCACR. Rule 241(c)(2), SCACR, requires Appellant to allege and establish one of the two grounds needed to obtain supersedeas relief. Appellant failed to argue either ground.[2] Instead, Appellant relies exclusively on the merits of his appeal to request supersedeas. *See* Writ p. 19 "Conclusion" ("Petitioner's telephone calls are not subject to FOIA . . . . This Court should issue a stay and quash the lower court's order."). Appellant should not be entitled to supersedeas relief when he ignored the two grounds needed to obtain such relief.

Further, our General Assembly has spoken and rejected a claim as to whether production of public documents should be stayed pending appeal. The General Assembly has stated that when a court "directs the assignment or delivery of documents" then "the

[2] Appellant cannot cure this defect by arguing the to grounds in his reply to this return. *See McClurg v. Deaton*, 395 S.C. 85, 716 S.E.2d 887 (2011) ("It is axiomatic that an issue cannot be raised for the first time in a reply brief"); *Glassock, Inc. v. U.S. Fid. & Guar. Co.*, 348 S.C. 76, 557 S.E.2d 689 (Ct. App. 2001) (finding an issue abandoned when addressed in the reply brief but not in the initial brief).

execution of the judgment shall not be stayed by appeal."[3] S.C. Code Ann. § 18-9-150. Rule 241(b)(2), SCACR, incorporates this rule as an exception to the general rule of an automatic appellate stay. When the General Assembly revised the South Carolina Freedom of Information Act in 2002, 2003, 2017, and 2024, the General Assembly did not include a provision exempting the immediate production of documents under Section 18-9-150. A grant of supersedeas would subvert the clear direction of the General Assembly.

In addition, the circuit court ordered Colleton County to "comply with the procedures set forth in the Freedom of Information Act" to provide the non-exempt documents after providing Appellant and interested parties with 72-hours advance notice. Section 30-4-30(C) requires that a public body provide non-exempt public records to a requestor "no later than thirty calendar days" from the date of final determination. Should the Court grant the relief requested by the Petitioner, Colleton County will be prohibited from complying with state law, as required by S.C. Code Ann. § 30-4-30(C), during the pendency of this appeal.

II. Appellant's merit-based arguments are irrelevant to a writ of supersedeas.

Rule 241, SCACR, does not allow for the grant of a writ of supersedeas based on the merits of an appeal. As noted above, the rule is limited to specific situations, which Appellant has wholly ignored undoubtedly because he has no plausible argument to support the Rule 241, SCACR, requirements.

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[3] While Section 18-9-150 contains an exception, Appellant has not offered to meet those requirements, which include "an undertaking be entered into on the part of the appellant, with at least two sureties and in such amount as the court or a judge thereof shall direct . . . ."

Gray Media intends to file an amicus brief establishing why each of Appellant's merit-based arguments lack merit. However, Gray Media will illustrate Appellant's fundamental misunderstanding of the South Carolin Freedom of Information Act ("FOIA"), as follows:

1. Appellant admits the detention center in which he incarcerated is a public body as defined by FOIA. *See* Writ p. 8.

2. Curiously Appellant then claims jailhouse recordings made by a public body "should not be deemed public records simply because a public agency has ***access*** to [Appellant's] telephone calls." *See* Writ p. 7 (emphasis added). This argument ignores the fact that the General Assembly defined "public record" to "include[] all books, papers, maps, photographs, cards, ***tapes***, ***recordings***, or other documentary materials regardless of physical form or characteristics ***prepared, owned, used, in the possession of, or retained*** by a public body. S.C. Code Ann. § 30-4-20(c) (emphasis added). Moreover, Appellant later admits that "[t]he detention center retains access to the recordings for security purposes." *See* Writ p. 8. Thus, the recordings of Appellant's non-private jailhouse calls fall squarely within the definition of public record.

3. Appellant's argument that the recordings cannot be a public record because they are compiled by a third-party vendor under a contract with the dentition center borders on frivolous. Section 30-4-20(c) defines public record as one "supported in whole or in part by public funds or expending public funds." The detention center pays the contracted third-party vendor with state funds.

4. Appellant's privacy-based arguments operate under a misconception that a right to privacy bars disclosure of the public record by the public body. Section 30-4-40 merely states that:

> (a) A public body ***may but is not required to exempt*** from disclosure the following information . . .
> (2) Information of a personal nature where the public disclosure thereof would constitute unreasonable invasion of personal privacy . . . .

S.C. Code Ann. § 30-4-40(a)(2) (emphasis added). Thus, Appellant's argument that his privacy right bars release of the recordings is wrong. The public body can release the records over Appellant's objection. *See Fowler v. Beasley*, 322 S.C. 463, 468, 472 S.E.2d 630, 633 (1996) (holding that exemptions should be narrowly construed to not provide blanket prohibition of disclosure). In this case, the government has exempted three of the recorded calls, and is not claiming any other exemptions. Moreover, Appellant, prior to making his jailhouse calls heard a recording explicitly stating that the call is recorded and that the call is not private. Appellant chose to continue with his call while incarcerated in a public body and with knowledge it would be a public record.

5. Lastly, Appellant's claims of interference with the jury's role likewise lack merit. In *Ex Parte First Charleston Corp.*, 329 S.C. 31, 495 S.E.2d 425 (1998), the Supreme Court held that, even in highly publicized cases, voir dire sufficiently ensures a fair trial.

CONCLUSION

Based on the foregoing reasons, Appellant failed to meet his burden to obtain a writ of supersedeas. Gray Media Group, Inc. respectfully requests that this Court deny Appellant's request for a writ of supersedeas.

Respectfully submitted,

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