

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Newberry County
Honorable Eugene C. Griffith, Jr., Circuit Court Judge
Appellate Case No. 2012-212180

RONNIE ALLEN MITCHELL,

Appellant,

vs.

THE STATE OF SOUTH CAROLINA,

Respondent.

INITIAL BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

J. RUTLEDGE JOHNSON
Assistant Attorney General
S.C. Bar #78871

Post Office Box 11549
Columbia, SC 29211
(803) 734-3737

ATTORNEYS FOR RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

I.

The Circuit Court properly issued an administrative order rescinding the grant of authority to proceed *in forma pauperis* after becoming aware of the prior Order Restricting Future Filings in Appellant's 2007 PCR case (2007-CP-36-0109).

STATEMENT OF THE CASE

Appellant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Newberry County. Appellant was indicted at the November 1994 term of the Newberry County Grand Jury for First Degree Burglary and Assault with Intent to Commit First Degree Criminal Sexual Conduct (1994-GS-36-564). Raymond K. Wicker, Esquire, represented him. On February 6-7, 1995, Appellant underwent trial by jury pursuant to which he was found guilty as indicted. The Honorable E.C. Burnett, III, sentenced him to confinement for a period of life for First Degree Burglary and thirty (30) years for Assault with Intent to Commit First Degree Criminal Sexual Conduct. Appellant did not appeal his conviction or sentence.

1996-CP-36-031

Appellant subsequently filed an application for post-conviction relief on February 1, 1996, in which he alleged the following grounds for relief:

1. Ineffective Assistance of Counsel. Did not request continuance on Burglary Charge. Did not do a legal and factual investigation of charges;
2. "Improper sentence on assault with intent to commit criminal sexual conduct. The Judge still sentenced me to 30 years for C.S.C., but the jury only found me guilty to a lessor offense(sic). In the law books assault with the intent is the same as C.S.C. 1st degree. Seems to me the judge didn't explain 1st, 2nd, or 3rd degree to the jury. Also, the Judge stated to the jury if they could not find me guilty of 1st degree he told them they could not find me guilty of 1st degree burglary my lawyer didn't say anything to the Judge about this when the verdict was read out! Why?"; and
3. Without proper indictment court had no jurisdiction.

On December 19, 1996, an evidentiary hearing was held before the Honorable David H. Maring, at which Appellant was present and was represented by Charles Johnson, Esquire. By order dated April 19, 1997, Judge Maring denied and dismissed Appellant's application. Appellant did not appeal the denial of his first Application for PCR.

1998-CP-36-089

Thereafter, Appellant filed a second PCR application on March 19, 1998, in which he raised the following grounds for relief:

1. Ineffective assistance of Post-Conviction Relief counsel. PCR counsel failed to file Notice of Intent to Appeal and the appeal itself; and
2. I was abandoned after denial of PCR as to where I did not know how to file an appeal to the appellate courts. I was totally abandoned by PCR counsel's negligence in perfecting the appeal.

On February 9, 1999, an evidentiary hearing was held before the Honorable Larry R. Patterson, at which Appellant was present and was represented by Lisa G. Echols, Esquire. By order dated March 8, 1999, Judge Patterson denied and dismissed Appellant's application. A timely notice of appeal was filed, and Appellant submitted a petition for writ of certiorari. The South Carolina Supreme Court denied Appellant's petition by order dated March 14, 2001. The Remittitur was sent on April 2, 2001.

2002-CP-37-0063

Appellant filed a third PCR application on February 8, 2002, in which he raised the following allegations:

1. I was not aware of Appeal Rights;
2. Attorney did not advise me or appeal it; and
3. Court lacked subject matter jurisdiction.

The State made its Return on March 25, 2003. An evidentiary hearing into the matter was convened on April 17, 2003, at the Laurens County Courthouse. Appellant was present at the hearing and was represented by David E. Belding, Esquire. On May 12, 2003, the Honorable James W. Johnson, Jr., issued an Order of Dismissal denying and dismissing with prejudice the PCR application.

Appellant timely served and filed a notice of appeal. Assistant Appellate Defender Robert M. Dudek represented him on certiorari in the South Carolina Supreme Court. On April 21, 2004, Mr. Dudek filed a Johnson¹ Petition for Writ of Certiorari on Appellant's behalf in the South Carolina Supreme Court and moved to be relieved as counsel. The South Carolina Supreme Court denied certiorari and granted counsel's request to be relieved in an Order filed on March 3, 2005. The Remittitur was sent on March 22, 2005.

Subsequently, Appellant filed a *pro se* Petition for Writ of Habeas Corpus in the Federal District Court for the District of South Carolina on June 3, 2005. On August 17, 2005, the State filed a Motion for Summary Judgment. Appellant filed his Opposition to the Motion on September 9, 2005. On December 22, 2005, the Magistrate Judge issued a Report recommending that the Respondents' Motion for Summary Judgment be granted. Plaintiff filed "objections" to the Report and Recommendation on January 17, 2006. On January 26, 2006, issued an Order granting the Respondent's Motion for Summary Judgment and dismissed the petition with prejudice. On February 23, 2006, Appellant filed a Notice of Appeal to the United States Court of Appeals for the Fourth Circuit from

¹ Johnson v. State, 364 S.E.2d 201 (S.C. 1988). Johnson sets forth the procedures for counsel to follow when filing meritless appeals in state PCR cases pursuant to Anders v. California, 386 U.S. 738 (1967). *Contra* Pennsylvania v. Finley, 481 U.S. 551 (1987) (prisoner, who had no equal protection or due process right to appointed counsel in post-conviction proceedings, also had no right to insist on Anders procedures for withdrawal of appointed counsel when collateral counsel determined direct appeal was frivolous).

the Order denying Plaintiff's Habeas Corpus. On June 1, 2006, the United States Court of Appeals denied and dismissed the appeal.

2007-CP-36-0109

Appellant filed a fourth application for post-conviction relief on March 21, 2007, which he raised the following allegations:

1. The indictment for first-degree burglary is defective on its face.
2. Appellant argues that he has never been arrested or served properly with an arrest warrant for the offense of first-degree burglary.
3. The State issued two indictments upon the Appellant for the same offenses and improperly made an amendment to the body of the first indictment in open court.

The State filed a Return and Motion to Dismiss and a Motion to Restrict Future Filings on November 19, 2007. An evidentiary hearing into the matter was convened on April 2, 2008, at the Newberry County Courthouse. The Appellant was present at the hearing and represented by M. Rita Metts, Esquire. Ashley A. McMahan, Esquire, of the South Carolina Attorney General's Office represented the State. On May 12, 2008, the Honorable J. Ernest Kinard, Jr., issued an Order dismissing the application as untimely filed and successive, and also granted the State's Motion to Restrict Future Filings.

2011-CP-36-0176

Appellant then filed a "Petition for a State Writ of Habeas Corpus" on March 30, 2011. A Form 4 waiving the filing fees was also filed on March 30, 2011. An Order from the Honorable William P. Keesley was issued on March 9, 2012. An Administrative Order from the Honorable Eugene C. Griffith, Jr. was issued rescinding the previous granted to proceed *in forma pauperis*, attaching the order restricting future filings and dismissing the action.

Appellant filed an appeal on or around June 1, 2013. This Brief of Respondent follows.

ARGUMENT

I.

The Circuit Court properly issued an administrative order rescinding the grant of authority to proceed *in forma pauperis* after becoming aware of the prior Order Restricting Future Filings in Appellant's 2007 PCR case (2007-CP-36-0109).

STANDARD OF REVIEW

In Habeas Corpus actions, preliminary decisions, like whether to allow a petitioner to proceed *in forma pauperis*, are within the sound discretion of the presiding judge and his ruling will not be disturbed unless there is a clear showing of an abuse of such discretion. See Sweet v. State, 255 S.C. 293, 178 S.E.2d 657 (1971).

ANALYSIS

The Honorable Eugene C. Griffith, Jr. properly rescinded the conditional authority of Appellant to proceed *in forma pauperis* in his Administrative Order dated March 30, 2012.

Circuit court judges do not have authority to set aside the orders of other circuit court judges. See Enoree Baptist Church v. Fletcher, 287 S.C. 602, 340 S.E.2d 546 (1986); see also Cook v. Taylor, 272 S.C. 536, 252 S.E.2d 923 (1979); Cf. Narruhn v. Alea London Ltd., 404 S.C. 337, 745 S.E.2d 90 (2013).

After Appellant filed his fourth PCR application and a Writ of Habeas Corpus in the District Court for the District of South Carolina, the Honorable J. Ernest Kinard, Jr. issued an Order of Dismissal on May 12, 2008. (Order of Dismissal dated May 12, 2008). Contained in this order was an order to restrict Appellant's future filings. (Order of Dismissal dated May 12, 2008 pp. 7-11). In essence, Appellant, through his repetitive and frivolous filings, has exhausted all of his PCR and state habeas remedies. The order

directs the Newberry Clerk of Court to refuse to accept further petitions from Appellant unless he pays the filing fees required for filing motions and petitions and to return all documents that do not comply with the order. (Order of Dismissal dated May 12, 2008 pp. 10). It also requires Appellant to file a properly notarized affidavit certifying that Appellant has a good faith basis that the matter raised is not frivolous. (Order of Dismissal dated May 12, 2008 pp. 10). Further, Appellant must send any application to the Chief Administrative Judge for a finding that the allegations are non-frivolous. (Order of Dismissal dated May 12, 2008 pp. 10). Appellant has failed to comply with this order in that he filed no affidavit with his Writ of Habeas Corpus nor submitted the affidavit along with his petition to the Chief Administrative Judge for a finding or non-frivolity.

Nonetheless, Appellant filed a Writ of Habeas Corpus in Newberry County, and Judge Griffith signed an order granting Appellant leave to proceed *in forma pauperis* on March 30, 2011. (Form 4 dated March 30, 2011). Upon receiving the Writ of Habeas Corpus from the Newberry Clerk of Courts Office, Respondent notified Judge Griffith and Appellant that there was an order restricting future filings still in effect. As stated in the Administrative Order, the Honorable Frank R. Addy, Jr. thereafter became Chief Administrative Judge in the Eighth Judicial Circuit, but recused himself due to a conflict. The Honorable William P. Keesley then was assigned to review that matter and issued an order on March 9, 2012, which questioned whether or not Appellant had been granted leave to proceed *in forma pauperis* in his 2011 habeas corpus action. Judge Griffith then issued the Administrative Order which is the subject of this appeal on March 30, 2012. (Administrative Order dated March 30, 2012).

In his Administrative Order, Judge Griffith acknowledges that he was unaware of the order restricting Appellant's future findings when he signed the order granting

Appellant leave to proceed *in forma pauperis*. (Administrative Order dated March 30, 2012 p. 2). He also states the order granting leave was premature and improvidently granted. (Administrative Order dated March 30, 2012 p. 2). Further, Judge Griffith found that, due to Appellant's many previous filings, Appellant has "consumed the entire apple" in pursuit of PCR and habeas remedies. (Administrative Order dated March 30, 2012 p. 2). He then rescinded the Form 4 from 2011 and dismissed the habeas petition. (Administrative Order dated March 30, 2012 p. 3).

In accordance with Enoree Baptist Church v. Fletcher, Judge Griffith lacked the authority to grant Appellant leave to proceed *in forma pauperis* in the state habeas action because Judge Kinard had already restricted Appellant's future filings in the order from Appellant's 2007 case. 287 S.C. 602, 340 S.E.2d 546 (1986). This order was still in effect when Judge Griffith signed the Form 4, and thus Judge Griffith could not overrule this order. The order restricting future filings clearly set forth the procedures Appellant had to follow when filing another petition of this nature. These guidelines were not followed by Appellant.

However, Judge Griffith remedied this situation when he issued the Administrative Order on March 30, 2012. This order put the case back to the same position it would have been had Judge Kinard's order been followed from the start. Therefore, Judge Griffith was well within his discretion to rescind the order granting Appellant leave to proceed *in forma pauperis*.

Thus, Appellant cannot show that Judge Griffith abused his discretion when he remedied his previous order and dismissed the case.

CONCLUSION

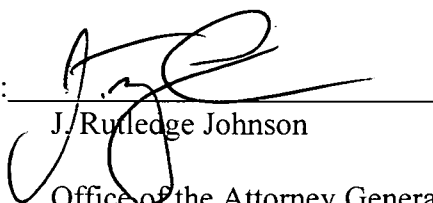
For all the foregoing reasons, it is respectfully submitted that the ruling of the circuit court judge should be affirmed and the case should be dismissed.

Respectfully submitted,

ALAN WILSON
Attorney General

J. RUTLEDGE JOHNSON
Assistant Attorney General
SC Bar #78871

BY: _____


J. Rutledge Johnson

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3737

ATTORNEYS FOR RESPONDENT

September 3, 2013