



RECEIVED
Dec 27 2024
S.C. SUPREME COURT

ALAN WILSON
ATTORNEY GENERAL

December 27, 2024

The Honorable Patricia A. Howard
Clerk of the South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

RE: State v. Antonio Gordon – Appellate Case No. 2024-001905

Dear Ms. Howard:

At present, a pro se petition for a writ of certiorari filed by Antonio Gordon, the petitioner in the above-referenced case, pursuant to Rule 242 of the South Carolina Appellate Court Rules is currently pending before this Court. That petition relates to Gordon’s so-far-unsuccessful appeal of the October 2021 order of the Honorable William A. McKinnon, circuit court judge, summarily denying his pro se post-plea motion entitled “Notice and Motion to Vacate Conviction and Sentenced Based on ‘Lack of Subject Matter Jurisdiction.” Notably, that pro se post-plea motion was filed 8,088 days *after* Gordon was sentenced for murder and other crimes and, thus, was plainly untimely. See Rule 29(a), SCRCrimP (“Except for motions for new trials based on after-discovered evidence, post-trial motions shall be made within ten (10) days after the imposition of the sentence.”).

Through a pro se motion dated November 26, 2024, Gordon—despite having already filed his pro se petition for a writ of certiorari in this matter—now asks this Court to appoint counsel to represent him going forward on appeal. Respectfully, the State asks this Court relax the timelines set out in Rule 240(e) of the South Carolina Appellate Court Rules and accept this letter in lieu of a formal return to Gordon’s pro se motion. See Rule 263(b), SCACR (“The time prescribed by these Rules for performing any act except the time for serving the notice of appeal under Rules 203 and 243 may be extended or shortened by the appellate court, or by any judge or justice thereof.”).

To the extent Gordon is now seeking for counsel to be appointed to represent him at this late stage of the appellate process in his case, the State wishes to leave the matter to the sound discretion of this Court. However, the State wishes to note three points that strongly support the denial of Gordon’s request for counsel to now be appointed.

First, Gordon’s appeal is wholly lacking in merit for the reasons identified by Judge McKinnon in his order, by the Court of Appeals in its decision affirming Judge McKinnon’s order, and by the State in its return to Gordon’s pro se petition for a writ of certiorari, which is

being filed contemporaneously with this letter. Second, since Gordon's appeal relates to the summary denial of a post-plea motion filed years after he was convicted and sentenced, Gordon did not and does not have a right to counsel in this matter. See State v. Clinkscales, 318 S.C. 513, 515, 458 S.E.2d 548, 549 (1995) (rejecting Clinkscales's claim he had a right to counsel in connection to his post-trial, post-appeal new trial motion). Third and finally, the nature of certiorari review greatly constrains what can validly be raised and argued in Gordon's appeal regardless of whether he is represented by counsel or not. See Rule 242(d)(1), SCACR ("Only those questions raised in the Court of Appeals and in the petition for rehearing shall be included in the petition for writ of certiorari as a question presented to the Supreme Court.").

Thank you very much, and, if you should have any questions or concerns or if a more formal return is desired, please do not hesitate to contact me.

Sincerely,



Mark R. Farthing
Senior Assistant Deputy Attorney General
S.C. Bar Number 76901

MRF/

cc: Antonio Gordon, # 259758
Victim Advocacy Division