

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Jun 25 2025

Appeal from Charleston County

S.C. SUPREME COURT

Honorable Jocelyn Newman, Circuit Court Judge

DARRELL L. GOSS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

APPELLATE CASE NO.: 2025-000218

MOTION TO HOLD APPEAL IN ABEYANCE AND
REMAND FOR RULING ON PETITIONER'S RULE 59(e) MOTION

Pursuant to Rule 240 of the South Carolina Appellate Court Rules, undersigned counsel moves this Court for an order holding the timelines for appeal in abeyance and remanding this case to the Charleston County Court of Common Pleas for a ruling on Petitioner's outstanding Rule 59(e), SCRCF, motion. Counsel would show this Court:

1. In September of 2007, Petitioner was indicted by a Charleston County grand jury for one count each of assault and battery with intent to kill, armed robbery, and kidnapping. He proceeded

to trial on February 23-26, 2009, before the Honorable J.C. Nicholson.¹ He was found guilty as indicted and sentenced to concurrent sentences of twenty years' incarceration for each charge.

2. Petitioner timely filed a direct appeal of his convictions. The Court of Appeals affirmed the convictions in an unpublished opinion. State v. Goss, Op. No. 2011-UP-214 (S.C. Ct. App. filed May 17, 2011). On May 27, 2011, Petitioner filed his initial application for post-conviction relief in PCR case 2011-CP-10-03782. An evidentiary hearing was held on September 11, 2011, before the Honorable Deadra L. Jefferson. On December 11, 2011, Judge Jefferson denied Petitioner's application for post-conviction relief.

3. Petitioner timely appealed the denial of his 2011 PCR application. The Court of Appeals affirmed the denial of the 2011 PCR application in an unpublished opinion. Goss v. State, Op. No. 2016-UP-382 (S.C. Ct. App. filed July 27, 2016). Petitioner sought a writ of certiorari from this Court to review the denial of his 2011 PCR application. This Court reversed the Court of Appeals and remanded the matter to the circuit court for a *de novo* evidentiary hearing.² Goss v. State, 425 S.C. 101, 820 S.E.2d 373 (2018).

4. The *de novo* evidentiary hearing in PCR case 2011-CP-10-03782 was held on December 8, 2021, before the Honorable Jennifer B. McCoy. At the start of the hearing Petitioner moved to

¹ Petitioner was tried jointly with his co-defendant, Joy Mack, who was also found guilty as indicted.

² "It was error for the PCR court to take judicial notice of the witnesses' testimony and then conclude these witnesses would not have been credible to a jury because of their relationships with Goss. ... Here, the PCR court's decision to take judicial notice of the substance of witnesses' testimony and then find those witnesses not credible diluted the process to the point where the PCR court's factual findings—and perhaps the legal conclusions arising from those factual findings—were based upon an incomplete consideration of all the evidence." Goss v. State, 425 S.C. 101, 107–08, 820 S.E.2d 373, 376 (2018).

proceed *pro se* and his request was granted. Judge McCoy denied Petitioner's 2011 PCR application in a written order on June 15, 2022. (Exhibit A)

5. Petitioner timely filed a Rule 59(e), SCRPC, motion on June 27, 2022. (Exhibit B). No order has ever been issued ruling on this Rule 59(e), SCRPC, motion. On July 5, 2022, Petitioner filed a notice of intent to appeal Judge McCoy's 2022 ruling denying relief in PCR case 2011-CP-10-03782, even though the Rule 59(e), SCRPC, motion was still pending.

6. Petitioner moved before this Court to proceed *pro se* on appeal. This Court denied that request and ordered Petitioner to hire private counsel or obtain representation through the South Carolina Office of Indigent Defense. On October 24, 2022, this Court dismissed Petitioner's appeal for failing to comply with the Court's order.

7. On September 25, 2023, Petitioner filed the present application in PCR case 2024-CP-10-02101, alleging he was entitled to a belated appeal of Judge McCoy's 2022 order in PCR case 2011-CP-10-03785 pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991). He amended his application on June 27, 2024, to further assert that his name should be removed from the sex offender registry because his kidnapping conviction did not include a criminal sexual offense.

8. An evidentiary hearing was convened in PCR case 2024-CP-10-02101 before the Honorable Jocelyn Newman on December 17, 2024. At the hearing the State agreed that Petitioner's name should be removed from the sex offender registry, but argued that the claim related to the belated appeal of 2011-CP-10-03782 should be dismissed as premature and not ripe for consideration due to a pending Rule 59(e), SCRPC, motion in that case.

9. On January 10, 2025, an order was filed removing Petitioner's name from the sex offender registry and dismissing the belated appeal pursuant to Austin claim as untimely.³ Petitioner timely filed a notice of appeal from the portion of the order denying him a belated appeal.

10. The record in this case shows that Petitioner timely filed a Rule 59(e), SCRPC, motion in PCR case 2011-CP-10-03782 that has been pending since June 2022. The unruled upon Rule 59(e), SCRPC, motion stayed the necessity for any further proceedings in the case until that motion has been resolved.


11. Petitioner requests this Court remand this matter to the Court of Common Pleas of Charleston County for a ruling on the Rule 59(e), SCRPC, motion so that if the lower court denies the motion, Petitioner can properly file a notice of intent to appeal the denial of relief in PCR case 2011-CP-10-03782.

12. Opposing counsel for the state, Assistant Attorney General Danielle Dixon, has no objection to remanding this matter to the circuit court for a ruling on the outstanding Rule 59(e), SCRPC, motion.

³ In the order, the PCR court found in the alternative that if the Rule 59(e) did not stay the timelines for filing an appeal, Petitioner could not show prejudice from stand-by counsel's failure to file an appeal where Petitioner himself filed the appeal but failed to follow the instructions of the Supreme Court resulting in the appeal being dismissed.

WHEREFORE, undersigned counsel respectfully requests an order from this Court holding the appeal in abeyance and remanding the matter to the circuit court of Charleston County for a ruling on Petitioner's outstanding Rule 59(e), SCRPC, motion in case number 2011-CP-10-03782.

Respectfully submitted,



Jessica M. Saxon
Appellate Defender
Attorney for Appellant

This 25th day of June, 2025.