

Sep 23 2025

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

On Petition for Writ of Certiorari to the Court of General Sessions
Appeal from Spartanburg County
Honorable J. Mark Hayes, II, Circuit Court Judge
Appellate Case No. 2025-001324

GARY LAMONT PETTY,

Petitioner,

vs.

THE STATE OF SOUTH CAROLINA,

Respondent.

RETURN TO PETITIONER'S PRO SE PETITION FOR REHEARING

Through an order issued on July 29, 2025, this Court dismissed an Access to Justice Post-Conviction DNA Testing Act appeal initiated in a pro se capacity by the petitioner, Gary Lamont Petty, after he received a letter from a circuit court judge about insufficiencies with a number of filings he had submitted at the circuit court level. In dismissing the appeal, this Court concluded there did not appear to be a final order that was reviewable on appeal in Petty's case. Pursuant to Rule 221(a) of the South Carolina Appellate Court Rules, Petty has now submitted a pro se petition for rehearing along with requests for rehearing en banc and to be granted an appeal bond to this Court, and this Court has asked the State to file a return to Petty's petition. For the reasons that follow, Petty's pro se rehearing petition should be denied.

First, Petty's pro se petition for rehearing should be rejected because Petty did not actually raise any arguments in it related to any ruling of the circuit court judge—final or

otherwise—concerning Petty’s application for post-conviction forensic DNA testing, which is the sole subject to which the matter currently before this Court relates. Instead, through his pro se petition for rehearing, Petty contends the circuit court judge rejected his post-trial *new trial motions* that were submitted pursuant to Rule 29(b) of the South Carolina Rules of Criminal Procedure as untimely and, thus, a final and reviewable judgment was supposedly issued in his case in connection to those motions. (Pet. for Reh. pp. 1-5; Amended Pet. for Reh. pp. 1-4).

Importantly though, Petty’s appeal related to his post-trial new trial motions was an entirely *separate* matter that was also recently before this Court, but, since Petty did not properly seek rehearing in that particular matter, this Court has already issued the remittitur, which brought that distinct appeal to an end. Appellate Records for State v. Gary Lamont Petty, South Carolina Appellate Court Public Index,

<https://ctrack.sccourts.org/public/caseView.do?csIID=83727>. Therefore, since Petty’s pro se petition for rehearing is substantively only seeking rehearing in connection to a matter over which this Court no longer has jurisdiction, it should be denied as moot. See Sullivan v. Speights, 14 S.C. 358, 360 (1880) (“After the *remittitur*, however, is sent down, the case passes beyond the reach of this court and its jurisdiction is lost, and no motion can be heard by this court on the matter thereafter.”); see also Atl. Coast Builders & Contractors, LLC v. Lewis, 398 S.C. 323, 329, 730 S.E.2d 282, 285 (2012) (“[A]n unappealed ruling, right or wrong, is the law of the case.”); Sloan v. Friends of Hunley, Inc., 369 S.C. 20, 26, 630 S.E.2d 474, 477 (2006) (“A moot case exists where a judgment rendered by the court will have no practical legal effect upon an existing controversy because an intervening event renders any grant of effectual relief impossible for the reviewing court.”); DeWitt v. South Carolina Dep’t of Highways and Pub.

Transp., 274 S.C. 184, 187, 262 S.E.2d 28, 30 (1980) (“The acts of a court without jurisdiction are without effect.”).

Second, just as this Court has already found when dismissing Petty’s appeal, the circuit court judge does not appear to have issued any final appealable orders on Petty’s application for post-conviction forensic DNA testing. Resultantly, notwithstanding any other procedural or substantive issues with Petty’s pro se petition, Petty’s petition for rehearing should be denied due to the absence of an appealable final judgment.

Generally speaking, an appeal may only be pursued after a party has obtained a final judgment or has otherwise satisfied the terms Section 14-3-330 of the South Carolina Code of Laws. State v. Wilson, 387 S.C. 597, 599, 693 S.E.2d 923, 924 (2010); see Hagood v. Sommerville, 362 S.C. 191, 194, 607 S.E.2d 707, 708 (2005) (“An appeal ordinarily may be pursued only after a party has obtained a final judgment.”); State v. Miller, 289 S.C. 426, 427, 346 S.E.2d 705, 706 (1986) (“In order to exercise his statutory right to appeal, a defendant must come within the terms of the applicable statute.”). And, critically, in the context of a ruling on an application for testing made pursuant to Access to Justice Post-Conviction DNA Testing Act, an appealable final judgment means “a final order denying or granting DNA testing[.]” S.C. Code Ann. § 17-28-90(G).

Here, through the letter Petty is currently attempting to challenge on appeal, the circuit court judge did *not* finally grant or deny Petty’s application for additional post-conviction DNA testing on the merits but, instead, appeared to simply advise Petty his application was insufficient in its current form. (June 2025 Letter pp. 1-2). Accordingly, the circuit court judge’s letter does not appear to constitute a final ruling that was appealable pursuant to the plain language of the Access to Justice Post-Conviction DNA Testing Act. See S.C. Code Ann. § 17-28-90(G) (“The

applicant and the solicitor or Attorney General, as applicable, shall have the right to appeal a final order denying or granting DNA testing by a writ of certiorari to the Court of Appeals or the Supreme Court as provided by the South Carolina Appellate Court Rules.”).

Third and finally, to the extent Petty is seeking the grant of an appeal bond, that request should respectfully also be rejected. Significantly, a defendant has no right to an appeal bond, and a court ordinarily will only issue one with “extreme caution.” Nichols v. Patterson, 202 S.C. 352, ___, 25 S.E.2d 155, 156 (1943) (citation and internal quotations omitted). Here, Petty stands convicted by a jury of his peers of a litany of highly-serious and heinous offenses, including first-degree burglary and first-degree criminal sexual conduct, and is currently serving an aggregate sentence of *life without the possibility of parole*. See, e.g., State v. Johnson, 350 S.C. 543, 547, 567 S.E.2d 486, 488 (Ct. App. 2002) (characterizing first-degree burglary as a grave offense). Meanwhile, his current appeal is not a direct appeal but, instead, is a collateral appeal of a letter addressing—amongst other things—insufficiencies with his application seeking *further* post-conviction DNA testing, which—if Petty’s appeal was somehow ultimately successful and that application was ever granted—would only result in, at best for Petty, further testing and the discovery of a *potential* basis upon which a post-trial motion seeking a new trial could be filed. See S.C. Code Ann. § 17-28-100(B) (“If the results of the DNA test are exculpatory, the applicant may use the exculpatory results of the DNA test as grounds for filing a motion for new trial pursuant to the South Carolina Rules of Criminal Procedure.”). Under such circumstances, Petty cannot possibly demonstrate what is necessary to warrant the extraordinary—and disfavored—relief of the grant of an appeal bond, and his request for one should be flatly denied. See Nichols, 202 S.C. at ___, 25 S.E.2d at 156 (explaining an appellate court—when deciding whether to grant an appeal bond—should consider the following factors:

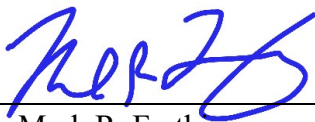
(1) the probability of success on appeal; (2) the nature and seriousness of the criminal offense committed; (3) the danger the defendant may pose to the community if he or she is released; (4) the likelihood the defendant may forfeit bail or flee if released; (5) the character and circumstances of the defendant; and (6) the defendant's "personal attitude toward society and government."); see also S.C. Code Ann. § 18-1-90 ("Bail may be allowed to the defendant in all cases in which the appeal is from the trial, conviction, or sentence for a criminal offense. However, bail is not allowed when the defendant has been sentenced to death, life imprisonment, or imprisonment for more than ten years.").

Accordingly, for all those reasons, this Court should deny Petty's pro se petition for rehearing and uphold its earlier decision to dismiss his appeal. Furthermore, to the extent Petty is seeking release from his life-without-parole sentence on an appeal bond, this Court should deny that request, too.

Respectfully submitted,

ALAN WILSON
Attorney General

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Senior Assistant Deputy Attorney General

By: 
Mark R. Farthing
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September 23, 2025

RECEIVED

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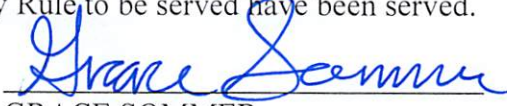
Respondent.

PROOF OF SERVICE

I, Grace Sommer, certify I have served the within Return to Petitioner's Pro Se Petition for Rehearing on Petitioner by mailing a copy to the following individual:

Gary Lamont Petty, # 264235
Perry Correctional Institution
430 Oaklawn Road
Pelzer, SC 29669

I further certify all parties required by Rule to be served have been served.
This 23rd day of September, 2025.


GRACE SOMMER
Legal Assistant
Office of the Attorney General