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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

On Petition for Writ of Certiorari to the Court of Appeals
Appeal from Spartanburg County
Honorable J. Mark Hayes, II, Circuit Court Judge
Appellate Case No. 2026-000368

GARY LAMONT PETTY,

Petitioner,

vs.

THE STATE OF SOUTH CAROLINA,

Respondent.

RETURN TO PETITION FOR WRIT OF CERTIORARI

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 Petty’s petition for a writ of certiorari should be denied because:
 (1) the arguments raised through that petition relate to a separate
 and distinct appeal involving a post-trial claim of juror misconduct
 that has already been remitted; and (2) no contentions have been
 raised in the petition concerning the Court of Appeals’s dismissal
 of the matter currently before this Court, which involves an appeal
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PETITIONER’S STATEMENT OF ISSUES ON CERTIORARI

I.

“Whether the Court of Appeals erred by dismissing the appeal for lack of a final order where the Circuit Court’s written letter denying a hearing on juror voir dire misconduct which implicates a constitutional right to an impartial jury, effectively foreclosed any avenue for further relief and render the claim incapable of further adjudication.”

II.

“Whether a Circuit Courts letter denying a hearing on juror misconduct constitutes an appeal order under S.C. Code Ann. § 14-3-330(2) in that it is an intermediate order involving the merits or affecting a substantial right which, in effect, determines the action and prevents a judgment from which an appeal might be taken.”

RESPONDENT’S COUNTER-STATEMENT OF ISSUE ON CERTIORARI

Should Petty’s petition for a writ of certiorari be denied when: (1) the arguments raised through that petition relate to a separate and distinct appeal involving a post-trial claim of juror misconduct that has already been remitted; and (2) no contentions have been raised in the petition concerning the Court of Appeals’s dismissal of the matter currently before this Court, which involves an appeal stemming solely from Petty’s latest attempt to obtain further post-conviction forensic DNA testing, and, thus, the ruling of the Court of Appeals in the current appeal has now—whether right or wrong—become the law of the case?

STATEMENT OF THE CASE

Relevant Portions of Procedural History

In November of 1998, Petitioner Gary Lamont Petty was arrested following an investigation into a violent home invasion and sexual assault that had been committed a few weeks earlier. In April of 1999, the Spartanburg County Grand Jury indicted Petty for first-degree burglary, first-degree criminal sexual conduct, and grand larceny. On February 7, 2000, a jury trial was commenced in the Spartanburg County Court of General Sessions with the Honorable Lee S. Alford, circuit court judge, presiding. At the conclusion of the three-day trial, the jury convicted Petty as indicted. Following the verdict, the trial judge—after deferring sentencing to the next day—sentenced Petty to concurrent terms of imprisonment of life without parole for first-degree burglary, thirty years for first-degree criminal sexual conduct, and five years for grand larceny.

Subsequently, following an unsuccessful direct appeal and a variety of other unsuccessful attempts to obtain relief—including by filing *numerous* successive applications for post-conviction relief¹—at the circuit court level, on appeal,² and through the federal court system, Petty filed a variety of motions and other filings in the Spartanburg County Court of General Sessions seeking—amongst other things—a new trial based on supposed newly-discovered

¹ To date, Petty appears to have filed no less than eight applications for post-conviction relief related to his February 2000 Spartanburg County convictions. Records for Gary Lamont Petty, Spartanburg County Seventh Judicial Circuit Public Index, <https://publicindex.sccourts.org/spartanburg/publicindex>.

² Records from a portion of Petty's earlier appeals are presently available through our state's appellate court public index. Appellate Records for Gary Lamont Petty v. State, South Carolina Appellate Court Public Index, <https://ctrack.sccourts.org/public/caseView.do?csIID=83240>; Appellate Records for Gary Lamont Petty v. State, South Carolina Appellate Court Public Index, <https://ctrack.sccourts.org/public/caseView.do?csIID=65044>; Appellate Records for Gary L. Petty v. State, South Carolina Appellate Court Public Index, <https://ctrack.sccourts.org/public/caseView.do?csIID=53122>.

evidence, a new trial based on purported juror misconduct, and additional forensic testing pursuant to the Access to Justice Post-Conviction DNA Testing Act. Through a letter dated June 6, 2025, the Honorable J. Mark Hayes, II, circuit court judge, advised Petty: (1) he had reviewed Petty's numerous motions and other circuit court filings in his administrative capacity; (2) he determined those motions and filings were either not properly filed or failed to contain sufficient information to make the requisite prima facie showing needed to justify conducting a hearing on them; (3) no hearings would be scheduled on Petty's motions and filings; and (4) he encouraged Petty to seek legal advice from an attorney. Following that, Petty initiated two separate and distinct appeals by filing two different notices of appeal. More specifically, Petty submitted a first notice of appeal dated June 19, 2025, in an effort to initiate an appeal of the letter to the extent it addressed his various new trial motions along with a second notice of appeal dated June 23, 2025, in an effort to initiate an appeal of the letter to the extent it addressed his attempt to obtain forensic testing pursuant to the Access to Justice Post-Conviction DNA Testing Act.³

On appeal, the Court of Appeals—via an order issued on July 16, 2025—dismissed the new trial motion appeal Petty initiated through the June 19, 2024, notice of appeal upon concluding there was not a final order that was reviewable on appeal. Thereafter, through an order issued on July 29, 2025, the Court of Appeals dismissed the post-conviction forensic testing appeal Petty initiated through the June 23, 2025, notice of appeal for the same reasons.

No petition for rehearing was filed in connection to the first order of dismissal, and the remittitur was issued in connection to Petty's new trial motion appeal on August 5, 2025.

³ Demonstrating Petty's awareness of the distinct nature of the two appeals he initiated, Petty—shortly after filing the second of the notices of appeal—also submitted a petition for a writ of certiorari along with various documents, including his application for forensic DNA testing pursuant to the Access to Justice Post-Conviction DNA Testing Act, that appear to constitute the accompanying appendix. Appellate Records for Gary Lamont Petty v. State, South Carolina Appellate Court Public Index, <https://ctrack.sccourts.org/public/caseView.do?csIID=83745>.

However, on August 4, 2025,⁴ Petty submitted a petition for rehearing in connection to the second order of dismissal, and, a few days later, he submitted some amendments to that petition along with a request for rehearing en banc. At the request of the Court of Appeals, the State filed a return to Petty’s submissions, and Petty filed a reply to the State’s return. On January 21, 2026, the Court of Appeals denied Petty’s petition for rehearing. Petty then filed a petition for a writ of certiorari in the Supreme Court along with a subsequent amendment to that petition.⁵

⁴ Notably, a little over a month after filing that petition for rehearing, Petty also filed what appears to be his *eighth* application for post-conviction relief in the Spartanburg County Court of Common Pleas. Records for Gary Lamont Petty, Spartanburg County Seventh Judicial Circuit Public Index, <https://publicindex.sccourts.org/spartanburg/publicindex>. Through that latest application, Petty is—once again—seeking to litigate his claim of supposed juror misconduct. Id.

⁵ Since that point, Petty has filed *another* notice of appeal in an apparent effort to yet again initiate an appeal of the circuit court judge’s June 6, 2025, letter. Appellate Records for Gary Lamont Petty v. State, South Carolina Appellate Court Public Index, <https://ctrack.sccourts.org/public/caseView.do?csIID=83745>. And, despite having already filed two earlier notices of appeal related to the very same letter, Petty claimed in his latest notice of appeal he received “written notice of entry of this ruling on February 19, 2026[.]” Id.

STANDARD OF REVIEW

In criminal cases, appellate courts sit only to review *preserved* errors of law. State v. Wise, 359 S.C. 14, 21, 596 S.E.2d 475, 478 (2004); see State v. Branham, 392 S.C. 225, 228, 708 S.E.2d 806, 808 (Ct. App. 2011) (“The appellate court’s review in criminal cases is limited to correcting the order of the circuit court for errors of law.”). For appellate purposes, “[t]he determination of whether a trial court’s order is immediately appealable is governed by statute[.]” Morrow v. Fundamental Long-Term Care Holdings, LLC, 412 S.C. 534, 537, 773 S.E.2d 144, 145 (2015). When conducting appellate review of an issue hinging on interpretation of a statute, the appellate court will review the matter de novo because questions of statutory interpretation are questions of law. State v. Whitner, 399 S.C. 547, 552, 732 S.E.2d 861, 863 (2012).

ARGUMENT

Petty’s petition for a writ of certiorari should be denied because: (1) the arguments raised through that petition relate to a separate and distinct appeal involving a post-trial claim of juror misconduct that has already been remitted; and (2) no contentions have been raised in the petition concerning the Court of Appeals’s dismissal of the matter currently before this Court, which involves an appeal stemming solely from Petty’s latest attempt to obtain further post-conviction forensic DNA testing, and, thus, the ruling of the Court of Appeals in the current appeal has now—whether right or wrong—become the law of the case.

Through his current pro se petition for a writ of certiorari, Petty contends the Court of Appeals erred by dismissing his appeal related to his most-recent post-trial claim of *juror misconduct*. As support for that contention, Petty maintains he timely filed a post-trial “juror voir dire misconduct motion,” the circuit court judge supposedly “disposed of the juror misconduct claim in its entirety” through a letter, he filed a notice of appeal after that, and the Court of Appeals both dismissed his appeal and denied his petition for rehearing due to its conclusion there was no final appealable order for him to appeal. In Petty’s view, the circuit court judge’s letter about the insufficiencies with his motions and filings should have been construed as a final order on the merits of his juror misconduct claim and, therefore, the Court of Appeals reversibly erred by dismissing his appeal. Meanwhile, Petty raises *no* contentions whatsoever through his pro se petition concerning the Court of Appeals’s dismissal of his *other* appeal related to his latest attempt to obtain further forensic testing pursuant to an Access to Justice Post-Conviction DNA Testing Act. Critically, since the matter currently before this Court *solely* stems from the dismissal of Petty’s appeal attempting to challenge the circuit court judge’s refusal to grant further post-conviction forensic testing based on the information presented to him, Petty’s failure to raise any issues related to that matter means the Court of

Appeals’s dismissal of that distinct appeal—whether right⁶ or wrong—has become the law of the case. Petty’s petition for a writ of certiorari should be denied.

Pursuant to the law-of-the-case doctrine, a lower court’s ruling—right or wrong—becomes the law of the case if not appealed. State v. Black, 400 S.C. 10, 28, 732 S.E.2d 880, 890 (2012); see State v. Childers, 373 S.C. 367, 377 n. 5, 645 S.E.2d 233, 238 n. 5 (2007) (“An unchallenged ruling *by the Court of Appeals*, even if erroneous, is the law of the case on certiorari.” (emphasis added)). Significantly, “should the appealing party fail to raise all of the grounds upon which a lower court’s decision was based, those unappealed findings—whether correct or not—become the law of the case.” Dreher v. S.C. Dep’t of Health & Env’t Control, 412 S.C. 244, 250, 772 S.E.2d 505, 508 (2015).

With that in mind, Petty’s current pro se petition is solely focused on a supposed error committed by the Court of Appeals when it dismissed his attempt to appeal the portion of the circuit court judge’s letter refusing to grant him a hearing on his post-trial claim seeking a new trial based on purported juror misconduct. Importantly though, Petty’s appeal related to his post-trial new trial motions was an entirely *separate* matter initiated through the filing of a different

⁶ For what it’s worth, the circuit court judge did not finally grant or deny Petty’s application for additional post-conviction DNA testing on the merits through the letter Petty was attempting to challenge on appeal but, instead, appeared to simply advise Petty his application and other filings were insufficient in their current forms. (Petty’s Feb. 2026 App’x pp. 1-2). Resultantly, the decision of the Court of Appeals was correct because the circuit court judge’s letter did 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.”); see also 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.”).

notice of appeal⁷ that was also recently before the Court of Appeals, but, since Petty did not properly seek rehearing in that particular matter, the Court of Appeals 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>. Meanwhile, the matter currently before this Court relates to the *other* appeal Petty initiated in response to the circuit court judge’s letter through the filing of a discrete notice of appeal,⁸ and that appeal solely concerned Petty’s latest attempt to obtain further forensic testing pursuant to an Access to Justice Post-Conviction DNA Testing Act. Appellate Records for Gary Lamont Petty v. State, South Carolina Appellate Court Public Index, <https://ctrack.sccourts.org/public/caseView.do?csIID=83745>.

Therefore, since Petty’s current pro se petition for a writ of certiorari is substantively only seeking relief in connection to a matter over which appellate jurisdiction no longer exists, it should be denied as moot. See Sullivan v. Speights, 14 S.C. 358, 360 (1880) (“After the *remittitur* . . . 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.”); 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

⁷ As previously noted, the notice of appeal initiating that appeal was dated June 19, 2025, and, in it, Petty indicated he was appealing “the dismissal and refusal to grant hearings on his Rule 29(b) and juror misconduct motions for a new trial” that was made on June 6, 2025. Appellate Records for State v. Gary Lamont Petty, South Carolina Appellate Court Public Index, <https://ctrack.sccourts.org/public/caseView.do?csIID=83727>.

⁸ The notice of appeal initiating the case sub judice was dated June 23, 2025, and, in it, Petty indicating he was appealing the June 6, 2025, ruling “denying a hearing on his application for post conviction DNA testing[.]” Appellate Records for Gary Lamont Petty v. State, South Carolina Appellate Court Public Index, <https://ctrack.sccourts.org/public/caseView.do?csIID=83745>.

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.”). Relatedly, since Petty has not challenged the Court of Appeals’s dismissal of his other appeal—which is the one currently before this Court—related to the Access to Justice Post-Conviction DNA Testing Act, the Court of Appeals’s ruling dismissing that distinct appeal has now become the law of the case regardless of whether it was right or wrong. See 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.”). Petty’s petition for a writ of certiorari should be denied.


CONCLUSION

For all the foregoing reasons, it is respectfully submitted Petitioner's petition for a writ of certiorari should be denied.

Respectfully submitted,

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