The Supreme Court of South Carolina

Larry A. White, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2026-001101

ORDER

This matter is currently before the Court by way of a *pro se* notice of appeal from an order of the Court of Common Pleas denying Petitioner relief under *Franks v. Delaware*, 438 U.S. 154 (1978), for an alleged false statement in an arrest warrant affidavit. Petitioner has also filed a Rule 29(b), SCRCrimP, motion for a new trial based on a change in the law on the intent required for attempted murder. *See State v. Geter*, 445 S.C. 139, 912 S.E.2d 255 (2025) (holding the doctrine of transferred intent is not applicable to attempted murder). According to the Public Index, that motion has not been heard or decided. Although Petitioner filed both his motion for a *Franks* hearing and his motion for a new trial under his general sessions indictment number, the Marion County Clerk of Court filed both motions in the Court of Common Pleas under the case number for Petitioner's second post-conviction relief (PCR) action.

The State now moves to dismiss the matter on the ground that the circuit court did not have subject matter jurisdiction to hear the motion for a new trial. There is no argument as to the subject matter jurisdiction over the motion for a *Franks* hearing. Because this matter does not concern the motion for a new trial, we deny the State's motion to dismiss based on a lack of subject matter jurisdiction. However, because the Marion County Clerk of Court erroneously filed the motion for a new trial in the Court of Common Pleas, we direct the clerk to transfer the motion to the Court of General Sessions and file it under Indictment No. 2017-GS-33-00416.

As to the matter currently before the Court, in which Petitioner is seeking a writ of certiorari from the order of Judge Seals denying his motion for a *Franks* hearing,

Petitioner has filed a Rule 59(e), SCRCP, motion to alter or amend with Judge Seals. Because that motion has not been ruled on, we dismiss the petition for a writ of certiorari filed by Petitioner without prejudice and remand the matter to Judge Seals for a ruling on Petitioner's Rule 59(e) motion. Following a ruling by Judge Seals, either party may file a petition for a writ of certiorari seeking review of that decision. *See Hudson v. Hudson*, 290 S.C. 215, 216, 349 S.E.2d 341, 341–42 (1986) (holding when a timely post-trial motion is pending before the lower court, a notice of appeal will be dismissed without prejudice as premature, and any party can appeal after the order disposing of the post-trial motions). The State's motion to file its return to the petition for a writ of certiorari is denied as moot.

C.J.

J.

J.

J.

Columbia, South Carolina
November 4, 2026

cc:
D. Russell Barlow, II
Larry A. White, 371303