

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Charleston County
Kristi Lea Harrington, Circuit Court Judge

Appellate Case No. 2013-000692
- Circuit Court Case No. 2013-CP-10-4462

LARRY G. HARVIN, #253468,

Appellant,

v.

STATE OF SOUTH CAROLINA,

Respondent.

REPLY BRIEF OF APPELLANT

LARRY G. HARVIN, #253468

M&C.I. F.I-125.B

386 Redemption Way

M&Cormick, SC 29899

- PRO. SE. APPELLANT

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SC Court of Appeals

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TABLE OF CITED AUTHORITIES

CASES

[FEDERAL]

- Briggs v. Newberry County School Dist., 838 F.Supp. 232 (D.S.C. 1992), 9
- Gonzalez v. Crosby, 545 U.S. 524, 125 S.Ct. 2641, 162 L.Ed. 2d 480 (2005), 9
- In re FTC Line of Business Report Litigation, 626 F.2d 1022 (D.C. Cir. 1980), 7
- U.S. ex rel. May v. Perdue Pharma L.P., 737 F.3d 908 (4th Cir. 2013), 9

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- Doe v. Roe, 379 S.C. 291, 665 S.E.2d 182 (S.C. App. 2008), 8
- In re Treatment and Care of Luckabaugh, 351 S.C. 122, 568 S.E.2d 338 (S.C. 2002), 6; 7
- State v. Black, 319 S.C. 515, 462 S.E.2d 311 (S.C. App. 1995), 8

COURT RULES

[FEDERAL]

- Federal Rules of Civil Procedure 52(a), 7

[STATE]

- South Carolina Appellate Court Rules 203(d)(1)(B)(vi), 9
- South Carolina Rules of Civil Procedure 41(b), 6
- South Carolina Rules of Civil Procedure 52(a), 6
- South Carolina Rules of Civil Procedure 60(b), 6

SECONDARY RESOURCES

- BLACK'S LAW DICTIONARY, Bryan A. Garner, 9th ed. 2009, 9

STATEMENT OF REPLY ISSUES

I. - Whether this Court should Affirm the lower Court's judgment based on Respondent's Conclutory Arguments?

II. Whether this Court should Affirm the lower Court's judgment based on Respondent's apparent Misconstruction of the 'Res Judicata' doctrine?

STATEMENT OF THE CASE

Appellant ('Harvin') agrees with Respondent's
Statement of the Case.

REPLY ARGUMENT(S)

Harvin designates his Reply to Respondents unnumbered Arguments with specific reference(s) to Page and Paragraph lines of 'Initial Brief of Respondent' as enumerated below.

I. - This Court should not Affirm the lower court's judgment based on Respondent's conclusion in bold-face print on Page 6 of their Initial Brief ["The lower court properly denied the Appellant's Motion for Relief from Judgment and the Order denying the motion was sufficient when the claims raised in the motion could have been and were litigated on appeal and the Order denying the motion did not have to include findings of fact and conclusions of law."], due to Respondent's premises:

(a) - Failing to clearly articulate whether this Court's April 9, 2012 Order was on the merits of Harvin's Appellate claims before this Court previously, or whether this Court simply found the manner in which Harvin brought the matter in his 'Written Explanation' as not containing "sufficient facts, argument, and citation to legal authority..." — [Initial Brief of Respondent, Pg. 6, ¶ 2 (quoted in part)] — ;

(b) - Erroneously stating, "... it is clear in the motion the Appellant was trying to litigate a claim this Court had already reviewed on appeal,..." [Initial Brief of Respondent, Pg. 7, ¶ 1, ln.s 7-8] where the Record before this Court contains Harvin's Motion For Relief of Judgment' which Harvin moved for the lower court to vacate its Order because of the interests held by Reviewing Courts and dissatisfied Appellants in receiving 'clear notice' of lower court findings on law as well as fact, as this Court would agree the S.C. Supreme Court announced in In re Treatment and Care of Luckabaugh, 351 S.C. 122, 131, 568 S.E. 2d 338, 342 (S.C. 2002), and Respondent's premise on that end is not 'clear';

(c) - Misconstruction of South Carolina Rules of Civil Procedure 52(a) whereby stating that, because Harvin's SCRCP 60(b) Motion made no reference to Rule 41(b), SCRCP, "the lower court did not have to include findings of fact and conclusions of law in its order denying the Appellant's motion." [Initial Brief of Respondent, Pg. 7, ¶ 2, ln.s 7-8 (quoted in part)], as, quoting in Reply, Harvin states (i) - Note, SCRCP 52(a) states it "are the

language of the Federal Rule", which, consistent with Luckabaugh's language, Federal Rule of Civil Procedure ('Fed. R. Civ. P.')

52(a) has been explained thus:

"Findings of fact and conclusions of law are unnecessary on decisions of motions under Rules 12 or 56 or any other motion except as provided in Rule 41(b)." Fed. R. Civ. P. 52(a). Nevertheless, a statement of the factual findings on which the court based its decision often is helpful to appellate review. See, e.g., Tygett v. Washington, 177 U.S. App. D.C. 355, 359, N. 17, 543 F.2d 840, 844, N. 17 (1974). Moreover, "regardless of what the rule in terms requires, whenever decision of a matter requires the court to resolve conflicting versions of the facts, findings are desirable and ought to be made." 9 C. Wright & A. Miller, Federal Practice § 2575, at 649 (1971). See Von der Heydt v. Rogers, 102 U.S. App. D.C. 114, 115, 251 F.2d 17, 18 (1958) ("[a]bsent specific findings to be reviewed in light of the evidence, we cannot make an adequate assessment of [the] issue"). (Though findings are not normally required, then, we may properly remand for further elucidation when review would be substantially hindered without them.")

- See In re FTC Line of Business

Report Litigation, 626 F.2d 1022, 1028, N. 34 (D.C. Cir. 1980).

In sum, Respondents premises are inherently erroneous.

Also, because Respondents have not cited to any authority to support the premises of their

above-cited conclusion, they should not prevail. <

See, e.g., Doe v. Roe, 379 S.C. 291, 665 S.E.2d 182 (

S.C. App. 2008); State v. Black, 319 S.C. 515, 462

S.E.2d 311 (S.C. App. 1995) ("A conclusory

argument of an issue by appellant amounts

to an abandonment of the issue.") >.

II. - This Court should not Affirm the lower court's judgment based on Respondent's conclusion in bold-face print on Page 8 of their Initial Brief ["This Court should not review the denial of the Appellant's state habeas petition when this Court already reviewed the lower court's denial of relief on appeal and a second review of the lower court's denial should be barred by the doctrine of res judicata."], where it is a matter of law and fact that:

(a) - This Court's prior Order (April 9, 2012) was issued upon Harvin's 'Written Explanation of Improper Determination', as Respondents even clearly state [Initial Brief of Respondent, Pg. 8, ¶ 3, l.n.s. 6-7], as opposed to the "merits" of the actual claim(s) Harvin intended to raise in the prior action in Brief form, yet was prevented by the April 9, 2012 Order — then, congruently:

(i) - The authority governing the 'Written

Explanation of Improper Determination'

< SCACR 203(d)(1)(B)(vi) > does not specifically - state that a failure to make a sufficient showing will constitute a 'judgment on the merits' as the law has expounded upon the term (see, e.g., Gonzalez v. Crosby, 545 U.S. 524, 532, n. 4, 125 S.Ct. 2641, 2648, n. 4, 162 L.Ed. 2d 480 (2005) ("The term "on the merits" has multiple usages.") (Citation Omitted));

and

(ii) - 'Res Judicata', denotatively, exists when "An issue that has been definitively settled by judicial decision" < see

BLACK'S LAW DICTIONARY, 9th ed. 2009 >

and, connotatively, decisions explain that

"The doctrine of res judicata embodies two distinct preclusion concepts: (1)

claim preclusion; and (2) issue preclusion."

< see Briggs v. Newberry County School

Dist., 838 F.Supp. 232, 234 (D.S.C. 1992)

>, coupled with "... jurisdictional dismissals are not "judgment[s] on the merits for purposes of res judicata." "

< see U.S. ex rel. May v. Perdue

Pharma L.P., 737 F.3d 908, 912 (4th

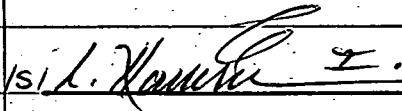
Cir. 2013) (Citation Omitted) >.

In sum, because this Court's April 9, 2012 Order did not specifically deny the matter Harvin would bring in the Brief, but denied the 'Written Explanation of Improper Determination' prior to Harvin bringing the Brief at all, the April 9, 2012 Order operated as this Court's 'jurisdictional dismissal' for purposes of SCACR 203(d)(1)(B)(vi) < Perdue Pharma, supra > rather than a dismissal on the merits' as contemplated within concept of res judicata.

CONCLUSION

Considering the insufficiently-pled premises of Respondent's Initial Brief, as Harvin replied to, Harvin respectfully asks this Court to Reverse and Remand the effect of the lower court Order (judgment) at the crux of this action, to allow Harvin to receive his required Habeas Corpus Evidentiary Hearing on his NON-PCR issues.

Respectfully Submitted,



Larry G. Harvin, #253468

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DATE

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PROOF OF SERVICE

I Certify, before below-signed Notary Public, that while forwarding an Original 'Reply Brief' to Clerk of S.C. Court of Appeals, I have served one (1) exact copy of same material on opposing counsel [Ashleigh R. Wilson, Ass't Atty. Gen., P.O. Box 11544, Columbia, SC 29211], by depositing said material into the U.S. Mail with sufficient postage attached.

Sworn and Subscribed to

before me this 11th

day of April, 2014

/s/ P. Hudson
Notary Public, South Carolina

* My Commission Expires: 4-24-2018

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/s/ L. Harvin

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