

JOSE ALBERTO MALDONADO
I/D#:312648
Kershaw Corr. Inst. MB/Room, # 59
4848 Goldmine Highway
Kershaw, S.C. 29067

RECEIVED

August 12, 2014

AUG 15 2014

[S.C. SUPREME COURT

THE SUPREME COURT OF SOUTH CAROLINA
DANIEL E. SHEAROUSE, CLERK OF COURT
POST OFFICE BOX 11330
COLUMBIA, S.C. 29211

Re: Jose A. Maldonado C/A#.:2014-1164/Lower Court C/A#.:2013-CP-23-1440
v. State of South Carolina.

Dear Clerk of Court:

Enclosed please find the proposed original PETITION FOR HEARING EN BANC. And I hope this Enclosure find you in greading healt, in the above-captioned case.

If this PETITION FOR HEARING EN BANC meets with your "approval please be so kind to clock-staped," and forward to the (6) panel, of "Judge". To reviewing or votes of the en banc panel.

And also at the same time that you please return the clock-stamped copy of the Applicant's confinement address.

Thank You, For Your Valuable time in this Matter. With Kind was Requires!

Sincerely,

Jose A Maldonado
Jose A. Maldonado

Enclosures:(1)

Files:(Doc. 6)

Cc: KAREN Christine Ratigan, Esquire

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM GREENVILLE COUNTY
Court of Comon Pleas

Letitia E. Verdin, Circuit Court Judge

Appellate Case No. 2014-001164
Lower Court Case No. 2013-CP-23-1440

Jose Alberto Maldonado, Petitioner,

RECEIVED

v.

State of South Carolina, Respondent.

AUG 15 2014

S.C. SUPREME COURT

PETITION FOR HEARING EN BANC

THE SUPREME COURT OF SOUTH CAROLINA
DANIEL E. SHEAROUSE, CLERK OF COURT
POST OFFICE BOX 11330
COLUMBIA, S.C. 29211

Karen C. Ratigan
Assitant Attorney General
Post Office Box 11549
Columbia, S.C. 29211

Files: (DOC. 6)

Issue Filed: Rule .240(f)(g) SCACR.

Respectfully Submitted

Jose A. Maldonado
s/ Jose A. Maldonado, I/D#: 312648
The Petitioner:
Kershaw Corr. Inst. MB/Room, #59
4848 Goldmine Highway
Kershaw, S. C. 29067

RETURN AND REPLY MOTION

Petitioner above captioned moves this Honorable Court for a "PETITION FOR HEARING EN BANC" from the above captioned matter. Were the 3rd Post-Conviction Relief Action Application, has been filed on February 7, 2013. Petitioner as stated herein this Petition. See, Filed (Doc. 4) is Procedural Backgrounds.

ISSUES PRESENT

I.

On July 3, 2014 Petitioner filed a Petition for "REHEARING AND REMITTUR". Was it is Filed Four (4), in this Honorable Court and also Petitioner filed a (PETITION FOR COURT REPORTER TRANSCRIPTS AND TAPES). Rules of South Carolina Appellate Court Rule 243(b). Holdings, as follows:

In the same manner and under the same time limitations as provided for appeal from the Court of Common Pleas in Rule 203 and 207, the Petitioner shall serve and file a notice of appeal and shall obtain from the court reporter a transcript of the proceedings in the lower court

That, the Petitioner, "submitted is (Doc. 5) five, in the South Carolina Court of Administration." On July 10, 2014. and also seded a copy to the Supreme Court is Clerk of Court, Appellate Court too.

Petitioner raised (7) Grounds, to overturn the transcripts. To Lack of Subject Matter Jurisdiction, on basis that indictments failed to contain necessary elements of charged offense, was a jurisdictional defect not covered by the "statute which require that objection to the indictments be made prior to swearing in of state grand jury." Was the Plead Guilty show that 28-to-100 grams Consecutive offense Code § 44-53-375(C)(2)(b) and quashing the Indictment is information for five court 100-to-400 hundreds grams § 44-53-375(C)(5); Code Ann. § 17-19-100 et seq;

S.C. Const. Art. V. § 5; Hooks v. State, 353 S.C. 48, 577 S.E.2d 211 (S.C. 2003), lack subject matter jurisdiction may be raised at any time, and thus, the "Supreme Court was able to review Applicant is claims that trial court, and the prosecutor lacked subject matter jurisdiction on grounds that indictment is a "TRUE BILL" When, the Final Order of Dismissal The State presented through the Letitia H. Verdin Judge signed and said this Court finds the "indictments in this case were true-billed and clearly adequate to provide notice of the charges the Applicant was facing. Order was issued on April 29, 2014.

ISSUE II.

Although, Guilty plead judge and solisitor expressed same confusion over whether fine, on manufacturing charge was mandatory and over sentencing range, judge incorrectly mislead and infoed Applicant that maximum panalty for conviction on manufacturing penalty for conviction an manufacturing charged was ("Sixty (60) years") for consecutively on these indictments for ~~second~~ offences, records revealed that in the Guilty Plead is Transcripts, and the sentenced transcript. (That show is not adequated to provide the notice in the charges the Applicant was faced), that Applicant did not understand consequences of his pleas and charges against him was the Applicant is counsel incorrectly mislead, the "STATUTE LANGUAGE" to Applicant be in confused to pled for the (Twenty years) sentencing possibilities. Code 1976 §§ 44-53-370, 44-53-375 (C)(2)(b); Carter v. State, 329 S.C. 355, 495 S.E.2d 776, at 777 (S.C. 1998). The interest of the State in the enforcement of the

"statute" for the prevention of imminent and irreparable injury to the statute had been applied. While recognizing that it's impossible to formulate a definite rule by which this question may be determined, the court those facts stated in Kirk v. Clark 191 S.C. 205, 4 S.E.2d 13 (1939); Clair v. State, 324 S.C. 144, 478 S.E.2d 54 (S.C. 1996); State v. Fonseca, 383 S.C. 646, 681 S.E.2d 1 (S.C. App. 2009) See (3rd PCR Act is Attached Copies Page [9]:

Amendment to indictment, charging defendant [with] trafficking in cocaine, and methamphetamine weighing more than 400 and less than 2,201 grams, see the Guilty plead Transcript is record at P. (18, ¶ 4)" and charging the Applicant with trafficking, 28 to a less than 100 grams therein had to, changed, nature of offense and therefore, amendment to indictment ..., without presentment by grand jury deprived court of the jurisdiction by increasing Applicant fine from 50,000 to 100⁰. Thousands of Dolars. Code Ann. § 17-19-100. et seq. That indictment may not be challenged on the grounds that the grand jury acted on the basis of incompetent evidence. (Footnotes Omitted). Third, (PCR.Act.) Attached.

Except for certain minor offenses, Circuit Court does not have subject matter jurisdiction to hear a guilty plea unless ;(1) there has been an indictment which sufficient states offense ;(2) there has been waiver of indictment, or (3) charge is lesser included charge of crime charged in indictment. Overruled is stated in Carter v. State, 329 S.C. 355, 361, 495 S.E.2d at 777. See Reply Motion To Defense And Objection for Strick the Transcript's Record, filed on March 27-28, 2014. Is Pages (14 through 17).

STANDARD OF REVIEW

ISSUE III.

Granting of Rehearing "en banc" by the "Court of Appeals" effectively vacates the original panel from the Supreme Court of South Carolina "ORDER" on August 6, 2014 opinion. Petitioner Jose Alberto Maldonado, seeking Consideration by the Supreme Court to review the judgments from the lower court pursuant is S.C. Code Ann. § 14-8-90(b) require six votes of the "en banc" panel to reverse "the judgment" from the FINAL ORDER OF DISMISSAL filed On: May 1, 2014. See, e.g., Williamson's view, "the judgment below" show a opinion of the three-judge panel rather than the decision of the Court. This Court disagree and find no error. That judgment of "ORDER DENYING MOTION TO ALTER OR AMEND is null and void" because the (3rd PCR Hearing judge against his signature issue order April 9, 2014). Was the ORDER DENYING MOTION TO ALTER OR AMEND denied is Order from "Nov. 8, 2013" and (there in is the error upon the lower court. Williamson v. Minddleton, 383 SC. 490 495, 681 S.E.2d 870 (S.C. 2009); see Rule 202(b)(1), SCACR, defined term "lower court" as the circuit Court ... from "which the Appeal is taken") State v. McAteer, 333 S.C. 615-616, 511 SE.2d 79, at 80 (Ct. App. 1998), overruled on other grounds, State v. McAteer, 340 S.C. 644, 532 S.E.2d 865 (Ct. App. 2000); State v. Cooper, 342 S.C. 389, 536 S.E.2d at 875 (S.C. 2000). Holdings, the thirty days of the Order disposing of Applicant is Rule 59(e) SCRCF motion. When either party files a timely Rule 59 SCRCF motion, see Filed Motion Rule 59(e) SCRCF, on (November 21, 2013) the time to appeals for all parties is "Stayed" until the motion is resolved, Rule 203(b) (1) SCACR; Rule 59(f), SCRCF.

The State failure to submitted the Replay Motion pursuant is Rule 59(c) SCRCP motion, therefore, filed the appropriate motions and acted in a timely manner to appeal the November 21, 2013 failed and did not from Dec. 19, 2013 That, statements agains "Federal Statute under False Claim Act [31 U.S.C.A. § 3730] including the "judgment had been submitted on Jan. 15, 2014 "RETURN TO MOTION TO ALTER OR AMEND THE ORDER DENYING THE MOTION FOR DEFAULT", against divulgence in the judiciary all nine (9) grounds, in the State of South Carolina lower court, and Supreme Court. when both court ignored the (3rd PCR Act), was the Supreme Court sended the Remittitur to the lower Court, with the signature of five judges, and they said that Applicant is "notice of appeal in this matter was dismissed due to petitioner's failure to show an arguable basis dor asserting the determination by the circuit court was inproper. Rule 243(c), SCACR."

ISSUE IV.

"November 8, 2013, and January 15, 2014" Orders directing it to pay the expert fees. State v. Cooper is [Footnote (3) Omitted] Rule 60(b) SCRCP order see e.g., Lancaster v. Fielder, 305 S. C. 418, 409 S.E.2d 375 (1991)(in timely appeal after final order, party can challenge intermediate orders). State v. Cooper, 341 S. C. 389, 536 S.E.2d 875 (S.C. 2000) Court of Appeals had authority to decide whether exception to automatic stay contained in Rules of Appellate Procedure was applicable to appeal of orders directing Attorney General is Office to pay fees, [t]he funds appropriated under "Civil Court Appointments" shall be used for Civil Court Appointments including Termination of Parental Rights, Abu-

se and Neglect, Probate Court Commitments, and Post Conviction Relief (PCR) to reimburse court appointed attorney. This, Opinion stated in State v. Cooper, at Page 877. Rule 241(c) SCACR, Superseas or lifting of Automatic Stay. In this, Honorable Supreme Court to effectively vacating the original panel opinion's orders from the lower court does to the State's claims had being misled upon the (3rd PCR. Judge).

C O C L U S I O N

In Finding, that it lack jurisdiction to entertain Applicant is motion for PETITION FOR HEARING EN BANC, because a question of the jurisdiction of the circuit court to hear matter after issuance of the remittitur is well establish, once the remittitur is issue from the Supreme Court, and did not for an Appellate Court, See, AUSTIN v. STATE (S.C. 1991). On petition for rehearing, the Supreme Court held that remand was required for evidenciary hearing on issue of whether movant requested and was denied opportunity to seeking appellate review; Anders requires appellate counsel to brief arguable issues, despite counsel's belief the appeal is frivolous, as a safeguard of the right to appeal. Applicant, supplicate to this honorable Supreme Court, to Applying this rule in his (3rd PCR) have being heald to recognize the Petitioner is right to assistance of Appellate counsel in seeking review of the denial of (3rd PCR Act) with the Rehearing and Remittitur.

Issue Filed: Aug. 12 2014

Respectfully Submitted
1st Jose A. Madro

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Letitia H. Verdin, Circuit Court Judge

Appellate Case No. 2014-001164
Lower Court Case No. 2013-CP-23-01440

Jose Alberto Maldonado,Petitioner,
v.
State of South Carolina,Respondent.

PROOF OF SERVICE

I, Jose Alberto Maldonado, declare under the oath that, on the below said [issue date] the petitioner (J.A.M.), deposit a true and exact copy of foresaid, of the General Allegations, of the PETITION FOR HEARING EN BANC upon's Appellate C/A#:2014-1164 /Lower Court C/A#:2013-CP-23-1440 in the above-captioned matter , on the following persons by depositing same in the Kershaw C.I. United States is mail. with sufficient postage prepaid. On this 12 day of August 2014. To:

THE SUPREME COURT OF SOUTH CAROLINA
DANIEL E. SHEAROUSE, CLERK OF COURT
Post Office Box 11330
Columbia, S.C. 29211

Karen C. Ratigan
Assistant Attorney General
Post Office Box 11549
Columbia, S.C. 29211

Further, Petitioner said & Not:
Done this day of 8/12, 2014.

Respectfully Submitted

SWORN TO and SUBSCRIBED before Me
this 12 day of August, 2014.

Cathie A. Chivers
Notary Public For South Carolina
My Commission Expires:
December 24, 2018

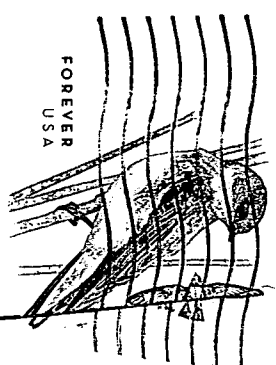
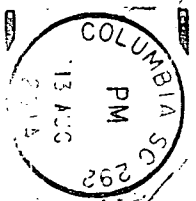
1st Jose A. Maldonado
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Issue Filed: 8/12/2014

JOSE ALBERTO MALDONADO, #312648
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File on: Aug 8 2014

Legal - Mail

THE SUPREME COURT OF SOUTH CAROLINA
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COLUMBIA, S.C. 29211



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