

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

APR 13 2015

SC Court of Appeals

Appeal from Richland County
Honorable DeAndrea G. Benjamin, Circuit Court Judge
Appellate Case No. 2013-000933

THE STATE,

Respondent,

vs.

CONRAD LAMONT SLOCUMB,

Appellant.

RESPONDENT'S RETURN TO PETITION FOR REHEARING

On March 18, 2015, this Court issued a published opinion in which it unanimously affirmed the circuit court judge's order resentencing Slocumb to a fifty-year term of imprisonment for first-degree burglary after noting a circuit court generally lacks jurisdiction to reconsider a criminal matter once the term of court expires and after further noting a circuit court has limited jurisdiction in a matter on remand. State v. Slocumb, Op. No. 5303 (S.C. Ct. App. filed March 18, 2015). Pursuant to Rule 221(a), SCACR, Slocumb petitioned this Court for rehearing, and this Court asked Respondent ("the State") to file a return to Slocumb's petition. For the following reasons, Slocumb's petition for rehearing should be denied.

Lack of Jurisdiction of the Circuit Court to Consider Any Matter Other Than Slocumb's Sentence for First-Degree Burglary and Propriety of Slocumb's First-Degree Burglary Sentence

Just as this Court correctly recognized in affirming the circuit court judge's order, our appellate courts have repeatedly and consistently held a circuit court judge has no jurisdiction to

consider or reconsider a criminal matter once the term of court expires unless either a timely post-trial motion is filed or a motion for a new trial based on after discovered evidence is filed. State v. Campbell, 376 S.C. 212, 215, 656 S.E.2d 371, 373 (2008); see State v. Hinson, 303 S.C. 92, 94, 399 S.E.2d 422, 422 (1990) (“It is a long-standing rule of law that a trial judge is without jurisdiction to consider a criminal matter once the term of court during which judgment was entered expires.”); cf. Tant v. South Carolina Dep’t of Corr., 408 S.C. 334, 759 S.E.2d 398 (2014) (“The judge sent the letter two-and-a-half years after sentencing and at that point no longer had jurisdiction over the case. Therefore, Judge Saunders was **without jurisdiction to make any subsequent pronouncement concerning Tant’s sentence**. Such correspondence may not be considered in determining the length of an inmate’s sentence, even if both the sentencing sheets and the transcript are vague or unclear.” (emphasis added and citation omitted)). Likewise, just as this Court correctly recognized, our appellate courts have repeatedly and consistently held a circuit court judge only has limited jurisdiction when another tribunal remands a matter to the circuit court. Parker v. Shecut, 359 S.C. 143, 152, 597 S.E.2d 793, 798-799 (2004); see Prince v. Beaufort Mem’l Hosp., 392 S.C. 599, 605, 709 S.E.2d 122, 125 (Ct. App. 2011) (recognizing an appellate court’s mandate is jurisdictional and must be followed by the circuit court).

In the case sub judice, the only matter properly before the circuit court judge was the issue of resentencing Slocumb for first-degree burglary in a manner consistent with Graham v. Florida, 560 U.S. 48 (2011), as directed by the United States District Court, and the circuit court judge did, in fact, sentence Slocumb to a sentence consistent with Graham in light of the fact Slocumb’s fifty-year sentence for first-degree burglary was **not** a sentence of life without parole. See Graham, 560 U.S. at 63 (“The instant case concerns only those juvenile offenders sentenced

to **life without parole** solely for a nonhomicide offense.” (emphasis added)); see also Walle v. State, 99 So. 3d 967, 970 (Fla. Dist. Ct. App. 2012) (“The Supreme Court itself limited the scope and breadth of its decision in Graham by stating that its decision ‘concern[ed] only those juvenile offenders sentenced to life without parole solely for a nonhomicide offense.’ From this statement we identify the four necessary analytical factors: (1) the offender was a juvenile when he committed his offense, (2) the sentence imposed applied to a singular nonhomicide offense, (3) the offender was ‘sentenced to life,’ and (4) the sentence does not provide the offender with any possibility of release during his lifetime.” (brackets in original and citations omitted)). As a result, the circuit court judge properly limited her actions in Slocumb’s case to the limited matter before her, and this Court properly affirmed the circuit court judge’s order while declining to address any other matters related to Slocumb’s case that were neither appropriately before the circuit court judge nor appropriately before this Court on appeal. See State v. Wilson, 345 S.C. 1, 5, 545 S.E.2d 827, 829 (2001) (“In criminal cases, the appellate court sits to review errors of law only.”); see also Campbell, 376 S.C. at 215, 656 S.E.2d at 373 (recognizing a trial judge does not have jurisdiction to consider a criminal matter once the term of court during which judgment was entered expires unless a timely post-trial motion is made or a proper new trial motion based on after-discovered evidence is filed).

In seeking rehearing, Slocumb disagrees and contends this Court “misapprehended the facts and record” while asserting the circuit court judge did, in fact, have proper jurisdiction to reconsider all of his sentences for his earlier convictions despite the limited nature of the remand from the United States District Court in his case. In support of that contention, Slocumb claims to have filed a “timely” motion for resentencing while asserting the South Carolina Supreme Court’s recent decision in Aiken v. Byars, 410 S.C. 534, 765 S.E.2d 572 (2014), somehow

supports his claim the circuit court judge had jurisdiction to reconsider all of his sentences for all of his crimes. However, Slocumb's motion for resentencing could in no way be considered timely as it was not filed until January 26, 2011, which was **over 2,500 days** after his sentences were imposed on February 18, 2004. See Rule 29(a), SCRCrimP ("Except for motions for new trials based on after-discovered evidence, post-trial motions shall be made **within ten (10) days after the imposition of the sentence.**" (emphasis added)); cf. State v. Warren, 392 S.C. 235, 240, 708 S.E.2d 234, 236 (Ct. App. 2011) ("Warren's motion to reconsider her sentence . . . is subject to the ten day time period prescribed in Rule 29; thus, because the motion was filed more than three years after imposition of the sentence, Warren's motion is not timely."). As a result, the circuit court judge simply had no jurisdiction to act on Slocumb's motion or to take any action in regard to Slocumb's sentences for his non-burglary convictions, and any order in regard to those sentences would have been a nullity had the circuit court judge mistakenly been lulled into issuing one. See Warren, 392 S.C. at 238, 708 S.E.2d at 235 ("Generally, a trial judge is without authority to consider a criminal matter once the term of court during which judgment was entered expires."); see also Blanton v. Stathos, 351 S.C. 534, 542, 570 S.E.2d 565, 569 (Ct. App. 2002) ("A judgment by a court without jurisdiction of both the parties and the subject matter is a nullity and must be so treated by the courts whenever and for whatever purpose it is presented and relied on."). Moreover, our Supreme Court's decision in Aiken does not support Slocumb's claims regarding jurisdiction and most certainly did not create a jurisdictional exception to our general rules that would have permitted the circuit court judge, who was otherwise lacking jurisdiction over anything other than the remanded first-degree burglary charge, to act on Slocumb's untimely motion simply because Slocumb based the motion on his belief the Graham decision has retroactively impacted the propriety of his previously-imposed

sentences. Instead, our Supreme Court's decision in Aiken, which was issued after the Supreme Court granted a petition for original jurisdiction, confirms the existence of other proper avenues for Slocumb to seek the relief he believes he is entitled to just as the United States District Court's issuance of an order of remand in response to Slocumb's earlier successful petition for habeas corpus has already confirmed in his case. See generally S.C. Const. art. V, § 5 ("The Supreme Court shall have power to issue writs or orders of injunction, mandamus, quo warranto, prohibition, certiorari, habeas corpus, and other original and remedial writs."). However, Slocumb's current challenge to his sentences has **not** been raised through a proper avenue like a petition for habeas corpus or a petition for original jurisdiction and, thus, has not properly been brought before any court to this point. Accordingly, the circuit court judge committed no error in properly limiting her actions in Slocumb's case to the matter over which she properly and solely had jurisdiction, and this Court committed no error in affirming the circuit court judge's order while declining to address matters related to issues over which the circuit court judge had no jurisdiction. Slocumb's petition for rehearing should be denied.¹

Conclusion

Based on the foregoing coupled with the arguments raised in the Final Brief of Respondent and during the oral argument before this Court, the State respectfully submits Slocumb's petition for rehearing should be denied.

¹ To the extent Slocumb is challenging the constitutionality of his aggregate sentence in his petition for rehearing, the State would reassert its arguments advanced in the Final Brief of Respondent and during oral argument before this Court in response. However, the State notes Slocumb is now contending for the first time in his petition for rehearing his life expectancy is equal to or less than fifty years, which is inconsistent with his assertion to the circuit court judge he had a life expectancy of approximately sixty-seven years. See McClurg v. Deaton, 395 S.C. 85, 87, n. 2, 716 S.E.2d 887, 888 (2011) (rejecting the dissent's reliance on an argument raised for the first time in a petition for rehearing and noting "[i]t is axiomatic that an issue cannot be raised for the first time on rehearing"); see also l'On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000) ("Imposing this preservation requirement on the appellant is meant to enable the lower court to rule properly after it considered all relevant facts, law, and **arguments**." (emphasis added)). Furthermore, based on the materials Slocumb presented to the circuit court judge and assuming those materials are accurate, the State notes Slocumb's newly-asserted remaining life expectancy in his petition for rehearing is **shorter than** his remaining life expectancy would have been if he had lived in the Upper Paleolithic Period. (R. p. 51).

Respectfully submitted,

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Attorney General

MARK R. FARTHING
Assistant Attorney General

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Solicitor, Fifth Judicial Circuit

By: 
Mark R. Farthing

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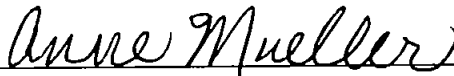
Appellant.

PROOF OF SERVICE

I, Anne A. Mueller, certify that I have served the within Respondent's Return to Petition for Rehearing on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Laura R. Baer, Esquire
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, SC 29211

I further certify that all parties required by Rule to be served have been served.
This 13th day of April, 2015.


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ALAN WILSON
ATTORNEY GENERAL

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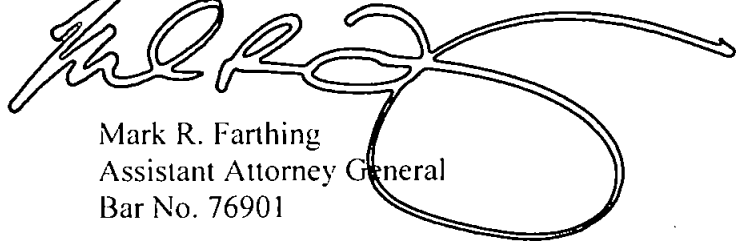
The Honorable Jenny A. Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

RE: State v. Conrad Lamont Slocumb – Appellate Case No. 2013-000933

Dear Ms. Kitchings:

Enclosed please find the original and six (6) copies of Respondent's Return to Petition for Rehearing, along with proof of service, for filing in the above-referenced appeal.

Sincerely,



Mark R. Farthing
Assistant Attorney General
Bar No. 76901

MRF/
Enclosures

cc: Laura R. Baer, Esquire
Victim Services