

STATE OF SOUTH CAROLINA
In The Supreme Court

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APR 21 2015

APPEAL FROM MARION COUNTY
Court of Common Pleas

S.C. Supreme Court

The Honorable Michael G. Nettles, Circuit Court Judge

Appellate Case No. 2014-001631

LETRON S. DAVIS,Respondent,

v.

STATE OF SOUTH CAROLINA,Petitioner.

MOTION TO DISMISS

Pursuant to Rule 240 of the South Carolina Appellate Court Rules, counsel for Petitioner moves to dismiss this appeal and remand the matter to the circuit court for an entry of judgment in Petitioner’s favor. In support of this motion, Respondent would present the following facts:

1. Respondent filed an application for post-conviction relief on June 1, 2012. (App. pp. 11-18). The post-conviction relief judge granted relief to Respondent on the grounds that Respondent’s “trial counsel was deficient by providing incorrect advice concerning the collateral consequences of [Respondent’s] guilty plea.” (App. p. 70). Specifically, the post-conviction relief judge found that trial counsel advised Respondent he would be parole eligible, but the department of corrections was instead subjecting him to the

“85% rule.” See S.C. Code Ann. § 24-13-150(a) (persons sentenced for no parole offenses must serve eighty-five percent of the actual term of imprisonment).

2. Petitioner filed the Petition for Writ of Certiorari and Appendix in this matter on January 9, 2015.

3. Petitioner has learned that Respondent has been paroled by the Department of Corrections and is currently being supervised by the Department of Probation, Pardon, and Parole Services. Attached to this motion and incorporated herein is a letter from the Department of Probation, Pardon, and Parole Services indicating Respondent was paroled on October 9, 2014.

4. Petitioner therefore moves this Court to dismiss this appeal and remand this matter to the circuit court with directions to enter judgment in Petitioner’s favor. The post-conviction relief judge’s grant of relief was based on testimony from respondent that trial counsel mis-advised him about when he would be paroled. Respondent testified at the evidentiary hearing that he believed he would only serve sixty-five percent of his sentence before being paroled. (App. p. 28, line 24-p. 29, line 13; p. 34, lines 22-23; p. 35, lines 13-19). If Respondent were to only serve sixty-five percent of his seven year sentence, as he testified was his understanding, he would be parole eligible after 1,660 days of incarceration. Respondent’s sentence start date was May 11, 2011. (App. p. 85). Therefore, under his understanding of his sentence, he would be parole eligible on November 26, 2015. As Respondent was actually paroled on October 9, 2014, it appears he has served less than sixty-five percent of his sentence.

5. Petitioner submits this appeal is moot because Respondent’s release on parole

granted him the relief he alleged he was promised by counsel. “Before any action can be maintained, there must exist a justiciable controversy.” Byrd v. Irmo High Sch., 321 S.C. 426, 430, 468 S.E.2d 861, 864 (1996). Justiciability encompasses several doctrines, including ripeness, mootness, and standing. Jackson v. State, 331 S.C. 486, 491 n. 2, 489 S.E.2d 915, 917 n. 2 (1997). A moot case exists where a judgment rendered by the court will have no practical legal effect upon an existing controversy because an intervening event renders any grant of effectual relief impossible for the reviewing court. Mathis v. South Carolina State Highway Dep’t, 260 S.C. 344, 346, 195 S.E.2d 713, 715 (1973). If there is no actual controversy, this Court will not decide moot or academic questions. Id. (citing Jones v. Dillon–Marion Human Res. Dev. Comm’n., 277 S.C. 533, 535, 291 S.E.2d 195, 196 (1982)); see also Wallace v. City of York, 276 S.C. 693, 694, 281 S.E.2d 487, 488 (1981). Sloan v. Friends of Hunley, Inc., 369 S.C. 20, 25-26, 630 S.E.2d 474, 477 (2006). Respondent’s allegation of ineffectiveness was that he was being required to serve more time than his counsel advised him he would serve. However, the simple fact is Respondent has been paroled in less time than he claimed his counsel told him he would serve. Viewing the evidence at the evidentiary hearing in the light most favorable to Respondent, he received exactly what trial counsel promised him. Because Respondent received exactly what he claimed he expected to receive, Petitioner submits there is no justiciable controversy before this Court. Accordingly, this matter should be dismissed and remanded to the circuit court with directions to enter judgment in favor of Petitioner.¹

¹ This Court has the authority to remand a case to the lower court with directions to enter judgment in favor of an appealing party. See Taylor v. Bryant, 274 S.C. 509, 515, 265 S.E.2d 514, 517 (1980); Crider v. Infinger Transp. Co., 248 S.C. 10, 18, 148 S.E.2d 732, 735 (1966).

WHEREFORE, as Respondent has received the relief he expected to receive, Petitioner respectfully requests this Court dismiss this appeal and remand this matter to the circuit court with directions to enter judgment in favor of Petitioner.

Respectfully submitted,

ALAN WILSON
Attorney General



JOSHUA L. THOMAS
Assistant Attorney General
S.C. Bar No. 100777

Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3737

By: _____

ATTORNEYS FOR PETITIONER

April 20, 2015

Attachment #1

Letter from SCDPPPS indicating Respondent's parole date.

State of South Carolina
Department of Probation, Parole and Pardon Services

NIKKI R. HALEY
Governor



JERRY B. ADGER
Director

2221 DEVINE STREET, SUITE 600
POST OFFICE BOX 50666
COLUMBIA, SOUTH CAROLINA 29250
Telephone: (803) 734-9220
Facsimile: (803) 734-9440
www.state.sc.us/ppp

April 20, 2015

Joshua Thomas
Assistant Attorney General

RE: Letron Davis, #348914

Dear Mr. Thomas:

Per your request, please note that the above referenced offender was placed on parole on October 9, 2014, with an end date of May 9, 2018. Should you need anything further, please let me know.

Sincerely,

A handwritten signature in black ink, appearing to read "Matthew C. Buchanan", written over a horizontal line.

Matthew C. Buchanan
General Counsel

MCB:dn

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal From Marion County
Honorable Michael G. Nettles, Circuit Court Judge

LETRON S. DAVIS

RESPONDENT,

vs.

THE STATE,

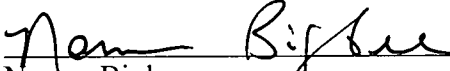
PETITIONER.

PROOF OF SERVICE

I, Norma Bigbee, certify that I have served the State's Motion to Dismiss on respondent's attorney by depositing a copy of the same in the United States mail, postage prepaid, addressed to Laura R. Baer, Esquire, Appellate Defender, SC Commission on Indigent Defense, Division of Appellate Defense, P.O. Box 11589, Columbia, SC 29211.

I further certify that all parties required by Rule to be served have been served.

This 21st day of April, 2015.


Norma Bigbee
Administrative Assistant
Office of Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727



ALAN WILSON
ATTORNEY GENERAL

April 21, 2015

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S.C. Supreme Court

VIA HAND DELIVERY

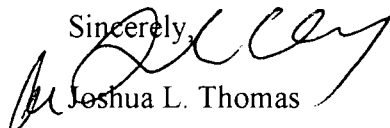
The Honorable Daniel E. Shearouse
Clerk, South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

RE: **Letron S. Davis v. State of South Carolina**
Appellate Case No: 2014-001631

Dear Mr. Shearouse:

Enclosed please find the Original and six (6) copies of the Motion to Dismiss in the above case.

Sincerely,


Joshua L. Thomas
Assistant Attorney General

JLT/nb

Enclosures

cc: Laura R. Baer, Esquire (2 copies)
Ms. Trisha Allen