

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

JUL - 9 2015

Clifton Newman, Circuit Court Judge

S.C. Supreme Court

Case No. 11-GS-40-897 and 11-GS-40-898
Court of Appeals Appellate Case No. 2012-205888

The State of South Carolina,..... Respondent,

v.

Leslie Todd Parvin, Appellant.

Motion for an Extension of Time to File Petition for a Writ of Certiorari

Pursuant to Rules 240 and 242 of the South Carolina Appellate Court Rules, Petitioner Leslie Todd Parvin (“Parvin”) moves this Court for an extension of time to file his petition for a writ of certiorari to review and reverse the Court of Appeals’ only operative opinion in State v. Parvin, Op. No. 5254 (S.C. Ct. App. filed June 10, 2015) (Shearouse Adv. Sh. No. 22 at 50). Parvin requests a thirty (30) day extension of time to file his writ of certiorari. While Parvin believes this motion is unnecessary, he files this motion out of an abundance of caution because our appellate court rules do not address how a party should proceed vis-à-vis seeking certiorari review when the Court of Appeals vacates the original opinion and issues a substantively different opinion after considering the party’s petition for rehearing as to the original opinion. Parvin does not want to lose his ability to seek certiorari review, if needed.

On July 30, 2014, the Court of Appeals issued the first written opinion in this matter.¹ Parvin timely filed a petition for rehearing as to the original opinion. The State also filed a petition for rehearing. The Panel denied the State's petition but granted Parvin's petition in part and ordered oral argument on the issues raised by Parvin.

After argument, the Panel withdrew the original opinion and substituted the new opinion in its place. Substituted Opinion No. 5254 was included in the June 10, 2015 Advance Sheets, indicating it replaced the original opinion. See State v. Parvin, Op. No. 5254 (S.C. Ct. App. Opinion Withdrawn, Substituted, and Re-filed June 10, 2015) (Shearouse Adv. Sh. No. 22 at 50). Parvin has filed a second petition for rehearing with the Court of Appeals to address the substituted opinion. The Court of Appeals has yet to rule on that petition.

Parvin avers that he was required to file a petition for rehearing in order to address the valid and operative second opinion as a precursor to a petition for writ of certiorari (should the Panel or *en banc* court not reverse the opinion). In issuing the substituted opinion, the Court of Appeals deemed the original opinion "withdrawn and substituted" and added new findings/conclusions that were not present in the original opinion. Such action vacated the original opinion and rendered it void. See, e.g., Sierra Club v. Kiawah Resort Assocs., 318 S.C. 119, 121, 456 S.E.2d 397, 399 (1995) (acknowledging that the issuance of a substituted opinion vacates a prior opinion, stating "[t]he prior opinion in Sierra Club v. Kiawah Resort Assocs., Op. No. 24121 (S.C. Sup. Ct. filed July 18, 1994) (Davis Adv. Sh. 17 at 7), is vacated and the

¹ See State v. Parvin, Op. No. 5254 (S.C. Ct. App. filed July 30, 2014) (Shearouse Adv. Sh. No. 30 at 85).


following substituted in its place”) (emphasis added); Benton v. Roger C. Peace Hosp., 313 S.C. 520, 521, 443 S.E.2d 537, 537 (1994) (“The prior opinion is vacated and the following substituted in its place”) (emphasis added); State Workers’ Comp. Fund v. S.C. Second Injury Fund, 313 S.C. 536, 537, 443 S.E.2d 546, 547 (1994) (“The prior opinion is vacated and the following substituted in its place”).

By vacating the initial opinion and issuing a substituted opinion, the Court of Appeals voided the initial opinion and rendered the initial petition for rehearing immaterial. As a result, Parvin was required to file the petition for rehearing addressing the substituted opinion prior to seeking a petition for writ of certiorari from this Court. See Rule 242(c), SCACR.

Thus, Parvin files this motion so as to protect his rights to seek certiorari review, if needed, after the Court of Appeals rules on the petition for rehearing addressing the substituted opinion. The extension of time should allow the Court of Appeals adequate time to rule on the petition for rehearing as to the substituted opinion.

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July 9, 2015

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PROOF OF SERVICE


I, the undersigned administrative assistant in the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Leslie Todd Parvin, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by U.S. Mail, to the following address(es):

Pleadings:

Motion for Extension of Time to File Petition for a Writ of Certiorari

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Lisa P. Whitehurst

July 9, 2015

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

S.C. Supreme Court

RE: The State v. Leslie Parvin
Civil Action Nos. 2011-GS-40-00897 and 2011-GS-40-00898
Appellate Case No.: 2012-205888
Our file no.: 33999/00708

Dear Mr. Shearouse:

Enclosed please find the original and seven copies of Appellant's Motion for an Extension of Time to File Petition for Writ of Certiorari in the above-referenced matter. We would ask that you file the original and return a clocked-in copy to us via our courier.

Very truly yours,



Michael J. Anzelmo

MJA:lpw
Enclosures

cc: The Honorable Jenny Abbott Kitchings (w/enc.)
Brendan McDonald, Esquire (w/enc.)