

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

APPEAL FROM CHARLESTON COUNTY

COURT OF COMMON PLEAS

J.C. NICHOLSON, CIRCUIT COURT JUDGE

RECEIVED

AUG 14 2015

S.C. Supreme Court

2014-CP-10-305

THE STATE OF SOUTH CAROLINA

RESPONDENT.

V.

SIDNEY FIELDS # 254392

PETITIONER.

MOTION TO BE RELIEVED FROM PAYING FILING FEE
PURSUANT TO RULE 240(d) SCACR

Sidney Fields # 254392
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PROCEDURAL HISTORY

At the conclusion of petitioner's original (PCR) proceeding, petitioner informed his (PCR) counsel that no record was developed to substantiate the main allegation of petitioner's (PCR) issue, nor was there a record developed to substantiate the exhibits marked into evidence.

After a succession of pleadings, petitioner submitted a writ of habeas corpus in circuit court (Charleston) to address the deficiencies of the original (PCR) record, in which the Chief Adm. Judge Roger M. Young issued a docket Order that placed petitioner's habeas corpus pleading on the habeas corpus docket of the court. The Order also decreed that a habeas corpus hearing be set in accordance.

The respondent then submitted a motion to reconsider asking Judge Young to vacate his docket Order, and in turn, issue an Order to place the habeas corpus pleading on the (PCR) docket of the court. And since the respondent wanted the habeas corpus pleading to be construed as a (PCR) application, the respondent needed the pleading to be placed on the (PCR) docket.

After Judge Young denied the respondent's motion to reconsider, the respondent failed to appeal Judge Young's docket Order, thus the docket order became the law of the case.

A hearing was held on this matter before Judge R. Markley Dennis. However, instead of conducting a habeas corpus proceeding on the habeas corpus docket as decreed by Judge Young's law of the case Order, Judge Dennis conducted a (PCR) proceeding on the (PCR) docket of the court.

And because the proceeding was conducted on the (PCR) docket, the respondent in violation of Rule 60 Of The S.C. Circuit Court Rules Of Practice moved the court for a second time for a (PCR) dismissal. Judge Dennis who was also in violation of rule 60 granted the respondent's motion, and in turn, construed petitioner's habeas corpus pleading as a (PCR) application and denied the application accordingly.

After a succession of pleadings to enforce Judge Young's docket order, petitioner submitted a petition for writ of mandamus in circuit court (charleston) to compel the court to vacate Judge Dennis's (PCR) Order pursuant to Rule 60 Of The S.C. Circuit Court Rules Of Practice, and to enforce Judge Young's law of the case docket Order. After a hearing was conducted, the circuit court denied the mandamus. **App.4-7**

On October 8, 2014 petitioner filed a notice of appeal to the S.C. Court Of Appeals to appeal the order denying the mandamus petition. **App.3 / App.4-7** petitioner also submitted a motion pursuant to Rule 240(d) SCACR asking the court of appeals to relieve him from paying a filing fee and other related cost. Rule 240(d) states that parties may be relieved from paying a filing fee in extraordinary cases. **Rule 240(d) SCACR / App.8-10**

On December 2, 2014 the Court Of Appeals issued an interlocutory Order that construed the appeal as if the appeal derived from a habeas corpus proceeding in the lower court under Rule 203(d)(1)(B)(vi) SCACR. The Order also decreed that petitioner submit within (20) days an explanation to why the lower court's determination was improper. **App.11**

And because the December 2, 2015 interlocutory Order construed the appeal as if the appeal derived from a habeas corpus proceeding in the lower court, petitioner put the court on notice by way of petition for rehearing that his appeal derived from a mandamus proceeding in the lower court. **App.4-7 / App.12-20 / App.21-24**

Petitioner also informed the court in his petition for rehearing that the court was committing procedural error by construing the appeal under Rule 203(d)(1)(B)(vi) SCACR, and that it was improper to Order petitioner to submit an explanation under this inapplicable Rule. Petitioner asked the court to vacate the December 2, 2014 interlocutory Order and to rule on his Rule 240(d) motion. **App.12-20 / App.21-24**

In it's February 9, 2015 final Order, the court not only failed to rule on petitioner's Rule 240(d) motion for a second time, the court construed petitioner's petition for rehearing as explanations under Rule 203(d)(1)(B)(vi) SCACR. **App.25**

The court concluded in it's final Order that petitioner failed to provide a sufficient explanation as required by Rule 203(d)(1)(B)(vi) SCACR. Thus the court Of Appeals dismissed the appeal accordingly. **App.25**

Without filing a petition for rehearing on the February 9, 2015 final Order, petitioner prematurely assumed that his petitions for rehearing on the December 2, 2014 interlocutory Order was sufficient, thus on February 17, 2015 petitioner submitted a petition for writ of certiorari to the S.C. Supreme Court to challenge the Court Of Appeals decision.

On February 20, 2015 the S.C. Supreme Court abruptly dismissed the petition for certiorari due to the fact that there was no petition for rehearing on the February 9, 2015 final Order of the Court Of Appeals. **App.26**

While appealing to the S.C. Supreme Court, the (15) day period to file a petition for rehearing on the Court Of Appeals February 9, 2015 final Order had expired. On March 4, 2015 the Court Of Appeals sent the remittitur to the lower court. **App.27 / App.28**

On March 12, 2015 petitioner submitted a motion to recall the remittitur to the Court Of Appeals due to the Court Of Appeals lack of subject matter jurisdiction. **App.29-36** On May 15, 2015 the court denied the motion. **App.37** On May 26, 2015 petitioner submitted a petition for rehearing to the Court Of Appeals. **App.38-46** On July 16, 2015 by letter of the court, the court refuse to entertain the petition for rehearing pursuant to Rule 240(i) SCACR. **App.47-48**

Petitioner's Rule 240(d) Motion now follows:

ARGUMENT

The S.C. Supreme Court has ruled that when the remittitur has been properly sent, the appellate court no longer has jurisdiction over the matter, and no motion can be heard thereafter. The only exception to the rule is when the remittitur is sent down by mistake, error, or inadvertence of the appellate court. Wise v. S.C. Dept. Of Corrections 372 S.C. 173, 642 SE2d 551 (2007)

Rule 203(d)(1)(B)(vi) SCACR states: [If a notice of appeal is from a habeas corpus hearing, and the lower court has determined that habeas corpus relief was improper because the issues could have been raised in a timely application under the Post Conviction Relief Act, appellant shall submit an explanation to show why the lower court's determination was improper] Rule 203(d)(1)(B)(vi) SCACR

Petitioner argues that this Rule clearly stipulates that it pertains to parties appealing the denial of a habeas corpus proceeding in the lower court. And because the Court Of Appeals construed and dismissed the appeal under Rule 203(d)(1)(B)(vi) SCACR, the court never obtained Jurisdiction over the subject matter. App.11 / App.25 This is because the lower court's Order on appeal shows that the appeal derived from a mandamus proceeding in the lower court. App.4-7

The S.C. Supreme Court has ruled that the Court Of Appeals is limited to review only the evidence presented in the lower court and only matters included in the record on appeal. Williamsburg Rural Water and Sewer Co. Inc. v. Williamsburg County Water And Sewer Authority 367 S.C. 566, 627 SE2d 690, 693 (2003)

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In the instant case, the Court of Appeals clearly operated outside of their Jurisdictional authority by construing and dismissing the appeal contrary to the evidence presented to the lower court, and contrary to matters included in the record on appeal. Williamsbug at 693

And even though petitioner failed to submit a petition for rehearing on the February 9, 2015 final Order, this does not relieve the Court Of Appeals from the Jurisdictional error it committed because Jurisdiction of a court over the subject matter of a proceeding is fundamental. State v. Guthrie 352 S.C. 107, 572 SE2d 309,311 (2002)

And issues related to subject matter Jurisdiction can be raised at anytime. Therefore, any actions of a court with respect to a matter to which it has no Jurisdiction are void. Brown v. State 343 S.C. 342, 540 SE2d 848-49 (2001)

A void Judgment is one that, from it's inception, is a complete nullity and is without legal effect. Katzburg v. Katzburg 410 S.C. 184, 764 SE2d 3,5 (2014) Therefore, since the Court Of Appeals failed to show the proper taking of the necessary steps to confer Jurisdiction on the appellate court Windham v. Sanders 282 S.C. 120, 337 SE2d205,206 (1986), Judgment by the Court Of Appeals cannot be confirmed because the court did not have the right to act. Hooks v. State 353 S.C. 48, 577 SE2d 211,214 (2003)

And even though petitioner wrongly submitted the petition for rehearing on the December 2, 2014 interlocutory Order as oppose to submitting the petition on the February 9, 2015 final Order, nevertheless, the petition for rehearing put the court on notice that their actions was Jurisdictionally defective. And as said earlier, Jurisdictional issues can be raised at anytime. App.12-20 / App.21-24 / Brown at 848-49

And because it was a Jurisdictional issue and the fact that petitioner put the court on notice, the Court Of Appeals should have raised the Jurisdictional issue sua sponte before it rendered it's February 9, 2015 final Order. State v. Guthrie at 311 This would have ensured an orderly administration of justice. Ness v. Eckerred Corp. 566 SE2d 193,195 (2002) Therefore, the Court Of Appeals is without excuse.

It is well settled that once an appellate court sends down the remittitur and it is filed in the lower court, this ends the case and the lower court has jurisdictional authority to enforce whatever Judgment consistent with the appellate court's ruling. Until that time, the case is still pending. Christy v. Christy 317 S.C. 145, 452 SE2d 1,4 (1994)

In the instant case, petitioner argues that since the Court Of Appeals never obtained Jurisdiction over the subject matter, the remittitur was sent in error to the lower court. Therefore, there is no appellate disposition of the lower court's mandamus Judgment. Thus the lower court's mandamus Judgment is still pending. App.25 / Christy at 4

In it's letter to petitioner, the Court Of Appeals refused to entertain petitioner's petition for rehearing pertaining to the denial of his motion to recall remittitur. The court based it's conclusion on Rule 240(i) SCACR App.47-48

Petitioner argues that the court's decision pursuant to Rule 240(i) SCACR has no legal effect on this case because the appeal from it's inception is null and void due to the court's lack of Jurisdiction over the subject matter. Katzburg v. Katzburg 764 SE2d at 5 (2014) In other words the appeal was never valid.

Conclusion

The appellate record clearly shows that the appeal derived from a mandamus proceeding in the lower court. **App.4-7** However, the Court Of Appeals construed and dismissed the appeal as if the appeal derived from a habeas corpus proceeding in the lower court under Rule 203(d)(1)(B)(vi) SCACR

Therefore, the Court Of Appeals not only lacked subject matter Jurisdiction over the appeal, the appeal is MOOT because the February 9, 2015 final Order under Rule 203(d)(1)(B)(vi) SCACR had no practical effect on the existing controversy. **App.25**

Furthermore, by conducting the appeal under Rule 203(d)(1)(B)(vi) SCACR, there was no meaningful relief the Court Of Appeals could have given petitioner. Mathis v. S.C. State Highway Dept. 260 S.C. 344, 195 SE2d 713,714 (1973)

In short, by construing the appeal contrary to what occurred in the lower court and contrary to the record on appeal Williamsburg 627 SE2d 693 (2006), the Court Of Appeals never obtained proper Jurisdiction over the subject matter. Thus the remittitur was sent in error to the lower court. Therefore the remittitur must be recalled. Wise 642 SE2d at 551 (2007)

Rule 240(d) SCACR states that parties may be relieved from paying a filing fee in extraordinary cases. Rule 240(d) SCACR In the instant case, petitioner has clearly shown that not only does this matter meet the burden of being extraordinary, the initial appeal from the lower court is extraordinary also. (see procedural history)

Wherefore, petitioner Sidney Fields now pray that this Honorable court grant this Rule 240(d) motion to proceed without cost to petition the court for a writ of certiorari to address the Court Of Appeals denial of his motion to recall remittitur.

Respectfully Submitted,


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Date August 12, 2015

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