

The Supreme Court of South Carolina

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September 22, 2015

Brana J. Williams, Esquire
1500 Highway 17N Ste 102
Surfside Beach SC 29575

Re: John B. Frazier v. State
Appellate Case No. 2014-002774

Dear Ms. Williams:

This responds to your notice entitled "Notice of Intent to Pursue Rule 59(e) Motion."

I am a little confused by the fact that you filed this notice on behalf of Mr. Frazier. While you were his counsel of record before the lower court, you were automatically relieved as his counsel when the Division of Appellate Defense determined that Mr. Frazier was indigent and assumed responsibility for this appeal in February 2015. *See* Rule 71.1(g) of the South Carolina Rules of Civil Procedure and Rule 602(e)(4) of the South Carolina Appellate Court Rules. Therefore, the records of this Court do not show that you are currently his counsel in this matter.

In any event, the Division of Appellate Defense has already made a motion to hold this appeal in abeyance pending a decision on the Rule 59 motion that was filed with the circuit court on December 19, 2014. This Court denied the motion to hold in abeyance in an order dated July 13, 2015 (a copy of this order is enclosed). This order found, based on the information that had been provided, that the Rule 59 motion was untimely and that the circuit court lacks jurisdiction to take action on

the Rule 59 motion. In light of the order issued by this Court, I do not understand the purpose of the notice that you have filed.

Very Truly Yours,

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke extending to the right.

CLERK

Enclosure

cc: Joshua L. Thomas, Esquire
Robert M. Pachak, Esquire

The Supreme Court of South Carolina

John B. Frazier, Petitioner,

v.

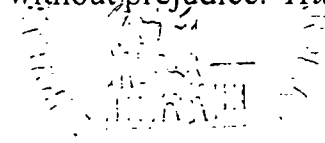
State of South Carolina, Respondent.

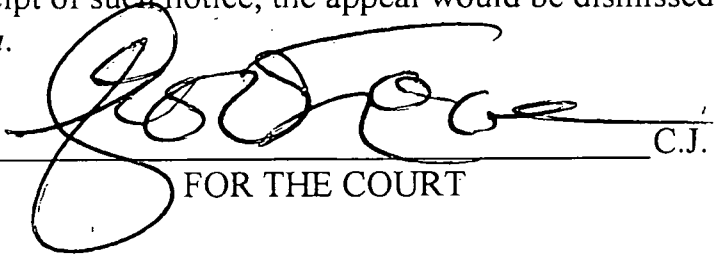
Appellate Case No. 2014-002774

ORDER

This matter is before the Court by way of a notice of appeal from the denial of petitioner's application for post-conviction relief (PCR). The order was filed on November 6, 2014, and the notice of appeal was filed on November 18, 2014. Counsel for petitioner now moves the Court to hold the matter in abeyance pending a ruling by the lower court on a Rule 59(e), SCRCPP, motion filed on December 19, 2014. The State consents to the motion.

The motion is denied. Based on the information provided, the Rule 59(e) motion is untimely and therefore, the circuit court lacks jurisdiction to take action on the motion. Rule 59(b), SCRCPP; Rule 205, SCACR. *See Hudson v. Hudson*, 290 S.C. 215, 349 S.E.2d 341 (1986). Moreover, even if the motion were *timely*, the proper procedure to be followed would be to notify the Clerk of this Court in writing of the pending motion and upon receipt of such notice, the appeal would be dismissed without prejudice. *Hudson, supra*.




C.J.
FOR THE COURT

Columbia, South Carolina

July 13, 2015

cc:

Joshua L. Thomas, Esquire

Laura Ruth Baer, Esquire

The Honorable Melanie Huggins-Ward