

STATE OF SOUTH CAROLINA  
COURT OF APPEALS

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APPEAL FROM YORK COUNTY  
Court of Common Pleas  
Daneil D. Hall, Presiding Judge

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RECEIVED

OCT 20 2015  
SC Court of Appeals

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Appellate Case No.: 2015- 001004

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Antonio Gordon,

Apellant,

v.

State of South Carolina,

Respondent.

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MOTION TO REMAND FOR EVIDENTIARY  
HEARING ON SECOND 59(e) motion

Appellant asserts due to the York County Clerk of Court (David Hamilton) refusing to his <sup>file</sup> second SCRCP 59(e) motion based upon a order issued in Antonio Gordon v. State, 2008-cp-46-4951 that restricted him from filing any future post-conviction relief applications only, See Attachment (3) (Order restricting Appellant from filing any future post-convictions), deprived Appellant of his fundamental constitutional rights to the 1st, 14th amendment rights to access the court and an opportunity to be heard in a meaningful manner as those similarly situated and this court should remand to the lower court for an evidentiary hearing on Appellant's second 59(e) motion that (David Hamilton) returned to Appellant unfiled and unprocessed.

Appellant filed his SCRCP 60(b)(5)-Austin v. State, 495 S.E.2d 395 (1991) "Belated Appeal", dated February 2, 2015, filed March 9, 2015. On March 4, 2015

Judge Hayes issued an order denying dismissing Appellant's Rule 60(b) motion/Belated Appeal finding he was not a conflict of interest, a review of the file reflects that the issue the current motion raises, namely that the jurisdiction of his case was in the Family Court due to his age and not the Court of General Sessions, was raised in this proceeding previously in his initial filing, dated December 16, 2005, in this case, Judge Hayes proceeded on to find that Appellant now seeks to raise for at least the second, an issue regarding Family Court/General Sessions jurisdiction and therefore, the current proceeding on this issue is dismissed as it is a subsequent request for relief which has been previously ruled on and unappealed. Judge Couch Order is the law of the case and is not a ruling which would appear to generate an appeal by the prevailing party. However, to the extent Petitioner' has been denied his right to appeal, the undersigned has conducted an Austin review. I find that the failure to appeal a ruling, which granted petitioner the relief he sought, resulted in no prejudice to Petitioner. petitioner asked to and was granted the right to file a Habeas Corpus proceeding in the Supreme Court of South Carolina. Therefore, there existed no grounds upon which an appeal favorable to Petition could be predicated. See Attachment (k) (Order dated March 4, 2015, filed March 19, 2015 dismissing Gordon's 60(b)/Belated Appeal without prejudiced).

Appellant filed a SCRCP 59(e) motion dated March 23, 2015, filed March 25, 2015. In the motion at attachment (L) page one (1), first paragraph Appellant asserted he received Judge Hayes Order dated **March 4, 2015, filed March 9, 2015 the same exact day Appellant's motion was filed, on March 19, 2015.** Appellant asked Judge Hayes to reconsider, alter and amend his previously decision to find that he (Hayes) was a conflict of interest, Appellant did not raise the jurisdiction issue that the unconstitutionality of S.C. Code ANN § 20-7-6605(1)(supp.1998) Titled Define Child statutory deprived the York County Grand Jury and General Sessions of its jurisdiction over Gordon's person, was not previously raised in the initial habeas petition/pcr petition filed dated December 5, 2005, filed January 3, 2006, jurisdiction could be raised at any time, Appellant did not ask to have judge Hayes original Order dated

April 30, 2007, filed June 1, 2007, reconsidered, amended or clarified, that Appellant's motion was to have judge Hayes order **reopen**, and that judge Couch order is void as a matter of law because he granted Appellant's 60(b) motion under 59(e) analysis in which time had expired, therefore, Appellant was prejudiced by judge Couch Order and Appellant's counsel should have appealed judge Couch decision at Gordon's request.

Judge Hayes recused his self and Judge Hall presided over the case. Dated April 14, 2015, filed April 20, 2015, Judge Hall issued an Order denying Appellant's 59(e) motion and 60(b)/Belated Appeal and found the handwritten motion requests that the court reconsider "for at least a second time" the **jurisdictional issues previously brought before the court**. These issues have been litigated and orders issued. Also, as per S.C.R. Civ.p. 59(e) mandates, the motion must be made "no later than 10 days after the receipt of written notice of entry of judgment." Since **these issues** have been previously heard and ruled on, and since **these issues are untimely**, the Defendant's motions are Denied. See Attachment (m) (Order filed April 20, 2015 issued by Judge Hall).

The Appellant attempted to file a second 59(e) motion asking judge Hall to reconsider, alter and amend his judgment where his Order replaced Judge Hall Order filed March 9, 2015. In the second 59(e) motion Appellant asked judge Hall to find that his Austin review was not untimely pursuant to Odom v. State, 523 S.E.2d 753 (1999), therefore, his motions should not be denied, Appellant's juvenile jurisdiction claim that the unconstitutionality of section 20-7-6605(1) deprived York County Grand Jury and General Sessions of its jurisdiction over Gordon's person was not previously raised and ruled upon and that jurisdiction could be raised at anytime, and Appellant did file his first 59(e) motion from judge Hayes Order filed March 9, 2015, timely where Appellant received the Order on March 19, 2015. See Attachment (n) (Gordon's second 59(e) motion dated May 7, 2015). However, David Hamilton return Appellant's motion with attachments with a letter stating Appellant previously filed the same type of motion and an order has been issued and

there is a order in place restricting Appellant from any future filing, therefore, his office is returning Appellant's documents. See Attachment (o) (Letter from clerk of court returning Appellant's motion based upon an order that restricted Appellant from filing any future post-conviction relief applications only).

Rule 59(e), SCRCF ("A motion to alter or amend the judgment shall be served not later than 10 days after receipt of the written notice of the entry of the order"). See Fnl In Howard Hund Constr. Co. v. Ball Corp, 336 S.C. 1,4,518 S.E.2d 56,58 (ct.App.1999) the court found a successive rule 59(e), SCRCF, motion following the denial of a similar motion does not toll the time for filing an appeal when the trial court's ruling on the first 59(e) motion did not change its ruling from trial. id at 3,518 S.E.2d at 58 (A second motion for reconsideration is appropriate only if it challenges something that was altered from the original judgment as a result of the initial motion for reconsideration. In such a case, a new judgment has replaced the previous judgment and the party aggrieved by the alteration may move for reconsideration).

Judge Hall judgment entered April 20, 2015 replaced the previous judgment of Judge Hayes entered March 9, 2015 in relation to (1) Appellant's Austin review. Judge Hayes found Appellant's Austin Belated Appeal must fail because Appellant was granted relief for which he asked for in his 60(b) motion filed August 7, 2007. See Attachment (k) page 2 (judge Hayes Order filed

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fnl In the instant case Appellant asserted in his Rule 59(e) motion that he received judge Hayes Order entered March 9, 2015 denying his Rule 60(b) motion on March 19, 2015, approx 10 days after the Order was entered and filed by the York County Clerk of Court. See Attachment (L) pg 1. Therefore, Judge Hall order entered April 20, 2015 is controlled by an error of law pursuant to SCRCF 59(e) and USAA Property and ,Inc, Co. V. Clegg, 661 S.E.2d 791 (2008) (In determining the timeliness of a Rule 59(e) motion to reconsider, the court presumed counsel was being truthful when representing the date she received notice of entry of the Order).

March 9, 2015). Thus Judge Hall found Appellant's Austin review untimely in his order entered April 20, 2015. See Attachment (m) (Ordered entered by Judge Hall finding all of Appellant's claims untimely), (2) Judge Hayes found Appellant raised the juvenile jurisdictional issues in the initial habeas petition. See Attachment (k) pages 1 and 2. Thus Judge Hall recognized Appellant did file two (2) separate juvenile jurisdictional issues but found that ~~they~~ was untimely. See Attachment (m) (Ordered entered April 20, 2015 finding Appellants juvenile jurisdictional issues untimely) and (3) Judge Hall found Appellant's 59(e) motion was untimely filed. See Attachment (m). Appellant's asserts his **second** 59(e) motion David Hamilton returned due to an order which did not authorize him to perform his acts, challenged something that was altered from the original judgment as a result of the initial order denying motion for Relief from Judgment pursuant to 60(b) entered March 9, 2015. id at 3,518 S.E.2d at 58.

Appellant asserts David Hamilton deprived him of his fundamental constitutional right to access the courts under the first amendment to the united States Constitution. See U.S. v. Parker, 2013 WL 5530269, D.S.C. (First amendment right of access on party seeking to restrict access, and party must present specific reasons in support of its position) quoting Press-Enterprise Co. v. Superior Court, 106 S.ct 2735 (1985) and deprived Appellant an opportunity to be heard in a meaningful manner in violation of Appellant's fundamental constitutional right to due process of law under the 14th amendment to the United States Constitution. Armstrong v. Monzo, 380 U.S. 545, 552, 85 S.ct 1187 (1965) (Due process requires as general matter opportunity to be heard at a meaningful time and in a meaningful manner), and deprived Appellant equal access to the courts and the opportunity to be heard in a meaningful manner as those similarly situated. See City of Cleburne v. Cleburne Living Center, 473 U.S. 432, 105 S.ct 3249 (1985) (The equal protection clause essentially requires that all persons similarly situated be treated alike).

Furthermore, the Clerk of Court (David Hamilton) violated United States Supreme Court case law that of Hill v. Wampler, 56 S.ct 760 (1936) where

the United States Supreme Court held that clerk of court personnel did not have the authority to alter a judgment issued by the court. Appellant's restriction on future filing did not include motions that of 60(b), 59(e), summary judgment, habeas corpus, the order restricted Appellant from filing any future post-conviction only. See Attachment (3), therefore, restricting Appellant from future filing of 59(e) motions ect must come from the judgment of a court. Wampler, supra. The Clerk of Court also deprived Appellant appellate review on his second 59(e) motion based upon an Order that restricted Appellant from filing any future post-conviction only as well because appellant bears the burden of providing a record on appeal sufficient for intelligent review; Rule 210(h), SCACR (The appellate court will not consider any fact which does not appear in the record on appeal. Bonaparte v. Floyd, 291 S.C. 427, 444, 354 S.E.2d 40, 50 (Ct.App.1987)

In this case the many attachments on appellant's second 59(e) motion which show when Appellant received Judge Hayes Order entered March 9, 2015 and attachments showing Appellant did not file both juvenile jurisdictional issues previously as ruled on by both Judge Hayes and Hall. See hundley v. rite Aid of S.C., Inc, 339 S.C. 285, 306, 529 S.E.2d 45, 56 (Ct.App.2000) (Finding arguments must be conducted on the record to be preserved for appellate review); Bonaparte v. Floyd, supra. Therefore, this court should remand for an evidentiary hearing on the timelessness of Appellant's first 59(e) motion where the Clerk of Court refuse to file Appellant's second 59(e) motion based upon an Order that restricted him from filing any future post-conviction relief applications only.

#### CONCLUSION

It is respectfully asked that this Honorable Court remand for an evidentiary hearing on Appellant's second 59(e) motion the clerk refused to file. Also it is asked that this Court Order briefing be held in abeyance until all motions are ruled upon.

Respectfully Submitted.

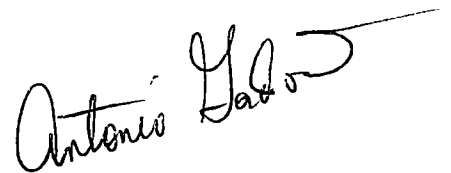
Antonio Gordon, #259798

Kershaw C.I. Oak B 46

4848 Goldmine Hwy

Kershaw, South Carolina 29067

This 19 day of October, 2015



STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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APPEAL FROM YORK COUNTY  
COURT OF COMMON PLEAS  
DANEIL D. HALL, PRESIDING JUDGE

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CERTIFICATE OF SERVICE

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I, Antonio Gordon, hereby certify that I did serve Respondent with Appellant's motions to Relax the court, motion to reconstruct the record and motion to remand for evidentiary hearing on second 59(e) motion on:

Attorney General Office

Ashley Anne McMahan, Esquire.

P.O. Box 11549

Columbia, South Carolina 29211

by placing copies in the mail with sufficient funds on this 19 day of October, 2015



Antonio Gordon, #259798

Kershaw, C.I. Oak B Room 46

4848 Goldmine Hwy

Kershaw, South Carolina 29067