



The Supreme Court of South Carolina

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November 16, 2015

Mr. Thomas Lowery, #083240
Kershaw Correctional Institution
4848 Gold Mine Hwy
Kershaw SC 29069

Re: Thomas Lowery v. State
Appellate Case No. 2015-002101

Dear Mr. Lowery:

This responds to your motion dated November 9, 2015, seeking relief under Rule 60(b) of the South Carolina Rules of Civil Procedure (SCRCP). No action will be taken on this motion for several reasons.

First, Rule 60(b), SCRCP, is inapplicable to this appellate proceeding. *See* Rule 81, SCRCP ("These rules, or any of them, shall apply to every trial court of civil jurisdiction within this state."); see also Rule 73, SCRCP ("Procedure on appeal to the South Carolina Supreme Court or the South Carolina Court of Appeals shall be in accordance with the South Carolina Appellate Court Rules.").

Second, the order issued by this Court was filed on October 10, 2015. Therefore, even if your motion is construed as a petition for rehearing, it is untimely. Rule 221(a) of the South Carolina Appellate Court Rules (SCACR) ("Petitions for rehearing must be actually received by the appellate court no later than fifteen (15) days after the filing of the opinion, order, judgment, or decree of the court.").

Finally, and most importantly, when no timely petition for rehearing was received by this Court, the remittitur was sent to the circuit court on November 6, 2015. Rule 221(b), SCACR (procedure governing remittitur). The sending of the remittitur ended appellate jurisdiction over this case and no further motions or petitions can be considered by this Court. *Wise v. S.C. Dept. of Corr.*, 372 S.C. 173, 642 S.E.2d 551 (2007).

Accordingly, no action will be taken on your motion by this Court.¹

Very truly yours,

A handwritten signature in black ink, consisting of a large, stylized initial 'D' followed by a series of loops and a long horizontal stroke extending to the right.

CLERK

cc: Daniel Francis Gourley, II, Esquire

¹ If you desire to be granted permission to file a new post-conviction relief application seeking a belated direct appeal from your guilty pleas under *White v. State*, you will need to seek that permission from this Court by filing and serving a motion under Rule 240, SCACR. I do call your attention to *Graham v. State*, 378 S.C. 1, 661 S.E.2d 337 (2008) ("[P]etitioner clearly could have raised the issue of the denial of his right to direct appeal in his first PCR application. Because petitioner failed to raise the issue in his first application, the PCR judge correctly found petitioner was barred from raising it in a successive application.").

I note further that the conditional order of dismissal issued by the circuit court in this case appears to indicate that a *White v. State* claim was raised in your first post-conviction relief case.