

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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DEC 07 2015

SC Court of Appeals

Frazier T Williams, Appellant,

v.

The State, Respondent.

Appellate Case No. 2014-000595

Appeal From Cherokee County

J. Derham Cole, Circuit Court Judge

Unpublished Opinion No. 2015-UP-542
Submitted October 1, 2015-Filed November 25, 2015

PETITION FOR REHEARING

Frazier T. Williams, Pro Se

Attorney General Alan McCrory Wilson,
Deputy Attorney General Suzanne H. White,
for Respondent.

STATEMENT OF THE ISSUES FOR REHEARING

1. Did this Court err in denying petition's motion for recusal because the trial judge presided over his original trial?
2. Did the Court err in denying that petitioner's mandamus was not the proper method for challenging the trial court's subject-matter jurisdiction?

1. The petitioner was convicted in general sessions court in which Judge J. Derham Cole presided. After the denial of his direct appeal, post-conviction relief, and petition for writ of habeas corpus, the petitioner filed a petition for writ of mandamus. The petition for writ of mandamus was submitted to Judge Cole who dismissed the writ. Upon receipt of Judge Cole's dismissal, the petitioner filed a motion requesting Judge Cole's dismissal and vacation of his order. Judge Cole denied the motion. The petitioner filed a timely appeal from Judge Cole's order of dismissal.

On appeal, the Court of Appeals has acknowledged the S.C. Supreme Court's holding in Floyd v. State, 400 S.E.2d 145 (holding that in a all post-conviction relief hearing...a judge shall, upon motion, recuse himself if he was the judge who presided at...the criminal trial for which relief is being sought. In conjunction In conjunction, this Court has cited Canon 3(B)(1) of Judicial conduct, Rule 501, SCACR ("A Judge shall hear and decide matters assigned to the judge except those in which disqualification is required").

In reliance on both Floyd and Canon 3(B)(1), Rule 501, SCACR, the appellate submits that the Appellate Court's ruling in this case has not only rendered an erroneous decision regarding this issue, but has also created a conflict between this Court and the S.C. Supreme Court's decision in Floyd and Vnnon Tuir 3(B)(1). Therefore, this Court should grant the rehearing to resolve the conflict created by its erroneous ruling.

2. This Court has held that the issue of whether to issue...a writ of mandamus...lies within the sound discretion of the trial judge, and that it will only overturn that decision upon an abuse of discretion. Here, the issue of whether to issue the appellant's writ of mandamus did not lie within the sound discretion of Judge J. Durham Cole who presided over both the appellant's criminal trial and his petition for writ of mandamus; thus, under the purview of Floyd, infra and Rule 501, infra, Judge Cole did not exercise sound discretion in ruling on, and denying, appellate's writ of mandamus.

Furthermore, in addressing his entitlement to issuance of a writ of mandamus, the appellant submitted that he had exhausted all other remedies ex a writ of mandamus. He further submitted that the solicitor prosecuted him upon indictments which had not been presented to a grand jury, and that the solicitor had a ministerial duty to prosecute him upon lawfully indicted offenses to confer subject-matter jurisdiction upon the trial court to convict and sentence him. See Porter v. Jedzmiak, 512 S.E.2d 497 (1999); see also Anderson v. State, 527 S.C.App. 2001), in which this Court held that Subject matter jurisdiction can be raise in a writ of mandamus after exhaustion of PCR and habeas corpus remedies.

Wherefore, for the foregoing reasons, this Honorable Court should grant the rehearing to conform with previous ruling by this court and the S.C. S.C. Supreme court's rulings.

WHEREFORE, this Court should grant the rehearing to conform with previous ruling by this Court and the S.C. Supreme Court, and to resolve the conflict created by it current ruling.

Respectfully Submitted,

/s/ Frazier T. Williams
Frazier T. Williams #227393
Perry Correctional Institution
430 Oaklawn Road-Q4A/124
Pelzer, S.C. 29669

This 3 day
of December, 2015

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PROOF OF SERVICE

I, Frazier T. Williams, do hereby certify that I served a true copy of the Petition for Rehearing upon Respondent's Counsel by placing the same in the U.S. Mail, postage prepaid, addressed to Attorney Generals Alan McCrory and Deputy Attorney General Suzanne H. White, P.O. Box 11549, Columbia, S.C. 29211.

Respectfully,

This 3 day of December, 2015

/s/ *Frazier T. Williams*
Frazier T. Williams
Perry Correctional Inst.
430 Oaklawn Road-Q4A/124
Pelzer, S.C. 29669