

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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DEC 03 2015

SC Court of Appeals

THE STATE OF SOUTH CAROLINA,

RESPONDENT,

V.

GARY LANE PREWITT,

APPELLANT

Appeal from Newberry County

Honorable Clifton B. Newmam, Circuit Court Judge

**PETITION FOR REHEARING
AND
SUGGESTION FOR REHEARING
EN BANC**

Unpublished Opinion No. 2015-UP-523

Appellant respectfully petitions this Court for a rehearing pursuant to *Rule 221(a)*, SCACR. Appellant also suggests that his case is reheard en banc. Appellant submits that his Motion for a New Trial Based on After-Discovered Evidence was wrongfully denied by the three (3) member panel of the Court of Appeals, for the following reasons. Appellant also submits that the court's ruling has deprived him of his right to an appeal violated his due process rights.

Citing the fugitive disentitlement rule and *State v. Serrette*, 375 S.C. 650, 654 S.E.2d 554 (Ct. App. 2007), this Court granted the State's motion to dismiss Appellant's appeal. However, Appellant submits that the fugitive disentitlement rule does not apply in his case because his

flight did not “have an impact on the appellate process sufficient to warrant an appellate sanction.” *See Ortega-Rodriguez v. United States*, 507 U.S. 234, 249-250, 113 S.Ct. 1199, 1208-1209 (1993). Appellant further submits that the application of the fugitive disentitlement rule to his case violates due process.

The Court of Appeals Misapplied the Precedent to the Facts of the Present Case

Citing the holdings in State vs. Harris, 391 S.C. 539, 706 S.E.2d 526 (S.C.App. 2011) and Hayden vs. State, 278 S.C. 610, 299 S.E.2d 854 (1983), the Court determined that the witness’s recantation would not have changed the result were a new trial granted, as witness recantations ordinarily are unreliable. The Appellant contends that, because there is corroborative evidence validating the witness’s recantation, the precedent in Harris and Hayden is inapplicable to the facts of the present case. Furthermore, the Appellant contends that the facts of the present matter warrant a finding that the witness’s recantation would likely have changed the result were a new trial granted.

The Court of Appeals Misapplication of Precedent Prejudiced the Appellant

Because the Appellant contends that, had the Court correctly determined the weight to give the witness’s recantation and not used inapplicable precedent as a basis for affirming the Circuit Court’s decision, the Appellant would have been granted a new trial. Therefore, the Appellant asserts that this legal error has prejudiced him.

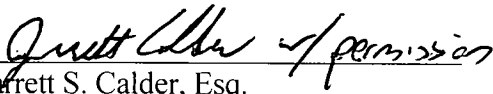
The Court of Appeals Erred in Failing to Address the Appellant’s Remaining Issues

Citing Futch vs. McAllister Towing of Georgetown, Inc., 335 S.C. 598, 518 S.E.2d 591 (1999), the Court did not address the Appellant’s remaining issues, as it determined the first to be dispositive. The Appellant asserts that the above precedent is inapplicable in this case. Had the Court not erred in analysis of the first issue, it would have determined that the witness’s recantation

would likely have changed the result were a new trial granted. Because of this, the Appellant contends that the first issue is not dispositive of the Appeal. Consequently, Appellant asserts that the Court should have addressed the remaining issues on appeal.

For the foregoing reasons, the Appellant respectfully request that this Court rehear his case.

Respectfully submitted,


Jarrett S. Calder, Esq.
Grand Strand Law Group, LLC
P.O. Box 3237
Myrtle Beach, SC 29578

ATTORNEY FOR APPELLANT
Gary Lane Prewitt

This 3rd day of December, 2015.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Newberry County
Honorable Clifton B. Newman, Circuit Court Judge

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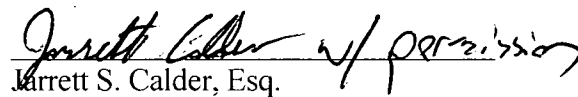
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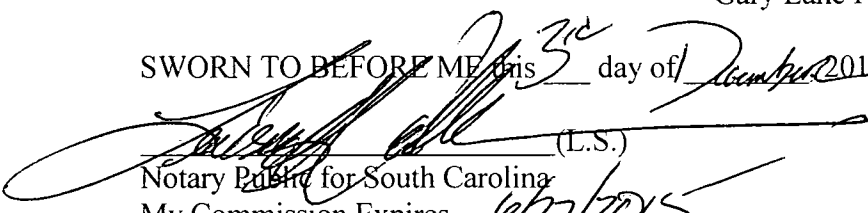
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Petition for Rehearing in the above-entitled case has been served upon David Spencer, Esq. at P.O. Box 11549, Columbia, SC 29211 this 3rd day of December, 2015.

Respectfully submitted,


Jarrett S. Calder, Esq.
Grand Strand Law Group, LLC
P.O. Box 3237
Myrtle Beach, SC 29578

ATTORNEY FOR APPELLANT
Gary Lane Prewitt

SWORN TO BEFORE ME this 3rd day of December 2015.

(L.S.)
Notary Public for South Carolina
My Commission Expires 6/27/2015