

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Pickens County
Alexander S. Macaulay, Circuit Court Judge

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MAR 08 2016

SC Court of Appeals

THE STATE OF SOUTH CAROLINA,

APPELLANT,

VS.

KENNY RAY HARRIS,

RESPONDENT.

FINAL BRIEF OF RESPONDENT

TO:

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DAVID SPENCER, Senior Assistant Attorney General

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STATEMENT OF ISSUE ON APPEAL

Whether or not the circuit court erred in reversing the magistrate court's order reinstating the ticket for criminal domestic violence against the Respondent based on Rule 4(a) of the SCRCrimP not being complied with. Whether or not the circuit court should have also reversed the magistrate court's order reinstating the ticket based on Rule 29 SCRCrimP. Further, whether or not the magistrate court's order reinstating the ticket was immediately appealable.

STATEMENT OF THE CASE

Respondent Kenny Ray Harris, herein after Respondent, was arrested and charged with criminal domestic violence under uniform traffic ticket number 32468 FS on July 11, 2014 by the Pickens County Sheriff's Office Deputy Roper. The case was set for a trial date as reflected on the ticket issued by Deputy Roper for July 23, 2014. The alleged victim and Respondent appeared at this trial date on July 23, 2014 but Deputy Roper did not and the magistrate court dismissed the charge against Respondent for failure of the State to prosecute. Thereafter, the alleged victim filed an appeal herself on July 24, 2014 with the circuit court which was never served on the Respondent nor Respondent's counsel. The solicitor filed a motion for reconsideration of the magistrate court's dismissal on August 4, 2014, which was never served on the Respondent nor Respondent's attorney. On August 7, 2014 Respondent through his attorney received a Summary Court Summons to appear for a "Motion for Reconsideration" on August 18, 2015 in the magistrate court. On that date a motion was heard with the State and Respondent present with his attorney, the State verbally stated the grounds for its motion and Respondent still had not received any documents relating to the filing of the motion. The magistrate court granted the State's motion and reinstated the charge against the Respondent, though issued no written order. No court reporter was present either for this motion hearing.

On August 28, 2014 Respondent filed a notice of appeal to circuit court of the magistrate court's reinstatement of the charge against the Respondent. On September 26, 2014 the circuit court heard and dismissed the alleged victim's appeal that she filed herself on July 24, 2014, which had still never been served on the Respondent nor his attorney. On February 2, 2015 the circuit court before Judge Macaulay heard Respondent's appeal from the magistrate court's reinstatement, and reversed the magistrate court's oral order of August 18, 2014, and reinstated the dismissal of the charge against Respondent and issued a formal written order which was served on Appellant on April 1, 2015. Appellant moved for a motion for reconsideration which was denied on April 23, 2015, and thereafter Appellant appealed to this Court on May 18, 2015.

In addition to this appeal, the Appellant also on February 4, 2015 filed a notice of motion and motion to re-instate the Appeal and Notice of Appeal filed by the alleged victim, which the Appellant was now joining. This motion was heard on April 1, 2015 in the circuit court and granted. Thus the Appellant now has an appeal of the original dismissal of the charge by the magistrate court, pending in circuit court that has yet to be heard. In addition the Appellant has this appeal pending before this Court of the circuit court's reversal of the magistrate court's reinstatement of the charge.

ARGUMENT

The Appellant's Motion for Reinstatement to the magistrate court was properly reversed by the circuit court in this case and should be affirmed by this Court. Rule 4 SCRCrimP states "(a) Form of Motions. An application to the court for an order shall be by motion which, unless made during a hearing or trial in open court with a court reporter present, shall be made in writing, shall state with particularity the grounds therefor, and shall set forth the relief or order sought. The requirement of writing is fulfilled if the motion is stated in a written notice of the hearing of the motion." In this case Respondent never received a written motion at any point in time for the motion for reconsideration being hearing in magistrate court. Apparently Appellant filed a Motion for Reconsideration and failed to serve it on Respondent and/or his attorney. Nonetheless, what was filed did not state with particularity the grounds for the motion, which was acknowledged by Appellant in the hearing before the circuit court. In addition, there was not a court reporter present at the motion for reconsideration in the magistrate court, though it was recorded by audio tape. This is not in compliance with Rule 4(a) SCRCrimP, as though the Appellant stated the grounds for the motion with particularity at the motion hearing in magistrate court, a court reporter was not present. Therefore it had to of been in writing, which was not done in this case. Thus the motion was not proper before the magistrate court and the circuit court properly reversed the granting of this motion. The effect of this was to reinstate the dismissal of the charge against the Respondent.

In addition, Appellant failed to comply with Rule 29 SCRCrimP by not serving the Respondent with its Motion for Reconsideration within ten (10) days of the magistrate court's ruling to dismiss the charge on July 23, 2014. Appellant apparently filed this motion on August 4, 2014, which is over ten (10) days from the date of the magistrate court's ruling of dismissal. In addition the motion was never even served on the Respondent. The only notice the Respondent received was the "Summary Court Summons", which he got on August 7, 2014, well over ten (10) days from the magistrate court's order dismissing the case on July 23, 2014. The circuit court did not reverse the magistrate court's reinstatement on this grounds, but it was raised by Respondent in his appeal in circuit court and is properly before this Court in this appeal as a result. Appellant's motion should have been reversed on an additional ground that it was not timely filed by Appellant and not timely served by Appellant on Respondent.

Lastly, Appellant's position is that that magistrate court's order reinstating the charge was not immediately appealable because no sentence was imposed by the court on Respondent. However, Appellant does not address the facts stated above that Appellant did not comply with the procedural requirements of the court in filing and serving its motion, and that of having a court reporter present at its motion. These are substantial rights Respondent is entitled to. Respondent is not simply trying to avoid a trial on the merits in this case, he is being denied a substantial right entitled to him to be served properly with motions that are to be heard by the court. In this case he was denied this substantial right and could not be adequately prepared to argue the motion for reconsideration before the magistrate as the Appellant did not serve him with the motion to begin with, but in addition Respondent had no knowledge of the grounds Appellant would be arguing at the motion. Appellant cannot not comply with these procedural rules and improperly gain an upper hand in a motion before the magistrate court and then when it wins turn around and argue that decision is not immediate appealable. This potentially

imposing Respondent to a jail sentence, in this case of 30 days, which he could appeal, but potentially have to serve. If he won the appeal his conviction could be overturned but he cannot undo the 30 days he did in jail. A fine is of course possible as a sentence but if he is unable to pay the fine, the jail sentence would be imposed. It is simply the substantial right of the Respondent to be properly notified and served with motions that impact his case such as this, whether the case is dismissed or reinstated. This is a substantial right Respondent is entitled to that was denied to him. Thus, given the Respondent has this substantial right he is entitled to an immediate appeal of what Appellant has characterized as an interlocutory order.

This Court should affirmed the circuit court's decision which reversed the magistrate court's reinstatement of the charge against Respondent, thus reinstating the dismissal of his charge.

CONCLUSION

For all the forgoing reasons, this Court should affirm the circuit court's ruling.

Respectfully Submitted,

Steven L. Alexander

Attorney for Respondent

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March 7, 2016

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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APPEAL FROM PICKENS COUNTY

Alexander S. Macauley, Circuit Court Judge

Appellate Case #: 2015-001099

STATE OF SOUTH CAROLINA.....Appellant,

v.

KENNY RAY HARRIS,.....Respondent.

RULE 211(b) CERTIFICATE

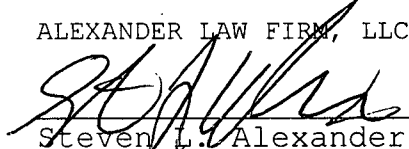
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Counsel for Appellants hereby certifies that the Final Brief of Appellant complies with Rule 211(b), SCACR.

March 7, 2016

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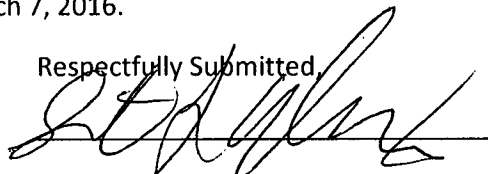
KENNY RAY HARRIS,

RESPONDENT.

PROOF OF SERVICE

Respondent has properly served the Appellant with his Final Brief of Respondent by placing same in an envelope with proper postage attached and address to David Spencer, Senior Assistant Attorney General P.O. Box 11549 Columbia, SC 29211 on this date March 7, 2016.

Respectfully Submitted,



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March 7, 2016