

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT
APPEAL FROM GREENVILLE
COURT OF COMMON PLRAS
ROBIN B. STILWELL, PRESIDING JUDGE

Case No. 2016-001479

Wilfredo Salas,

Petitioner,

RECEIVED

Vs.

OCT 11 2016

S.C. SUPREME COURT

State of South Carolina,

Respondent.

PETITION FOR WRIT OF CERTIORARI

Attorney General Office
Patrick Schmeckpeper, Esquire
Post Office Box 11549
Columbia, S.C 29211.

Wilfredo Salas, #347611
Ker. Corr. Inst. MA B-49
4848 Goldmine Hwy.
Kershaw, S.C 29067.

STATEMENT OF THE CASE

The petitioner plead guilty in Greenville County August 8, 2011, to Lewd Act on a minor. See Fnl The Petitioner received a maximum sentence of fifteen years of imprisonment. (2011-GS-23-6255). Scott D. Robinson, Esquire represented the Petitioner. On August 17, 2011, counsel filed a "timely post-trial motion" to "reconsider the sentence". See Appendix page 121, 129. As to this date no "[o]rder" has been issued adjudicating this motion on the merits. See Appendix pages 123, 132.

On May 17, 2012, Petitioner filed a post-conviction relief application. See Appendix page 24-32. The State made its return on August 31, 2012. See Appendix page 33-38. An evidentiary hearing into the matter was convened on October 23, 2013, at the Greenville County Courthouse. The Honorable Edward W. Miller issued an order dated January 7, 2014, filed January 8, 2014, dismissing the PCR with prejudice. See Appendix page 106-113.

On October 10th, 2015, the Petitioner filed a Rule 60(b), (4), (5), SCRPC motion alleging his PCR judgment in [2012-cp-23-3341] were void and should no longer have prospective application and no longer should equitable because the Court of Common Pleas were without jurisdiction due to Petitioner's timely post-trial motion pending during the time the PRC Court issued its order. See Appendix pages 116-123.

On June 23, 2016, the Petitioner filed a motion for summary judgment pursuant to Rule 56(c), SCRPC. The Court denied Petitioner's Motion to Vacate Judgment pursuant to Rule 60(b), (4) (5) and Motion for Summary Judgment pursuant to Rule 56(c) finding:

(1) Petitioner failed to comply with the South Carolina Rules of Civil Procedure and

(2) Lack of merit.

See Appendix page 135.

Fnl The Petitioner was originally charged with criminal sexual conduct with a minor less than ten years of age. The State agreed to reduce the charge to Lewd Act on a minor.

However, after the lower Court issued its order denying Petitioner's motions the Respondent in several emails addressed to judge Gravely admits there is an outstanding post-trial motion pending but nevertheless effected the court's jurisdiction because his counsel filed it under his original warrant number and not the indictment number in which he plead to. See Attachment (a) (Patrick Schmeckpeper emails addressed to judge Gravely).

STATEMENT OF THE GROUNDS ON APPEAL

(1) Whether the Lower Court abused its discretion and committed error of law when it found Petitioner's Motion to vacate judgment pursuant to Rule 60(b) and Motion for Summary Judgment pursuant to South Carolina Rules of Civil Procedure lack merits?

(2) Whether the Lower Court abused its discretion and committed error of law when it found Petitioner's Motion to vacate judgment and Motion for Summary Judgment should be dismissed because he failed to comply with the South Carolina Rules of Civil Procedure?

ARGUMENT

The Lower Court abused its discretion and committed error of law when it found Petitioner's Motion for to Vacate Judgment pursuant to Rule 60(b) and Motion for Summary Judgment pursuant to Rule 56(c) SCRPC lack merits

The Petitioner asserts the Lower Court committed error of law and abused his discretion when he found Petitioner's Motions should be dismissed because they lack merits. See Appendix page 135. In the instant case the Petitioner's guilty plea counsel filed a "[t]imely post-trial" motion pursuant to Rule 29(a), South Carolina Rules of Criminal Procedures. See Fnl Petitioner Retained an attorney to represent him on post-conviction. See Appendix page 106 (John G. Reckenbeil represented Petitioner). The PCR Court issued an order denying Petitioner's PCR Application during a time in which he had a "[t]imely post trial" motion pending in the Court of General Sessions. See Appendix page 121 and 106.

Judgment

Petitioner asserts the PCR Court in (2012-cp-23-3341) is a nullity and void ab initio as a matter of law and should not have prospective application and no longer equitable because the court could not exercise its authority because the Court lacked jurisdiction pursuant to S.C.R.Civ.Proc Rule 71.1(b) "Time and Form of Application" (An application for post-conviction relief "[c]annot" be made while an appeal from conviction or sentence is pending or during the time in which an appeal may be perfected". See Al-Shabazz, 527 S.E.2d 747 (S.C.2000) (Applicant may not bring a PCR action while a direct appeal is pending. Rule 71.1(b), the focus usually is upon alleged errors made by trial or plea counsel), Rule 203(2), SCACR. It's clear Petitioner's PCR application were filed during which time an appeal could be perfected. Therefore, the lower court erred when it found Petitioner's motions should be dismissed and denied for lack of merits.

Fnl Petitioner's guilty plea counsel filed this post-trial motion to reconsider his sentence under his original arrest warrant number I-479542. See Appendix page 121 and were properly before the court.

The lower Court abused its discretion and committed error of law when it found Petitioner's motion to vacate judgment and Motion for Summary Judgment should be dismissed because he failed to comply with the South Carolina Rules of Civil Procedure

The Petitioner asserts the lower court erred when it found Petitioner failed to comply with the South Carolina Rules of Civil Procedure. See Appendix page 136. In the instant case Petitioner sent copies of his motions to the opposing counsel and properly signed them according to the Rules of Court. See South Carolina Rules of Civil Procedure. See Fnl

Fnl The lower court does not identify which Rule Petitioner failed to comply with.

Therefore, the lower court erred and the order should be reversed.

CONCLUSION

I am respectfully asking that the Court grant Writ of Certiorari and appoint counsel.

This 3rd Day of October, 2016

Wilfredo Salas
Wilfredo Salas, #347611

STATE OF SOUTH CAROLINA
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Wilfredo Salas,

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Vs.

State of South Carolina,

Respondent.

CERTIFICATE OF SERVICE

I, Wilfredo Salas, hereby certify that I did serve petitioner's Writ of Certiorari on:

Attorney General Office
Patrick Schmeckpeper, Esquire
Post Office Box 11549
Columbia, S.C 29211-.

by depositing a copy in the U.S mail with sufficient funds this 3rd day of October, 2016.

Wilfredo Salas
Wilfredo Salas, #347611

Attachment (a)

Patrick Schmeckpeper

From: Patrick Schmeckpeper
Sent: Monday, August 29, 2016 5:16 PM
To: 'Gravely, Perry H.'
Subject: RE: Wilfredo Salas (2015-CP-23-0985)

Follow Up Flag: Worldox

Judge Gravely,

Just a quick update – Mr. Salas has recently filed a second appeal from his previous PCR raising the same issue he is raising in his successive application. I'm going to wait until that is resolved to submit anything further in this case unless you would prefer otherwise.

Thanks,

Patrick Schmeckpeper
Assistant Attorney General – PCR Division
South Carolina Attorney General's Office
(803) 734-3737

From: Patrick Schmeckpeper
Sent: Monday, August 22, 2016 9:14 AM
To: 'Gravely, Perry H.'
Subject: RE: Wilfredo Salas (2015-CP-23-0985)

Nothing further on my end – I'll go ahead and get everything sent out today to give Mr. Salas plenty of time to respond.

Thanks again, and sorry for the mix-up,

Patrick Schmeckpeper
Assistant Attorney General – PCR Division
South Carolina Attorney General's Office
(803) 734-3737

From: Gravely, Perry H. [<mailto:pgravelyj@sccourts.org>]
Sent: Friday, August 19, 2016 5:47 PM
To: Patrick Schmeckpeper
Subject: RE: Wilfredo Salas (2015-CP-23-0985)

I guess that's ok. Your thoughts?

From: Patrick Schmeckpeper [<mailto:PSchmeckpeper@scag.gov>]
Sent: Tuesday, August 16, 2016 11:19 AM
To: Gravely, Perry H. Law Clerk (Michelle Jones); Gravely, Perry H.
Subject: RE: Wilfredo Salas (2015-CP-23-0985)

Michelle,

Thanks – from what I can tell, it looks like Mr. Salas was originally facing criminal sexual conduct, 1st degree (warrant number I-479542). That charge was dismissed, and the charge of lewd act on a minor was directly presented (Mr. Salas waived presentment to the grand jury). After speaking with the record department over at the clerk's office, I believe Mr. Salas' trial attorney, Scott Robinson, filed the motion to reconsider under the warrant number that had been dismissed rather than the GS number that Mr. Salas actually pled guilty to. As a result, it was never ruled on. My understanding is that because the motion to reconsider was not pending on the charge he actually pled to, it doesn't affect the court's jurisdiction to rule on this PCR application (or to have ruled on his previous application). That being said, I'd appreciate the opportunity to draft an amended return and motion to dismiss and conditional order of dismissal, just to make sure the record is clear and to give Mr. Salas a formal opportunity to respond. I'll be sure to include the relevant documents.

Sorry again for the confusion. I'll mail a copy of this email chain to Mr. Salas to avoid any ex parte communications.

Patrick Schmeckpeper
Assistant Attorney General – PCR Division
South Carolina Attorney General's Office
(803) 734-3737

From: Gravely, Perry H. Law Clerk (Michelle Jones) [<mailto:pgravelylc@sccourts.org>]
Sent: Tuesday, August 16, 2016 10:45 AM
To: Patrick Schmeckpeper; Gravely, Perry H.
Subject: RE: Wilfredo Salas (2015-CP-23-0985)

Mr. Schmeckpeper,

I have pulled the proposed order and made a note to hold it until further we receive further information from you.

Michelle

M. Michelle Jones
Law Clerk to the Honorable Perry H. Gravely
Thirteenth Judicial Circuit
P.O. Box 219
Pickens, SC 29671
Pickens Phone: (864) 898-5790
Greenville Phone: (864) 467-8385

From: Patrick Schmeckpeper [<mailto:PSchmeckpeper@scag.gov>]
Sent: Tuesday, August 16, 2016 10:28 AM
To: Gravely, Perry H.; Gravely, Perry H. Law Clerk (Michelle Jones)
Subject: Wilfredo Salas (2015-CP-23-0985)

Judge Gravely,

Sorry to bother you – I recently sent a group of final orders to your office and just caught one of Karen's notes concerning Wilfredo Salas (2015-CP-23-0985). It looks like there might have been an outstanding motion to reconsider his sentence that was never ruled on. Would you mind holding off signing Mr. Salas' order while I check with the clerk's office and try to confirm that? He's currently on his second post-conviction relief application, so this may implicate his first application, as well.

Thanks, and I apologize for the confusion,

Patrick Schmeckpeper
Assistant Attorney General – PCR Division
South Carolina Attorney General's Office
(803) 734-3737

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