

October 24, 2016

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S.C. SUPREME COURT

S.C. Supreme Court
The Honorable Daniel E. Sherouse
Clerk of Court
P.O. Box 11330
Columbia, S.C. 29211

Vincent Missouri v. State 2016-002037

Dear Mr. Shearouse;

With all due respect for your position and the responsibility for processing and scheduling matters which are filed with the Supreme Court for this State, Do I find questionable, "not presenting the 60(b) motion to the Court". When the motion does not require this Court to adjudicate the merits of such motion. And instead only requires "leave from this Court granting or denying permission to file such motion, irregardless of if its pro-se or not", to permit the lower court to proceed forward. And at that time, the lower court has the authority to permit or restrict such filing based on "hybrid" representation.

According to South Carolina Rules of Civil Procedure, Rule 60, it is drawn from the Federal Rule 60. That where there are minor changes, the minor change does not offend "a party's request for relief of judgement". Further, S.C. Rule 60 goes on to mandate "any Rule 60 filed during the pendency of an appeal, must file the Rule, requesting "leave" from the appellate court. Which in this case, would be the Supreme Court, as the PCR intent to appeal has already been filed.

Then according to further research on this matter, "the power to open, modify or vacate a judgment pursuant to this Rule is possessed solely by the court that rendered the decision or judgment. 46 Am. Jur. (2d) Judgments §681 (1969) See also Bagley v. Bagley, 415 A (2d) 1080(Me. 1980). Whether to grant or deny a motion under SCRCP 60(b), is within the sound discretion of the judge. Tri-County Ice and Fuel Co., v. Palmetto Ice Co., 399 S.E.2d 779, 782 (1990).

Thus, the Petitioner in this matter by filing for leave (i.e. permission) to have the 60(b) proceed in the lower court is tantamount to a applicant filing his initial PCR application. And on such basis, "if the lower court sees

fit to appoint counsel", then at such time counsel could be appointed. Thus, the application pursuant to 60(b) is not targeting this Court, "accept for 'leave' to proceed in the lower court retaining proper jurisdiction of such a motion. And under the circumstance, "I do not have a attorney at this time appointed to protect my interest on the grounds cited within the 60(b)".

Mr. Mills Arial, Jr., was appointed to represent me for PCR. Once he filed the intent to appeal, as beforementioned, his job is complete. Ms. Johnson, of this Court whom I've conversed with indicated "the Office of Appellate Defense will represent me forward".

However, Rule 60(b) is not equipped to handle appellate matters, nor does the Rule invoke such jurisdiction. Rather, the Rule again, "only required a party to move for leave in this Court', based on a appeal pending. Nothing more, nothing less. As a mechanism of 'comity' between the courts to inform that there may be an issue of concern. Which if corrected by the lower court. The Supreme Court may not have to waste its judicial resources on errors that occurred and corrected on lower court level.

You correctly cited I'm filing for leave for the lower court. But in not processing my request for leave based on 'Hybrid' restrictions, Miller v. State, 388 S.C. 347, 697 S.E.2d 527 (2010), does not address the central concern that I raise herein.

And that is; "whether the Clerk or the Court itself" must answer the request for leave to proceed with a 60(b) in lower Court". Based on counsel's failure to file a 59(e) in a PCR case. Where if such appeal is permitted to go forward, it has the unfair advantage of prejudice and bias because there are clear falsities, misapprehensions of law, and omitted issues with the PCR ruling.

In otherwords, Miller "does not address whether a 60(b) like a PCR application", can be filed pro-se. But in the Supreme Court of The United States, cases such as Gonzales v. Lopez, (2005); and Liljeberg v. Health Services Acquisition Corp., 486 U.S. 847, n. 11 (1988); and Klapprott v. United States, 335 U.S. 601, 613 (1949); and Harris v. United States, 367 F.3d 80-81 (CA 2 2004), such is not restrictive by pro-se filings.

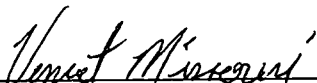
According to the U.S. Supreme Court, in which South Carolina Rule 60 was drawn from, A 60 (b) can come into court as an "independent action", comparable with that of a PCR application. As such, the Rule is not restricted from relieving a party from a judgment (erroneously entered) because he has an attorney. Where as here, the attorney is the direct and approximate cause of the erroneous judgment being entered.

Not to allow as the Rule suggest (a party may proceed) I personally may proceed creates an ambiguity in the language if argued. Which must be resolved in favor of the Petitioner.

For these reasons, I respectfully reject the decision you made with I assume a 'delegated authority' granted you by the Court. For which allows you to make impressionable decision for the Court. Even where the Rule directs the Court to grant or deny relief. After the case was back in its proper jurisdiction (i.e. the lower court), that may have been the proper venue to determine from that point forward, "whether hybrid restrictions may apply".

I pray that this letter sheds some needed light on the situation, and this matter is permitted to proceed forward as legally designed by the Rules.

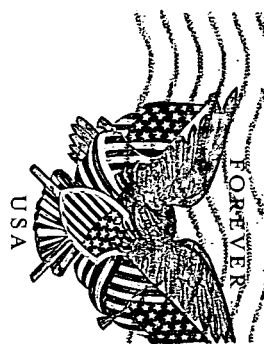
Sincerely,

/s/ 
Vincent Missouri #197996
BRCI-Wateree Unit
4460 Broad River Road
Columbia, S.C. 29210

cc: filed
10/24/2016

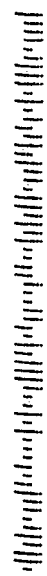
Mr. Vincent Missouri #197996
BRCI-Wateree Unit
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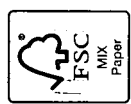
The South Carolina Supreme Court
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