

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

CERTIORARI TO GREENVILLE COUNTY  
COURT OF COMMON PLEAS  
ROBIN B. STILWELL, CIRCUIT COURT JUDGE

2012-CP-23-3341  
Appellate Case No.:2016-001479

Wilfredo Salas,

Petitioner,

**RECEIVED**

DEC 19 2016

Vs.

**S.C. SUPREME COURT**

State of South Carolina,

REspondent.

PETITIONER'S REPLY TO PETITION FOR WRIT OF CERTIORARI

South Carolina Attorney General Office  
Patrick L. Schmepeper,  
P.O.BOX 11549  
Columbia, S.C 29211

Wilfredo Salas #347611  
Ker.Corr.Inst.(Mag.b-49)  
4848 Goldmine Hwy.  
Kershaw, S.C 29067.

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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 to 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?

STATEMENT OF THE CASE

The petitioner plead guilty in Greenville County August 8, 2011, to Lewd Act on a minor. See Fn1. 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 "order" 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 pages 24-32. The State made its return on August 31, 2012. See Appendix pages 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 pre-judice. See Appendix pages 106-113. On October 10th, 2015, the Petitioner filed a Rule 60(b), (4), (5), SCRPC Motion alleging his PCR judgment in (2012-CP-23-334 1) 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 PCR 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 pages 135.

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Fn1. 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 motion the Respondent in several emails addressed to judge Gravely admits there is an outstanding post-trial motion pending but never theless 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).

ARGUMENT

Certiorari is warranted to review the lower Court's denial of Petitioner's post-trial motion where Petitioner's argument that the denial of his P.C.R application is void for lack of jurisdiction does have merit.

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The PCR Court did not correctly conclude Petitioner was not entitled to relief Pursuant to Rule 60(b), SCRC.P. The respondent alleges because petitioner's plea counsel filed the Motion to Reconsider his Sentence under his original Arrest Warrant Number I-479542, which was never rule upon. This warrant number refers to his original charge that of criminal sexual conduct (CSC) with a minor, where the victim is under the age of 11 years old, first degree. Supp.P.1, that the lower court was correct in finding, petitioner's motions lack merits.

The problem with Respondent's argument is the Fact, petitioner's plea counsel did in fact file a timely post-trial motion to Reconsider his Sentence and place his original arrest warrant number for (CSC), but the "body and language" of the timely post-trial motion plea counsel file "Specifically" addresses the "Lewd Act charge" to which petitioner pled to. See Appendix pages 121 and 122. See Fn1

Inasmuch, the Respondent are relying on the fact Petitioner's plea counsel placed the warrant number at the "Caption" of the Motion instead of Petitioner's Indictment number to which petitioner pled to is totally a frivolous argument in an attempt to uphold the PCR Judgment, a sham to the Judicial System, a waste of time and resources and Outright lame because the Plea Court "Had not" made such a ruling stating it dismissed the motion on the above procedural argument asserted by respondent.

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Fn1 Petitioner argue that plea counsel action of placing the original warrant number instead of the indictment number to which petitioner pled is a scrivener error because plea counsel aim was to have the Court to Reconsider the Sentence Petitioner pled to rather than a charge that was dismissed because there was no sentence on the (CSC) charge. State V. Guillebeaux, 607 S.E.2d 99, 101 n.1(ct.App.2004) (Holding although Guillebeaux's issue on appeal referred to a motion for mistrial instead of a motion for a new trial, the Court treated the references to mistrial in his appellate brief as a scrivener error because the substance of the appate argument focused on the failure of the trial Judge to grant a new trial under the circumstances).

And to make matters worse, the plea Court still have not made a ruling on the Timely post-trial Motion as of today's date and if so petitioner hadn't been made aware of it. See Fn2

Therefore, regardless whether plea counsel placed petitioner's original Arrest Warrant number at the "Caption" of the post-trial Motion to Reconsider petitioner Sentence, the Motion was filed Timely Pursuant to Rule 29(a), SCRCriP and the language therein addressed the "Lewd Act" charge to which petitioner pled to and until the plea Court make a Ruling adjudicating the Timely post-trial motion whether on the merits and or on procedural grounds the PCR Court did not have the authority to exercise its jurisdiction and issue an order on petitioner PCR application. Al-Shabazz V. State, 527 S.E.2d 742 (S.C.2000), Rule 203(b)(2), SCACR, S.C. Code Ann § 17-27-45(A) (Supp. 2011).

#### CONCLUSION

It is respectfully asked that this Court grant the petition for Writ of Certiorari and appoint counsel to fully brief his issues.

This 12 day of December, 2016

Wilfredo Salas  
Wilfredo Salas, #347611

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Fn2 The respondent suggest that petitioner's proper argument would have been ineffective assistance of counsel for improperly filing a Motion to Reconsider Sentence. The problem with that statement is the fact, the plea Court has not made such a ruling that the timely post-trial motion was improperly filed because of the warrant number, therefore, under the two prong Strickland Vs. Washington, 104 S.Ct 2052 (1984) test this argument must fail. However, if the plea Court do make such a ruling in the future petitioner will have one year from that date to file a PCR application on that ground because its obvious the ground could not have been raised in the first PCR. See, Foxworth V. State, Talley V. State, 640 S.E.2d 878 (2007).

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Appellate Case No; 2016-001479

Wilfredo Salas,

Petitioner,

Vs.

State of South Carolina,

Respondent.

CERTIFICATE OF SERVICE

I, Wilfredo Salas, hereby certify that I did serve Prtitioner's Reply to  
Petitioner for Writ of Certiorari on;

Patrick L. Schmeckpeper  
P.O. Box 11549  
Columbia, S.C. 29211

by depositing a copy in the U.S mail wiyh sufficient postage  
this 12 day of December 2016.

s/ Wilfredo Salas  
Wilfredo Salas, #347611  
Ker. Corr. Inst. (Mag. b-49)  
4848 Goldmine Hwy.  
Kershaw, S.C. 29067.

Attachment (a)

**Patrick Schmeckpeper**

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**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

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**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

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**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?

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**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, 1<sup>st</sup> 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

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**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

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**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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WILFREDO SALAS, #347611  
KERSHAW CORRECTIONAL INSTITUTION  
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KERSHAW SC 29069

**The Supreme Court of South Carolina**  
DANIEL E. SHEAROUSE, CLERK OF COURT  
POST OFFICE BOX 11330  
COLUMBIA, SOUTH CAROLINA 29211



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