RECEIVED
MAR 16 2017
S.C. SUPREME COURT
ORIGINAL

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

LETRON DAVIS,

RESPONDENT,

V.

STATE OF SOUTH CAROLINA,

PETITIONER

APPELLATE CASE NO 2014-001631

Appeal from Marion County

Honorable Michael G. Nettles, Circuit Court Judge

Opinion No. 2017-MO-004

PETITION FOR REHEARING

On March 1, 2017, this Court vacated the PCR court's order granting Respondent Letron Davis' application for post-conviction relief. Davis respectfully petitions this Court for a rehearing of its Opinion No. 2017-MO-004. Pursuant to Rule 221(a), SCACR, Davis avers that the following points were overlooked or misapprehended by the Court:

I.

Davis is still suffering the negative consequences of his plea attorney's deficient advice. Had plea counsel's advice regarding the length of time Davis would serve in prison been accurate, he should have been released on or about November 11, 2014. *See* App. 35, ll. 13-25; App. 36, ll. 14-20. Because Davis was still being subjected to the eighty-five percent rule when the state

offered him parole on October 9, 2014, he accepted it. *See* State's Motion to Dismiss (Apr. 21, 2015). Had the Department of Corrections ("DOC") been applying the law as interpreted by plea counsel and eventually by the Court in *Bolin*,[1] Davis would have served merely one more month in prison and then been free of the entanglements of the criminal justice system. Instead, he will remain on parole until May 9, 2018.

In vacating the PCR court's Order, this Court noted that the Court of Appeals ruled in *Bolin* that a second offense crime classified under subsection 44-53-375(B) is no longer a "no parole offense" such that plea counsel's advice to Davis "was correct." *Davis v. State*, 2017 WL 878703 *1 (S.C. Mar. 1, 2017). This Court acknowledged that at the time of the PCR court's order, the advice appeared incorrect because DOC interpreted Davis' sentence as "no parole." *Id.* Yet, this Court ruled: "Because the underlying premise of the PCR court's order has now been invalidated by *Bolin*, there no longer remains any basis on which to grant Davis a new trial." *Id.* Further, this Court found that Davis' release on parole and DOC's current compliance with *Bolin*, were such that "any decision here would have no practical effect on his confinement." *Id.*

"[I]f a decision by the trial court may affect future events, or have collateral consequences for the parties, an appeal from that decision is not moot, even though the appellate court cannot give effective relief in the present case." *Curtis v. State*, 345 S.C. 557, 568, 549 S.E.2d 591, 596 (2001). *Bolin* was certainly helpful to the appellant therein and other offenders who did not accept intermediate offers of parole. However, it had no practical effect on offenders like Davis who accepted parole – rather than rejecting it and remaining subject to the

---

[1] *Bolin v. South Carolina Dept. of Corrections*, 415 S.C. 276, 781 S.E.2d 914 (Ct. App. 2016).

eighty-five percent rule under DOC's original interpretation of the law – during the almost six intervening years between the effectiveness of the Act[2] and the finality of *Bolin*.

Here, it was Davis's understanding based on plea counsel's advice that he would have been released – not paroled – on or about November 11, 2014. There was no dispute at the PCR hearing that Davis was eligible for parole. Rather, the focus of the proceedings was that Davis was relatedly being subjected to the eighty-five percent rule, pushing his release date far past that which he expected when he entered the plea. On October 9, 2014, during the pendency of the state's appeal from the PCR court's order, Davis was offered and accepted parole. Certainly Davis was not required to reject parole and remain incarcerated past what should have been his release date in the hopes that an appellate court would reject DOC's interpretation of the law, which did not occur approximately sixteen months later.

Davis will remain subject to the stringent requirements and costs of parole until May 9, 2018. "A prisoner upon release on parole continues to serve his sentence outside the prison walls." *Sanders v. MacDougall*, 244 S.C. 160, 163, 135 S.E.2d 836, 837 (1964). While on parole, a "prisoner remains in legal custody until the expiration of his sentence." *Id.*; S.C. CODE ANN. §§ 24-21-660 to -680; *see also Alexander v. Gower*, 113 P.3d 917, 918 n. 1 (Or. App. 2005) ("Plaintiff has since been released on parole. However, this case is not moot because, if plaintiff obtains the relief he seeks, he will not be subject to parole supervision.").

In the interests of justice and judicial economy, this Court should craft some remedy to cure the unfairness that has resulted from Davis' continued probation for the next fourteen months by ordering that he no longer be subject to it. Alternatively, this Court should remand this matter to the PCR court for consideration of the proper remedy.

---

[2] The Omnibus Crime Reduction and Sentencing Reform Act of 2010.

II.

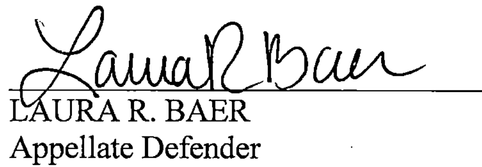
Assuming *arguendo* that the case is moot, the proper remedy is dismissal of the state's appeal, not vacation of the PCR court's Order. "An appellate court will not pass on moot and academic questions or make an adjudication where there remains no actual controversy." *Curtis v. State*, 345 S.C. 557, 567, 549 S.E.2d 591, 596 (2001). "Moot appeals differ from unripe appeals in that moot appeals result when intervening events render a case nonjusticiable." *Id.* "A case becomes moot when judgment, if rendered, will have no practical legal effect upon the existing controversy. This is true when some event occurs making it impossible *for the reviewing Court* to grant effectual relief." *Id.* at 567-68, 549 S.E.2d at 596 (emphasis added).

Mootness works to preclude appellate review, such that the Court will not conduct a review of the merits of the action. *See Curtis*, 345 S.C. at 567-68, 549 S.E.2d at 596; *McClam v. State*, 386 S.C. 49, 55, 686 S.E.2d 203, 206 (Ct. App. 2009) ("We agree with McClam this appeal should be dismissed as moot and therefore decline to address the merits of the issues presented."). In *Frick v. State*, 250 S.C. 513, 515, 159 S.E.2d 279, 279 (1968), the Court concluded that "a controversy was originally presented; however, the State, by its own action has, in granting the parole, pending the appeal, caused the issue to lose its controversial character." Therefore, the Court ordered dismissal of the state's appeal. 250 S.C. at 515, 159 S.E.2d at 279. Likewise, here, it is the state who appealed the relief granted by the PCR court, it is the state that unreasonably subjected him to the eighty-five percent rule, and it is the state who released him on parole. Thus, if the matter is moot it is due their actions. As such, the proper result is dismissal of the state's appeal, rendering the PCR court's Order granting Davis a new trial the law of the case.

CONCLUSION

For the reasons set forth herein, Appellant Letron Davis respectfully requests that this Court withdraw its original opinion in his case and either craft a remedy to cure the unfairness of Davis' continued parole or remand the matter to the PCR court (I), or dismiss the state's appeal (II).

Respectfully Submitted,



LAURA R. BAER
Appellate Defender

This 16th day of March, 2017.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Marion County

Honorable Michael G. Nettles, Circuit Court Judge

LETRON DAVIS,

RESPONDENT,

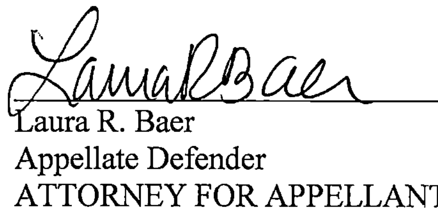
V.

STATE OF SOUTH CAROLINA,

PETITIONER

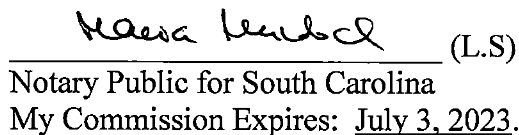
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a copy of the Petition for Rehearing in the above-entitled case has been served upon Lindsey McCallister, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and Letron S. Davis, at 600 Bee Street, Marion, SC 29571, this 16th day of March, 2017.



Laura R. Baer
Appellate Defender
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO BEFORE ME this 16th day of March, 2017.


(L.S)
Notary Public for South Carolina
My Commission Expires: July 3, 2023.