ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

THE STATE,

RESPONDENT,

V.

JAKE LAKE,

APPELLANT

APPELLATE CASE NO 2016-000976

Appeal from Lexington County

Roger M. Young, Circuit Court Judge

RECEIVED
AUG 29 2017
SC Court of Appeals

PETITION FOR REHEARING

On February 27, 2017, Appellant filed his initial brief and designation of matter with this Court. Over four months later, Respondent filed a motion to dismiss the appeal for lack of jurisdiction on June 30, 2017. Appellant filed the return to the motion to dismiss the appeal for lack of jurisdiction on July 20, 2017. On July 25, 2017, the state filed its reply. This Court dismissed the appeal by its order of August 9, 2017. On August 24, 2017, undersigned counsel requested an extension of time to file the petition for rehearing due to a family medical emergency. Pursuant to Rule 221(a), SCACR, Appellant respectfully requests this Court rehear the matter to address the arguments made in Appellant's return concerning judicial estoppel, laches, and abandonment of counsel that were not discussed in this Court's order dismissing

Appellant's appeal. Additionally, Appellant respectfully requests this Court deny the state's request to dismiss his appeal.

Judicial Estoppel

According to this Court's order, Appellant's notice of appeal was untimely because his motion for reconsideration did not stay the timeline for filing the notice of appeal as it was filed *pro se* and that Appellant was represented by counsel at the time of the filing of the motion. This Court's order failed to provide any factual support for this finding. Therefore, it must be assumed this Court relied upon the state's argument that plea counsel's letter dated April 12, 2013, and filed on April 15, 2013, to reach its conclusion. This was error.

Plea counsel's letter stated:

> I represented Jake Lake at his guilty plea, which occurred on October 4, 2012. Mr. Lake has filed a Pro Se motion to reconsider and I respectfully request that I receive a notice as to the date of the hearing in order that I may assist him if possible. Also, Mr. Lake's father Magistrate Judge Robert H. Lake would like to receive notice of the hearing.

During the current proceedings, the state insisted, and this Court apparently agreed, the letter showed plea counsel continued with his representation of Appellant. What this Court failed to recognize was the letter evidenced plea counsel's intent to adopt Appellant's *pro se* motion as his own. Plea counsel did not disavow the motion or indicate he thought the motion was meritless. On the contrary, plea counsel indicated his desire to assist Appellant with the adjudication of the motion. This reading of the letter is *exactly* the one espoused by the state in related proceedings in the matter. It is only recently that the state changed its position.

During the PCR proceedings, the state maintained the motion was filed "through counsel." When the state told the PCR court the motion was filed through counsel, the state was aware of the nature of the filing as the pleading was in the Clerk's file and publicly available.

Additionally, the Clerk's handwritten note on the motion indicated the Attorney General's office was well aware of the motion and was following up on it. After reviewing the motion and plea counsel's letter, the state concluded that plea counsel adopted the motion filed by Appellant, and represented to the PCR court that the pending post-sentencing motion was filed "through counsel" in its return. The state convinced the PCR court of this position as evidenced by the PCR court's order using this same language in reference to the motion. All parties signed the order evidencing their understanding and assent to the entirety of the order, including the language indicating the motion was filed "through counsel." The state is estopped from arguing a contrary position now.

In its reply, the state contended Appellant was "not entitled to equitable defenses because if, as he allege[d], the state misrepresented inconsistent positions to the PCR Court regarding the author of Appellant's post-trial motions, Appellant also participated in that misrepresentation and failed to correct the record." To be clear, it is Appellant's position that the state concluded plea counsel "filed" the post-sentencing motion after a review of the motion and plea counsel's letter by adopting the motion and not disavowing the motion. Appellant's hands are "clean" as he was at all times completely forthcoming in the PCR action and the direct appeal. Appellant provided copies of the motion with his PCR application. It was Appellant's contention then, as it is now, that plea counsel adopted the motion as his own. Therefore, the representations to the PCR court were accurate and consistent with Appellant's representations during the direct appeal. Appellant never argued, as the state contended, that the state "misrepresented inconsistent positions to the PCR Court regarding the author" of the motions. Rather, the argument was and is that the state *consistently* maintained during the PCR proceedings that plea counsel filed the motions, and the state *consistently* maintained an *inconsistent* position during the appellate

proceedings by arguing the motion was filed *pro se*. The state changed its position on a statement of fact in these related proceedings.

In Cothran v. Brown, 357 S.C. 210, 215, 592 S.E.2d 629, 631 (2004), the South Carolina Supreme Court explained that "[j]udicial estoppel is an equitable concept that prevents a litigant from asserting a position inconsistent with, or in conflict with, one the litigant has previously asserted in the same or related proceeding." "The purpose of the doctrine is to ensure the integrity of the judicial process, not to protect the parties from allegedly dishonest conduct by their adversary." Id. The Court went on to "delineate[] the requirements for the application of judicial estoppel." Id. at 215-216, 592 S.E.2d at 632. According to the Court, the following elements are necessary for the doctrine to apply:

> (1) two inconsistent positions taken by the same party or parties in privity with one another; (2) the positions must be taken in the same or related proceedings involving the same party or parties in privity with each other; (3) the party taking the position must have been successful in maintaining that position and have received some benefit; (4) the inconsistency must be part of an intentional effort to mislead the court; and (5) the two positions must be totally inconsistent.

Id. "The doctrine of judicial estoppel is an equitable concept and should be applied sparingly, with clear regard for the facts of the particular case." Id. at 216, 592 S.E.2d at 632. "The application of judicial estoppel must be determined on a case-by-case basis, and must not be applied to impede the truth-seeking function of the court." Id.

The doctrine of judicial estoppel applies in this case because all five elements are satisfied. It is the same party in the direct appeal action and the post-conviction relief proceedings – the State of South Carolina. The Attorney General's Office, a part of the Executive Branch of the State of South Carolina, represented the state in the PCR proceedings **and** in the direct appeal. Quite clearly, the first element is satisfied. See State v. Blakney, 410 S.C. 244, 256, 763 S.E.2d 622, 629 (Ct. App. 2014)(Few, C.J. dissenting)(holding the parties

were the same at sentencing and on appeal where the state was represented at the sentencing by a solicitor and was represented on appeal by the general counsel for the Department of Probation, Parole and Pardon Services).

The second element is satisfied as well because the positions were taken in related proceedings – direct appeal and post-conviction relief – involving the same parties, the same conviction, and the same sentence.

The state was successful in maintaining its position that the motion for reconsideration was filed through counsel as that was the position ultimately adopted by the PCR court. The state benefitted from the position it took in the PCR proceedings as its motion to dismiss was granted.

The inconsistencies in the positions on behalf of the state must be part of an intentional effort to mislead the court. The attorney representing the state in the direct appeal action works for the Attorney General, just as the attorney representing the state in the PCR action worked for the Attorney General. The pleadings filed by the Attorney General in the PCR action were available to the attorney who filed the motion to dismiss either on the internal system used by the Attorney General's Office or through the Clerk of Court's Office. There is simply no explanation for why the Attorney General would make one representation during the direct appeal and a different representation during the PCR action. The state, in its reply, offered no reason to explain its decision to tell the PCR court that the motion was filed "through counsel" and to tell this Court that the motion was filed *pro se*. The best the state offered was there was "confusion over the authorship of the post-trial motions." The state went further and blamed its inconsistent positions on "Appellant's statements in his PCR application." Notably, the state made no reference to anything specific in the PCR application that would have contributed to

any alleged confusion. This is not surprising because the state could not point to any matter in the application that would result in any such confusion. The only support offered by the state is that the PCR application twice referenced the post-trial motions, but that Appellant did not "specify his post-trial motions were filed pro se." Even a cursory examination of the PCR application reveals the fallacy of this argument as Appellant explained "I filed a post-trial motion" and provided a copy of the actual motion showing his signature alone. The state's argument that it was confused by Appellant's PCR application and therefore, it made one representation during the PCR proceedings and is now making a completely inconsistent representation during the direct appeal proceedings does not hold water and must be rejected.

The two positions taken by the state are completely inconsistent. In the PCR action, the state represented to the court that the motion for reconsideration was filed **through counsel**. However, in the motion to dismiss, the state contended the motion for reconsideration was filed by Appellant and never adopted by plea counsel resulting in "hybrid representation." These two positions are totally inconsistent. See Blakney, 410 S.C. 254, 763 S.E.2d 628 (Few, C.J. dissenting)(explaining that under judicial estoppel "the state may not argue to a sentencing court that the court has the power to suspend a sentence, and after the court accepts the state's argument and suspends the sentence, turn around and argue, as it has done in this appeal, the sentence may not be suspended" as these two positions are "precisely the opposite" of each other).

"Judicial estoppel generally applies only to inconsistent statements of fact." Hayne Federal Credit Union v. Bailey, 327 S.C. 242, 251, 489 S.E.2d 472, 477 (1997). South Carolina adopted the doctrine "as it relates to matters of *fact* (not law)." Id. (emphasis in original). "In order for the judicial process to function properly, litigants must approach it in a truthful

manner." Id. at 251-252, 489 S.E.2d at 477. Certainly, "parties may vigorously assert their version of the facts," but "they may not misrepresent those facts in order to gain advantage in the process." Id. at 252, 489 S.E.2d at 477. Thus, "[w]hen a party has formally asserted a certain version of the facts in litigation, he cannot later change those facts when the initial version no longer suits him." Id. "[T]he truth-seeking function of the judicial process is undermined if parties are allowed to change positions as to the facts of the case, unless compelled by newly-discovered evidence." Id.

Failing to apply judicial estoppel in this case would impede the truth-seeking function of the courts. Appellant entered his guilty plea, and post-trial motions were filed. Unable to have his motions heard and in light of plea counsel's suspension from the practice of law, Appellant sought relief through the avenue of PCR. During the PCR proceedings, Appellant provided truthful information regarding his guilty plea, his filing of post-sentencing motions, his expectation that plea counsel would assist him with the litigation of his post-sentencing motions, his writings to the plea judge in order to have the post-sentencing motions heard, and the plea judge's responses to his inquiries. During the PCR proceedings, the parties discovered that one of Appellant's motions was properly filed with the Clerk, but misplaced. This contributed to confusion on the part of the plea judge. Upon realizing the outstanding motion was not ruled upon, all parties, **including the state**, agreed the proper course of action would be to have the motion considered. Thereafter, all parties agreed the proper course of action would be to dismiss the PCR action and allow the direct appeal to proceed.

Appellant requests this Court apply judicial estoppel to a statement of fact – Appellant's post-sentencing motions were filed "through counsel" – consistent with this Court's authority and case law. By applying judicial estoppel, this Court will prohibit the state from making

inconsistent representations of facts in the same or related proceedings to the detriment of a criminal defendant. Treating Appellant differently in the PCR proceedings and the direct appeal proceedings would place Appellant "in a classic Catch-22 situation which [he] could find no redress." See Tobias v. Rice, 386 S.C. 306, 311, 688 S.E.2d 552, 554 (2010)(overruling the Court of Appeals' opinion affirming the denial of Rice's post-trial motions to set aside the judgment and explaining that when Rice filed a *pro se* motion to reconsider the judgment, alleging her trial counsel abandoned her, the trial court declined to rule on it, treating her as though she were represented by counsel, but on appeal, the Court of Appeals treated her as a *pro se* litigant with a duty to monitor her own proceedings where it was undisputed Rice's counsel was suspended from the practice of law during the course of the representation).

This was not a situation in which plea counsel acted as a mere conduit for *pro se* documents filed by Appellant. Cf. Jones v. State, 348 S.C. 13, 14, 558 S.E.2d 517, 517 (2002)(finding hybrid representation where counsel filed a petition for writ of certiorari, then the petitioner filed a motion asking him to file a *pro se* amended petition, followed by counsel filing the amended petition with a letter stating he did not believe any of the issues in the amended petition were relevant but that he was submitting the petition at petitioner's request because counsel was acting as a "mere conduit for pro se documents in an effort to avoid the prohibition against hybrid representation and the displeasure of his client"). Rather, plea counsel adopted the filing as his own when he wrote to the court explaining his representation of Appellant, his desire for notice of the hearing date on the motion, and his indication that he would assist Appellant with litigation of the motion. The state construed the filings in this manner when it represented to the PCR court that the post-trial motions had been filed "through counsel" and

won its request to dismiss the PCR action based on this representation. Therefore, the state is estopped from maintaining a contrary position in the direct appeal.

Laches

The state's current contention that the post-sentencing motion was the product of hybrid representation was first presented on June 30, 2017, almost five years after the filing of the motion. Not once during that period of time did the state assert the motion was improperly filed or improper for consideration by a court despite multiple opportunities to do so. The state did not make this claim at the hearing on the post-sentencing motion. The state did not make this claim in its return to the PCR application. The state did not make this claim when the judge continued the PCR hearing to allow the post-sentencing motion to be heard. The state did not make this claim when the PCR judge dismissed the PCR application to allow the direct appeal to proceed. The state did not make this claim in response to the notice of appeal served on May 6, 2016. The state sat on its right to assert such a defense and is now barred from doing so by the doctrine of laches.

"Laches is neglect for an unreasonable and unexplained length of time, under circumstances affording opportunity for diligence, to do what in law should have been done." Mid-State Trust, II v. Wright, 323 S.C. 303, 307, 474 S.E.2d 421, 423 (1996); Hallums v. Hallums, 296 S.C. 195, 198, 371 S.E.2d 525, 527 (1988); Muir v. C.R. Bard, Inc., 336 S.C. 266, 296, 519 S.E.2d 583, 598 (Ct. App. 1999). "Laches is an equitable doctrine, which arises upon the failure to assert a known right." Emery v. Smith, 361 S.C. 207, 215, 603 S.E.2d 598, 602 (Ct. App. 2004)(citing All Saints Parish, Waccamaw v. Protestant Episcopal Church in the Diocese of S.C., 358 S.C. 209, 235, 595 S.E.2d 253, 267 (Ct. App. 2004). "Under the doctrine of laches, if a party, knowing his rights, does not timely assert them, but by unreasonable delay

causes his adversary to incur expenses or otherwise detrimentally change his position, then equity will ordinarily refuse to enforce these rights." Muir, 336 S.C. at 296, 519 S.E.2d at 599. "[T]he party asserting laches must show it has been materially prejudiced by the other party's delay." Mid-State Trust, II, 323 S.C. at 307, 474 S.E.2d at 423. In sum, "[t]he party asserting laches must satisfactorily show negligence, the opportunity to have acted sooner, and material prejudice." Muir, 336 S.C. at 297, 519 S.E.2d at 599.

According to the state, the nature of the motion for reconsideration of sentence as the product of hybrid representation was known either as soon as the motion was filed on October 9, 2012, or at least as early as April 12, 2013, when plea counsel sent a letter to the Clerk of Court regarding his involvement. The state was involved in this matter at all stages – the guilty plea, the post-sentencing motions, and the post-conviction relief proceedings. The state simply cannot claim it was unaware of the filing until June 30, 2017.

Further, the state never argued before any court that the motion for reconsideration was not proper for consideration as the product of hybrid representation despite multiple opportunities to do so. As explained previously, the state's position was the opposite – the motion was filed through counsel and proper for consideration. Nevertheless, the state, fully aware of how and when the motion was filed, never asked the trial court to dismiss based on hybrid representation. The state could have asserted in its pleadings before the trial court that the post-sentencing motion was not proper for consideration due to hybrid representation, but the state made no such argument. In fact, the state's memorandum in support of denial of the motion on its merits, stated that the "in response to the motion by Defendant, Jake Dale Lake, by and through counsel for Defendant, Sarah H. Mauldin, Esquire for reconsideration of sentence imposed by the Court on April 4, 2012[,] following his plea to the charge of attempted murder."

The state, fully aware of how and when the motion was filed, moved to dismiss without prejudice the post-conviction relief application to permit consideration of the merits of the post-sentencing motion. Certainly, the state could have asserted the post-sentencing motion was improper for consideration due to hybrid representation during the post-conviction relief proceedings, but it did not. After receiving Appellant's notice of appeal, the state failed to argue the notice was untimely. Instead, the state convinced the PCR court to dismiss the PCR action due to the pendency of the appeal. Had the state believed the notice of appeal was untimely, the state should have, and could have, moved to dismiss at that time. Instead, the state did nothing.

Despite the multitude of opportunities over the course of almost five years for the state to claim that Appellant's motion was not proper for consideration by a court as it was the product of hybrid representation, the state failed to do so. The state waited until June 30, 2017, **after** the initial brief of appellant and designation of matter had been filed and **after** the parties had consented to the dismissal without prejudice of Appellant's PCR application, to make such an assertion. At a minimum, the state was negligent in its unreasonable delay in making its claim that Appellant's motion was the result of hybrid representation and not proper for consideration by a court.

Appellant suffered prejudice as a result of the state's negligent delay. During the PCR proceedings, Appellant agreed to the dismissal without prejudice of his PCR application so that his direct appeal may proceed. Notably, the state agreed to this resolution as well. The language of the order induced Appellant to believe that his direct appeal would be permitted to go forward. While Appellant was not led to believe he would obtain relief on appeal, he was led to believe he would have the opportunity to seek relief on direct appeal. Had there been any contention at that

time that Appellant's post-sentencing motions did not toll the time period for filing a notice of appeal, Appellant would not have agreed to the dismissal of his PCR application.

This Court's determination that Appellant's post-sentencing motion was the product of hybrid representation and, therefore, the time the motion was pending did not stay the time for appeal, pursuant to Rule 29(a), SCRCrimP, increases the likelihood that Appellant's PCR application filed in 2015 or any other PCR application would be ruled untimely under the statute of limitations in the Uniform Post-Conviction Procedure Act. See S.C. Code Ann. § 17-27-45(A)(providing for a one year limitations period after the entry of a judgment of conviction or one year after the sending of the remittitur to the lower court from an appeal). Thus, Appellant's conviction and sentence may never be reviewed by any court. This too is contrary to what Appellant was led to believe when he entered into the consent order to dismiss his PCR application without prejudice as the order specifically provided for him to file a PCR application at the conclusion of his direct appeal. The prejudice to Appellant based on the state's negligent inaction in this case is abundant, material, and clear.

Abandonment

As an alternative basis to permit Appellant's direct appeal to proceed, Appellant posits that plea counsel abandoned him following the guilty plea; therefore, his filing of the motion was not the product of hybrid representation. In the letter to the Clerk of Court, plea counsel used the past tense, "represented," to indicate that his attorney-client relationship no longer existed. Further, he sought notice of the date of the hearing so that he *may* assist Appellant. This was not an affirmative indication that plea counsel would appear at the hearing or would assist Appellant. This language indicated plea counsel had abandoned Appellant. In fact, plea counsel put himself into the same category as Appellant's father in his request for notice of the date of the hearing.

In light of plea counsel's abandonment of Appellant, Appellant's filing of his *pro se* motion was **not** a product of "hybrid representation." The filing was entirely proper and adjudicated by the lower court.

Plea counsel's letter to the Clerk of Court, plea counsel's conduct following the guilty plea, including his personal illegal and unprofessional conduct, and plea counsel's failure to diligently pursue adjudication of Appellant's post-sentencing motion evidence plea counsel's abandonment of Appellant. Due to plea counsel's abandonment of Appellant following the guilty plea hearing, Appellant's motion for reconsideration of his sentence was not the product of hybrid representation and tolled the time for filing a notice of appeal.

In 2013, while Frank McMaster was purportedly representing Appellant according to the state, he was arrested and charged with driving under the influence, failure to give or giving improper signal, and hit and run involving property damage. In the Matter of Frank Barnwell McMaster, 419 S.C. 37, 38-39, 795 S.E.2d 853, 854 (2017). McMaster pleaded guilty to DUI and improper turn, and the remaining charge was dismissed. Id. at 39, 795 S.E.2d at 854. McMaster paid a fine for his criminal offenses. Id. According to the Richland County Clerk of Court, McMaster was arrested on these charges on April 29, 2013, a mere seventeen days after McMaster's letter to the court in Appellant's case. Also according to the Clerk's records, McMaster entered his guilty plea on December 5, 2013.

In 2014, again while McMaster was purportedly representing Appellant according to the state, he was arrested for use of a firearm while under the influence of alcohol or drugs, disorderly conduct, and damaging/tampering with a vehicle. Id. On March 4, 2014, shortly after his arrest for the second set of criminal charges, McMaster was placed on interim suspension. Id.; In the Matter of Frank Barnwell McMaster, Appellate Case No. 2014-000334 (S.C. Sup. Ct.

filed Mar. 4, 2014). According to the Lexington County Clerk of Court, McMaster was arrested for these offenses on February 21, 2014, and entered a guilty plea on November 4, 2014. Ultimately, McMaster pleaded guilty to unlawful carrying of a pistol and paid a fine. McMaster, 419 S.C. at 39, 795 S.E.2d at 854. On January 11, 2017, the Supreme Court suspended McMaster from the practice of law for thirty (30) months. In the Matter of Frank Barnwell McMaster, 419 S.C. 37, 795 S.E.2d 853 (2017). According to the agreement for discipline by consent to which McMaster entered, "the common thread in both incidents was alcohol abuse induced by depression associated with the dissolution of his marriage." Id. at 39, 795 S.E.2d at 854.

Pursuant to the Appellate Court Rules, "[t]rial counsel, whether retained, appointed, or Public Defender, shall continue representation of an accused until final judgment, including any proceeding on direct appeal," unless an exception applies. Rule 602(e)(1), SCACR. Thus, retained counsel, such as McMaster, must represent a criminal defendant through appeal unless permitted to withdraw by a court. Rule 602(e)(4), SCACR. This is of no surprise in light of the Rules of Professional Conduct. Pursuant to the Rules, a lawyer may withdraw from representation only in certain circumstances, such as a client using a lawyer's services to perpetrate a fraud. Rule 1.16, RPC, Rule 402, SCACR. None of those circumstances were present, yet plea counsel failed to represent Appellant competently and diligently following the guilty plea as required. Quite simply, counsel abandoned Appellant.

"An attorney who undertakes the conduct of an action impliedly stipulates to carry it to its termination and is not at liberty to abandon it without reasonable cause and reasonable notice." Graham v. Town of Loris, 272 S.C. 442, 452, 248 S.E.2d 594, 599 (1978). "Conscience

requires" the court "to charge the attorney alone with his gross dereliction of duty and not to visit its consequences upon an innocent client." Id. at 452-453, 248 S.E.2d at 599.

"The rule that an attorney's negligence may be imputed to his client and prevent the latter from relying on that ground for opening or vacating a judgment does not necessarily prevail in the event of the attorney's abandonment or withdrawal from the case." Id. at 452, 248 S.E.2d at 599. "Our law thus instructs that an exception to the general rule applies when the attorney's inaction was the consequence of willful abandonment or withdrawal from the case." Stearns Bank Nat. Ass'n v. Glenwood Falls, LP, 373 S.C. 331, 342, 644 S.E.2d 793, 799 (Ct. App. 2007). Nevertheless, the general rule attributing the neglect of counsel to the client is not absolute. "Rather it is one that is to be applied rationally, with a fair recognition that justice to the litigants is always the polestar." Brown v. Butler, 347 S.C. 259, 265, 554 S.E.2d 431, 434 (Ct. App. 2001)(internal quotation omitted).

Thus, if the state's current argument that McMaster was representing Appellant at the time of the filing of the motion for reconsideration prevails, then the record demonstrated McMaster's ultimate abandonment of Appellant. According to McMaster's letter, he would assist Appellant during the post-sentencing motion hearing "if possible." Either the letter indicated McMaster was adopting the motion as his own or that McMaster had abandoned Appellant. Quite frankly, the state's argument on appeal is that McMaster willfully abandoned Appellant by not filing the motion and not ensuring the motion was adjudicated. This was not mere neglect on the part of plea counsel, as the state even recognized in its reply when it suggested plea counsel's failure was a basis for ineffective assistance of counsel, which requires a higher showing that negligence. In these circumstances, McMaster willfully abandoned

Appellant following the guilty plea hearing and his conduct – not filing the post-sentencing motion – should not be attributed to Appellant.

Conclusion

This Court should deny the state's motion to dismiss under the doctrines of judicial estoppel and laches and due to counsel's abandonment of Appellant. The state must be judicially estopped from taking a position in the PCR proceedings inconsistent with the position it currently asserts during the appeal. The factual assertion by the state during the PCR pleadings was that the post-sentencing motion was filed "through counsel." The state cannot assert a contrary fact now – that the motion was filed pro se while Appellant was represented by counsel and not adopted by counsel. Further, the doctrine of laches must bar the state's attempt to strip Appellant of his right to a direct appeal, and potentially, of his right to a PCR action in light of the state's almost five-year delay in asserting his claim despite numerous opportunities to do so. Finally, counsel abandoned Appellant during a critical stage of the proceedings by failing to (1) file the motion for reconsideration, (2) ensure the expedient disposition of the motion, and (3) subsequently file a notice of appeal.

Pursuant to Rule 221(a), SCACR, Appellant respectfully requests this Court rehear the matter to address the arguments made in Appellant's return concerning judicial estoppel, laches, and abandonment of counsel. Additionally, Appellant respectfully requests this Court deny the state's request to dismiss his appeal.

Respectfully Submitted,

Susan B. Hackett

SUSAN B. HACKETT
Appellate Defender

This 29th day of August, 2017.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Lexington County

Roger M. Young, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JAKE LAKE,

APPELLANT

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 William F. Schumacher, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and Jake Dale Lake, #352637, at Perry Correctional Institution, 430 Oaklawn Road, Pelzer, SC 29669, this 29th day of August, 2017.

Susan B. Hackett
Appellate Defender
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO BEFORE
ME this 29th day of August, 2017.

_____ (L.S)
Notary Public for South Carolina
My Commission Expires: October 30, 2022.