

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

The Honorable Robert E. Hood, Circuit Court Judge

Appellate Case No. 2016-002367

RECEIVED

JAN 22 2018

SC Court of Appeals

Cedric L. Woods#265789,.....Appellant.

v.

State of South Carolina,.....Respondent.

MOTION TO DISMISS APPEAL FOR LACK OF ISSUE PRESERVATION

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MEMORANDUM IN SUPPORT OF MOTION TO DISMISS¹

The State files this motion to dismiss under Rule 240(a), SCACR, and asks this Court to dismiss Appellant’s direct appeal because the issue presented is not preserved for review.

¹ Under Rule 240(c)(1)-(3), a motion shall include a certificate of service, a memorandum with citation of authorities, and, “where the Record on Appeal or Appendix has not been filed, or where the facts relied upon in support of the motion are not contained in the Record on Appeal or Appendix, the parties shall file affidavits and other documents in support of their positions.” Although the Record on Appeal or Appendix has not been filed, the State does not think affidavits or other documents are necessary, because the motion and memorandum reference facts in the hearing transcript and Judge Hood’s order, which Mr. Woods has already submitted to the court. If the court disagrees, the State will accordingly supplement the motion and memorandum.

MEMORANDUM IN SUPPORT OF MOTION TO DISMISS

Background Facts

The Appellant, Mr. Woods, initially filed a declaratory judgment action in 2014. Mr. Woods, under the authority of *State v. Thompson*, 415 S.C. 560, 785 S.E.2d 189 (2016), asked the court to declare that his kidnapping conviction did not contain a sexual element and that the Sex Offender Registry Act² does not require him, upon his release from incarceration, to register as a sex offender because of his kidnapping and ABHAN convictions. For a time, his declaratory judgment action was somehow misconstrued as an application for post-conviction relief, but Judge Hood eventually held a hearing and decided the case under the authority of the Uniform Declaratory Judgment Act.³ (Order of Judge Hood, p. 3). Judge Hood ruled that Mr. Woods kidnapping conviction (as well as the other crimes he was convicted of), included a criminal sexual offense or an attempted criminal sexual offense. (Order of Judge Hood, pp. 5-6). Judge Hood also ruled that the request to declare whether Mr. Woods has to register upon his release from prison was not yet a justiciable controversy; so, he made no ruling on that issue.⁴ (Order of Judge Hood, p. 6). Mr. Woods appeals that order.

In his appeal, however, Mr. Woods does not challenge the lower court's determinations; instead, he challenges his underlying criminal conviction. (Appellant's Initial Brief, p. 2). Specifically, he asks the court to decide, whether "the Solicitor of the Second Judicial Circuit [in] Aiken County [,] South Carolina commit[ted] procedural error by unlawfully impaneling the county's Grand Jury outside the statute of Law [sic] S.C. Code [sic] §14-5-630(1)?" This issue was not raised or ruled upon, in either the hearing or the order.

² S.C. Code Ann. §§23-3-400 *et seq.*

³ S.C. Code Ann. §§15-53-10 through -140.

⁴ SCDC will not release Mr. Woods until 2024. (Order of Judge Hood, p. 6).

Discussion

“The general rule of issue preservation states that if an issue was not raised or ruled upon below, it will not be considered for the first time on appeal.” *State v. Passmore*, 363 S.C. 568, 583, 611 S.E.2d 273, 281 (2005). In the civil declaratory judgment action below, only two issues were raised during the hearing and ruled upon in the order. The first was whether Mr. Woods’s kidnapping conviction contained a criminal sexual offense or attempted criminal offense. The second was whether he would have to register upon his release from incarceration. Thus, the issue presented in this appeal, concerning the Grand Jury indictments in the underlying criminal conviction, is not preserved for review by this court.

Conclusion

Because the issue presented is not preserved for review, this court should dismiss Mr. Woods’s appeal.

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Respectfully submitted,

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Jan. 22, 2018

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CERTIFICATE OF SERVICE

I certify that I served the Appellant, Mr. Woods, with a copy of the Motion to Dismiss and Memorandum in Support by depositing a copy of the motion in the United States Mail, postage prepaid. The document was sent to the following address:

Mr. Cedric Woods#265789
P.O. Box 1151
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Respectfully submitted,

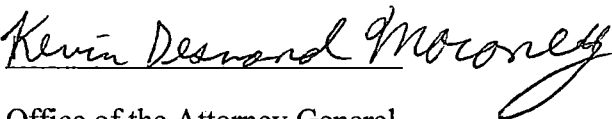
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