

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT
APPEAL FROM GREENVILLE
COURT OF COMMON PLAS
ROBIN B. STILWELL, PRESIDING JUDGE
Case No. 2016-001479

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MAR 14 2018

S.C. SUPREME COURT

Wilfredo Salas,

Petitioner,

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MAR 14 2018

SC Court of Appeals

Vs.

State of South Carolina,

Respondent.

PETITION FOR REHEARING 221, SCARC

Attorney General Office
Patrick Schmeckpeper, Esquire
Post Office Box 11549
Columbia, S.C 29211.

Wilfredo Salas, #347611
Ker. Corr. Inst. MA B-49
4848 Goldmine Hwy.
Kershaw, S.C 29067.

Statement of the ground on appeal

Whether the Court of Appeals reviewed Petitioner's Appeal under the wrong standard of review, where the Order states the Court deny Petitioner's appeal from a "[p]ost-conviction relief" instead of appeal from a Rule 60(b) motion?

STATEMENT OF THE CASE

The petitioner plead guilty in Greenville County August 8, 2011, to Lewd Act on a minor. See Enl 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 "[o]der" 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 page 24-32. The State made its return on August 31, 2012. See Appendix page 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 prejudice. See Appendix page 106-113.

On October 10th, 2015, the Petitioner filed a Rule 60(b), (4), (5), SCRPC motion alleging his PCR judgment in [2012-cp-23-3341] 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 PRC 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 page 135.

Enl 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 motions 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

The Court of Appeals reviewed Petitioner's appeal under the wrong standard of review where the Order states the Court deny Petitioner's appeal from a "[p]ost-conviction relief instead of appeal from a Rule 60(b) motion

In this case the Court states it deny Petitioner's petition for writ of certiorari following the denial of his application for post-conviction relief. Petitioner asserts the Court has reviewed his appeal under the wrong standard of review. On certiorari in a PCR action, the court applies the "any evidence" standard. Accordingly, this Court will affirm if any evidence of probative value in the record exists to support the findings of the PCR Court. Terry v. State, 394 S.C. 62, 66, 714 S.E.2d 326, 328 (2011).

In the instant case Petitioner did not appeal an PCR order but instead an "[o]rder denying Petitioner's Rule 60(b) motion". ROA page 135. The decision to grant or deny a motion under Rule 60(b) is within the sound discretion of the trial court. Lanier v. Lanier, 364 S.C. 211, 215-16, 612 S.E.2d 456 (Ct.App.2005), therefore, the decision can be reversed only if the lower court abused its discretion. Raby Constr, L.L.P v. Orr, 358 S.C. 10, 18, 594 S.E.2d 478, 482 (2004). An abuse of discretion occurs when the judge issuing the order was controlled by an error of law or the order is based on factual conclusions that are without evidentiary support. BB&T v. Taylor, 633 S.E.2d 501, 503 (2006). In the instant appeal Petitioner argued to the Court that the lower court abused its discretion and commit error of law when it denied Petitioner's motion to vacate judgment pursuant to the South Carolina Rules of Civil Procedure and on the merits. Therefore, in the interest of justice this court should grant rehearing and decide Petitioner's appeal under the proper standard of review.

Conclusion

It is therefore respectfully asked that this Court grant rehearing in the interest of justice.

Respectfully Submitted

Wilfredo Salas

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Wilfredo Salas,

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CERTIFICATE OF SERVICE

I, Wilfredo Salas, hereby certify that I did serve petitioner
's ~~Writ of Certiorari~~
Petition for Rehearing on

Attorney General Office
Patrick Schmeckpeper, Esquire
Post Office Box 11549
Columbia, S.C 29211-.

by depositing a copy in the U.S mail with sufficient funds
this ~~3rd~~ day of ~~October, 2016.~~

March, 2018.

Wilfredo Salas
Wilfredo Salas, #34

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COA

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~~The Supreme Court of South Carolina
Daniel E. Stearns, Clerk of Court
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