

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Ronnie Mitchell,

2012-212180

Petitioner,

RESPONDENT'S MEMORANDUM
OF APPEALABILITY OF
ADMINISTRATIVE ORDER

v.

State of South Carolina,

Respondent.

This matter comes before the Court by way of Petitioner's appeal from the Honorable Eugene C. Griffith's Administrative Order dated March 30, 2012.

FACTUAL BACKGROUND

The Petitioner is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Newberry County. The Petitioner was indicted at the November 1994 term of the Newberry County Grand Jury for First Degree Burglary and Assault with Intent to Commit First Degree Criminal Sexual Conduct (1994-GS-36-564). Raymond K. Wicker, Esquire, represented him. On February 6-7, 1995, the Petitioner underwent trial by jury pursuant to which he was found guilty as charged. The Honorable E.C. Burnett, III, sentenced him to confinement for a period of life for First Degree Burglary and thirty (30) years for Assault with Intent to Commit First Degree Criminal Sexual Conduct. The Petitioner did not appeal his conviction or sentence.

1996-CP-36-031

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The Petitioner subsequently filed an application for post-conviction relief on February 1, 1996, in which he alleged the following grounds for relief:

1. Ineffective Assistance of Counsel. Did not request continuance on Burglary Charge. Did not do a legal and factual investigation of charges;
2. "Improper sentence on assault with intent to commit criminal sexual conduct. The Judge still sentenced me to 30 years for C.S.C., but the jury only found me guilty to a lessor offense. In the law books assault with the intent is the same as C.S.C. 1st degree. Seems to me the judge didn't explain 1st, 2nd, or 3rd degree to the jury. Also, the Judge stated to the jury if they could not find me guilty of 1st degree he told them they could not find me guilty of 1st degree burglary my lawyer didn't say anything to the Judge about this when the verdict was read out! Why?"; and
3. Without proper indictment court had no jurisdiction.

On December 19, 1996, an evidentiary hearing was held before the Honorable David H. Maring, at which the Petitioner was present and was represented by Charles Johnson, Esquire. By order dated April 19, 1997, Judge Maring denied and dismissed the Petitioner's application. The Petitioner did not appeal the denial of his first Application for PCR.

1998-CP-36-089

Thereafter, the Petitioner filed a second PCR application on March 19, 1998, in which he raised the following grounds for relief:

1. Ineffective assistance of Post-Conviction Relief counsel. PCR counsel failed to file Notice of Intent to Appeal and the appeal itself; and
2. I was abandoned after denial of PCR as to where I did not know how to file an appeal to the appellate courts. I was totally abandoned by PCR counsel's negligence in perfecting the appeal.

On February 9, 1999, an evidentiary hearing was held before the Honorable Larry R. Patterson, at which the Petitioner was present and was represented by Lisa G. Echols, Esquire:

By order dated March 8, 1999, Judge Patterson denied and dismissed the Petitioner's application. A timely notice of appeal was filed, and the Petitioner submitted a petition for writ of certiorari. The South Carolina Supreme Court denied the Petitioner's petition by order dated March 14, 2001. The Remittitur was sent on April 2, 2001.

2002-CP-37-0063

The Petitioner filed a third PCR application on February 8, 2002, in which he raised the following allegations:

1. I was not aware of Appeal Rights;
2. Attorney did not advise me or appeal it; and
3. Court lacked subject matter jurisdiction.

The State made its Return on March 25, 2003. An evidentiary hearing into the matter was convened on April 17, 2003 at the Laurens County Courthouse. The Petitioner was present at the hearing and was represented by David E. Belding, Esquire. On May 12, 2003, the Honorable James W. Johnson, Jr., issued an Order of Dismissal denying and dismissing with prejudice the PCR application.

The Petitioner timely served and filed a notice of appeal. Assistant Appellate Defender Robert M. Dudek represented him on certiorari in the South Carolina Supreme Court. On April 21, 2004, Mr. Dudek filed a Johnson¹ Petition for Writ of Certiorari on Petitioner's behalf in the South Carolina Supreme Court and moved to be relieved as counsel. The South Carolina

¹ Johnson v. State, 364 S.E.2d 201 (S.C. 1988). Johnson sets forth the procedures for counsel to follow when filing meritless appeals in state PCR cases pursuant to Anders v. California, 386 U.S. 738 (1967).

Supreme Court denied certiorari and granted counsel's request to be relieved in an Order filed on March 3, 2005. The Remittitur was sent on March 22, 2005.

6:05-1637-CMC-W

Subsequently, the Petitioner filed a pro se Petition for Writ of Habeas Corpus in the Federal District Court for the District of South Carolina on June 3, 2005. On August 17, 2005, the State filed a Motion for Summary Judgment. The Petitioner filed his Opposition to the Motion on September 9, 2005. On December 22, 2005, the Magistrate Judge issued a Report recommending that the Respondents' Motion for Summary Judgment be granted. Plaintiff filed "objections" to the Report and Recommendation on January 17, 2006. On January 26, 2006, issued an Order granting the Respondent's Motion for Summary Judgment and dismissed the petition with prejudice. On February 23, 2006, the Petitioner filed a Notice of Appeal to the United States Court of Appeals for the 4th Circuit from the Order denying Plaintiff's Habeas Corpus. On June 1, 2006, the United States Court of Appeals denied and dismissed the appeal.

2007-CP-36-0109

The Petitioner filed a fourth application for post-conviction relief on March 21, 2007, in which he raised the following allegations:

1. The indictment for first-degree burglary is defective on its face.
2. Petitioner argues that he has never been arrested or served properly with an arrest warrant for the offense of first-degree burglary.
3. The State issued two indictments upon the Petitioner for the same offenses and improperly made an amendment to the body of the first indictment in open court.

The State filed a Return and Motion to Dismiss and a Motion to Restrict Future Filings on November 19, 2007. An evidentiary hearing into the matter was convened on April 2, 2008, at the Newberry County Courthouse. The Petitioner was present at the hearing and represented by M. Rita Metts, Esquire. Ashley A. McMahan, Esquire, of the South Carolina Attorney General's Office represented the State. On May 12, 2008, the Honorable J. Ernest Kinard, Jr., issued an Order dismissing the application as untimely filed and successive, and also granted the the State's Motion to Restrict Future Filings.

2011-CP-36-0176

The Petitioner then filed a Petition for Writ of Habeas Corpus with the Newberry Clerk of Court's Office. The Honorable Eugene C. Griffith issued an Administrative Order on March 30, 2012, dismissing the Petitioner's petition pursuant to the Honorable J. Ernest Kinard, Jr.'s Order of Dismissal dated May 12, 2008, which restricted Petitioner's future filings on the underlying convictions. The Petitioner filed a notice of appeal. This memorandum addressing whether the Administrative Order is appealable follows.

ANALYSIS

I. While the Administrative Order is appealable, Petitioner's appeal is without merit.

The Respondent submits the Administrative Order would be considered a final judgment for the purposes of Rule 201 SCRApp.P. ("Appeal may be taken, as provided by law, from any final judgment, appealable order or decision.") "[A] final judgment disposes of the whole subject matter of the action or terminates the particular proceeding or action, leaving nothing to be done but to enforce by execution what has been determined. Bone v. U.S. Food Serv., 399

S.C. 566, 573, 733 S.E.2d 200, 203 (2012) (quoting Charlotte–Mecklenburg Hospital Authority v. South Carolina Department of Health and Environmental Control, 387 S.C. 265, 267, 692 S.E.2d 894, 895 (2010)). In this case, Judge Griffith’s Administrative Order disposed of the entire Petitioner’s State Habeas Corpus action, leaving nothing to be later decided by the circuit court. According to the plain language of Rule 201, this order can be appealed as it is a final judgment.

Nonetheless, this appeal is without any merit. As per the Petitioner’s procedural history, Petitioner has had multiple PCR actions and appeals which were all denied and dismissed. This appeal would only be challenging the Administrative Order that dismissed the Petitioner’s state Habeas Corpus action. Any challenge to the Order of Dismissal and Order restricting Petitioner’s future filings would be untimely. That challenge must be within thirty days of his receipt of the 2008 Order. No appeal was filed in that case. Therefore, Respondent submits this appeal is without merit as the Administrative Order was simply to instruct all parties to comply with Judge Kinard’s 2008 Order.

CONCLUSION

Based upon the foregoing analysis, the Respondent submits while the Administrative Order is appealable as a final judgment, this appeal is completely without merit. The Respondent respectfully requests this Court to deny and dismiss the Petitioner’s appeal in this case.

Respectfully submitted,

ALAN WILSON
Attorney General

J. RUTLEDGE JOHNSON
Assistant Attorney General
SC Bar # 78871

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211

12/10, 2012.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Newberry county

Eugene C. Griffith, Jr., Circuit Court Judge

RONNIE MITCHELL, #217691

Petitioner,

v.

STATE OF SOUTH CAROLINA

Respondent.

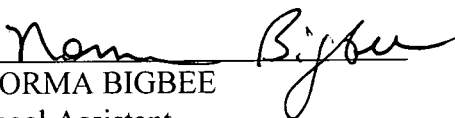
PROOF OF SERVICE

I, NORMA BIGBEE, certify that I have served the Respondent's Memorandum of Appealability of Administrative Order on the Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Ronnie A. Mitchell, #217691
McCormick Corr. Inst.
386 Redemption Way
McCormick, SC 29899

I further certify that all parties required by Rule to be served have been served.

This 10TH day of December, 2012.



NORMA BIGBEE
Legal Assistant
Office of Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3737



ALAN WILSON
ATTORNEY GENERAL

December 10, 2012

VIA HAND DELIVERY

The Honorable Jenny A. Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

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RE: Ronnie Mitchell, #217691 v. State of South Carolina
Appellate Case No: 2012-212180

Dear Mr. Shearouse:

I am enclosing the original and six (6) copies of the Respondent's Memorandum of Appealability of Administrative Order in the above case.

Sincerely,

J. Rutledge Johnson
Assistant Attorney General
Bar No: 78871

JRJ:nb
Enclosures

cc: Ronnie A. Mitchell, #217691
Trisha Allen, Victim Services

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